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Pacific Coast Agricultural Export Association v. Sunkist Growers, Inc.

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ANTITRUST (U.S.) — EXEMPTION FROM ANTITRUST LAWS — CAPPER-VOLSTEAD IMMUNITY NOT APPLICABLE TO AGRICULTURAL COOPERATIVE ENGAGED IN EXPORT COMPETITION WITH WEBB-POMERENE ASSOCIATION.

Pacific Coast Agricultural Export Association v. Sunkist Growers, Inc., 526 F.2d 1196 (9th Cir. 1975), *cert. denied*, 96 S. Ct. 1741 (1976)

Plaintiff Pacific Coast Agricultural Export Association is an unincorporated Webb-Pomerene association of fresh fruit exporters.[1] Until 1966, Pacific Coast had received the bulk of its supply for export to Hong Kong from defendant Sunkist Growers, Inc. Sunkist is a federated agricultural cooperative of fresh fruit producers, qualified under the Capper-Volstead Act,[2] whose mem-

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1. Webb-Pomerene Act, 15 U.S.C. §§ 61-65 (1970). Section 61 defines "association" as "any corporation or combination, by contract or otherwise, of two or more persons, partnerships or corporations." Section 61 provides:

> Nothing contained in sections 1 to 7 of this title shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade, or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States and is not in restraint of the export trade of any domestic competitor of such association: *Provided,* That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein.

Broadly, the statute permits U.S. exporters to combine for the sole purpose of engaging in export trade while enjoying exemption from antitrust liability.

See generally W. FUGATE, FOREIGN COMMERCE AND THE ANTITRUST LAWS ch. 7 (rev. ed. 1973).

2. Capper-Volstead Act, 7 U.S.C. §§ 291-292 (1970). Section 291 provides: Persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce, such products of persons so engaged. Such associations may have marketing agencies in common; and such associations and their members may make the necessary contracts and agreements to effect such purposes: *Provided,* however,

bers grow and pack citrus fruit for sale in the United States and abroad.[3] In 1966 Sunkist terminated its arrangement with Pacific Coast and began direct sales to Hong Kong through an exclusive agent, Reliance Commercial Enterprises, Inc.[4] In the following

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That such associations are operated for the mutual benefit of the members thereof, as such producers, and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein, or,

Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.

And in any case to the following:

Third. That the association shall not deal in the products of non-members to an amount greater in value than such as are handled by it for members.

The Act extends the antitrust exemption afforded agricultural cooperatives by § 6 of the Clayton Act, 15 U.S.C. § 17, by authorizing producers to organize capital stock associations which may operate collectively in production and marketing.

Sunkist was found to be improperly organized for purposes of the Capper-Volstead exemption in Case Swayne v. Sunkist Growers, Inc., 389 U.S. 384, *reh. denied,* 390 U.S. 930 (1967). Sunkist reorganized and in Case Swayne v. Sunkist Growers, Inc., 355 F. Supp. 408 (C.D. Cal. 1971), the court found that Sunkist's present structure complied with the requirements of Capper-Volstead; it was (a) a non-profit organization, (b) whose membership was limited to citrus fruit growers and associations of growers, (c) who solely possessed the voting power of the association, to the exclusion of all non-growers in the policy making decisions of the association. This formed the basis for the district court's instruction that Sunkist was a lawfully constituted Capper-Volstead cooperative.

3. Sunkist's organizational structure is described in detail in Case Swayne v. Sunkist Growers, Inc., 355 F. Supp. 408. Sunkist's members grow approximately 75% of all oranges grown in California and Arizona.

It should also be noted that Sunkist belongs to the California-Arizona Citrus League. The League is a voluntary non-profit trade association composed of marketers of California-Arizona citrus, largely cooperatives, which represent approximately 90% of the 12,500 citrus growers in California and Arizona. For an 8-year period ending 1971–1972, exports averaged 28.3% of total shipments of fresh citrus from California and Arizona. Currently the dollar value of citrus and citrus products exported by the California-Arizona citrus industry exceeds $125 million annually. *See Hearings on H.R. 6767 Before the House Comm. on Ways & Means,* 93d Cong., 1st Sess. 4186 (1973) (statement of James Van Horn, Past President, California-Arizona Citrus League).

4. In the past, Sunkist had used numerous export companies, including Pacific Coast, for its Hong Kong sales. Beginning in 1966, Sunkist performed all export functions in its relationship with Reliance as its sole agent in Hong Kong. In addition to performing all the usual import-export agent's functions, Reliance served as promotion agent for Sunkist in Hong Kong. This broader role enabled Reliance to charge a lower agent's commission per carton and thereby reduced the wholesale price of oranges in Hong Kong. *See* Petitioner's Brief for Certiorari at 9, *et seq.,* Sunkist Growers, Inc. v. Pacific Coast Agricultural Export Association, No. 75–1325.

six months Sunkist captured nearly 70% of the market for American oranges sold in Hong Kong.[5]

In July 1968, Pacific Coast, as assignee of the rights of seven of its members, filed suit against Sunkist in the United States District Court for the Northern District of California, alleging violations of the antitrust laws. In August 1969, M-C International, Inc. (M-C), a non-association exporter, and Robert Louis Lepinay, filed similar actions against Sunkist and Reliance.

All suits were filed under sections 4 and 16 of the Clayton Act[6] and 28 U.S.C. § 1377[7] seeking damages and injunctive relief from the defendants' alleged violations of sections 1 and 2 of the Sherman Act.[8]

In support of their section 1 claim, plaintiffs alleged that Reliance had sought, through communications to Sunkist, restrictions on the supply of domestic oranges available to the exporters; that Sunkist had attempted to frustrate plaintiffs' shipping orders by over-ordering the shipping space necessary to accommodate its own orders; that Sunkist supplied to Reliance a list of Hong Kong customers acquired by plaintiffs; and that Sunkist terminated export sales to domestic exporters. These same allegations were used in support of plaintiffs' section 2 claim, with the important additional allegation that from 1967 to 1971 Sunkist controlled 45% to 70% of the Hong Kong export market for fresh citrus fruit. For section 2 purposes, the relevant market was defined as "oranges grown in Arizona and California for export in Hong Kong."[9] Sunkist responded to these allegations

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5. The court noted:

> The percentage sold by plaintiffs and other exporters later increased somewhat, ranging between 38.1% and 55.5% from 1967 to 1971. Although an improving overall market in Hong Kong allowed three of the Association's assignors to attain 1970 volume sales exceeding comparable pre-1966 figures, neither M-C nor any of the assignors has regained its pre-1966 share.

526 F.2d 1201 n.7.

6. Clayton Act §§ 4, 16, 15 U.S.C. §§ 15, 16 (1970). Section 4 authorizes plaintiffs in antitrust actions to collect treble damages and attorneys' fees. Section 16 authorizes plaintiffs in antitrust actions to seek injunctive relief.

7. 28 U.S.C. § 1337 (1948) is the general jurisdictional statute for antitrust actions. It provides: "The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies."

8. Sherman Act §§ 1, 2, 15 U.S.C. §§ 1, 2 (1970). Section 1 provides that every combination in restraint of trade is illegal. Section 2 provides that every person who monopolizes or attempts or conspires to monopolize is guilty of a misdemeanor.

9. 526 F.2d 1203.

by challenging their accuracy, asserting that the actions were reasonable responses to a competitive market, and claiming they were insufficient to sustain a verdict.[10]

The jury returned a verdict against defendants Sunkist and Reliance in November 1972[11] and awarded total damages to Pacific Coast and M-C of almost one million dollars.[12] In addition, injunctive relief was granted: the exclusive selling agreement between Sunkist and Reliance was terminated and Sunkist was enjoined from refusing to sell oranges from both its domestic and export departments to qualified exporters.[13] Plaintiffs' request

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10. On Dec. 8, 1969, the cases were consolidated for discovery, pre-trial, and trial proceedings by stipulation of the parties. On Aug. 17, 1971, the district court ordered a bifurcated trial before the same jury and beginning in Sept. 1972, the liability phase was tried before the jury.

11. The jury found against plaintiff Lepinay as to all counts. With respect to Sunkist and Reliance, the jury found that (1) Sunkist and Reliance had conspired in restraint of trade by refusing to sell oranges to the exporters for export, (2) that Sunkist and Reliance had conspired to monopolize the relevant market consisting of oranges grown in Arizona and California for export to Hong Kong, (3) that Sunkist had attempted to monopolize that market, and (4) that Sunkist had monopoly power and did in fact monopolize that market.

12. The jury returned verdicts against Sunkist Growers, Inc., in favor of the seven members assigning their rights to plaintiff Pacific Coast Agricultural Export Association in the following amounts:

John De Martini Co., Inc.	$ 10,677.00
Ghiselli Bros., Inc.	13,514.00
Honolulu Distributors, Inc.	2,781.00
Paramount Export Co.	99,941.00
Sunrise Produce Co.	16,936.00
Liberty Gold Fruit Co.	87,464.00
Pacific Produce Co.	7,391.00
	$238,704.00

Sunkist and Reliance were found jointly and severally liable to M-C for $2,363.00.

The court awarded $200,000 in attorneys' fees, $197,000 of which were paid to Pacific Coast's attorneys. Additional attorneys' fees related to plaintiffs' post-trial motions for judgment n.o.v. and a new trial were awarded in the amount of $5,250.

Total treble damages and attorneys' fees were $928,451. *See* Petitioner's Brief for Certiorari, *supra* note 4, app. at 39–40.

13. The district court noted: "[H]owever, nothing in this decree shall be construed as enjoining or restraining Sunkist from selling oranges directly to Hong Kong, either on its own or through non-exclusive sales agents." Memorandum of Opinion and Order of United States District Court, Northern District of California, in Petitioner's Brief for Certiorari, *supra* note 4, app. at 36–38.

that Sunkist Growers, Inc. be dissolved was denied.[14] Both parties appealed and the United States Court of Appeals for the Ninth Circuit affirmed.[15] The appellate court found, *inter alia*, that Sunkist did not enjoy Capper-Volstead immunity; that sufficient evidence supported the finding of Sherman Act violations; and that the amount of attorneys' fees and scope of equitable relief was proper.

As stated, the Ninth Circuit held that Sunkist's activities were not immune from antitrust liability under the Capper-Volstead Act. As to the Section 1 claim, the court ruled that plaintiffs were required to show only that Sunkist's actions were motivated by a desire to accomplish anti-competitive objectives; that the determination of such an objective was a question for the jury, and that there existed ample evidence to support the finding against Sunkist. With respect to the Section 2 claim, the court found Sunkist's 45% to 70% control of the relevant market sufficient to support a jury's finding of the existence of monopoly power, and ample evidence to support the specific intent and "wrongful" act (or acts) required to sustain a finding that defendants attempted to monopolize. Similarly, the evidence supported the jury's conclusion that defendants had conspired with specific intent to monopolize an area of commerce. The Ninth Circuit also ruled on the issue of damages, holding that the plaintiffs had produced sufficient evidence to show causal connection between defendants' unlawful conduct and injury to plaintiffs; and that although market share projections may not have been exact, there was sufficient evidence to support a reasonable estimate of damage by the jury. Lastly, the propriety of equitable relief was considered. In support of the district court action, the Ninth Circuit ruled that the injunctive relief was proper in that it was designed to restore competition in the relevant market and that the remedy of dissolution is not available to private antitrust litigants.

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14. *Id.* Plaintiffs had contended that dissolution was the only effective method of curing the illegal practices found by the jury.

15. Defendants appealed on several grounds, alleging errors in evidence and procedure, insufficiency of proof of prohibited conduct as well as insufficiency of proof of actual damages, improper equitable relief and excessive attorneys' fees. Plaintiffs appealed on the grounds of inadequate equitable relief: specifically, that the court should have enjoined all sales by Sunkist in Hong Kong for a period equal to the period of violations (6 years) and that the court's refusal to dissolve Sunkist was an abuse of discretion. 526 F.2d 1201.

The most significant aspect of the Ninth Circuit's holding concerns the use of Capper-Volstead immunity in an international context. This is the first instance where that immunity has been invoked as a defense in an international trade case. The inherent conflicts between the policy objectives of the Webb-Pomerene and Capper-Volstead acts may have significant impact on international trade in light of the Supreme Court's refusal to resolve the question.[16]

Two Supreme Court decisions have narrowly defined the limits of the Capper-Volstead exemption. In *United States v. Borden Co.*,[17] the Court stated that the involvement of "other persons" in the allegedly exempt cooperative caused the exemption to be denied.[18] In *Maryland and Virginia Milk Producers*

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16. Plaintiffs and defendants both filed Petitions for Certiorari in Mar. 1976. 44 U.S.L.W. 3533 (U.S. Mar. 23, 1976). Pacific Coast and M-C International posed the following question for consideration by the Court:

> Is the remedy of dissolution available to a plaintiff in a private antitrust action under 15 U.S.C. § 16 where (a) the defendant whose dissolution is sought is an habitual violator of the antitrust laws and (b) the jury has found that such defendant violated Section 1 of the Sherman Act by a conspiracy to restrain trade, and violated Section 2 of the Sherman Act by monopolizing, attempting to monopolize, and conspiring to monopolize? Petitioner's Brief for Certiorari, at 2, Pacific Coast Agricultural Export Ass'n v. Sunkist Growers, Inc., No. 75-1311 (U.S. Mar. 23, 1976).

Sunkist Growers, Inc. presented the following four questions:

1. Can a private party antitrust plaintiff maintain an action under Section 4 of the Clayton Act by proving anticompetitive purpose but not effect?
2. May a private party antitrust plaintiff calculate damages based on lost sales projections which assume no competing sales by a defendant when that defendant's competition is not part of the claimed antitrust violations?
3. Is a market share of approximately 50% sufficient to establish monopoly power absent other proof of power to control prices or exclude competition?
4. Does an association which itself does not engage in business have standing under Section 16 of the Clayton Act to seek injunctive relief for the benefit of its members?

Petitioner's Brief for Certiorari, *supra* note 4, at 2. Certiorari was denied. 96 S. Ct. 1741.

17. 308 U.S. 188 (1939). For a thorough discussion of this case, see Noakes, *Exemption for Cooperatives,* 19 ABA SECTION ON ANTITRUST LAW 407 (1961).

18. Confronted with a conspiracy involving cooperatives, milk distributors, labor unions, a trade association, and government officials in the Chicago milk market, the Court stated that:

> the right of these agricultural producers thus to unite in preparing for market and in marketing their products, and to make the contracts which are necessary for that collaboration, cannot be deemed to authorize any combination or con-

Ass'n. v. United States[19] the court stated that an exempt cooperative may not exceed the bounds of the "legitimate objects" test of Section 6 of the Clayton Act.[20] If it does, the antitrust exemption may be lost.[21] Both of these tests have been applied in varying degrees by the courts in similar domestic cases.[22]

In this case, however, Sunkist interposed its Capper-Volstead immunity as a defense in an international context and a threshold determination had to be made of the extent to which Capper-Volstead was intended to apply to such situations.

Evidence in the congressional debates suggests that the original intention was to confine the scope of the bill to "trading within the United States"[23] because "[t]his is a domestic situation."[24] However, the final language of the statute is controlling and

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spiracy with *other persons* in restraint of trade that these producers may see fit to devise.

308 U.S. 204–5.

19. 362 U.S. 458 (1960).

20. 15 U.S.C. § 17. In part, this section reads: "Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help . . . or restrain individual members of such organizations from lawfully carrying out the *legitimate objects* thereof" (emphasis added).

21. The Court held that the Capper-Volstead Act "did not leave cooperatives free to engage in practices against other persons in order to monopolize trade, or restrain or suppress competition with the cooperative." 362 U.S. 458.

22. The "other persons" test has been clearly followed in Alabama Power Company v. Alabama Electric Cooperative, Inc., 394 F.2d 672 (5th Cir. 1968) and Waters v. National Farmers Organization, Inc., 328 F. Supp. 1229 (7th Cir. 1971). The "legitimate objects" test was applied in Marketing Assistance Plan, Inc. v. Associated Milk Producers, Inc., 338 F. Supp. 1019 (5th Cir. 1971). Both approaches have been applied in Treasure Valley Potato Bargaining Ass'n v. Ore-Ida Foods, Inc., 497 F.2d 203 (9th Cir. 1974) and in Knuth v. Erie Crawford Dairy Cooperative Ass'n, 395 F.2d 420 (3d Cir. 1968) where the court most succinctly combined the two strands of analysis: "Section 1 of the Capper-Volstead Act does not authorize combinations or conspiracies between cooperatives and others in restraint of trade. Indeed, such a cooperative may even be liable under the Sherman Act without proof of involvement of non-cooperatives if the activity under attack is predatory." *Id.* at 423 (citations omitted).

On the Capper-Volstead Act generally, see Noakes, *supra* note 17; Lemon, *The Capper-Volstead Act — Will it Ever Grow Up?*, 22 AD. L. REV. 443 (1969–1970); Hufseadler, *A Prediction: The Exemption Favoring Agricultural Cooperatives Will Be Reaffirmed*, 22 AD. L. REV. 455 (1969–1970).

23. 62 CONG. REC. 2171 (1922).

24. *Id.* at 2174.

applies to producers "marketing in interstate *and foreign commerce*" (emphasis added).[25]

Thus, in holding that the Capper-Volstead Act does not "authorize any combination or conspiracy with others which unreasonably restrain interstate or foreign commerce" or "immunize cooperatives engaged in competition-stifling practices from actions under the anti-monopolization provisions of the Sherman Act," the Ninth Circuit did not misapply the basic principles of the antitrust law in this area, notwithstanding the limited domestic application of Capper-Volstead in the past.[26] This view is further supported by the fact that the violations in this case took place within the United States and were affecting domestic prices and commerce. However, irrespective of the legal soundness of the Ninth Circuit's decision, a very basic policy conflict remains unresolved.

The legislative history of the Capper-Volstead Act demonstrates clearly that one of the primary policy considerations behind the exemption of agricultural cooperatives was the elimination of the non-producer "middleman" who took a large share of the profits from agricultural sales.[27] The Supreme Court articulated this policy in *Case-Swayne Co., Inc. v. Sunkist Growers, Inc.*,[28] where it stated that "a principal concern of Congress was to prohibit the participation in the collectivity of the predatory middleman."[29]

The policy conflict in the present case stems from the fact that plaintiffs are precisely the middlemen against whom the

25. *Supra* note 2. The obvious advice of Professor Lemon is noteworthy: "As is true with any legislative history, you can find in the Congressional discussions of the Capper-Volstead Act some material which supports and some material which refutes nearly any point you wish to make." Lemon, *supra* note 22, at 443.

26. 526 F.2d 1202. Although the Ninth Circuit cites *Borden* as supporting the proposition that the Capper-Volstead Act extends to foreign commerce, that case dealt exclusively with domestic trade and contained no language relating to foreign commerce.

27. Senator Norris from Nebraska stated: "If the producers form a cooperative that will eliminate middlemen, they will benefit themselves and they will benefit everyone who consumes any of the things that they produce." 62 CONG. REC. 2260 (1922).

Senator Walsh from Montana agreed: "If we are going to have a monopoly at all, I would rather have a monopoly of producers than a monopoly of middlemen." *Id.* at 2159.

28. 389 U.S. 384.

29. *Id.* at 393.

30. 526 F.2d 1200.

Capper-Volstead Act is directed. Indeed, the Ninth Circuit acknowledged this status.[30] However, plaintiffs are also immune from antitrust liability by reason of the Webb-Pomerene exemption. The primary policy consideration for the Webb-Pomerene Act is promotion of export trade.[31] The difficulty with the Ninth Circuit's decision is that the court ignored these basic policy considerations. Indeed, the result reached in *Pacific Coast* contravenes those policy objectives.

It is this dichotomy that Sunkist argued in its Petition for Certiorari.[32] It argued that its arrangement with Reliance was enabling United States fruit to compete more effectively in the Hong Kong market[33] thereby promoting export trade consistently with the objectives of the Webb-Pomerene Act. Thus, it argued, the policy objectives of Webb-Pomerene, rather than a blind application of who was or was not a qualified Webb-Pomerene association, ought to govern the decision. These policy objectives were intended to benefit and apply to all who are engaged in export trade. However, the Ninth Circuit chose to apply strictly the language of Webb-Pomerene to protect only those who technically qualified under its provisions rather than other domestic exporters who were incidentally competing with these protected monopolists.

Similarly, the Capper-Volstead cooperative has been dealt a severe blow by the Court's refusal to examine basic policy. Recalling that the basic policy objective underlying the Capper-Volstead Act was the elimination of the non-producer "middle-

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31. *See* 62 CONG. REC. 2050 (1922). The Webb-Pomerene Act, 15 U.S.C. § 61 (1970), is entitled in part "Promotion of Export Trade." *See, e.g.*, United States v. Concentrated Phosphate Export Ass'n, Inc., 393 U.S. 199 (1967) (dicta).

32. *Supra* note 4.

33. Sunkist changed its method of distribution to respond to heavy competitive pressure in the Hong Kong market from other orange producing countries, particularly Australia and Africa. These foreign competitors generally underpriced Sunkist and other American orange suppliers and offered attractive agency arrangements which significantly reduced the market risks to the Hong Kong fresh fruit importers. As a result, foreign orange sales increased dramatically.

> The American exporters did not deal effectively with this competition. . . . As a result of the actions taken by Sunkist, a healthy competition between Sunkist and the exporters developed, and overall American oranges competed more effectively with foreign oranges sold in Hong Kong. From a total of 1,234,661 cartons of American oranges exported to Hong Kong in 1965, the last year the exporters handled all the business, the trade grew to 3,089,386 cartons in 1970 and 2,689,980 in 1971. *Id.* at 8-9, 11.

man," an extension of that policy to international trade would vindicate the interests of the cooperative producer. In this sense, *Pacific Coast* represents a victory for non-producing middlemen engaged in international trade.

An examination of the policy objectives of each statute reveals that the Ninth Circuit's decision vindicated neither. In addition, the refusal of the Supreme Court to grant *certiorari* has not helped to clear the resulting confusion. Sunkist, originally organized under a statute for the purpose of eliminating middlemen, is now compelled to sell to middlemen in the international market, with the probable result that overseas fruit prices will increase coupled with a consequent decline in the United States' competitive position. Pacific Coast, whose antitrust exemption is designed to promote and stimulate United States exports, is now in the position of causing a decline in the competitive position of United States fruit products by reason of the higher prices it charges over that of the producer Sunkist. Thus, the basic policy objectives of the two statutes involved are the ultimate losers in this case.

There is nothing especially novel about the observation that vigorous support for the promotion of export trade and the enforcement of antitrust laws presents a near irreconcilable policy conflict. The fact that existing antitrust laws interfere with this country's ability to compete more efficiently and effectively in many areas of international trade has not gone unnoticed.[34] Indeed, the passage of the Webb-Pomerene Act exempting export associations from the antitrust laws is itself a recognition of this dialectic.

Generally, however, when this conflict comes into focus as in this case, it is the policy favoring increased competition, not export trade, which dictate the result. As recent evidence of this, a bill was introduced in 1973 to broaden the definition of export

34. E. KINTNER AND M. JOELSON, AN INTERNATIONAL ANTITRUST PRIMER (1974). Speaking of those favoring expansion of the Webb-Pomerene exemption:

> The American businessman is placed in an unequal competitive position by U.S. antitrust laws because other developed nations impose little or no antitrust sanctions on their nationals; encourage and many times initiate the formation of national and international cartels for the purpose of doing business abroad; and give special encouragement to their export cartel associations, including special rediscount rates, guarantees of currency convertibility, and protection against credit and political risks.

Id. at 183.

35. S. 1483, 93rd Cong., 1st Sess. (1973).

trade and eliminate the criminal and civil liability imposed upon exporters by the Sherman and Clayton Acts respectively.[35] Regrettably, in partial response to Justice Department opposition, the antitrust exemption provision of the bill was deleted.[36]

Although one may concede that the policy conflicts were not clearly argued on petition to the U.S. Supreme Court, the denial of the petitions for *certiorari* by the Court has helped delay the day that these unfair competitive restraints on U.S. business abroad shaped and articulated in the interest of increased competition at home, can be eliminated to permit U.S. businesses to operate effectively and competitively in the international market place. In the final analysis, what this case really represents is the need for a congressional redefinition of the policies underlying this country's export trade and the application of antitrust laws thereto — a need which could have received indispensable recognition in a Supreme Court opinion.

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36. 7 L. & POLICY IN INT'L BUS. 57, 79 (1975) (citations omitted).