would resolve the United States Government's potential liability for response costs, response actions, and natural resource damages associated with the Site under CERCLA. Under the proposed Consent Decree, Brown County, Green Bay, and the United States would pay a total of $5.2 million ($350,000 each from Brown County and Green Bay and $4.5 million from the United States). If the Decree is approved, the $5.2 million would be paid into a set of Site-specific special accounts for use in financing future cleanup and natural resource restoration work at the Site.

The Department of Justice will receive comments relating to the Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and mailed either electronically to *pubcommentees.enrd@usdoj.gov* or in hard copy to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. Comments should refer to *United States and the State of Wisconsin* v. *NCR Corp., et al.,* Case No. 10–C–910 (E.D. Wis.) and D.J. Ref. No. 90–11–2–1045/3.

The Consent Decree may be examined at: (1) The offices of the United States Attorney, 517 E. Wisconsin Avenue, Room 530, Milwaukee, Wisconsin; and (2) the offices of the U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 14th Floor, Chicago, Illinois. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $11.00 (44 pages at 25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen M. Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–30572 Filed 12–6–10; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Graftech International Ltd., Et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *GrafTech International Ltd., et al.,* Civil Action No. 1:10–cv–02039. On November 29, 2010, the United States filed a Complaint alleging that the proposed acquisition by GrafTech International Ltd. ("GrafTech") of Seadrift Coke L.P. ("Seadrift") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires that GrafTech and Seadrift modify an existing supply agreement with one of Seadrift's competitors in the provision of petroleum needle coke, ConocoPhillips Company ("Conoco"), to remove terms that might have facilitated the sharing of pricing and production information. In addition, future supply agreements between GrafTech and Conoco must not provide Seadrift the means with which to verify customer-specific competitor pricing or production. In order to ensure compliance with these provisions, GrafTech must provide to the United States: (1) All future agreements between Conoco and GrafTech for the provision of petroleum needle coke; and (2) Seadrift documents prepared in the ordinary course of business that demonstrate Seadrift's production, capacity and sales. GrafTech must also institute a firewall, which restricts the flow of competitively sensitive information to and from Conoco during GrafTech's supply negotiations with that company, as well as preventing the flow of any competitively sensitive information to GrafTech personnel that may be provided to Seadrift from its customers.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530 (telephone: 202–307–0924).

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 450 5th Street, NW., Suite 8700, Washington, DC 20530, *Plaintiff,*

v.

Graftech International Ltd., 2900 Snow Road, Parma, Ohio 44130, and

Seadrift Coke L.P., 8618 Highway 185 North, Port Lavaca, Texas 77979, *Defendants.*

Case No.: 1:10–Cv–02039
Judge: Rosemary M. Collyer
Deck Type: Antitrust
Date Stamp: November 29, 2010

Complaint

Plaintiff, the United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action against defendants GrafTech International Ltd. ("GrafTech") and Seadrift Coke L.P. ("Seadrift") to obtain a permanent injunction and other relief to remedy the harm to competition caused by GrafTech's acquisition of Seadrift. Plaintiff alleges as follows:

I. Nature of the Action

1. GrafTech is one of the largest producers of graphite electrodes in the world. On April 1, 2010, GrafTech agreed to acquire the 81.1 percent of Seadrift that it does not already own for approximately $308.1 million. Seadrift produces petroleum needle coke, the primary input in the production of graphite electrodes.

2. Historically, GrafTech has sourced the majority of its petroleum needle coke from Seadrift's competitor, ConocoPhillips Company ("Conoco"). At various times, there have been constraints in the supply of needle coke. Beginning January 1, 2001, GrafTech and Conoco formalized their relationship by negotiating two, nearly-

identical, long-term supply agreements for petroleum needle coke supplied from Conoco's two production facilities, in Lake Charles, Louisiana, and South Killinghorne, England (collectively referred to hereinafter as "Supply Agreement").

3. The Supply Agreement provides each party with the ability to audit the books, records, and documents of the other to ensure compliance. Though the "termination clause" of the Supply Agreement was recently activated, notice of termination essentially locks in the terms of the Supply Agreement for three years. During this period, Conoco must provide petroleum needle coke to GrafTech on a most-favored-nation ("MFN") basis, meaning that prices to GrafTech may not exceed the lowest price charged by Conoco to its other customers. To ensure compliance with the MFN guarantee, GrafTech could demand to audit Conoco documents reflecting the company's costs, pricing to specific customers, volume of production to each customer and other commercially sensitive terms of sale.

4. GrafTech's acquisition of Seadrift effectively would allow GrafTech to determine Seadrift's capacity and utilization rate for the production and supply of petroleum needle coke. The acquisition would also provide Seadrift with direct access to all of the information GrafTech collects via the Supply Agreement with Conoco. This would allow access to verified, customer-specific pricing and production information between two petroleum needle coke competitors, Seadrift and Conoco. Such control over Seadrift and access to information could facilitate tacit coordination of prices or output. Thus, the merger would remove a significant barrier to collusion among suppliers of petroleum needle coke, enhancing GrafTech's, Seadrift's and Conoco's ability to coordinate prices and output, with the likely effect of increased prices or reduced supply to consumers, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

II. The Defendants

5. Headquartered in Parma, Ohio, GrafTech, through its graphite power systems division, is the largest manufacturer of graphite electrodes ("graphite electrodes") sold in the United States. GrafTech has no U.S. production facility, but produces graphite electrodes for sale in the United States at some of its international facilities, located in Mexico, Brazil, Africa, France and Spain. GrafTech's revenues from the sale of graphite electrodes were approximately $483 million in 2009.

6. Seadrift, headquartered in Port Lavaca, Texas, is one of two domestic manufacturers of petroleum needle coke, the key input product in the manufacture of graphite electrodes in North America. Seadrift produces petroleum needle coke for sale to customers producing graphite electrodes sold in the United States from a single manufacturing plant, also located in Port Lavaca. The Port Lavaca plant has an annual production capacity of approximately 150,000 metric tons of petroleum needle coke, representing approximately 19 percent of worldwide petroleum needle coke capacity.

III. Jurisdiction and Venue

7. The United States brings this action against defendants GrafTech and Seadrift under Section 15 of the Clayton Act, 15 U.S.C. 25, as amended, to prevent GrafTech from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

8. Defendant GrafTech manufactures, sells and provides services related to graphite electrodes sold in the United States and in the flow of interstate commerce. GrafTech's manufacture, sale and provision of services related to graphite electrodes substantially affect interstate commerce. Defendant Seadrift produces and sells petroleum needle coke in the United States in the flow of interstate commerce, and those activities substantially affect interstate commerce. The Court has jurisdiction over this action and over the parties pursuant to 15 U.S.C. 25 and 28 U.S.C. 1331 and 1337.

9. Defendants have consented to venue and personal jurisdiction in this judicial district.

V. Trade and Commerce

A. Relevant Market

10. Petroleum needle coke, a crystalline form of carbon derived from decant oil, is the key ingredient in, and is used only in, the production of graphite electrodes. Graphite electrode producers such as GrafTech combine petroleum needle coke with pitch adhesives and other inputs to form cylinders that are shot through with electricity and baked to produce graphite electrodes. Graphite electrodes are then assembled into columns using connecting pins and sold to steel manufacturers for use in furnaces and foundries. Steel manufacturers dip the graphite electrodes into the belly of an electric arc furnace and use the graphite electrodes as a conductor to shoot electricity into the furnace, heating the furnace and melting scrap steel.

11. Graphite electrodes oxidize and gradually are consumed. They are replaced about every eight hours. Graphite electrodes that oxidize too quickly or break while in use reduce the efficiency of the furnace and, in the case of breakage, require the electric arc furnace to be shut down so the fragments can be extracted from the molten steel, which imposes a significant cost on steel producers. The quality of the petroleum needle coke used to make the graphite electrode is the most important factor in preventing breakage or accelerated consumption of graphite electrodes.

12. Petroleum needle coke, relative to other varieties of coke, is distinguished by its needle-like structure and its quality, which is measured by the presence of impurities, principally sulfur, nitrogen and ash. The needle-like structure of petroleum needle coke encourages expansion along the length of the electrode, rather than the width, which reduces the likelihood of fractures. Impurities reduce quality because they increase the coefficient of thermal expansion and electrical resistivity of the graphite electrode, which can lead to uneven expansion and a build-up of heat and causes the graphite electrode to oxidize rapidly and break. Petroleum needle coke is typically low in these impurities. In order to minimize fractures caused by disproportionate expansion over the width of an electrode, and minimize the effect of impurities, large-diameter graphite electrodes (18 inches to 32 inches) employed in high-intensity electric arc furnace applications are comprised almost exclusively of petroleum needle coke.

13. An alternative form of needle coke is produced from coal tar pitch. Pitch needle coke ("pitch coke") tends to include more impurities than petroleum needle coke. Pitch coke can be used to make graphite electrodes, but it must be processed differently, is more costly and time-consuming to produce, and typically results in a lower quality graphite electrode. Pitch coke cannot be blended with petroleum needle coke. Because of these disadvantages, most producers of large-diameter graphite electrodes do not use pitch coke as an input.

14. Anode coke, like petroleum needle coke, is a derivative of decant oil, but it lacks the needle-like structure of petroleum needle coke. Instead, anode coke particles are spherical and cause a graphite electrode to expand across the width rather than just the length of the electrode. This pattern of expansion makes fractures more likely, particularly in large-diameter graphite

electrodes, the greater width of which exaggerates the effect. Although producers may blend anode coke with petroleum needle coke to produce graphite electrodes, most producers carefully restrict the amount of anode coke used in graphite electrode production and do not use significant quantities of anode coke in the production of large-diameter graphite electrodes.

15. Petroleum needle coke customers can and do obtain petroleum needle coke from multiple sources worldwide. Petroleum needle coke is produced at manufacturing facilities located in the United States, England and Japan. Each facility ships petroleum needle coke internationally, and transportation costs comprise a small fraction of the cost of petroleum needle coke. Petroleum needle coke purchasers typically pay the same price for petroleum needle coke regardless of the location of the production facility or the destination.

16. A small but significant increase in the price of petroleum needle coke would not cause customers to substitute volumes of pitch needle coke or anode coke sufficient to make such a price increase unprofitable. Accordingly, worldwide production and sale of petroleum needle coke is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

B. Competitive Effects

1. Market Structure and Supply Relationships

17. Four significant firms operating out of five facilities worldwide produce petroleum needle coke. There have been instances in which demand has exceeded available supply; artificial restrictions on output could lead to supply constraints and higher prices. Conoco has the largest production capacity of all petroleum needle coke producers, and is the only manufacturer with two production facilities, including a plant in South Killinghorne, England and another in Lake Charles, Louisiana. Conoco's two plants collectively represent 55 percent of worldwide petroleum needle coke capacity. Seadrift owns a single plant in Port Lavaca, Louisiana. Seadrift is the second-largest producer of petroleum needle coke, with approximately 19 percent of capacity. It historically has sold petroleum needle coke to most of the major graphite electrode producers. GrafTech's acquisition of Seadrift would enable it to alter Seadrift's capacity and utilization rates. Two other producers each operate a plant in Japan; historically, the Japanese producers have not significantly increased the amount of petroleum needle coke they ship into the United States from year to year.

18. Conoco supplies nearly every graphite electrode manufacturer in the world with some portion of the manufacturer's petroleum needle coke requirements, including GrafTech and all of its graphite electrode competitors. Even following its acquisition of Seadrift, GrafTech intends to continue to purchase petroleum needle coke from Conoco. All major graphite electrode producers have multiple plants worldwide, and typically rely upon either Conoco or Seadrift for some portion of their petroleum needle coke requirements. Supply agreements are typically negotiated annually for the following year, with sporadic monthly purchases as-needed to fill gaps between projected and real demand.

2. GrafTech-Conoco Long-Term Supply Relationship

19. Over the past ten years, GrafTech has been engaged in a long-term supply arrangement with Conoco, buying the vast majority of its petroleum needle coke requirements from Conoco's South Killinghorne and Lake Charles facilities. The Supply Agreement includes a target range for the volume of purchases by GrafTech from each Conoco plant, and is modified annually to record negotiated price terms for the coming year.

20. The Supply Agreement includes a clause entitled "Audit Rights," which permit Conoco and GrafTech to audit each other's books, records and documents. The audit rights do not exclude contemporaneous books, records and documents.

21. The Supply Agreement also includes a "termination clause," which is activated upon notice by either party. When activated, the termination clause requires the Supply Agreement to continue for a period of three years, with modified volume commitments and pricing terms. GrafTech's obligations to buy petroleum needle coke from Conoco are based on past purchase volumes and decline each year by a set percentage. Conoco, in turn, must grant GrafTech MFN pricing for that three-year period, which requires that GrafTech's prices shall be no higher than the lowest price charged by Conoco for the relevant grade of petroleum needle coke among all of its petroleum needle coke customers.

22. On September 27, 2010, Conoco notified GrafTech that it intended to terminate the Supply Agreement. Activation of the termination clause converted the price term to MFN pricing. The audit rights clause remains unchanged.

23. Even after the three-year period remaining under the Supply Agreement expires, GrafTech intends to continue to contract with Conoco for a substantial volume of petroleum needle coke. Such a relationship could expose GrafTech to information regarding Conoco's pricing, supply and output. GrafTech could utilize such information to coordinate petroleum needle coke pricing and output.

3. Impact of GrafTech's Merger with Seadrift

24. On April 1, 2010, GrafTech agreed to acquire the outstanding majority interest in Seadrift. When announcing the proposed acquisition, GrafTech also described various improvements that it intended to make to the Seadrift facility, including expansion in available capacity, in anticipation of using a significant volume of Seadrift's production following the acquisition.

25. The audit rights clause provides GrafTech access to Conoco's facilities, books, records and documents to ensure compliance with the Supply Agreement. The MFN clause now requires that Conoco charge to GrafTech prices no higher than the lowest price it offers to other graphite electrode producers. To ensure compliance with the MFN, GrafTech could request to audit Conoco's books, records and documents reflecting prices charged to specific graphite electrode customers. Such an audit also could reveal Conoco's costs, production, terms of sale and related commercial information. Access to invoices and billing records, for example, would provide direct information about volume sold, prices charged and the credit terms under which payment was collected for individual customers.

26. Once Seadrift is acquired by GrafTech, it will have access to the same information as GrafTech under the Supply Agreement, including any information arising from GrafTech's access to Conoco's facilities and audits of Conoco's contemporaneous books, records and documents. Because Conoco sells petroleum needle coke to nearly every graphite electrode producer in the world, the scope of that access is essentially market-wide.

27. Consequently, post-merger, GrafTech would be able to exercise rights under the Supply Agreement at the behest of Seadrift, Conoco's competitor. Indeed, the activation of the MFN clause maximizes GrafTech's ability to verify the prices that Seadrift's primary competitor charges to specific petroleum needle coke customers, and

the volume of petroleum needle coke promised to each customer. The merger would allow the exploitation of those rights by Seadrift. Such access by a competitor could facilitate a tacit understanding between Seadrift and Conoco about the prices that should be charged to each customer, or the rate of output of each facility. Further, the ability to verify a competitor's contemporaneous, customer-specific production and pricing would eliminate the incentive and opportunity to deviate from any such understanding, as detection would be likely, removing another barrier to coordination.

28. Accordingly, the MFN and audit rights clauses would substantially reduce competition in the petroleum needle coke market, which likely would lead to higher prices and reduced output, in violation of Section 7 of the Clayton Act.

29. Even in the absence of the MFN and Audit Rights, however, the ongoing supply relationship between GrafTech and Conoco could provide GrafTech (and hence Seadrift) with inappropriate competitive information regarding pricing, supply and output. Such information could enhance the potential for price and output coordination.

V. Violation Alleged

30. GrafTech's acquisition of Seadrift, by permitting access to verified, customer-specific production, pricing and related commercial information by competitors Seadrift and Conoco under the terms of the Supply Agreement, and possibly other supply arrangements, would substantially reduce competition and likely increase prices and reduce output in the petroleum needle coke market in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

VI. Requested Relief

31. Plaintiff requests that this Court:

a. Adjudge and decree that GrafTech's acquisition of Seadrift would violate Section 7 of the Clayton Act, 15 U.S.C. 18;

b. Compel GrafTech to strike the audit and MFN clauses from the Supply Agreement;

c. Prohibit GrafTech from including in future contracts with Conoco any term that conveys an audit right, MFN pricing, or otherwise allows the exchange of third-party production, pricing and related commercial information between GrafTech and Conoco;

d. Award Plaintiff the cost of this action; and

e. Grant Plaintiff such other and further relief as the case requires and the Court deems just and proper.

Dated: November 29, 2010

Respectfully Submitted,

For Plaintiff United States of America:

Christine A. Varney,
Assistant Attorney General, D.C. Bar No. 411654.

/s/ _____
Katherine B. Forrest,
Deputy Assistant Attorney General

/s/ _____
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United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Graftech International Ltd. And Seadrift Coke L.P., Defendants.*

Case No.: 1:10–Cv–02039.
Judge: Rosemary M. Collyer.
Deck Type: Antitrust.
Date Stamp: November 29, 2010.

Competitive Impact Statement

Plaintiff United States of America ("United States"), pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Defendants GrafTech International Ltd. ("GrafTech") and Seadrift Coke L.P. ("Seadrift") entered into an Agreement and Plan of Merger, dated April 1, 2010, pursuant to which GrafTech agreed to acquire the 81.1 percent of Seadrift stock it does not already own for about $308.1 million.

The United States filed a civil antitrust Complaint on November 29, 2010, seeking to enjoin GrafTech's proposed acquisition of Seadrift. The Complaint alleges that the acquisition likely will substantially lessen competition in the worldwide sale of petroleum needle coke used to manufacture graphite electrodes, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. That loss of competition likely would result in higher prices, reduced output and less favorable terms of sale in the global petroleum needle coke market.

At the same time the Complaint was filed, the United States filed a proposed Final Judgment, which is designed to remedy the expected anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, GrafTech and Seadrift are required to modify the long-term petroleum needle coke supply agreements ("Supply Agreement") between GrafTech and ConocoPhillips Company ("Conoco"), a competitor of Seadrift, and provides for ongoing reports regarding petroleum needle coke demand, capacity utilization and the imposition of firewalls. After the proposed acquisition, GrafTech would control Seadrift's capacity utilization for petroleum needle coke. Seadrift effectively would also have direct access to all of the information it collects from its customers as well as the information GrafTech collects via the Supply Agreement. The Supply Agreement would include the ability to verify Conoco's customer-specific pricing, volume of production and other commercially sensitive information, via the audit rights and most-favored-nation ("MFN") pricing clauses included therein.[1] Future supply arrangements also could provide similar opportunities to access commercially sensitive information, as well as other sensitive information from Seadrift's own customers. The ability of a vendor to verify current commercial terms granted by a competitor could facilitate a tacit understanding on price or output and provide a means to detect cheating on such an understanding, increasing the likelihood of coordination. Accordingly, as the merger would remove a significant barrier to collusion, it likely would lead to anticompetitive effects.

Under the proposed Final Judgment, the Defendants are permitted only to engage in ongoing and future purchases of petroleum needle coke from Conoco pursuant to a revised supply agreement, one that does not provide Seadrift the means to verify customer-specific competitor pricing or production. The proposed Final Judgment also bars

[1] GrafTech has not received MFN pricing from Conoco under this clause to date. Conoco's September 2010 termination of the Supply Agreement activated this dormant provision, which would have applied to sales beginning in 2011.

GrafTech from negotiating any future agreement with Conoco that would confer any such rights to Seadrift, for a period of ten years from entry of the proposed Final Judgment. In order to ensure compliance with these provisions, all future agreements for the provision of petroleum needle coke from Conoco to GrafTech and Seadrift must be provided to the United States within two business days of execution. GrafTech also must produce documents prepared in the ordinary course of business that demonstrate Seadrift's production, capacity and sales. The proposed Final Judgment also restricts the flow of competitively sensitive information between GrafTech personnel who negotiate GrafTech's supply of petroleum needle coke from Conoco, and Seadrift personnel who make decisions about Seadrift's production and prices.

The United States believes the provisions in the proposed Final Judgment will remove the potential for competitors to verify customer-specific pricing, production and other commercial terms. At the same time, the proposed Final Judgment preserves the quality improvements likely after the merger, and would not impede the potential cost savings that the parties claim will result from the merger, and that may incentivize discounting in the downstream market for graphite electrodes.

The United States and the Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof for a period of ten years after entry of the Final Judgment.

II. Description of the Events Giving Rise to the Alleged Violations

A. The Defendants

GrafTech, headquartered in Parma, Ohio, through its graphite power systems division, is the largest manufacturer of graphite electrodes sold in the United States, and one of the two leading providers of graphite electrodes worldwide. GrafTech produces graphite electrodes at facilities in Mexico, Brazil, Africa, France and Spain. GrafTech realized revenue of approximately $483 million from the sale of graphite electrodes in 2009.

Seadrift, headquartered in Port Lavaca, Texas, is one of two U.S. manufacturers of petroleum needle coke, the key input in the manufacture of graphite electrodes in North America. Seadrift operates a single manufacturing plant, which has a current annual production capacity of approximately 150,000 metric tons of petroleum needle coke, representing approximately 19 percent of worldwide petroleum needle coke capacity, and Seadrift realized revenue of $62 million in 2009. Post-acquisition, GrafTech would control Seadrift's capacity and utilization rates.

B. The Competitive Effects of the Acquisition on the Market for Petroleum Needle Coke

1. Relevant Market

Petroleum needle coke is used exclusively in the production of graphite electrodes. Graphite electrodes are large columns of virtually pure graphite used in the production of steel from scrap in electric arc furnaces, ladle metallurgy furnaces, and foundries. As graphite electrodes heat the steel, they are consumed through oxidation, and are replaced by connecting the end of the new graphite electrode with the end of the chain of graphite electrodes in the furnace. The highest-intensity electric arc furnaces require large-diameter graphite electrodes, which range in size between 18 inches in diameter to 32 inches in diameter.

Petroleum needle coke is the key material input into large-diameter graphite electrodes used in electric arc furnaces in the United States. All sizes of graphite electrodes are manufactured out of needle coke, but some small-diameter graphite electrode manufacturers blend a percentage of anode coke with the needle coke during the production process. Large-diameter graphite electrodes require approximately one metric ton of raw needle coke to produce one metric ton of finished graphite electrode.

Needle coke is a nearly pure form of carbon that can be derived either from petroleum ("petroleum needle coke") or coal tar pitch ("pitch coke"). Petroleum needle coke is manufactured from decant oil, a byproduct from the catalytic cracking process of refining crude oil. Petroleum needle coke's structure differs from that of anode coke, also derived from decant oil, in that it is crystalline with needle-like particles. This structure provides a low coefficient of thermal expansion, which allows it to maintain its shape in high-temperature settings, and a low electrical resistivity, permitting efficient conduction of electricity. Additionally, petroleum needle coke has a lower content of sulfur and nitrogen than does pitch coke, which minimizes changes in shape caused when coke over-expands during graphite electrode manufacturing, creating cracks or voids within the graphite electrode, drastically altering both its strength and density.

Graphite electrode producers obtain their supply of petroleum needle coke from one or more of four firms: Seadrift, Conoco, and two vendors located in Japan. Historically, the Japanese suppliers have not substantially increased the volume of petroleum needle coke that they ship into the United States from year to year. Conoco is the only manufacturer with two petroleum needle coke production facilities, one in Lake Charles, Louisiana and one in South Killinghorne, England. Conoco, Seadrift, and the Japanese producers all have worldwide customers and ship internationally. There have been instances of supply constraint in the manufacture of petroleum needle coke. Transportation costs make up a small fraction of the cost of petroleum needle coke, and customers typically pay the same price for petroleum needle coke regardless of the location of the production facility or the destination.

Manufacturers of large-diameter graphite electrodes worldwide typically use petroleum needle coke to produce their graphite electrodes and would not, in response to a small but significant increase in price of petroleum needle coke, switch to pitch or anode cokes in sufficient volumes such that the attempted price increase would be defeated or deterred. Thus, worldwide production and sale of petroleum needle coke is a relevant market for purposes of antitrust analysis of the proposed transaction.

2. Anticompetitive Effects

The proposed acquisition of Seadrift by GrafTech could substantially lessen competition in the international petroleum needle coke market because it would allow GrafTech to control Seadrift's capacity and utilization rates for the manufacture of petroleum needle coke, and also provide Seadrift direct access to verified, customer-specific competitor pricing and production information. The basis for the Complaint, and the essence of the expected anticompetitive effect of this acquisition, is that GrafTech's acquisition of Seadrift, Conoco's largest petroleum needle coke competitor, would draw Seadrift into GrafTech's current Supply Agreement and future supply arrangements with Conoco, while also allowing GrafTech to control Seadrift's output. It is GrafTech's control of Seadrift and its addition to

the Conoco alliance, by and through the proposed acquisition, which has triggered a violation of the Clayton Act. It is the consequent agreement between competitors that the proposed Final Judgment is designed to address, by removing the opportunity and means for Seadrift and Conoco to engage in anticompetitive activity under cover of the Supply Agreement, and possibly future supply arrangements.

On September 27, 2010, in response to the proposed merger, the termination clause of the Supply Agreement was activated. The activation of the termination clause has initiated a three-year wind-down period during which GrafTech is obligated to buy specified volumes in each year and Conoco must provide that volume with pricing on an MFN basis. The MFN requires that prices to GrafTech shall be no higher than the lowest price charged by Conoco for the relevant grade of coke among all of its coke customers other than GrafTech. Included among the clauses in the Supply Agreement that remain in place during the wind-down period is the mutual right for GrafTech and Conoco, in order to ensure compliance with the Supply Agreement, to audit each other's books, records and documents, which likely would include current cost information, production schedules, invoices that contain third-party pricing and volume information, records that reveal credit terms, and similar competitively sensitive information. By operation of the merger, the audit clause would extend to Seadrift the information provided to GrafTech, allowing Seadrift to verify the real-time, customer-specific pricing its main competitor charges and the volume of petroleum needle coke sold to nearly every electrode manufacturer in the world.

The legacy audit right included in the Supply Agreement would provide Seadrift with the means to verify a key rival's contemporaneous prices, which could facilitate an understanding between Seadrift and Conoco about the prices to be charged to each customer, and could be used to enforce that understanding by deterring cheating. At the same time, the MFN effectively could have a chilling effect on Conoco's willingness to offer discounts to other graphite electrode customers, because it would have to provide the same discount for the large volume of petroleum needle coke it sells to GrafTech.

Even after the three-year extension of the Supply Agreement expires, however, GrafTech intends to purchase substantial quantities of petroleum needle coke from Conoco via other supply arrangements; combined with its ownership of Seadrift, this could provide the conditions for output coordination.

Exchanges of current price information have the potential to generate anticompetitive effects and, although not *per se* unlawful under the antitrust laws, have consistently been held to violate the Sherman Act. Moreover, the residual audit right in the Supply Agreement provides that GrafTech and Conoco may audit each other's contemporaneous books, records and documents. Post-merger, GrafTech's cost structure would include the production of Seadrift petroleum needle coke. This clause, if left unchecked, would allow Conoco to know Seadrift's volume and cost of production, and would allow GrafTech to review all of Conoco's production volume and costs. Moreover, should the audit clause be used in conjunction with the MFN, to verify that GrafTech was, in fact, receiving the lowest price, for example, Seadrift potentially would have access to its largest competitor's pricing and production to all other customers. Ongoing supply arrangements also have the potential to provide Seadrift, through GrafTech, with competitively sensitive information.

Therefore, GrafTech's acquisition of Seadrift likely will substantially lessen competition in the development, production and sale of petroleum needle coke in the United States, likely leading to higher prices, reduced output and less favorable terms of sale in the worldwide petroleum needle coke market, in violation of Section 7 of the Clayton Act.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment will eliminate the anticompetitive effects that otherwise would result from GrafTech's acquisition of Seadrift. Conoco, having activated the termination clause of the Supply Agreement, has initiated the three-year wind-down period during which GrafTech must buy specified volumes each year, and Conoco must provide that volume with pricing on an MFN basis. The audit rights, also included in the Supply Agreement, give GrafTech and Seadrift access to Conoco's pricing and commercial terms to all of its customers, for the purpose of enforcing MFN pricing. The proposed Final Judgment requires GrafTech and Seadrift immediately to abrogate, amend or otherwise alter the current petroleum needle coke Supply Agreement between GrafTech and Conoco to remove the terms related to the ongoing audit rights, sharing of non-public or proprietary information, and MFN pricing.

The proposed Final Judgment also provides that the Department of Justice's Antitrust Division must receive copies of any and all agreements regarding the provision of petroleum needle coke between the defendants and Conoco for the term of the Final Judgment, as well as ordinary course business documents that illuminate Seadrift's output and sales decisions. These provisions ensure that Defendants comply with the proposed Final Judgment and also will serve to deter them from entering into any agreement that may have the effect of enhancing coordination among competing suppliers of petroleum needle coke. Production of contracts between GrafTech and Conoco will allow the Division to monitor future agreements for audit rights or other provisions that facilitate the exchange of proprietary pricing and output information. Production of ordinary course business documents will allow the Division to monitor changes in production in relation to capacity that may suggest output coordination. As an additional safeguard, the proposed Final Judgment requires that GrafTech strictly segregate employees who negotiate terms with Conoco from those who make decisions about pricing and production at Seadrift. Similarly, Seadrift employees who negotiate arrangements with competitors of GrafTech will be prevented from sharing any competitively sensitive information thereby obtained.

Further, striking the audit clause and MFN provision of the Supply Agreement will not imperil the potential efficiencies that GrafTech expects will result from the merger. GrafTech anticipates substantial, merger-specific efficiencies by internal consumption of Seadrift petroleum needle coke, which would allow the elimination of double margins. Should this result in lower GrafTech prices for graphite electrodes downstream, it likely would incentivize other graphite electrode competitors to reduce prices in response to that competition. Verified plans to improve the quality of Seadrift petroleum needle coke likely will benefit Seadrift's graphite electrode customers, as well as the downstream consumers of finished graphite electrodes, in the future. Thus, by removing the audit rights and MFN provisions from the Supply Agreement, and providing other protections in connection with the future supply arrangements, that source of potential harm is eliminated without threatening to deprive consumers of the pro-competitive efficiencies that GrafTech

and Seadrift expect their merger to generate.

As a result of the proposed Final Judgment, Seadrift and Conoco will remain independent, competitive suppliers of petroleum needle coke, while GrafTech will be free to realize the efficiencies it expects to result from the Seadrift acquisition. Finally, in the future, any new agreement between Seadrift and Conoco that might facilitate collusion by incorporating terms such as those required to be abrogated by the proposed Final Judgment will be deterred.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Defendant.

V. Procedures Applicable for Approval or Modification of the Proposed Final Judgment

The United States and Defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have litigated and sought preliminary and permanent injunctions against Defendant GrafTech's acquisition of Seadrift, in order to avoid providing Seadrift access to competitively sensitive information available under the Supply Agreement. The United States is satisfied, however, that the proposed Final Judgment will preserve competition for the provision of petroleum needle coke without the time or expense of litigation. The proposed Final Judgment will achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In making that determination in accordance with the statute, the court is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A)–(B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.").

As the United States Court of Appeals for the District of Columbia has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the*

public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree. *Bechtel,* 648 F.2d at 666 (emphasis added) (citations omitted).[1] In determining whether a proposed settlement is in the public interest, the court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case); *United States* v. *Republic Serv., Inc.,* 2010–2 Trade Cas. (CCH) ¶77, 097, 2010 U.S. Dist. LEXIS 70895, No. 08–2076 (RWR), at *10 (D.D.C. July 15, 2010) (finding that "[i]n light of the deferential review to which the government's proposed remedy is accorded, [amicus curiae's] argument that an alternative remedy may be comparably superior, even if true, is not a sufficient basis for finding that the proposed final judgment is not in the public interest").

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). Therefore, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns,* 489 F. Supp. 2d at 17; *Republic Serv.,* 2010 U.S. Dist. LEXIS 70895, at *2–3 (entering final judgment "[b]ecause there is an adequate factual foundation upon which to conclude that the government's proposed divestiture will remedy the antitrust violations alleged in the complaint").

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft,* 56 F.3d at 1459; *see also InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As this Court confirmed in *SBC Communications,* courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." 489 F. Supp. 2d at 15.

In its 2004 amendments to the Tunney Act,[2] Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, stating: "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns,* 489 F. Supp. 2d at 11.[3]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: November 29, 2010.

Respectfully submitted,

/s/

Stephanie A. Fleming, Esq.,
United States Department of Justice, Antitrust Division, Litigation II Section, 450 Fifth Street, N.W., Suite 8700, Washington, D.C. 20530, (202) 514–9228, stephanie.fleming@usdoj.gov.

Certificate of Service

I, Stephanie A. Fleming, hereby certify that on November 29, 2010, I caused a copy of the foregoing Competitive Impact Statement to be served upon defendants GrafTech International Ltd. and Seadrift Coke L.P. by mailing the documents electronically to the duly authorized legal representatives of defendants as follows:

Counsel for Defendant GrafTech: Jonathan Gleklen, Esq., Arnold & Porter LLP, 555 12th Street, NW., Washington, DC 20004.

Counsel for Defendant Seadrift: Craig Seebald, Esq., Joel Grosberg, Esq., McDermott, Will & Emery, 600 13th Street, NW., Washington, DC 20006.

Stephanie A. Fleming, Esq., United States Department of Justice, Antitrust Division, Litigation II Section, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530, (202) 514–9228, *Stephanie.fleming@usdoj.gov.*

[1] *Cf. BNS,* 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' ").

[2] The 2004 amendments substituted the word "shall" for "may" when directing the courts to consider the enumerated factors and amended the list of factors to focus on competitive considerations and address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), with 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

[3] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

United States District Court for the District of District of Columbia

United States of America, *Plaintiff*, v. GrafTech International Ltd. and Seadrift Coke L.P., *Defendants*.

Case No.: 1:10–Cv–02039.
Judge: Rosemary M. Collyer.
Deck Type: Antitrust.
Date Stamp: November 29, 2010.

Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on November 29, 2010, and the United States and Defendants GrafTech International Ltd. ("GrafTech") and Seadrift Coke L.P. ("Seadrift"), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, this Final Judgment requires the prompt and certain modification of particular contracts to which GrafTech is a party and the imposition of certain conduct restrictions and obligations on GrafTech to assure that competition is maintained;

And whereas, GrafTech has represented to the United States that the contract modifications required below can and will be made, that GrafTech will abide by the conduct restrictions and obligations required below, and that GrafTech will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *Ordered, Adjudged And Decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, 15 U.S.C. 18, as amended.

II. Definitions

As used in this Final Judgment:

A. "GrafTech" means defendant GrafTech International Ltd., a Delaware corporation with its headquarters in Parma, Ohio, its predecessor, UCAR International Ltd., its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. "Seadrift" means defendant Seadrift Coke L.P., a Delaware Limited Partnership with its headquarters in Port Lavaca, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Conoco" means ConocoPhillips Company, a Delaware corporation with headquarters in Houston, Texas, which includes the subsidiaries managing the production facilities in Lake Charles, Louisiana and South Killinghorne, England, as well as all other successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. The "Supply Agreement" encompasses those two agreements effective January 1, 2001, between GrafTech and Conoco, which relate to the provision of petroleum needle coke and any agreement created to supersede, modify or amend those agreements.

E. "Contract" means any agreement, understanding, amendment, modification or other document describing the commercial terms of sale.

F. "Merger" means GrafTech's proposed purchase of the 81.1 percent of voting securities of Seadrift that it does not already own, and the concurrent merger between GrafTech and Seadrift, pursuant to the agreement executed on April 1, 2010.

G. "Exempted Employee" means any employee of Defendants who is not a GrafTech Covered Employee or Seadrift Covered Employee, including: (a) GrafTech's Chief Executive Officer and Chief Financial Officer; and (b) any employee of Defendants whose primary responsibilities includes accounting, tax, corporate development, human resources, legal, information systems, and/or finance.

H. "GrafTech Covered Employee" means any employee of GrafTech other than an Exempted Employee whose principal job responsibility involves the operation or day-to-day management of GrafTech's Industrial Materials or Engineered Solutions businesses.

I. "Petroleum Needle Coke Supplier Confidential Information" means all information provided, disclosed, or otherwise made available to GrafTech by petroleum needle coke suppliers or potential petroleum needle coke suppliers that is not in the public domain, including but not limited to information related to such suppliers' current or future output, capacity, prices, or forecasted shutdown schedules, but does not include prices paid by GrafTech or quantities purchased by GrafTech from a petroleum needle coke supplier.

J. "Seadrift Covered Employee" means any employee of Seadrift other than an Exempted Employee whose principal job responsibility involves the operation or day-to-day management of Seadrift's petroleum needle coke business.

K. "Seadrift Customer Confidential Information" means all information provided, disclosed, or otherwise made available to Seadrift by Seadrift customers or potential customers that is not in the public domain, including but not limited to information related to such customers' current or future purchases, output, capacity, prices, or forecasted shutdown schedules.

III. Applicability

This Final Judgment applies to Defendants GrafTech and Seadrift, as defined above, and all other persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Required Conduct

A. Defendants shall not consummate the Merger until the Supply Agreements have been modified in a manner consistent with this Final Judgment, including compliance with the following conditions:

1. The audit rights described in section 5.6 of the Supply Agreement shall be deleted and have no further force or effect.

2. The most-favored-nation basis price clause included in section 12.3.C of the Supply Agreement shall be deleted and have no further force or effect.

B. Defendants shall not agree to incorporate the following provisions in any future contract with Conoco for the provision of petroleum needle coke:

1. Any provision that grants to Defendants the right to audit or otherwise review the non-public financial and commercial records of Conoco, or grants such rights to Conoco with respect to Defendant's non-public financial and commercial records.

2. Any provision that grants to Defendants the right to obtain any non-public information about third-party petroleum needle coke pricing or related commercial terms from Conoco, or grants such rights to Conoco with respect to Defendants' non-public information about third-party petroleum needle coke pricing or related commercial terms.

C. Beginning on the date of entry of this Final Judgment and continuing for the term of the Final Judgment:

1. Within two business days of execution, Defendants shall provide to the United States complete and unredacted copies of any Contract formed between Defendants and Conoco relating to the provision of petroleum needle coke.

2. Within ten business days of the end of each quarter, Defendants shall provide to the United States a copy of documents prepared in the ordinary course of business sufficient to show:

(a) Seadrift's projection of demand and sales for petroleum needle coke in the subsequent twelve-month period;

(b) Seadrift's year-to-date production and sales of petroleum needle coke versus forecast; and

(c) Seadrift's changes to petroleum needle coke production capacity or other major capital projects, and capital spending by project.

3. If, at any time, Defendants elect to make a change in Seadrift's capacity or production plans that changes Seadrift's annual output by more than ten percent and that is not reflected in the most recent document provided in response to Paragraph IV(C)(1) or (2), Defendants shall:

(a) within two business days provide the Division written notice of that change; and

(b) within ten business days provide any documents prepared in the ordinary course of business that describe the change, reflect the reasons for the change or project the impact of that change.

D. All documents required to be produced to the United States under Paragraph IV(C) shall be delivered by certified mail to the following address: Chief, Litigation II Section, Antitrust Division, Department of Justice, 450 Fifth St., NW., Washington, DC 20530.

V. Prohibited Conduct

A. Subject to Paragraph V(B), Defendants shall not:

1. disclose to any GrafTech Covered Employee any Seadrift Customer Confidential Information; or

2. disclose to any Seadrift Covered Employee any Petroleum Needle Coke Supplier Confidential Information.

B. Notwithstanding the provisions of Paragraph V(A), GrafTech may:

1. disclose to Seadrift Covered Employees information regarding GrafTech's purchases of petroleum needle coke from petroleum needle coke suppliers other than Seadrift;

2. disclose to any GrafTech Covered Employee any Petroleum Needle Coke Supplier Confidential Information;

3. disclose Petroleum Needle Coke Supplier Confidential Information to an Exempted Employee who requires the information in order to perform his or her job function(s); provided, however, that such Exempted Employee may not use Petroleum Needle Coke Supplier Confidential Information to perform any job function(s) that primarily involve(s) the day-to-day operation or management of Seadrift's needle coke business;

4. disclose Seadrift Customer Confidential Information to an Exempted Employee who requires the information in order to perform his or her job function(s); provided, however, that such Exempted Employee may not use Seadrift Customer Confidential Information to perform any job function(s) that primarily involve(s) the day-to-day operation or management of GrafTech's Industrial Materials or Engineered Solutions businesses; and

5. disclose Petroleum Needle Coke Supplier Confidential Information and/or Seadrift Customer Confidential Information to any Defendant employee where so required by law, government regulation, legal process, or court order, so long as such disclosure is limited to fulfillment of that purpose.

VI. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice Antitrust Division ("Antitrust Division"), including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendant, be permitted:

1. access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copies or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section or pursuant to Paragraph IV(C) shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

VIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

IX. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments

filed with the Court, entry of this Final Judgment is in the public interest.

Date: ___, 20____

Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

Honorable

[FR Doc. 2010–30621 Filed 12–6–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,083]

American Axle & Manufacturing Detroit Manufacturing Complex Holbrook Avenue and Saint Aubin Including On-Site Leased Workers From Paint Tech International Detroit, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on November 24, 2008, applicable to workers of American Axle & Manufacturing, Detroit Manufacturing Complex, Detroit, Michigan. The Department's Notice was published in the **Federal Register** on December 10, 2008 (73 FR 75137).

The Department's Notice was amended on January 8, 2009 to clarify that the certification is to cover all workers of American Axle & Manufacturing, Detroit Manufacturing Complex, including those workers in forge and non-forge plants at Holbrook Avenue and Saint Aubin, Detroit, Michigan (subject firm). The Department's Notice was published in the **Federal Register** on January 15, 2009 (74 FR 2633).

The subject firm produces drivetrain components for the automotive industry including axle, steering, linkage, and other metal-formed products.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm.

New information revealed that workers leased from Paint Tech International were employed on-site at the Detroit, Michigan location of American Axle & Manufacturing, Detroit Manufacturing Complex, Holbrook Avenue and Saint Aubin. The Department has determined that these workers were sufficiently under the control of American Axle & Manufacturing, Detroit Manufacturing Complex, Holbrook Avenue and Saint Aubin to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Paint Tech International working on-site at the Detroit, Michigan location of American Axle & Manufacturing, Detroit Manufacturing Complex, Holbrook Avenue and Saint Aubin.

The amended notice applicable to TA–W–64,083 is hereby issued as follows:

All workers of American Axle & Manufacturing, Detroit Manufacturing Complex, Holbrook Avenue and Saint Aubin, including on-site leased workers from Paint Tech International, Detroit, Michigan, who became totally or partially separated from employment on or after September 16, 2007, through November 24, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 18th day of November 2010.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–30539 Filed 12–6–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,250]

Charming Shoppes of Delaware, Inc. Accounts Payable, Rent, Merchandise Disbursement Divisions, and Payroll Department Within the Shared Service Center, Bensalem, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 30, 2010, applicable to workers of Charming Shoppes of Delaware, Inc., including the Accounts Payable, Rent, and Merchandise Disbursement Divisions within the Shared Service Center, Bensalem, Pennsylvania. The Department's notice of determination was published in the **Federal Register** on July 16, 2010 (75 FR 41526).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers, all of the same division, are engaged in activities related to the supply of accounts payable, rent, merchandise disbursement services, and payroll.

The company reports that workers engaged in activities related to the supply of payroll services were inadvertently excluded from the certification decision.

The amended notice applicable to TA–W–74,250 is hereby issued as follows:

All workers of Charming Shoppes of Delaware, Inc., including the Accounts Payable, Rent, Merchandise Disbursement Divisions, and Payroll Department within the Shared Service Center, Bensalem, Pennsylvania who became totally or partially separated from employment on or after June 15, 2009 through June 30, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 24th day of November 2010.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–30536 Filed 12–6–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,892]

Bostik, Inc. Formerly Known as ATO Findley Marshall, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 28, 2009, applicable to workers of Bostik, Inc., a subsidiary of Elf Aquitaine, Marshall, Michigan. The notice was published in the **Federal Register** on February 16, 2010 (75 FR 7033).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of adhesives and sealants.

New information shows that Bostik, Inc. was formerly known as ATO