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UNITED NATIONS

RESTRICTIVE BUSINESS PRACTICES

Report on Restrictive Business Practices in International Trade

ECONOMIC AND SOCIAL COUNCIL

OFFICIAL RECORDS : NINETEENTH SESSION

SUPPLEMENT Nº 3A

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FOREWORD

The report submitted herewith has been prepared pursuant to paragraphs 3 and 4 of Economic and Social Council resolution 487 (XVI) of 31 July 1953, in which the Secretary-General is requested to " summarize relevant information regarding restrictive business practices in international trade which may be contained in official government documents, and to report thereon to the Council " not later than its nineteenth session.

This report summarizes information concerning restrictive business practices in international trade with respect to ten industries. It is thus supplemental to an earlier Secretariat report entitled " Analysis of Governmental Measures Relating to Restrictive Business Practices " (*Economic and Social Council, Official Records; Sixteenth Session, Supplement No. 11A*). Chapters I and II of that report presented general information concerning types of restrictive business practices, and their prevalence in international trade, while Appendix B summarized four case histories of restrictive business practices affecting the international trade in, respectively, the electric lamp, titanium pigment, aluminium and non-ferrous metal products industries (*ibid.*, pp. 50-68).

The present report is based on official government documents, which were either submitted by governments in 1952, in connexion with the preparation of the earlier Secretariat report (see Annex A of that report, " List of Documents on Restrictive Business Practices Officially Received from Governments ", *ibid.*, pp. 46-49), or were supplied by governments in response to a request made by the Secretary-General in his *note verbale* of 14 July 1954. The specific sources used are listed at the conclusion of the summary for each industry.

The ten industries dealt with in this report are those of considerable economic significance which were not previously covered and for which official documents contain the fullest information. At best, however, the information is limited in scope, since for reasons set out in the earlier Secretariat report, even the most comprehensive of the documents in question relate only to a small portion of the foreign trade of specific countries over a limited period of time.

It should be emphasized that the facts and conclusions set forth in this report are those presented in official documents, and that the Secretariat has not sought to verify their accuracy, completeness or emphasis. It should be borne in mind, moreover, that any attempt to set forth in condensed form salient facts and conclusions concerning matters as ramified and variable as those relating to restrictive business practices necessarily involves the omission of some qualifications and of some relevant information.

1. ALKALIS

The following summarizes the findings and conclusions of a Federal District Court of the United States and of the United States Federal Trade Commission.

MEMBERSHIP OF CARTEL

The main participants in the international cartel in alkalis (which include soda ash, caustic soda and bicarbonate of soda) were the U.S. Alkali Export Association (Alkasso), a U.S. export association organized under the Webb-Pomerene Export Trade Act of 1918 and consisting of eleven of the most important U.S. alkali producers; Imperial Chemical Industries, Ltd. (I.C.I.), a British corporation, and its wholly-owned U.S. subsidiary, Imperial Chemical Industries (New York) Ltd. (I.C.I. New York); Solvay et Cie., a Belgian corporation; and Interessengemeinschaft Farbenindustrie Aktiengesellschaft (I.G. Farben), a German corporation.

NATURE OF RESTRICTIVE BUSINESS PRACTICES

Starting in 1924, Alkasso and I.C.I. entered into agreements providing for the division of world markets, the establishing of national quotas, and the fixing of prices;

The United States was not specifically mentioned in these agreements, but, according to the federal court, was in fact Alkasso's exclusive market territory. Under a renewal agreement executed in 1936, Solvay was given Europe as its exclusive territory for the sale of alkalis; I.C.I. was assigned the British Empire (excluding Canada), Egypt, the Levant, Iraq and Iran; Alkasso was given Canada, Mexico, Cuba, Haiti, San Domingo and the Dutch East Indies. China, Japan, Brazil, and certain other South American markets were considered as joint sales territories for I.C.I. and Alkasso, to be shared on a percentage quota basis. Collateral agreements between I.C.I. and Solvay provided a basis for sharing European markets.

The cartel agreements obligated Alkasso to control exports from the United States. To accomplish this, Alkasso and its member firms employed the following devices :

1. The members of Alkasso used it as their exclusive agent for the sale of alkalis outside the United States; and shipments independent of Alkasso were allowed only upon Alkasso's express written permission.

2. Non-member U.S. alkali producers entered into contracts with Alkasso, appointing it their exclusive export agency.

3. In selling alkalis within the United States, Alkasso's members stipulated that the alkalis were for domestic consumption only and not for export.

4. Alkasso's members refused to sell to buyers who permitted alkalis to filter into unauthorized export channels.

5. Alkasso established an elaborate statistical system to check on all shipments of alkalis from the United States by persons other than itself. This involved the securing of reports from Alkasso's foreign agents and the maintenance by Alkasso of inspectors at United States docks.

6. Alkasso circulated to its members blacklists of all persons making " unauthorized " export sales, with the purpose of preventing future sales to such persons.

7. Alkasso maintained standing orders with certain persons in the trade to purchase at any time any tonnage which might get into the hands of export dealers or regular exporters.

8. From 1923 to 1945, special steps were taken to counteract a surplus of caustic soda caused by the rapid increase in output by the electrolytic process. These steps included the exporting of electrolytically-produced caustic soda in preference to other alkalis; the placing of such premiums on higher grades of caustic soda as would lead to the purchase of lower grades which were surplus; and the abandoning of markets not supplying a ready demand for caustic soda.

Effects of Restrictive Business Practices

1. The federal court, which held these agreements to be violations of the Sherman Act, and therefore not within the exemption from that Act which the Webb-Pomerene Act [1] affords to certain " agreements in the course of export trade ", found that, as a result of these agreements and the practices thereunder :

(*a*) The Alkasso group had closed the U.S. market to non-member producers, both domestic and foreign.

(*b*) The price of alkalis on the U.S. market had been maintained at a stable level, in spite of the general downward price movement caused by the 1937 recession.

(*c*) The storing of the surplus caustic soda neutralized the tendency of the surplus to become a price depressant.

2. The United States Federal Trade Commission reported that Alkasso was able to fix a monopolistic price in markets exclusively allocated to it. In markets which Alkasso shared with I.C.I. and other cartel members and in markets not specifically allocated by agreement, the cartel members determined jointly the prices to be charged. Both kinds of price fixing were used to eliminate competitors.

Sources

United States :

United States v. U. S. Alkali Export Association, et al, Opinion of Judge Samuel E. Kaufman, 86 Federal Supplement 59 (S.D.N.Y., 1949).

Report on International Cartels in the Alkali Industry, Federal Trade Commission, Washington, 1950.

[1] The text of this act, which permits associations of competing firms "for the sole purpose of engaging in export trade", provided they do not injure domestic competitors or affect domestic prices, is set forth on pages 227 and 228 of *Restrictive Business Practices, Annex C.* (This citation refers throughout this report to *Texts of National Legislation and Other Governmental Measures Relating to Restrictive Business Practices, Economic and Social Council, Official Records, Sixteenth Session, Supplement No. 11B;* E/AC.37/2/Add.2; E/2379/Add.2.)

2. CHEMICAL PRODUCTS (EXPLOSIVES; NYLON)

The following summarizes findings made by a Federal District Court of the United States.

Parties to, and Commodities covered by, Restrictive Agreements

The parties to the various agreements and arrangements herein described are E.I. duPont de Nemours and Company, Inc. (duPont), the largest U.S. chemical firm; British Imperial Chemical Industries, Ltd., formed in 1926 and dominating the British chemical industry (this firm and its predecessors are herein designated as ICI); and Interessengemeinschaft Farbenindustrie Aktiengesellschaft (I.G. Farben), controlling widespread German interests in the chemical field. Except where I.G. Farben is specifically mentioned, the agreements and

arrangements referred to are between duPont and ICI.

Prior to World War I, the ICI-duPont agreements concerned explosives, the original business of the two companies. After World War I, the agreements were broadened to cover a great variety of other chemical products, such as compounds of cellulose (including plastics), paints, varnishes, lacquers, pigments, acids, dyestuffs, neoprene, synthetic ammonia, fertilizers, insecticides, disinfectants and alcohols. After duPont acquired control of Remington Arms Company, Inc., in 1933, the agreements extended to sporting ammunition. The agreements relating to explosives and nylon have been selected as typical of the great number of international agreements in the chemical field.

Methods of Restricting Competition

World markets in explosives were divided by the following means :

1. An agreement executed in 1897 among duPont, ICI and Vereinigte Köln-Rottweiler Pulverfabriken (a company controlled by I.G. Farben), which allocated exclusive sales territories to the participating companies, and provided for the fixing of prices in territories which were to be shared. This agreement was cancelled because the parties recognized it to be illegal under United States law.

2. A series of agreements, beginning in 1907 and continuing to 1948, providing for the exchange among the parties of both patented and secret processes for the manufacture of explosives. Under these so-called " patents and processes agreements ", parties with exclusive sale territories were granted the exclusive right to use the processes in such territories; in all other territories, the parties possessed non-exclusive rights. During World War I and since the beginning of World War II, I.G. Farben has not been able to participate in these agreements; at other times the United States, British and German companies were involved in these agreements.

3. The formation, beginning in 1911, of jointly-owned corporations in Canada, Argentina, Brazil and Chile to carry on manufacture for sale in the respective countries. The Atlas Powder Company, a United States firm, was for a time a joint owner with ICI and duPont in two of these manufacturing subsidiaries. Explosives exported by duPont and ICI to South American countries were also sold through these subsidiaries. DuPont and ICI sometimes entered into patents and processes agreements with these subsidiaries.

4. The formation, by duPont, ICI and Dynamit Altiengesellschaft, a German affiliate of I.G. Farben, of a jointly-owned sales corporation to sell, in South American countries other than Chile and Bolivia, explosives manufactured outside those countries.

5. The establishment of various sales agreements and arrangements involving United States, German, Scandinavian and Belgian companies, under which market quotas and prices were fixed in national markets.

Effects of Restrictive Agreements

According to the United States District Court which found the foregoing arrangements illegal under the Sherman Act, the effects of these arrangements were to eliminate competition from various sales territories, and to restrain foreign trade of the United States to several nations. The Court noted that, " in 1949, I.C.I.'s exports to the United States amounted to a little over $500,000. In 1950 with the full force of devaluation [of the British currency], the figure rose to almost $5,500,000, and in the first nine months of 1951 it stood at over $4,000,000 ". This increase was attributed by the Court to the termination of the restrictive agreements. The Court also pointed out that in the polythene field, where duPont had given Union Carbide and Carbon a patent sublicence, Union Carbide in 1946 manufactured over 7,000,000 pounds at a net sales value of close to $4,000,000, while duPont, the other licensee, manufactured less than 2,000,000 pounds at a net sales value of less than a million dollars. Union Carbide made this more extensive use despite the fact that it paid a higher rate of royalty than duPont. The Court also noted that, despite the higher rate of royalty paid by Union Carbide, its net sales price was $4.318 a pound, while duPont's was $4.515 a pound.

General Agreements relating to Nylon

Nylon is a synthetic fibre invented by duPont. In 1939, duPont entered into agreements licensing ICI, I.G. Farben, French Rhodiaceta and Italian Rhodiaceta under its foreign nylon patents in the respective sales territories of those four companies. These agreements were similar in nature to the patents and processes agreements described in the preceding section, and were found to have similar effects.

British Empire Agreements relating to Nylon

After World War II the duPont-ICI nylon licensing agreement covering duPont's British Empire patents (except for Canada and Newfoundland) was cancelled, and those patents were transferred to the ownership of ICI. At a time when ICI was still a licensee under duPont's patents, it sublicensed those patents to British Nylon Spinners, Ltd. (BNS), a jointly-owned corporate subsidiary of ICI and Courtauld's. The sublicence was an exclusive one to manufacture nylon yarn. Later the patents were transferred to ICI, at which point BNS became the exclusive licensee under those patents.

Remedial Measures decreed by United States Court

The United States District Court for the Southern District of New York required duPont and ICI to cancel the patents and processes agreements and sales agreements described above. However, an agreement entered into between ICI and duPont in 1948 had given ICI and duPont non-exclusive rights in patents and processes in all sales territories, and this was allowed by the Court to stand. The District Court also directed ICI and duPont to terminate the joint ownership arrangements in the manufacturing subsidiaries mentioned in paragraph 3 above, with the exception of the Chilean com-

pany, which served the relatively small Chilean-Bolivian market.

The Court's judgment also required duPont and ICI to grant to any applicant a non-exclusive licence to use their patents and processes upon payment of a reasonable royalty. A product manufactured under such a licence could in the normal course, however, be kept from being exported into foreign countries, unless the exporting firm acquired a licence or other immunity from suit under the foreign patents covering that product. In order to prevent this restraint on the foreign trade of the United States, the Court provided that, where a non-exclusive licence had been granted under the United States patents, an immunity from patent prosecution would be available in foreign countries to which the United States licensee exported his products (e.g., the United Kingdom). Unless a reasonable royalty had been paid for manufacture under the United States patents and processes, such a royalty had to be paid for the immunity under the United Kingdom patent.

International Law Problem created by Extraterritorial Effect of United States Court Judgment

British Nylon Spinners subsequently brought suit in the United Kingdom against ICI to restrain ICI from complying with the order of the United States Court.

On 9 July 1954, judgment was rendered in favour of British Nylon Spinners, requiring ICI to perform its contract and enjoining it from complying with the United States court order. In doing so, the British court pointed out that the matter being dealt with was a contract between two British corporations in regard to British property and involved solely matters to be carried out in the United Kingdom.

Sources

United Kingdom :

British Nylon Spinners, Ltd. v. Imperial Chemical Industries, Ltd., Opinion of Mr. Justice Upjohn, High Court of Justice, Chancery Division, 13 August 1952; Opinion of Sir Raymond Evershed, Lord Justice Denning and Lord Justice Romer, Supreme Court of Judicature, Court of Appeal, 15 and 16 October, 1952.

United States :

United States v. Imperial Chemical Industries, Ltd., et al, Opinion of Sylvester J. Ryan, 100 Federal Supplement 504 (S.D.N.Y., 1951); Opinion on Remedies by Sylvester J. Ryan, 105 Federal Supplement 947 (S.D.N.Y., 1952); Final Judgment of Court, 30 July 1952.

3. COAL

The bulk of the coal entering into international trade is exported from the United States, the United Kingdom, Germany and Poland.

Restrictive business practices affecting the Canadian anthracite coal trade during the period 1929-1934 were reported by the Canadian authorities in 1933 and 1937. Restrictive practices affecting the Danish trade from 1929 to the end of the 1930's, and during a few years following World War II, were the subject of a report by the Danish Trust Commission in 1954. These reports indicated that restrictive arrangements eliminated competition both inside coal exporting and coal importing countries, and in the trade between the two groups of countries.

Restriction of Competition in and among Exporting Countries

1. In 1937, the American Anthracite Institute, an association of producers and distributors, controlled 85 per cent of the total output of anthracite coal in the United States. The major producers within the Institute fixed prices for both domestic sales and export; these prices were enforced by the Institute through a so-called " open price plan ". Under this plan, members were required to file with the Institute full particulars both of prices and terms of sale relating to individual transactions and of their general sales policies. Summaries of the information so filed were sent to all members. Output of United States anthracite coal was not restricted by the Institute, but the prices fixed by it did not reflect competitive conditions. However, the presence of a considerable number of independent companies that quoted prices below those fixed by the members of the Institute doubtless had some influence in keeping down the prices fixed by the major producers.

2. In the United Kingdom in the 1920's, scattered groups of mine owners within some of the coal producing districts entered into a series of corporate mergers. Pursuant to the Coal Mines Act of 1930, the Government sought to promote such agreements on a wider scale. In 1936 the Government established a system of central selling schemes, with a view to eliminating competition among the individual districts. One feature of these schemes was that exporters would, in their foreign sales, adhere to prices and terms and conditions fixed by the coal producers. In 1946, the Coal Industry Nationalisation Act nationalized all coal mines. Exports remained under the control of the private exporters, but the prices and terms and conditions of export sale were to be determined by the National Coal Board, the governmental body exercising jurisdiction over the nationalized mines.

3. The German coal mining industry was highly cartelized over many decades. In 1919, all coal mining companies were required by the Government to belong to one or more syndicates, depending on the type of coal produced. Prior to the end of World War II, the various German coal syndicates belonged to the Reichskohlenverband, a private organization with governmental

sponsorship, which was authorized to make decisions concerning general sales policies. In the years immediately following World War II, the German coal industry was subject to the control of the Allied Military Government, but in 1949 responsibility for the sale of coal was transferred to the German sales syndicate, Deutscher Kohlen-Verkauf. During the occupation period, this syndicate was split into six independent coal sales agencies, the activities of which were co-ordinated by a special Coal Office (Gemeinschaftsorganisation Ruhrkohle G.m.b.H.).

4. In Poland, during the period before World War II, a few large combines, later associated in an export cartel, controlled the coal industry.

5. What has been said indicates that within the principal exporting countries, with the possible exception of the United States, there existed a high degree of concentration and of control over production and sales prices. Also, there were many attempts to reach agreements to divide export markets among coal producers; however, only one such agreement was consummated. In 1934, British and Polish coal producers entered into an agreement which limited Polish coal exports to a fixed percentage of British exports. From time to time Polish exports exceeded the prescribed ratios, but the agreement was still in force at the outbreak of World War II.

Relationship between Exporters and Importers

1. The restrictive practices prevailing in importing countries were frequently based on exclusive sales contracts obtained by importers from the overseas exporters of a particular type of coal. Thus, in Canada certain importers obtained the exclusive right to buy Welsh and Scotch anthracite coal, and in Denmark a group of importers had exclusive contracts for the purchase of German and Polish coal. The original purpose of these contracts was to introduce a new type of coal in the country of importation. By 1937 in Canada, and 1954 in Denmark, such exclusive contracts had long ceased to serve their original purpose.

2. Companies which exported coal from a country frequently owned importing enterprises in the country of importation. This served to promote restrictive arrangements in the importing country. Thus, between the end of World War I and the beginning of World War II, German producers had acquired several large Danish coal importing companies. These companies, being German-owned, were confiscated by the Danish Government at the end of the war. Also, United States and United Kingdom coal producers owned several importing companies in Canada.

Restriction of Competition in Importing Countries

Canada

1. The dominant factor in the import of anthracite coal in Canada in the early 1930's was a group of four companies owned or controlled by members of a single family. These companies, largely because of their affiliation with Welsh coal exporters, effectively controlled both the import and sale of Welsh anthracite in the Montreal and Quebec areas, the Province of New Brunswick and, to a lesser degree, Toronto.

2. At various times, the four-company importing group just mentioned lessened competition from sources outside Canada, by preventing fuels other than Welsh and Scotch coal from being sold on the Canadian market. Thus, in 1929, the group entered into an agreement with a Canadian company which possessed the exclusive right to sell Russian coal in Canada, under which the latter agreed not to sell Russian coal in Montreal, Quebec, Ottawa and Toronto. In exchange for its agreement not to compete in these markets, the company was invited to become a distributor of Welsh coal.

3. Another instance of the elimination of competition on the Canadian market occurred in 1931, with respect to the import of German anthracite. Imports of such coal into Canada were restricted by private agreement to a single British exporter and a single Canadian importer. According to the Canadian report, these two companies entered into agreement with the German producers whereby German anthracite was precluded from being marketed in Canada. As a result, in 1933 no German anthracite was imported into Canada.

4. The dominant Canadian importing group and others entered into agreements concerning wholesale prices. These agreements covered most of the anthracite coal imported into the provinces of Ontario and Quebec, which account for about three fifths of Canada's population. Exclusive sales territories were assigned to the participants in these agreements. The agreements were entered into with the intention of keeping prices fairly high; in fact, one party wanted prices held at " the very limit ".

Denmark

Starting in 1920 and continuing into the 1930's, after several declines in the price of coal, mergers took place which concentrated considerable financial strength, and control over coal imports, in the hands of a few combines. During the years 1948 and 1949, a single combine handled a third of the total Danish coal imports. Retail prices in Denmark were governed by agreements among the retailers.

Effects of Restrictive Business Practices

The Canadian Combines Investigation report stated, with respect to Canada, that :

1. Cost reductions were not passed on to consumers.
2. From 1929 to 1932, which was a period of general decline in prices and profits, wholesale gross margins for coal (i.e., the difference between the wholesaler's sale and purchase prices), which were governed by price agreements, were maintained intact by the wholesalers. On the other hand, retail gross margins, which were not governed by effective price agreements, declined sharply.
3. The concentration of the United Kingdom anthracite industry in the hands of a few producers and exporters brought in its train an almost equal concentration of the import trade in Canada. In

1933, the latter concentration of imports became such as to invite apprehension in respect to competition in the anthracite trade.

4. In certain Canadian markets, the price of anthracite imported from the United States remained practically the only check on the price of anthracite imported from the United Kingdom.
5. Wholesale anthracite prices would have been materially reduced if competition had been present.

The Danish Trust Commission found, with respect to Denmark, that :

1. The exclusive importing and combines arrangements described above limited the freedom of entry into the coal trade. In addition, the foreign exchange control instituted by the Government in 1931 affected competition adversely since it discriminated against imports from certain foreign countries. However, during the war many new enterprises selling Danish-produced peat and lignite came into existence; these enterprises after the war engaged in importing coal and thus competed with the established importers.
2. The same exclusive importing and combines arrangements made it possible for importers to discriminate against retailers who did not adhere to the prices that were established by agreement among retailers, and against wholesalers selling to such non-conforming retailers. Such discrimination took the form either of a refusal to make supplies available, or of charging higher prices.
3. In the late 1930's, the various agreements among coal importers and coal retailers were gradually abandoned because the high prices resulting from these agreements encouraged the entry of new firms into the trade. In 1938, such new importing firms accounted for almost twenty per cent of total imports.
4. The exclusive importing arrangements described above are believed to have increased prices and profits. This conclusion is supported by comparison of information relating to German and Polish coal, the import of which was governed by agreements fixing prices, rebates and other conditions of sale, and to British coal, the import of which was not subject to such agreements. When the agreements were introduced with respect to Polish coal, the importer's margin of profit on Polish coal doubled. During the two years 1936 and 1937 the margin of profit on German and Polish coal was two shillings per ton, as compared with a profit margin on British coal of only half a shilling per ton.
5. Furthermore, under the agreements relating to German and Polish coal, importers were able, immediately upon an increase in the import price, to raise their selling prices correspondingly, so that the higher domestic sales price became applicable to coal which had been bought at a period of low import prices. On the other hand, a reduction in the price of imported coal was only gradually translated into price reductions in domestic sales; such reductions became effective only after existing stocks of coal had been disposed of.

Governmental Recommendations

1. The Danish Price Control Council in 1939 opposed the renewal of the coal price agreements prevailing among retailers, which is considered to be contrary to the Danish price agreements legislation.

2. The Danish Trust Commission recommended that publicity, already being given to price agreements, should be given to the combines arrangements.

3. The Canadian Combines Investigation report recommended that enforcement of the Combines Investigation Act should be continued to protect the consumer, by maintaining open competition and preventing private price-fixing.

4. The Canadian Royal Commission on Anthracite Coal recommended that an effort should be made to establish a co-operative to aid the less favoured class of citizens.

Effects of Governmental Action

1. In Canada, it was officially stated in 1937 that, largely as a result of court action taken by the Government to enforce the Combines Investigation Act, " at the present moment in so far as the fixing of export prices in the countries of origin permit there is freedom in competition in the importation of anthracite coal ".

2. In Denmark in the spring of 1950, when import restrictions were lifted with respect to German and British coal and government rationing and allocation of imported fuel were discontinued, there appeared to be more competition than at any time since 1927. In 1950, certain firms not located in Copenhagen and doing a local business organized a new firm to compete in Copenhagen against the large combine dominating the Copenhagen market.

Sources

Canada :

Investigation into an Alleged Combine in the Importation and Distribution of British Anthracite Coal in Canada, Report of Registrar, Department of Labour, 21 April 1933. Printed in Ottawa, 1936.

Report of the Royal Commission on Anthracite Coal, Ottawa, 3 February 1937.

Denmark :

Kulbranchen, Trustkommissionens Betaenkninger No. 2, Copenhagen, 1953.

4. COATED ABRASIVES

A coated abrasive is an abrasive or polishing device, such as sandpaper, composed of a flexible backing, to one or both surfaces of which a polishing grain is attached by an adhesive. Coated abrasives are widely used in many mass production industries for finishing all kinds of surfaces, such as wood. The following summarizes the findings and conclusions of, and the action taken by, a Federal District Court of the United States in a specific case. In 1929, the companies involved in this case sold over 85 per cent of the value of United States exports of coated abrasives.

Nature of Restrictive Arrangements

In May 1929, four U.S. manufacturing companies (hereinafter called " participating companies "), Minnesota Mining and Manufacturing Company, Behr-Manning Corporation, The Carborundum Company, and Armour and Company (together with five other domestic manufacturers, which were later acquired by one or another of the first three named firms) entered into arrangements among themselves to share foreign markets in coated abrasives. These arrangements, which were found by a Federal District Court to have violated the Sherman Act, were as follows :

1. The four participating companies formed a jointly-owned subsidiary in the United States, the Durex Corporation, as a holding company for their foreign manufacturing operations. This joint corporation organized subsidiary corporations in Great Britain, Canada, Germany, and (after World War II) in Australia, to carry on manufacturing in those countries.
2. The participating companies entered into licence agreements with the foreign manufacturing corporations, relating to their non-United States patents. Under these agreements the participating companies reserved the right to fix sales prices, and standards of manufacture, for products manufactured under the patents.
3. The participating companies entered into an export agreement, providing that they would make export sales only through a jointly-owned United States corporation, Durex Abrasives Corporation, organized under the Webb-Pomerene Act.[1]
4. The participating companies were required to use the trademark DUREX (and brand names based on that trademark) in all sales made by them in and to foreign countries.

Durex Abrasives Corporation, the joint export corporation (see 3, above) made some sales of U.S.-produced abrasives in foreign markets, thereby competing with foreign manufacturers and other United States firms not involved in the arrangements. However, since the sales in foreign markets of abrasives produced by the foreign manufacturing subsidiaries (referred to in 1, above) usually returned higher profits, the participating companies preferred to sell the abrasives produced by their foreign manufacturing subsidiaries.

Effects of Restrictive Practices

The effects of the foregoing arrangements were found by the Court to be as follows :

(*a*) The United States factories lost a substantial amount of foreign business.

(*b*) There was a substantial decline in the participating companies' exports from the United States, particularly to markets served by their foreign manufacturing subsidiaries. For example, exports of Durex Abrasives to Britain felt from over $1 million in 1929 to less than $9,000 in 1948, and sales to Canada declined from more than $423,000 in 1928 to under $69,000 in 1948.

(*c*) The sales of the foreign manufacturing subsidiaries increased significantly. For example, the sales of the British subsidiary increased from less than $1,680 million in 1938 to more than $5,488 million in 1948, and the sales of the Canadian subsidiary increased from less than $518,000 in 1938 to over $2,035 million in 1948.

(*d*) From 1929 to 1948, the non-participating United States producers of coated abrasives increased their volume of exports, and their share of the total volume of United States exports rose from 17.7 per cent to 39.7 per cent.

Effects of Governmental Action

The District Court's Final Decree provided the following remedies :

(i) The Durex Corporation, which held the stock of the foreign manufacturing subsidiaries (see 1, above), was dissolved.

(ii) The foreign manufacturing subsidiaries were either to be dissolved, or transferred to a single one of the defendants or to an outside person. No defendant was to acquire more than one of the British, Canadian, and German subsidiaries.

(iii) The participating companies were to be afforded an easy method of withdrawing from the export sales corporation, Durex Abrasives Corporation (see 3, above).

(iv) Any joint action by two or more United States manufacturers to establish or operate foreign factories or supply coated abrasives was prohibited.

(v) The patent licence agreements referred to in 2, above, were cancelled.

(vi) Non-United States patents were required to be transferred back from the foreign manufacturing

[1] See 1. Alkalis, page 2, footnote 1, in this report.

subsidiaries (see 1, above) to the participating companies that were their original owners.

(vii) Certain trademarks and brand names were required to be transferred from the foreign manufacturing subsidiaries to the export sales corporation.

SOURCES

United States :

United States v. Minnesota Mining and Manufacturing Company, et al, Opinion of Judge Charles E. Wyzanski, 92 Federal Supplement 958 (D. Mass., 1950); Findings of Fact, 92 Federal Supplement 950 (D. Mass., 1950); Final Decree of Court, 13 September 1950.

5. ELECTRIC WIRES AND CABLES

Many governmental reports on restrictive business practices affecting electric wires and cables have been prepared in recent years, including a Swiss report published in 1939, Swedish reports published in 1950 and 1951, a British report published in 1952, and Canadian and Danish reports published in 1953. The Danish and Swedish cartel registers also contain information about existing international cartel agreements in electric wires and cables.[1]

The cartel agreements described in these sources relate to two types of cables—mains cable (including super-tension cable), used to distribute electricity from the power station to the user, and rubber cable, used for wiring and for connecting portable tools, appliances and lights in factories, houses, etc.

Mains cable

ADMINISTRATION OF AGREEMENTS

The international agreements relating to mains cable were administered by the International Cable Development Corporation (ICDC), which was organized in 1928, when competition, in the opinion of many producers of cables, had become intense. ICDC was registered in Vaduz, Liechtenstein in 1931. At the time of its organization, sixteen European national groups of cable manufacturers were represented in ICDC—those of Austria, Belgium, Czechoslovakia, Denmark, Finland, France, Germany, Hungary, Italy, Netherlands, Norway, Poland, Spain, Sweden, Switzerland and the United Kingdom. The corporate existence of ICDC was not affected by World War II, nor were its funds diminished.

MARKET CONTROL ARRANGEMENTS (1929 TO WORLD WAR II)

The arrangements among the members of ICDC were governed not only by the charter of that corporation but by various agreements. The cable manufacturers outside Europe, i.e., those in Canada, Japan and the United States, although not members of ICDC, were tied into the arrangements prevailing among ICDC members by agreements with European cable manufacturers. For example, the trade in cable between the United Kingdom and Canada was controlled by agreements between the Canadian cable manufacturers and some of the United Kingdom manufacturers.

All ICDC members were required to subscribe to the following three agreements :

1. A Working Agreement, listing the different participating national associations of cable makers (referred to as " Contracting Groups "), and providing for levies against the Contracting Groups to meet expenses of administration and other financial arrangements, such as compensation payments to producers.
2. An Export Agreement, governing the trade to countries which did not produce cable.
3. An Agreement for Producing Countries, requiring each Contracting Group to enter into agreements with other Contracting Groups (" Country to Country Agreements ") pursuant to general rules. This Agreement, with certain exceptions, prohibited any Contracting Group, or cable manufacturer belonging to such Group, from erecting or acquiring control over any factory within the territory of any other Contracting Group.

In March 1939, these three agreements were renewed and extended for a period of ten years. In 1952 only the Working Agreement was in force.

Under the various Country to Country Agreements, a Contracting Group was empowered to determine sales prices in its own territory, and the members of other Contracting Groups were prohibited from making offers or executing orders in such territory except on conditions set forth in the agreements. In cases where a foreign Contracting Group was allowed to make sales in a country where cable was manufactured, quotas were established; thus, the Austrian, Belgian, German, Netherlands and Swedish groups each had a quota in the United Kingdom market and the United Kingdom Contracting Group had quotas in certain continental European countries. Penalties were to be levied against any Contracting Group which exceeded its quota, and bonuses were to be paid to Contracting Groups which failed to fill their quotas. Any bonuses thus due to a foreign Contracting Group for not filling its quota in a country was provided for by a levy on members of that country's Contracting Group, prorated according to such members' domestic quotas. In order to enforce the

[1] In the United States a Government complaint against an agreement by the four United States manufacturers and Italian and Swiss companies relating to fluid-filled cable was terminated by a " consent judgment " entered in 1948. Usually, in a consent judgment, no findings of fact or conclusions of law are made by the court entering the judgment, and the parties to the proceedings make no admissions as to the facts or the law.

foregoing provisions, members of a foreign Contracting Group which had no quota in another national Contracting Group's territory, and Contracting Groups which had exceeded their quota in such territory, were required to quote higher prices than those quoted by the national Contracting Group. Conversely, Contracting Groups falling below their quota were helped to fill their quota by being allowed to under-quote the prevailing price level, by a percentage usually not exceeding 12.5 per cent.

According to the British report, under the Anglo-Belgian Country to Country Agreement (originally entered into in 1928), and the Anglo-German Country to Country Agreement (in the form it took a few months before World War II), the United Kingdom group allowed foreign cable makers to quote lower prices to certain customers. Payments were made by United Kingdom manufacturers over a period of years to foreign Contracting Groups which had failed to fill their quotas on the United Kingdom market. Also, some small United Kingdom producers undertook, in return for small annual payments, not to engage in export trade.

Market Control Arrangements (after) World War II)

After World War II, manufacturing conditions in many countries changed. Cable manufacturers in Germany and the countries of eastern Europe were no longer able to function as a group. The United Kingdom group was less comprehensive than before the war because important independent cable producers had established themselves in export markets. According to the British report on the subject, the cable makers felt that account had to be taken of the public's change of attitude towards cartel arrangements, which ultimately led to the Havana Charter and the British Monopolies and Restrictive Business Practices Inquiry and Control Act of 1948.

Accordingly, in 1946, a new agreement was reached at Lausanne, which superseded the Agreement for Producing Countries and the Export Agreement. The parties to these so-called Lausanne arrangements included national groups of cable makers from the following fourteen countries : Austria, Belgium, Denmark, Finland, France, Hungary, Italy, the Netherlands, Norway, Poland, Spain, Sweden, Switzerland and the United Kingdom. Under the Lausanne arrangements, the participating national groups undertook to urge their respective members to respect the prices prevailing within a cable-producing country by consulting the producing country's national group prior to making any offer. The participating groups also argeed to abstain from making sales to non-producing countries at prices below those fixed by the Lausanne arrangement. In the case of supertension cable for over 70 kilovolts, national groups had to report any enquiries affecting another producing group's territory to that group. The British report notes that there seems to have been no weakening of the general intention to revive Country to Country Agreements sooner or later.

Effects of Restrictive Business Practices

With respect to supertension cable (i.e., mains cable for voltages in excess of 33 kilovolts), the British Monopolies and Restrictive Practices Commission pointed out that ICDC ensured that the prevailing United Kingdom market prices were respected and that there was no competition from European cable makers. It concluded that there was a danger that price competition might reduce collaboration in research and development among cable manufacturers and it might therefore lead to deterioration in quality, which was of supreme importance in the cable industry. The enforcement of minimum quality standards and the exchange of information and technique would in such a case be dependent on international price agreements.

With respect to lower voltage mains cable, the Commission pointed out that the tariff and the ICDC arrangements limited effective competition from abroad. However, there existed in the United Kingdom a number of large independent producers whose products were bought and accepted as satisfactory by government departments and other purchasers. The products of these independents were generally sold at lower prices than those charged by the members of the United Kingdom Cable Makers Association.

Recommendations

In the field of supertension cable, the United Kingdom Commission, although well aware that there was no safeguard to ensure that costs and prices remained reasonable as long as the U.K. tariff and international arrangements affected imported cable, did not see any way of regaining the advantage of competition. It did not believe that the present situation, where a near-monopoly buyer (The British Electricity Authority) faces a near-monopoly seller, should or could be transformed into one of ordinary competition. A system of purchase in the long term interest of both the consumer and producer would have to be worked out by the British Electricity Authority and the industry.

In the case of lower voltage cable, the Commission felt that there was neither a sufficient concentration of purchases nor the necessary competition among producers to ensure, under a system of agreed prices, that production be left in the hands of the most efficient producers. It therefore concluded that the existing system of agreed common prices for lower voltage cable was contrary to the public interest and should be brought to an end.

Rubber cable

In 1932, an international cartel agreement was reached among the makers of rubber cables in Belgium, Denmark, Germany, the Netherlands and Sweden. The agreement was due to the intense competition of German producers in countries adjoining Germany. Swedish cable makers were of the view that they were the subject of dumping operations by German producers.

Market Control Arrangements in Sweden

The 1932 international agreement regulated list prices and discounts for rubber cables. In selling cable to Swedish wholesalers, foreign cable makers who were parties to the agreement were allowed to charge a price five per cent less than the list price charged by the Swedish producers. This discount of five per cent was not passed on to ultimate consumers, who had to pay the same price for both Swedish-produced and imported rubber cable. Hence, foreign cable manufacturers, even if they quoted lower prices to Swedish wholesalers, were unable to attract the Swedish users of rubber cables.

The Swedish wholesalers were organized in a trade association, which fixed sales prices on the Swedish market and entered into an agreement with the international cartel not to buy rubber cable from foreign producers not parties to the international cartel.

The international agreement in some cases led to a division of fields of business activity. Thus, a Dutch firm, one of the world's leading cable makers, agreed not to establish or operate cable and wire factories in Sweden, in exchange for an undertaking from a Swedish cable producer to make room for greater imports into Sweden of incandescent lamps produced by the Dutch firm.

Effects and Recommendations

The Swedish report of 1950 concluded that, in general, the restriction of competition in the Swedish market through international cartels was undesirable. It emphasized the particular importance, for a small country like Sweden, that foreign competition be present on the home market; that competition should not be restricted in such a way as to prevent an appropriate division of labour between Sweden and foreign countries; and that Swedish prices should be kept at the levels prevailing in world markets.

However, the report also concluded that Swedish participation in the international agreement should be permitted in cases where the Swedish cable industry was suffering from harmful dumping or where foreign competition caused violent fluctuations in employment. Another situation where limitation of competition would be in the interest of Sweden was one in which foreign countries discriminated against Swedish exports. In all such cases, not only the producers' interest should be taken into consideration but also the interest of the public and other industries.

A more recent Swedish report published in 1951 recommended that the international agreement on rubber cable be discontinued, or at least modified in such a way that it would serve only as an instrument to counteract dumping, i.e., the sale by foreign producers of rubber cable on the Swedish market at prices lower than the prices charged in their home market plus reasonable transport and delivery charges. Provided such dumping did not take place, foreign producers should be permitted to charge lower c.i.f. prices than the prices charged by Swedish producers for comparable types of rubber cable.

The 1951 report also noted that the discontinuation of Swedish participation in the international agreement would not necessarily mean the restoration of effective competition. The members of the cartel had urged that the exchange of technical information and co-operation to promote technical inventions would be difficult without an international price agreement. The report concluded, however, that the technical progress which could be accomplished even in the absence of international exchange of patents and technical information might prove quite substantial.

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6. FLAT GLASS

The three major flat glass products are sheet glass (also referred to as window glass), plate glass and safety glass. While sheet glass is unground and unpolished, plate glass is ground and polished. Safety glass is made by bonding together two or more pieces of flat glass; it is used primarily by the automobile industry.

The most important countries producing flat glass are Belgium, Czechoslovakia, France, Germany, the United Kingdom and the United States. Restrictive business practices in the flat glass industry have in recent years been the subject of official investigations and reports in Canada, Denmark, Sweden and the United States, which have been drawn on for the following summary.

Plate glass

Membership of International Cartel

National sales agencies and individual producers of plate glass in Austria, Belgium, Czechoslovakia, France, Germany, the Netherlands and Spain were united in 1904 in the International Plate Glass Convention (" the Convention "), a cartel. The sole United Kingdom producer was not originally a member of this European cartel but in 1939 entered into an agreement with it providing for the sharing of national markets and the fixing of export prices; Italian producers are also believed to have co-operated with the cartel. In 1935, the Convention and the United Kingdom producer executed a joint Declaration of Policy with the Plate Glass Export Corporation, a Webb-Pomerene export trade association [1] composed of the three United States companies engaged in plate glass production. Before World War II, the only plate glass producers not affiliated with the cartel were located in Germany, Japan and Russia.

During World War II, according to the Danish report, the cartel discontinued operations in some areas of the world, e.g. North America. In the years immediately following the war, the fact that different plate glass producers charged different prices seemed to indicate that the cartel was not functioning. However, more recently the opinion has been gaining ground among Danish importers that co-operation has been restored among the plate glass manufacturers of Belgium, France, the Federal Republic of Germany and the United Kingdom.

Market Control Arrangements

When, in 1932, the Convention began to concern itself with the sale of plate glass in export as well as in home markets, its members entered into no specific allocation of export markets among themselves. However, the members agreed to maintain their relative total export positions, on the basis of their respective volumes of exports during the period 1925-1928. They also agreed to charge a uniform " base price " in all export markets.

The 1935 agreement (referred to above) between the European cartel and the United States glass producers provided for the sharing of markets, with the exception of the United States. The Japanese market was to be shared on the basis of 20 per cent to United States producers and 80 per cent to European producers. In other export markets, 20.68 per cent of the sales were allotted to United States producers and the rest to European producers. Within this allocation, it was agreed that United States producers would be limited to one-third of the sales on the Canadian market.

The parties to the agreement bound themselves to operate in the closest co-operation and to exchange statistics. If any party became unable to fill its quota, it was entitled to sell at a discount from the agreed base price. The parties agreed not to engage in any activity which, directly or indirectly, would be detrimental to the above-mentioned market controls, including that of selling thick sheet glass with the knowledge that it would be ground and polished into a plate glass substitute.

[1] See 1. Alkalis, page 2, footnote 1, in this report.

Methods of Implementing Market Control Arrangements

A large measure of the control obtained by the cartel over world markets derived from the fact that the production of glass requires considerable capital and is therefore concentrated in a few highly mechanized factories. In addition, the members of the cartel used the following methods of enforcing the division of world markets and the uniform price-fixing arrangements:

1. *Patent licensing agreements.* The United States producers at one time granted patent licences to non-United States producers on condition that the latter not export to the United States.
2. *Refusing to sell, or discriminating in the terms of sale, to prospective importers.* Exclusive selling arrangements were entered into by the international cartel with the respective national trade associations of importers and wholesalers, and these associations in turn usually had similar exclusive arrangements with their customers, the national associations of master glaziers. The cartel agreed with the national importer associations either that no sales would be made to new entrants in the industry or that, if such sales were made, they would take place on less favourable terms. It was therefore difficult for firms outside a trade association to obtain supplies of plate glass.

   Usually different importers enjoyed different percentage discounts, graduated according to their relative sales volumes or their status within the trade association. In addition to these discounts, importers received a special discount if they agreed not to buy glass from foreign producers not affiliated with the cartel or to buy only limited quantities of glass from such producers.

   The Danish report indicates that boycotting was resorted to in order to prevent the sale of substitute products that competed with plate glass. As soon as a certain Danish producer started to produce a substitute for plate glass from thick sheet glass (which he had obtained from Czechoslovakia at low prices), the members of the international cartel refused to supply him with any glass. Other Danish importers were sold glass only after they agreed not to resell the glass to the boycotted producer. These other importers were also offered glass competitive with the glass handled by the boycotted firm, at a discount of thirty per cent below prevailing prices for imports into Denmark and neighbouring countries.
3. *Holding interests in, or buying out, competing producers.* Before World War II, the German plate glass cartel, in addition to attempting to conclude a market-sharing agreement with the Danish firm just referred to, attempted to purchase it with a view to the discontinuance of its activity. After World War II, the Danish firm was unable to secure cheap sheet glass from Czechoslovakia. Accordingly, it discontinued production and sold its equipment to South America.

Effects of Restrictive Business Practices

The Canadian Commissioner of Combines in a 1949 report concluded " that competition for the glass trade has been lessened to a degree which is detrimental to the public interest ".

Effects of Governmental Action

1. In Sweden, the Government requested, in 1949, the foreign members of the Convention and their Swedish affiliates and distributors to register their restrictive agreements. The parties to the cartel, wishing to avoid the publicity consequent on registration, asked that the agreements in the register be kept secret, but this request was refused. Steps were thereupon taken by the Swedish affiliates and distributors to terminate their participation in most of the cartel agreements.

2. The Danish authorities also required the restrictive agreements with the international cartel to be registered. In 1950, after the agreements had been entered in the register, the Danish participants, likewise anxious to avoid publicity, informed the authorities that the agreements were no longer in force.

3. The Canadian report points out that, in addition to the disruption of international trade caused by World War II, the action taken by the United States Government to prevent the continuance of international cartel agreements in which U.S. firms participated was an important factor in the abandonment of such agreements.[2]

Window glass

Methods of Market Control

As in the case of plate glass, co-operation in the sharing of markets and in the fixing of uniform prices for window glass has been aided by the fact that glass producing companies in some countries have held stock interests in producing enterprises in other countries, and by patent licensing agreements.

In many European countries the major window glass producers have organized strong national sales agencies for the purpose of engaging in export trade. In 1932, the Belgian and Czechoslovakian producers entered into an agreement establishing a sales syndicate, the sharing of markets and a common price policy. This agreement was formally discontinued in 1934, but a certain amount of co-operation between the two groups continued after that time. In the 1930's, the German export cartel entered into similar agreements with Czechoslovakian, Danish and Swedish producers.

Market Sharing and Price Policies

Window glass exporters on the whole tended to follow the prices set by the Belgian exporters. However, in the years immediately following World War II, a certain amount of price competition existed among the various European producers. More recently, Belgian, British, French and German producers have been charging identical c.i.f. prices in Danish and other export markets. Glass from eastern Europe and Sweden, on the other hand, has been offered on these markets at lower prices.

Before World War II, an agreement between the German window glass cartel and the sole Danish producer of window glass provided for a sharing of the Danish market. The sale of inferior grades of window glass was reserved for the Danish producer, and that of window glass of more than three millimeters in thickness was reserved for the German cartel. In the case of ordinary window glass, of three millimeters or less in thickness, the Danish producer was given a quota of about 65 per cent, to be increased in the event Danish consumption declined but to be reduced in the case of increased consumption. As a result of an agreement with the German Government in 1937, the Danish Government limited the annual import of window glass from non-German producers to 1,500 tons.

Effects of Restrictive Business Practices

As a result of the above-mentioned cartel arrangement between the Danish producer and the German cartel, prices of Danish and German window glass in Denmark were increased anywhere from 10 to 35 per cent above the prices charged by other European producers. During the same period, the price of German glass in Sweden remained unchanged.

Effectiveness of Governmental Action

In 1931, the Danish Government, in order to conserve foreign exchange, prohibited the import of window glass except to the extent that Danish producers were unable to meet the requirements of the Danish market. In 1937, the Government allowed more liberal imports of window glass from Germany. The Danish producer immediately entered into a market-sharing agreement with the German cartel. Hence, the elimination of import restrictions did not lead to more active competition or to a lowering of prices.[3]

Safety glass

A Canadian report of 1945 indicates that international arrangements frustrated the efforts of the Canadian Government to give preference to United Kingdom sources of supply of safety glass for the automobile industry. In 1932, the Canadian Government removed

[2] An action brought by the United States Department of Justice against the United States glass producers in 1945 was terminated by a consent judgment entered in 1948. Under that judgment, the defendants were required to abstain from certain activities in the international field. As to the procedure in connexion with consent judgments, see 5. Electric wires and cables, page 8, footnote 1, in this report.

[3] The Danish report makes the general observation that governmental action in a country of importation can at best have a minor influence on the price terms and sales conditions established by the cartels or combines of the supplying countries. Where there is a restrictive business agreement between foreign suppliers and domestic importers, the domestic legislation is applicable to the latter group only. Since efforts towards international action in this area are still in a preparatory stage, the individual countries must overcome as best they can the harmful effects which arise in connexion with restrictive business practices in international trade.

the tariff on automobile glass imported from the United Kingdom. Despite the willingness of the Canadian automobile industry to buy more glass from the United Kingdom (which country, it was noted, bought one-third of the total Canadian automobile production), the Canadian representative of the United Kingdom safety glass manufacturer felt obliged to adhere to the prevailing cartel arrangement, which provided that only 22 per cent of the glass requirements of the Canadian automobile industry could be met by the United Kingdom.

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United States :

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7. MATCHES

The following summarizes findings and conclusions contained in Canadian and United Kingdom reports and in a Canadian judicial decision.

PARTIES TO AGREEMENTS

From the beginning of the twentieth century, the world's three leading match producers have had a series of close associations with one another for the purpose of restricting competition, on national markets and in international trade, in the production and sale of matches. A British company, Bryant and May, Limited, controlled, in 1952, more than 85 per cent by quantity of all matches supplied to the United Kingdom market. A United States company, Diamond Match Company (Diamond), is the chief producer in the United States. Swedish Match Company (Svenska Tändsticks Aktiebolaget) supplied about 20 per cent of the world's consumption of matches before World War II.

METHODS OF RESTRICTING COMPETITION

The following arrangements were employed :

1. *Market-sharing agreements.* In 1901, the British and United States companies entered into an agreement, whereby Bryant and May abstained from the production of matches in North America and the West Indies and from increasing the amount of its exports to those areas, and Diamond abstained from the production or sale of matches in the British Commonwealth, except in North America and the West Indies. At the same time Diamond acquired a majority stock interest in and control of Bryant and May, while Bryant and May acquired Diamond's British match-producing subsidiary.

By World War I, Bryant and May had, at the initiative of Diamond, been released from its commitment not to produce matches in North America and not to increase its exports to that continent; Diamond retained only a minor stock interest in Bryant and May; and Bryant and May and Diamond had entered into arrangements for the cross-licensing, on a non-exclusive basis, of patents and technical information.

Before World War I, more than half of the United Kingdom's demand for matches was imported from abroad, and half of these imports came from Sweden. Also, Swedish Match produced matches in the United Kingdom. After World War I, Swedish Match and a group of British producers, including Bryant and May, agreed to share sales on the United Kingdom and Ireland market in specified percentages, to fix minimum prices on that market, and to provide for fines and compensatory payments, respectively, for exceeding or falling below the agreed-on sales percentages. British imports from European producers not controlled by Swedish Match were deducted from Swedish Match's quota. Later agreements increased the share of British Match (the successor to Bryant and May, formed pursuant to agreement with Swedish Match) in the United Kingdom market from 51 per cent to 67 per cent; gave British Match exclusive rights of manufacture and sale in Canada and Brazil; and provided for the joint exploitation, by British Match and Swedish Match, of other British Commonwealth countries (except in Asia), Argentina, Colombia and Uruguay. Elsewhere in the world, Swedish Match was to control.

2. *The formation of jointly-owned companies.* In 1927, British Match Corporation, Limited, was formed as a holding company for the United Kingdom interests of both Bryant and May and Swedish Match. Swedish Match was the largest single stockholder, receiving 30 per cent of the share capital; Diamond Match turned in its Bryant and May stock for about 5 per cent of the shares of British Match; and the remaining 65 per cent went to stockholders of Bryant and May other than Diamond Match. In 1950, Swedish Match and Bryant and May controlled, through British Match, 85 per cent of United Kingdom match production and imports.

In 1927, Eddy Match Company, Limited, was organized to acquire the Canadian interests of the United States, British and Swedish companies and the match-making division of a Canadian independent. While Bryant and May held the dominant stock interest in Eddy Match, Diamond controlled its management. Swedish Match, in addition to receiving a substantial cash payment at

the time, was to be represented on the Board of Directors of both Eddy Match and British Match. Eddy Match's production was to be sold only in Canada, and the cartel members agreed to refrain from exporting to Canada. As of 1949, Eddy Match had a monopoly of wooden match production in Canada, and about 40 per cent of the much less important book match sales.

3. *The acquisition of competitive match companies.* As pointed out, the Swedish and British companies had originated in domestic amalgamations. Swedish Match subsequently acquired many foreign match-producing companies, including the main competing companies exporting to the United Kingdom market. Likewise, Bryant and May subsequently acquired producing companies in the United Kingdom, elsewhere in the British Commonwealth, and in South America. Eddy Match bought out each new rival producing company that appeared in Canada, often requiring the persons from whom they bought to agree to refrain from producing or selling matches for a stated period of time.

4. *Offering special brands of matches at reduced prices in particular areas.* Although these special brands, sometimes called " fighting " brands, sold at lower prices than the companies' usual brands, they were used on matches of the same quality as those sold under the usual brand names. Both British Match and Eddy Match used this technique of price discrimination effectively to eliminate competition, which was unable to meet their temporarily lowered prices.

5. *Control of raw materials.* British Match controlled the supply of chemicals used in the production of matches in the United Kingdom. Independent match producers in the United Kingdom paid British Match up to 77 per cent more than did the producing companies affiliated with British Match. Eddy Match purchased match chemicals through a subsidiary of Diamond Match, which controlled its management, and paid higher prices than if it had purchased directly from Canadian sources.

6. *Limitation and withholding from market of match-making machinery.* Swedish Match, Bryant and May and British Match, and Diamond made financial payments to United States, Finnish and Belgian match-making machinery producers in return for their agreement to withhold such machinery from independent match producers.

Effects of Restrictions

According to the United Kingdom Monopolies and Restrictive Practices Commission :

1. Prices and profits in the United Kingdom were higher than they would have been in the presence of significant competition.
2. Research and development in match-making machinery in the United Kingdom was discouraged.

According to the Canadian Combines Investigation Commission :

1. Having regard to the experience of two former independent Canadian match producers, the match business could have been carried on profitably at prices considerably lower than those charged by Eddy Match for its principal brands.
2. The Quebec Court of King's Bench, Crown Side, in its opinion finding Eddy Match guilty of having violated Section 32, para. (1) of the Canadian Combines Investigation Act,[1] found that ". . . prices were maintained at a higher level than they would normally have been . . ." in the presence of the free play of competition.

Recommendations

1. The United Kingdom Monopolies Commission recommended government regulation of match costs and prices. Three dissenting members of the Commission proposed that the abolition of the Swedish Match-British Match cartel arrangements, and the creation of a government selling agency (either for all matches or for imports into the United Kingdom), be considered by the Government.

2. In Canada, the Combines Investigation Commission suggested that the rate of customs duty be examined to ensure that the Canadian tariff was not excluding competition from outside Canada.[2]

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Rex v. Eddy Match Company Limited, et al, Quebec Court of King's Bench (Crown Side), 29 October 1951.

United Kingdom :

Report on the Supply and Export of Matches and the Supply of Match-Making Machinery, Monopolies and Restrictive Practices Commission, London, 12 May 1953.

[1] For the text of this provision, see *Restrictive Business Practices*, Annex C, p. 50.

[2] The Canadian legislation authorizes the lowering of customs duties where a combine or agreement exists to promote unduly the advantage of manufacturers or dealers at the expense of the consumers or the public. See *Restrictive Business Practices*, Annex C, pp. 49, 53.

8. PAPER (NEWSPRINT; KRAFT PAPER; FINE PAPER)

The information contained in this summary is taken from official Canadian, Swedish and United States reports.

Newsprint

Exports of newsprint come principally from Canada, Finland, Sweden and Norway. The principal importing countries are the United States and certain countries of Western Europe.

Production in Eastern Canada

During the period between World Wars I and II, International Paper Company, the leading newsprint producer in Canada, exercised a price leadership which, with few interruptions, was largely accepted by the other producers in Eastern Canada. In 1928, the Newsprint Institute was organized, at the intervention of the Premiers of Ontario and Quebec, in order to facilitate the even allocation of orders among mills, so as to afford some measure of employment in the various communities where newsprint was produced. The Institute came to control about 70 per cent of the Canadian newsprint industry.

Generally, according to a United States report, the governments of these two Canadian provinces did not attempt to determine the price of newsprint to United States purchasers. However, according to a Canadian report, in at least one case pressure was brought by the Premier of Quebec to have the International Paper Company, the leading newsprint producer, charge, and the Hearst newspaper interests pay, a higher price than had been originally agreed on, and both companies acceded to the request. Moreover, the allocation of production among the various newsprint mills, at a time when capacity was expanding and newsprint consumption was declining, assisted producers in maintaining prices at a somewhat higher level than would otherwise have prevailed. During the four or five years that the voluntary production allocation programme was operative, the provincial governments' intervention brought about only minor limitations on total production or total exports of Canadian newsprint.

Production on the West Coast of North America

In 1937, according to a United States report, newsprint producers in the Canadian province of British Columbia and the American states of Washington and Oregon combined " to fix, maintain and control prices for the sale of newsprint paper ". In 1941 six of these producers, who were the principal defendants in an indictment brought by the United States Government charging that this combination was illegal, paid fines totalling $30,000, without standing trial and on a plea of *bolo contendere*.[1]

[1] This is roughly the equivalent, in a criminal proceeding, of a consent judgment in a civil proceeding. See 5. Electric wires and cables, page 8, footnote 1, in this report.

Sales Arrangements in the United States Market

Most newsprint sold in the major consuming market, the United States, is sold under long-term contracts, lasting from five to fifteen years. For newspapers supplies of newsprint are a necessity, and a long-term sales contract which makes such supplies available, it is indicated, is equivalent to a permit to do business. In order to prevent the resale of newsprint to third persons in times of intense shortage, the sales contracts frequently required the publisher purchasing the newsprint to use it for specific publications.

Newsprint is sold in the United States on a " delivered price " basis, under a zoning system instituted in 1928. The price consists of a base price, plus or minus a fixed differential, depending on the geographic zone in which the newsprint is delivered. Since this differential was normally based upon the cost of rail transportation, buyers were deprived of cost savings which they could have obtained had the newsprint been delivered by cheaper water transportation facilities.

Exports from Canada and the United States

During the period 1939 to 1948, newsprint exports from Canada and the United States to Australia and New Zealand were affected by the so-called Seven Suppliers Agreement, under which newsprint producers fixed percentage quotas and selling prices. A similar agreement governed newsprint exports to the Far East. The Newsprint Association of Canada (and its predecessor), which embraced the Canadian industry, was actively interested in those arrangements, and the president of the Association served as a trustee of the Seven Suppliers Agreement. When that agreement expired in 1948, six of the seven companies that had participated in it formed a corporation for the purpose of making joint sales to Australia.

Production in Scandinavian Countries

According to a United States report, a newsprint cartel, Scannews, consisting of newsprint producers in Finland, Norway, and Sweden, engaged prior to World War II " in fixing prices, and in setting production and market quotas ". The arrangements were discontinued at the outbreak of World War II.

In 1950, according to the Swedish Cartel Register, the Swedish domestic newsprint market was protected, by cartel agreements of long standing, against competition from producers in Finland, Norway, and Czechoslovakia. The Swedish domestic price was far above export prices.

Kraft paper

International Market Sharing Arrangements

Kraft paper is high-quality paper primarily used in packaging. According to a Canadian source, the Swedish

domestic price of kraft paper was, before World War II, well above the export price. Scankraft, an association of kraft producers, at the time of its formation in 1932, controlled about 95 per cent of the Scandinavian output. In that year Scankraft arranged with British producers to divide the United Kingdom market. Also, it executed an agreement with the Canadian producers, which reserved the Canadian market for the latter and European markets (other than the United Kingdom) for members of Scankraft. Canadian producers were assigned certain agreed tonnages in the United Kingdom market, at prices equal to those quoted by Scankraft.

Effects

1. The Canadian report suggests that the foregoing arrangements meant higher prices in export markets and higher returns to Canadian producers. However, the arrangements may have resulted in a reduced volume of Canadian exports, and the expansion of the Canadian industry may have been limited. Competition was removed from the Canadian domestic market. The domestic price may in some cases have exceeded the export price, and the price paid by the Canadian purchaser for domestic paper may even have included the equivalent of a non-existent cost of transportation from sources other than Canada. The report concludes that "it is dangerous to have such power of discrimination subject only to the discretion of private interests".

2. A Swedish report has criticized the international cartel arrangements on kraft paper for having caused a Swedish home market price far in excess of the price in export markets. This difference between home and export prices was particularly pronounced in the depression years; in 1933, the home market price was 45 per cent above the export price. In 1945, however, governmental price controls brought home market prices below the prices on foreign markets, a state of affairs which continued until 1952, when a violent decline took place in the export price.

3. A Swedish Expert Committee on Restrictive Business Practices was reluctant to express any opinion about the effects of the various international cartel agreements in foreign countries, or to suggest governmental action with respect to the lowering of export prices. However, the committee said that if, under an international convention, other countries were to take action against restrictive business practices in international trade on condition that Sweden were to take similar steps, the neutral attitude of Sweden with regard to the export cartels of the northern countries might have to be reconsidered.

Fine paper

Fine paper includes mainly book paper and writing paper. Its manufacture, distribution and sale in Canada was found to have been, for many years prior to 1950, covered by an agreement participated in by seven producers and twenty-one merchants. A five per cent discount was given to merchants who agreed to import no paper of a class regularly manufactured by the participating producers; this served to keep foreign producers out of the Canadian market. Some Canadian merchants were refused certain varieties of Canadian fine papers, and at least one was threatened with a loss of his five per cent discount, if he sought to import from abroad paper that had been denied to him by domestic producers.

The Canadian import duties on paper aided these restrictive arrangements. The arrangements have been least in evidence with respect to paper for periodical publications used by book publishers, which in recent years has been free of import duty in Canada. Despite such duty-free import, the Canadian producers appear to have been successful in supplying the Canadian publishers. The Canadian Combines Investigation Commissioner, in 1952, considered it likely that a downward revision of the tariff would have a substantial tendency to restore competition.[2]

Governmental Measures against Restrictive Business Practices

In 1952, the Governments of France, the Federal Republic of Germany and the United Kingdom, in order to counteract what they considered to be the unduly high prices caused by the prevailing cartel arrangements for pulp and paper, instituted price control for those commodities. As a consequence of this price control, as well as of the large stocks at hand and of consumption, paper prices at the end of 1952 were 45 per cent, and pulp prices 60 per cent, lower than a year earlier.

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The Newsprint Problem, Final Report of the Special Antitrust Subcommittee of the Committee on the Judiciary, Washington, 14 September 1953.

[2] Subsequently, in a court proceeding, the Supreme Court of Ontario imposed fines totalling $242,000 on the producers and merchants involved in the agreement on fine paper, and granted an order prohibiting the continuation or repetition of the offence. This order has been appealed by the producers and merchants, who have challenged the constitutional authority of the provincial government to issue an order of prohibition. See Report on Current Legal Developments in the Field of Restrictive Business Practices, E/2671, dealing with the appeal in *Regina v. The Goodyear Tire and Rubber Company of Canada, Ltd.*

9. STEEL PRODUCTS (RAILS; PIPES AND TUBES; WIRE AND RODS)

After World War I, steel producers in various countries organized national cartels, and these national cartels entered into international cartel agreements. There were general agreements, embracing all basic steel products, and special agreements on individual commodities, such as steel rails, wire rods, structural shapes, steel pipes and tubes and tin plate. These agreements were designed to divide export markets for steel products and to restrict competition in the international trade in such products.

Descriptions of the international rail, pipe and tube, and steel rod and wire cartels will illustrate the nature of the cartel agreements prevalent among steel producers. These descriptions are based on Canadian, Swedish and United States reports, and on annexes to a report submitted by the Government of Belgium to the *Ad Hoc* Committee on Restrictive Business Practices.

Steel rails

Membership and Scope of International Cartel

By 1929, the International Railmakers Association, a world cartel, included national groups of producers of steel rails in Austria, Belgium, Czechoslovakia, France, Germany, Hungary, Luxembourg, the United Kingdom and the United States. The United States group of producers participated in the cartel through a Webb-Pomerene Export Association.[1] The two rail producers doing business in Canada were not official members of the cartel. In 1937, one of the producers had exported some steel rails from Canada. Apparently in order to prevent their competing on markets controlled by the cartel, both firms were offered and accepted export orders; these orders were to be deducted from the quota assigned to the United Kingdom rail producers. The outbreak of World War II interrupted the operation of this cartel.

Nature of Cartel Agreement

The cartel agreement provided for :

1. *Reserved markets.* There were allocated to each national group, as its " reserved areas ", its own national market and other specified territories; other cartel members agreed not to export to such reserved areas. The status of the United States was not mentioned in the agreement.

2. *Percentage export quotas.* The respective national groups shared the remaining " unreserved areas " of the world on the basis of fixed percentage quotas. All exports from a national group's country were deducted from that group's quota, even though some exports were by producers who were not members of the national group.

3. *Minimum prices and selling conditions.* In the various " unreserved " or jointly-shared markets, minimum prices and conditions of sale were established. The minimum prices varied from time to time, and were also on occasion lowered to meet competition from non-cartel producers. Provision was made for paying compensation to cartel members who made sales at sacrifice prices in order to meet competition.

4. *Fines and compensatory payments.* There was instituted a system of fines for national groups making sales in unreserved areas in excess of their quota percentages, and of compensatory payments for groups falling short of their quota percentages. Fines could also be imposed for violation of other provisions of the cartel agreement, such as those relating to minimum prices and conditions of sale.

5. *Collusive price quotations.* The reserved areas allotted to a particular national group were protected from competition by having members of other national groups, in reply to enquiries from such areas, quote prices higher than those quoted by the favoured national group. While generally collusive price quotations were 5 shillings per ton higher, in some cases they were 12½ or 15 shillings per ton higher.

6. *Central committees.* Two committees were organized to supervise the operations of the cartel. While each national group was responsible for the conduct of its individual members, the committees, through the national groups, maintained records of the particulars of all orders obtained, fixed prices, administered penalties, etc.

Effects of Cartel Agreement

The United States Federal Trade Commission found the effects of the rail cartel agreement to be :

1. In export markets, the elimination of price competition among the members of the cartel.
2. In certain domestic markets, the elimination of the competition of foreign cartel members.

Pipes and tubes

Membership and Scope of International Steel Pipe and Tube Cartels

Austrian, Belgian, Canadian, Czechoslovakian, French, German, Hungarian, Polish, Saar, United Kingdom and United States producers of steel pipe and tube products were associated by means of a series of international cartel agreements, the first of which was executed in 1928. In 1935, difficulties arose in adjusting quotas when the Saar was transferred to Germany, which brought about the collapse of the European cartel arrangements and, with that collapse, the termination of the international cartel agreements.

Although the formal agreements were never reinstated, there continued to be general agreement on prices and on quotas. The Swedish Cartel Register noted the

[1] See 1. Alkalis, page 2, footnote 1, in this report.

existence of the international tube cartel, which after World War II entered into an agreement with a Swedish association of wholesalers; according to a 1951 Swedish report, the agreement with the Swedish association was still in effect in 1951.

Nature of Cartel Agreements

The international steel pipe and tube cartel agreements prior to 1935 were similar in nature to the steel rail agreement, except that they did not explicitly provide for the meeting of competition from non-cartel producers, or for the deducting, from a national group's export quota, of the export sales made by non-cartel producers of that group's country. With these exceptions, the national and international arrangements for steel pipes and tubes included provisions for reserving markets, fixing prices and quotas, levying fines and granting compensation similar to those set forth for the international steel rail cartel.

Effects of Cartel Agreements

1. The Canadian Combines Investigation Commission reported the statement of one Canadian company that Canadian export tonnage under the cartel agreements was larger than would be possible under free and unrestricted competition. Some domestic users of steel pipes and tubes told the Commission that Canadian prices were maintained at a higher level than would have prevailed if supplies could have been obtained from outside Canada.

2. A Swedish report states that the price-fixing accomplished by the agreement between the cartel and the Swedish wholesalers had harmful effects, and that any minimum price protection that might be needed by Swedish firms should be afforded by the Swedish Government, not by private organizations.

3. The United States Federal Trade Commission indicated that the steel pipe and tube cartel agreements restrained price competition. It also indicated that a drastic decline which had taken place in steel pipe and tube exports from the United States might have been the result either of the depression of the 1930's or of the fact that foreign markets had been exclusively reserved for various national groups of producers.

4. The United States Tariff Commission noted that the cartel prices governing export sales were usually lower than prices for goods used in domestic consumption.

Wire and rods

Steel wire is drawn from steel wire rods; hence the manufacturers of steel wire are the customers of the manufacturers of steel wire rods.

Membership of Cartel

Prior to 1931, gentlemen's agreements existed among national groups of European producers of steel wire and steel wire products and individual manufacturers in Japan and the United States. The parties to these agreements gave each other assurances that they would co-operate to protect their domestic markets and would adhere to fixed prices and quotas in selling wire products in foreign markets. However, a decline in demand in the years immediately preceding 1931 led to secret competition in violation of the gentlemen's agreements. This in turn led to the formation of national cartels of manufacturers in countries where such cartels did not already exist.

In 1931 the International Wire Export Company (IWECO) was formed to regulate the international trade in steel wire. IWECO consisted of wire producers in Belgium, Czechoslovakia, Denmark, France and the Saar, Germany, Hungary, the Netherlands and Poland. The wire producers in Sweden, the United Kingdom and the United States did not join this cartel, but entered into special arrangements with it.

At the same time, the International Wire Rods Entente (IWRE), covering the wire rods from which steel wire is drawn, which was originally established in 1927 but had become dormant, was revived. The membership of IWRE consisted of practically the same groups of manufacturers as had organized IWECO. The purpose of IWRE was to control and limit the sales of wire rods to potential competitors of IWRE's members in the manufacture of drawn wire and wire products. A group of British producers joined IWRE in 1935, and the United States producers, represented by the Steel Export Association of America, began actively to co-operate in 1938.

Methods of Restricting Competition

IWECO acted as an exclusive sales organization for two conventions that had been concluded at the end of 1931 among its members :

1. A general export convention assigned to the respective national associations of wire producers the following percentages of the total quantities exported by the participating countries : German, 53.37 per cent; Belgian, 35.17 per cent; Czechoslovak, 6.02 per cent; Dutch, 3.96 per cent; Hungarian, 0.80 per cent; and Danish, 0.61 per cent. When the French, and later the Polish, producers joined the convention, the percentage quotas were modified, but not so as to reduce the quantities of exports permitted the other parties to the convention.
2. The other export convention established a syndicate for the sale of hexagon wire. Its members included producers in Austria, Belgium, Czechoslovakia, Denmark, Germany, the Netherlands and the Saar. Its purpose was to control exports.

In addition to allocating quotas, these two conventions provided for price fixing, obligated members to limit production to the kinds of wires produced by them when the convention first came into effect, and provided for arbitration of differences among members.

According to the United States reports, IWECO built and maintained its own sales organization, directed by a hired manager, and transacted all business in interna-

tional trade. It was governed by a management committee, dominated by the German group.

As pointed out, most members of IWRE were also members of IWECO. In order to restrict competition in the field of wire products, IWRE limited the number of its direct customers for wire rods to four in Sweden, five in Norway, one in Denmark, four in Finland, five in the Netherlands, two in Switzerland, six in Italy, one in Brazil, etc.

Situation since World War II

IWECO came to an end at the outbreak of World War II, when the Continental European wire manufacturers were forced to join an organization established by the Germans to serve German interests. In the post-war years, a crisis in the industry was felt in various European countries. This situation was aggravated by the gradual reappearance of German competition in export markets and contributed to the establishment of a new international cartel. On 7 January 1953 a meeting was held in Paris, among German, French, Italian, Dutch and Belgian exporters, at which they agreed to regulate export prices. A convention to this effect was signed on 20 January 1953. At the time when the Belgian Government submitted its report to the United Nations, it was expected that export quotas, a more difficult matter to agree on than export prices, would be established within the near future.

Effects of Cartel Arrangements

The Belgian report concludes that the cartel agreement administered by IWECO :

1. Led to a stabilization of production at assured minimum levels of activity;
2. Made possible investments needed to increase efficiency, encouraged rationalization, and eliminated surplus productive capacity;
3. Made possible remunerative and stable prices for the Belgian producers. Price discrimination in export markets produced better returns; from sales to such markets than would otherwise have been possible;
4. Eliminated a good deal of the instability existing in export markets and opened up new outlets for Belgian wire, despite the fact that many traditional markets had been closed;
5. Enabled the Belgian wire industry to maintain its position in foreign markets and to reduce its export risks to a minimum.

General comment of Belgian Government

The Belgian Government report to the Ad Hoc Committee on Restrictive Business Practices pointed out that the Belgian steel industry is largely dependent on exports and is therefore subject to restrictions that may be imposed by foreign governments. It also stated that cartel agreements, which are designed to avoid destructive price competition during a depression, and inflationary price increases in times of prosperity, are essentially defensive in nature and are of value to a country in Belgium's position, and that the various cartels in which Belgian steel producers have participated have generally attained these price objectives.

Sources

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United States :

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10. TIMBER

The following summarizes the findings of the United Kingdom Monopolies and Restrictive Practices Commissions with reference to imported timber.

Restrictive Arrangements

The channels of trade through which most timber is imported into the United Kingdom are regulated by a system of " Approved Lists ", administered by committees elected by members of affiliated or constituent bodies of the Timber Trade Federation (TTF). There are three Approved Lists, one for softwood (imported from European sources), one for hardwood, and one for plywood. The Lists contain the names of United Kingdom agents employed by overseas shippers, and of United Kingdom importers (not all of whom are members of the TTF). The agents of overseas shippers on each List undertake to negotiate sales of the timber covered by the List only to listed United Kingdom importers, and the importers on each List undertake to buy such timber only through listed agents of overseas shippers.

Aim of the Arrangements

The chief object of the arrangements is to preserve stability in the trade. Hence the Lists are used to ensure that all but a very small proportion of imported timber passes through the conventional channels of the trade—from the shipper by way of at least one agent and one importer to the user; that those who set up as agents or importers have the intention of remaining in the trade, and the resources and experience to do so; and that smaller merchants are kept from importing.

Industry Arguments for the Arrangements

According to the TTF, concentration of purchasing in the hands of a limited number of experienced buyers willing to buy general specifications of timber enables the United Kingdom to obtain overseas supplies of timber on more favourable terms. Without the existing system, importers could not afford to take the risk of holding stocks, investing capital in sawmills, and otherwise putting themselves in a position to provide the distributive services which users expect. The trade maintains that the Lists do not in fact restrict competition since, although they theoretically limit the number of agents and importers, there is a sufficient number of both on the Lists to ensure that prices are highly competitive. The timber trade feels that the interest of neither the users nor the nation in general would be served by permitting inexperienced persons with insufficient resources to be treated as agents and importers. Lastly, the point is made that most users would not be able to buy more cheaply if they went outside the conventional trade channels, and that although a few large users might economize by direct buying, their action would raise the prices which the rest of the trade would have to pay.

Objections of Timber Traders and Users to the Arrangements

The arrangements have the effect of restricting the number of agents and importers who are able to deal effectively in imported timber, and tend to make the trade at the point of importation a closed shop. This restricts competition and may thus in turn lead to an enhanced price level. Moreover, a degree of rigidity is introduced into the structure of the trade itself. Barriers are set up against the non-importing merchant who wishes to start importing, and against the importer of one class of timber who wishes to start importing another class. Thus, the ability of traders to expand and change the character of their businesses at will is hampered, and the introduction of fresh resources from outside the trade is hindered. Finally, users of timber are forced to buy through the conventional channels of the trade, and are prevented from choosing any other method of purchase which might seem more convenient and economical to them.

Conclusions and Recommendations of the Commission

The Commission concludes that there is competition among agents, among importers, and between importers and non-importing merchants; further, there is no form of price ring on a national scale. Nor did it find any evidence that the Approved List system is being administered with any deliberate partiality. It also agreed that the agent and the importer each performs useful—in the majority of cases indispensable—functions in the import of timber, and that the structure of the trade as it has grown up is naturally suited to handle economically the requirements of the great majority of users.

On the other hand the Commission points out that this is not a real justification of the system, since if it were abolished there is every reason to believe that most timber would continue to be imported through the same channels as at present. Moreover, the users who prefer to buy directly from agents or shippers should not be prevented by the organized timber trade from exercising their preference. The Commission does not agree that the price level of imported timber would be raised if the system did not exist, but believes rather that it would tend to be lower. Since timber is an important raw material accounting for some 5 per cent of United Kingdom expenditure on imports, the Commission believes that the machinery of importation should be such as to secure adequate supplies, when and where they are needed, as cheaply as possible. To achieve the greater flexibility and freedom required, it is necessary to abolish not the Lists as such, but the agreements and undertakings by the traders on the Lists to deal only with each other. It is accordingly recommended that these agreements should be terminated, and that no others having similar effects should be made in the future.

Source

United Kingdom :

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