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Antitrust Prosecutions of International Business

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ANTITRUST PROSECUTIONS OF INTERNATIONAL BUSINESS

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The problem of the application of our antitrust laws to combinations of foreign and domestic business enterprises has for some years been receiving attention from the Department of Justice. This attention has been intensified by the war. In a number of public statements officials of the Department of Justice have stated that international arrangements to which domestic corporations are parties have exerted an influence harmful to our national interests,[1] and the Department has announced its intention "to carry out actively the policy of outlawing the cartel system."[2]

The political and economic implications of the cartel system have been widely discussed. The line separating desirable collaboration between nationals of different countries from monopolistic restrictions on international trade will take much defining. The problems confronting the practicing lawyer, however, are not ordinarily these larger questions. His problems are apt to fall into two general classes. The first is a substantive question. What is the law with respect to the matters covered in this agreement, actual or proposed, on which his advice is sought? The second, usually arising when some action by the government is taken or threatened, is: What can the government do to his client? What is it likely to do? What is its policy?

It is the second class of questions that will be discussed here. The answers to these questions are not to be found, for the most part, in decisions of courts, but in Departmental policy and practice. Accordingly, I shall discuss only briefly the decisions of the Supreme Court dealing with jurisdiction in this type of case. The main part of this article will be devoted to a chronological review of the principal foreign monopoly prosecutions, a discussion of the enforcement techniques used by the government in its attacks on foreign

[1]See N. Y. Times, July 29, 1942, p. 13, col. 6; N. Y. Times Mag., Sept. 26, 1943, p. 12; N. Y. Times, Jan, 7. 1944, p. 1, col. 8; CORWIN D. EDWARDS, ECONOMIC AND POLITICAL ASPECTS OF INTERNATIONAL CARTELS, prepared for Subcommittee on War Mobilization of the Committee on Military Affairs, United States Senate, 78th Cong., 2d Sess.; address of Attorney General Biddle to Harvard Law School Alumni Association, Feb. 23, 1944. For a contrary view, see J. COM., Jan. 14, 1944, p. 9, col. 5; J. COM., Feb. 4, 1944, p. 10, col. 6; DEHAAS, *Economic Peace Through Private Agreements* (1943) 22 HARV. BUS. REV. 139.

[2]Department of Justice Release, June 28, 1943. Whether this policy will stand unmodified is doubtful. The Department of Justice viewpoint is apparently under pressure from other government agencies as well as business interests. See Editorial, N. Y. Herald Tribune, Apr. 29, 1944; N. Y. Times, June 15, 1944, p. 6, col. 5; N. Y. Times, June 25, 1944, p. 30, col. 6; Editorial, J. COM., June 26, 1944.

monopolies, and an examination of antitrust policy as revealed in consent decrees.[3]

This discussion will also be confined to the problems raised by the activities of the ordinary commercial or manufacturing company and will not deal with specialized problems, such as those of carriers or export trade associations which are governed by special legislation.[4]

JURISDICTION—THE SUPREME COURT DECISIONS

Three Supreme Court decisions have dealt directly with the problem of the application of the antitrust laws to situations involving foreign restraints of commerce. They are: *American Banana Co.* v. *United Fruit Co.*,[5] *United States* v. *Pacific & Arctic Railway & Navigation Co.*, et al.,[6] and *United States* v. *Sisal Sales Corp.*[7]

American Banana Co. v. *United Fruit Co.* was a civil action under the Sherman Act for treble damages. From a judgment of the Circuit Court of Appeals, Second Circuit, affirming a dismissal of the complaint for failure to state a cause of action, the plaintiff brought error in the Supreme Court. Plaintiff was an Alabama corporation; defendant, a New Jersey corporation. It was alleged that defendant, long before the formation of the plaintiff corporation, had been engaged in restraining trade. In 1909, one McConnell started a banana plantation in Panama, then a part of the Republic of Columbia, and began to build a railway. He was notified by the defendant to combine or stop. Two months later the governor of Panama recommended to his government that Costa Rica be allowed to administer the territory through which the railway was to run. Defendant and the government of Costa Rica interfered with McConnell and his work. In November, 1903, Panama revolted. In June, 1904, plaintiff bought out McConnell and continued with the work. In July, Costa Rican soldiers and officials at the instigation of the defendant seized the plantation and supplies and stopped the construction of the railway. In August, one Astua by *ex parte* proceedings, obtained a judgment from a Costa Rican court declaring that the plantation should be his. The proceedings by which this was done were alleged to be without

[3]The value of consent decrees as material for study has been questioned in THE NATIONAL INDUSTRIAL CONFERENCE BOARD, INC., PUBLIC REGULATION OF COMPETITIVE PRACTICES (1929) 26. *Cf.* Oseas, Book Review (1930) 30 COL. L. REV. 593.

[4]See 39 STAT. 728 (1916), 46 U. S. C. 801 (1941); 39 STAT. 733 (1916), 46 U. S. C. 814 (1941); 40 STAT. 516 (1918), 15 U. S. C. 61 (1941). The first prosecution of an export trade association was filed on March 16, 1944. United States v. Alkali Export Association, Inc., Civil No. 24-464 (S. D. N. Y.).

[5]213 U. S. 347, 29 Sup. Ct. 511 (1909).

[6]228 U. S. 87, 33 Sup. Ct. 443 (1913).

[7]274 U. S. 268, 47 Sup. Ct. 592 (1927).

jurisdiction and void. Agents of the defendant then bought the property. The plaintiff was unable to induce the government of Costa Rica to withdraw its soldiers. Plaintiff was deprived of his plantation and railway. It was also alleged that defendant had, by outbidding, driven purchasers from the market. The Supreme Court held that no cause of action was stated.

In considering the holding of this case, it is important to note that it was a private action for treble damages and not a government prosecution. While the complaint alleged that the defendants had been engaged in prior restraints of trade in the United States, no connection was shown between such restraints and any injury suffered by plaintiff. A private party has no cause of action based merely on the existence of a conspiracy, but only on injury to him,[8] and the substantial allegations of the complaint were restricted to activities abroad which had resulted in damage to plaintiff.

Such a complaint poses a relatively simple problem in conflict of laws. Mr. Justice Holmes stated the applicable principle succinctly:[9]

> But the general and almost universal rule is that the character of an act as lawful or unlawful must be determined wholly by the law of the country where the act is done.

The Court had no difficulty in concluding that the Sherman Act is not one of those unusual exercises of extra-territorial sovereignty, such as punishment of offenses on the high seas. While recognizing the power of Congress in a variety of situations to apply our law extraterritorially, it decided that Congress had shown no intent to do so in the Sherman Act.[10]

Consideration by the Court of the further complication in this case, the effect of the intervention of a sovereign state, was therefore not necessary to the decision. It furnished merely an additional ground for coming to the conclusion that no tort had been alleged in the complaint.

The missing elements—local activity and local monopoly—were supplied in the next case to reach the Supreme Court. In *United States* v. *Pacific and Arctic Railway and Navigation Co.*, et al., the defendants were indicted for violating the Sherman Act. The combination alleged was between a shipping company, whose vessels plied between the United States and Alaskan and Canadian ports, and Canadian railways. The purpose, made effective by an

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[8] 38 STAT. 731 (1914), 15 U. S. C. 15 (1941); Gerli v. Silk Ass'n of America, 36 F. (2d) 959 (S. D. N. Y. 1929); Gibbs v. McNeeley, 102 Fed. 594 (C. C. Wash. 1900); Twin Ports Oil Co. v. Pure Oil Co., 119 F. (2d) 747 (C. C. A. 8th, 1941); Roseland v. Phister Mfg. Co., 125 F. (2d) 417 (C. C. A. 3d, 1942); Beegle v. Thomson, 138 F. (2d) 875 (C. C. A. 7th, 1943).

[9] 213 U. S. 347, 356, 29 Sup. Ct. 511, 512 (1909).

[10] *Cf.* United States v. Bowman, 260 U. S. 94, 43 Sup. Ct. 39 (1922).

agreement to charge excessive wharfage at Skagway, was to monopolize the water route from the United States. The defendants relied on the *American Banana* case as holding that our courts had no jurisdiction over foreign carriage. The Court readily conceded that our antitrust laws had no extraterritorial operation but held that the operation in our territory was sufficient to confer jurisdiction.

United States v. *Sisal Sales Corp.* was even clearer. There, the bill (drawn under both the Sherman Act and the Wilson Tariff Law[11]), as interpreted by the Supreme Court, charged a conspiracy, entered into and made effective by acts within the United States, to restrain trade in the importation of commodities into the United States and to increase domestic prices. The Court held the combination illegal. Although the conspiracy included acts done abroad and under the sanction of foreign law and acts of sovereignty, there was sufficient domestic activity to bring the situation within the coverage of our laws.

The result reached in the foregoing cases would seem to follow logically also from the decisions of the Supreme Court dealing with the situs of a conspiracy for purpose of venue. Although the Sherman Act punishes common law conspiracies, *i.e.*, without requiring the commission of an overt act, a conspiracy has been held to exist either where it was entered into or wherever an act was done to carry it out.[12] Therefore, if either the unlawful agreement was entered into in the United States or any act to make it effective was done here, our courts would have jurisdiction.

The Early Cases

In 1912, the United States brought a suit in equity in an attempt to break up a coffee control plan.[13] The bill alleged legislation procured in Brazil pursuant to which a control committee, resident abroad, made bank loans which were used to purchase large quantities of coffee and hold it off the market. It was alleged that some 900,000 bags of coffee were held in New York warehouses pursuant to the plan and that such quantities as the control committee determined had been withdrawn and sold in the New York market by an American agent of the committee who concededly had acted

[11]37 Stat. 667 (1913), 15 U. S. C. 8 (1940); 36 Stat. 1167 (1911), 15 U. S. C. 9 (1940).

[12]Nash v. United States, 229 U. S. 373, 33 Sup. Ct. 780 (1913); United States v. Trenton Potteries Co., 273 U. S. 392, 47 Sup. Ct. 377 (1927); United States v. Socony-Vacuum Oil Co., 310 U. S. 150, 60 Sup. Ct. 811 (1940). For a discussion of the logic of the decisions dealing with venue, see United States v. New York Great Atlantic & Pacific Tea Co. Inc., 137 F. (2d) 459 (C. C. A. 5th, 1943).

[13]United States v. Sielcken *et al.*, Equity No. 9-188 (S. D. N. Y. 1912).

abroad. Service was made on the American agent and on the company operating the warehouse in which the coffee was stored. A temporary restraining order was obtained, restraining the transfer of the coffee. The defendants demurred to the bill. Before further proceedings were taken, the Government of Brazil entered into diplomatic negotiations with the United States Government; the coffee was sold and the proceeding was dismissed by stipulation.

After the *American Banana* case and before the *Pacific and Arctic Railway* case, the government brought several actions against steamship companies engaged in operating ships between American and foreign ports. *United States* v. *Hamburg-Amerikanische-Packet-Fahrt A.G.*[14] is typical of these. The petition charged a conspiracy to allocate quotas, fix rates, pool receipts and fight competitors. The defendants demurred. In overruling the demurrer, the court said:[15]

> Citizens of foreign countries are not free to restrain or monopolize the foreign commerce of this country by entering into combinations abroad nor by employing foreign vessels to effect their purpose. Such combinations are to be tested by the same standard as similar combinations entered into here by citizens of this country. The vital question in all cases is the same: Is the combination to so operate in this country as to directly and materially affect our foreign commerce? As said by the Circuit Court of Appeals for this Circuit in Thomsen v. Union Castle Mail S.S. Co., 166 Fed. 251, 92 C. C. A. 315:
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> "That the combination was formed in a foreign country is likewise immaterial. It affected the foreign commerce of this country and was to be put into operation here."

When the case reached the Supreme Court, however, the European War was in progress. Taking judicial notice of the war, the Court was of the opinion that it had rendered the controversy moot and therefore directed that the bill be dismissed without prejudice to the right of the government to sue thereafter if the conspiracy were renewed.[16] The same disposition was made of two similar cases against other steamship companies.[17]

In 1918, the government indicted the Sumatra Purchasing Corporation (*United States* v. *Sumatra Purchasing Co.*)[18] under the Sherman Act and Wilson Tariff Act. The case was essentially an American case, for although

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[14]200 Fed. 806 (S. D. N. Y. 1911).

[15]*Id.* at 807.

[16]United States v. Hamburg-Amerikanische-Packet-Fahrt A.G., 239 U. S. 466, 36 Sup. Ct. 212 (1916).

[17]United States v. American-Asiatic S.S. Co., United States v. Prince Line, 242 U. S. 537, 37 Sup. Ct. 233 (1917).

[18]Criminal No. 15-35-36 (S. D. N. Y. 1920).

foreign elements were involved, the plan to which the government objected was entered into and carried out by Americans for their business interests. The case was settled by a consent decree[19] and a plea of *nolo contendere* to the violation of the Sherman Act.

On April 7, 1927, the United States instituted a suit in equity against the Franco-German Potash syndicate (*United States* v. *Deutsches Kalisyndikat Gesellschaft,* et al.[20]). The petition alleged the existence of contracts between the French group and its American agent and between the German group and its American agent, which contracts were alleged to be severally in restraint of trade under the Sherman Act and the Wilson Tariff Act. It set out the terms of a syndicate agreement which provided for fixed participations of each group in American business and for the creation of a single exclusive selling agency in the United States. It was further alleged that French and German representatives of the syndicate were at that moment in New York for the purpose of setting up the agency and agreeing upon the terms and conditions of sale of potash imported into the United States.[21]

[19]Equity No. 17-317 (S. D. N. Y. 1920). Petition filed and consent decree entered April 13, 1920. The plea of *nolo contendere* was entered the same day.

[20]Equity No. 41-124 (S. D. N. Y. 1929).

[21]The activities of the German Potash syndicate had previously come to the attention of the Department of Justice. On Oct. 5, 1910, the Solicitor General gave an opinion to the Secretary of State. In it he described a German law to raise the export prices of potash salts through the formation of a syndicate of mine owners. It was stated that the syndicate had established connections with a corporation known as the German Kali Works organized under the laws of New York with offices in New York City. After quoting the Wilson Tariff Act he went on to say that a law of the German government cannot itself constitute a combination within the meaning of the Act, but a statute of the German Empire cannot protect citizens of that country and still less American citizens from consequences of the acts done within the jurisdiction of the United States in violation of its laws. Acts done pursuant to agreement valid in Germany, which would result in restraint of trade, would be subject to the laws of this country. He then analyzed the agreement and concluded that it went further than the German law and then stated:

"This fact alone, without going into the details of the agreement, is sufficient to show beyond question that the combination is not protected by the German Act and is such as the Act of Congress condemns, and the only question is whether or not the combination or agreement is made by or between persons or corporations either of whom is engaged in importing potash into the United States. . . .

". . . either the American corporation is a selling agent of the syndicate, which is composed of the mine owners, and the potash when shipped is consigned to it as such agent, or this corporation is a purchaser of the goods from the syndicate, and as such purchaser has agreed to handle the entire supply from the mines which are embraced in the syndicate at the prices fixed by this combination, and in accordance with its provisions, and has thereby either become a party to the agreement or has entered into an independent agreement of the same character. In either event, I think the statute would apply, because, in the first instance, the importer would be the German syndicate, or rather the various mine owners who under the combination have made the syndicate their agent, and, in the second instance, the American corporation would be the importer, which by its contract has become a party to this or another unlawful combination." 31 Op. A. G. 545 (1919).

Subpoenas were served on the representatives of the French and German groups while discussions were still under way, and so service was obtained not only on the American parties but also on the principal foreign entities involved.

The French Ambassador appeared specially, together with the French defendants, and asserted a claim of sovereign immunity on their behalf. This was based on his certificate that the French Government was the owner of Societé Commerciale des Potasses d'Alsace, the French corporation involved, and that the suit was therefore in effect against the French Government. The District Court upheld the service.[22] The case was settled by the entry of a consent decree.

The next foreign group to be attacked by the government was the Dutch quinine monopoly (*United States* v. *383,340 Ounces of Quinine Derivatives*).[23] Ninety per cent of the world's supply of cinchona bark (from which quinine is made) was grown on the Island of Java. Virtually all of the planters were members of an organization that limited production. An organization in Amsterdam, called the Kina Bureau, allocated the bark to thirteen manufacturers, located in Holland, Germany, France, England, Japan, and the United States. Prices of the manufactured product, including prices in the United States, were fixed and a very close control was kept over the whole world trade to prevent competition.

The principal problem confronting the government was how to obtain jurisdiction over the Dutch interests which had control of the situation. While there were two manufacturers of quinine, an importer and several manufacturers of quinine products within the country, it was obvious that control lay abroad.

The government moved simultaneously on three fronts against the monopoly. On March 23, 1928, customs agents armed with search warrants seized 383,340 ounces of assorted quinine derivatives of a value of approximately one hundred fifty thousand dollars, representing about a year's supply of quinine for the United States. On March 29, 1928, a bill in equity was filed seeking injunctive relief;[24] on March 30, an indictment was returned.[25] On April 23, a libel was filed in the United States District Court for the Southern District of New York, praying for a forfeiture of the goods seized.[26]

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[22]United States v. Deutsches Kalisyndikat Gesellschaft *et al.*, 31 F. (2d) 199 (S. D. N. Y. 1929).

[23]Admiralty No. 98-242 (S. D. N. Y. 1928).

[24]United States v. N.V. Amsterdamsche Chininefabriek *et al.*, Equity No. 44-384 (S. D. N. Y. 1928).

[25]Criminal No. 54-546 (S. D. N. Y. 1928).

[26]United States v. 383,340 Ounces of Quinine Derivatives, Admiralty No. 98-242 (S. D. N. Y. 1928).

The forfeiture procedure was novel. Although there is a forfeiture provision in the Sherman Act,[27] it has been used only once.[28] These proceedings were brought under a similar provision of the Wilson Tariff Act[29] which had not been invoked before. The Wilson Tariff Act rather than the Sherman Act was used because of the broader provision of the former. While under the Sherman Act it is provided that property to be seized must be in the course of transportation, there is no such requirement in the Wilson Tariff Act.

This drastic procedure was effective. The business of importing quinine derivatives in the United States was interrupted and proceeded thereafter only, in effect, under license from the Antitrust Division.

The forfeiture proceeding was intended to accomplish two primary purposes. By seizing a valuable asset of the foreign defendants, the government placed upon them the burden of litigating the issues under penalty of forfeiture of their property and an embargo on their business with this country. It also assured the citizens of this country of a temporary source of supply of a necessary commodity in the event of protracted litigation. The government was successful. The Dutch defendants appeared and negotiated a consent decree. Upon the entry of the decree, the other proceedings were dismissed.

A similar procedure was followed in the *Norwegian Sardine* case (*United States* v. *5898 Cases of Sardines etc.*)[30] instituted two years later. No indictment was sought but the government seized a quantity of sardines in a warehouse in New York. Three days later a bill in equity was filed naming fifty Norwegian packers and a dozen American agents as defendants. The

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[27]26 STAT. 210 (1890), 15 U. S. C. 6 (1940).
"FORFEITURE OF PROPERTY IN TRANSIT. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section 1 of this title, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law."

[28]United States v. One Hundred and Seventy-Five Cases of Cigarettes (E. D. Va. Oct. 28, 1907).

[29]37 STAT. 667 (1913), 15 U. S. C. 11 (1940).
"FORFEITURE OF PROPERTY IN TRANSIT. Any property owned under any contract or by any combination, or pursuant to any conspiracy, and being the subject thereof, mentioned in section 8 of this title, imported into and being within the United States or being in the course of transportation from one State to another, or to or from a Territory or the District of Columbia, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law or the forfeiture, seizure, and condemnation of property imported into the United States, contrary to law."

[30]Admiralty No. 105-37 (S. D. N. Y. 1930).

foreign defendants all appeared, a consent decree was negotiated and the seized goods were thereupon released.

During this period a petition in equity was filed against a combination of owners of Canadian Asbestos mines.[31] The petition alleged a combination in restraint of trade under the Sherman and Wilson Tariff Acts in the importation of Canadian asbestos. The case, however, was not carried through to a decree. Service of process was quashed as to one defendant[32] and thereafter the case was dismissed because the issues had become moot.

The Present Drive against Cartels

A number of actions,[33] civil and criminal, have been brought against foreign monopolies during the time roughly corresponding with the period of the present war. They are directed against restraints in the fields of light metals, chemicals, electrical products, petroleum, and glass. Most of them aim at alleged German economic control over our industry. These combinations are usually described as international cartels. The term is loosely used. From an inspection of the complaints they may be defined as combinations created by contract among powerful companies or groups of companies, each occupying a position of dominance in its own country, for the purpose of dividing world markets. In general, the intent of these agreements is to leave each party dominant in its own home market, free from fear of competition from its normal competitors in other countries.

This division of territory usually accompanies agreements for divisions of profits and agreements for exchange of technical information and licensing of patents and trade marks. Certain kinds of manufacturing may be reserved to some of the parties.

Some of these combinations are exceedingly complex. A description of a cartel taken from the complaint in the case of *United States* v. *Aluminum Company of America*[34] will serve as an illustration of this type of combination:

> 14. On or about March 4, 1927, defendants DOW (Dow Chemical Company) and AMC (American Magnesium Corporation) entered into an agreement to cross-license certain patents relating to the fabrication of magnesium. Dow and AMC were each given the right to issue

[31] United States v. Asbestos Corporation, Limited, *et al.*, Equity No. 44-268 (S. D. N. Y. 1928).

[32] 34 F. (2d) 182 (S. D. N. Y. 1929).

[33] See Appendix.

[34] Civil No. 18-31 (S. D. N. Y. 1942). For a picture of "world cartelization" (the words are the government's) of the chemical industry, see the complaint in United States v. Imperial Chemical Industries, *et al.*, Civil No. 24-13 (S. D. N. Y. 1944).

sub-licenses under those patents on condition that the sub-licensee use magnesium produced by either party.

15. At some time during the period between March 4, 1927, and on or about August 31, 1927, defendants Dow, AMC, and Alcoa (Aluminum Company of America) entered into an agreement whereby AMC agreed to purchase, and did purchase, all of its requirements of magnesium from Dow, and AMC agreed to stop, and did stop, producing magnesium. At all times thereafter defendant AMC obtained its requirements of magnesium from defendant Dow at prices more favorable than those prices quoted other purchasers from Dow. At all times thereafter defendant Alcoa obtained its requirements of magnesium from defendant AMC.

16. On or about October 23, 1931, defendant Alcoa entered into a contract (hereinafter referred to as the Alig agreement) with I. G. Farbenindustrie (hereinafter refered to as I. G. Farben), a corporation or association organized and existing under the laws of Germany. This contract, among other things, provided:

a. The two companies would form a third company [subsequently organized as defendant MDC (Magnesium Development Corporation)] to be equally owned and jointly controlled by them.

b. Each company would assigu to MDC its then owned and subsequently acquired United States patents relating to the production and fabrication of magnesium.

c. MDC would grant royalty-free fabrication licenses under all fabrication patents to Alcoa and I. G. Farben.

d. No licenses were to be granted for the production of magnesium under any patents held by MDC without the affirmative vote of the majority of the directors of MDC.

e. Neither of the companies would engage in the production of magnesium in the United States without offering the other party an equal participation.

17. Pursuant to the Alig agreement the defendant Alcoa and I. G. Farben organized defendant MDC and transferred to it all of the United States patents owned by defendant Alcoa and by I. G. Farben relating to the production and fabrication of magnesium.

18. On or about February 8, 1933, defendant Alcoa entered into a contract with I. G. Farben, according to the terms of which I. G. Farben was given the right to subscribe to 50% of the stock of defendant AMC. The parties agreed that neither was thereafter to fabricate magnesium products in the United States independently of defendant AMC, thereby eliminating competition between themselves in the fabrication of magnesium products. In addition, the parties agreed to conclude certain pending negotiations with defendant Dow which had as their objective prevention of competition in the production of magnesium by the defendants Alcoa and AMC and I. G. Farben, on the one hand, and defendant Dow on the other, and for the further purpose of controlling price competition in the sale of magnesium products.

19. On or about June 24, 1933, defendant AMC entered into a contract with defendant Dow providing for the purchase by AMC of its magnesium requirements from Dow at lower prices than any other customer of Dow.

20. On or about January 1, 1934, defendants Dow, AMC, and MDC entered into an agreement by the terms of which defendants Dow and MDC cross-licensed each other under the patents then owned and subsequently to be acquired by each relative to the fabrication of magnesium with the right granted to each to sublicense others under such patents. These patents comprised the great bulk of patents relating to the fabrication of magnesium products in the United States and largely dominated such fabrication.

21. Defendant AMC has never issued sublicenses for the fabrication of magnesium products. Defendant Dow has refused to issue sublicenses to many persons deciding to fabricate magnesium products and has granted a limited number of sublicenses to certain other persons. Defendant Dow has compelled and required each prospective sublicensee, as a condition precedent to the issuance of a sublicense, to enter into a purchase contract with defendant Dow for its requirements of magnesium.

22. Defendant Dow by various special arrangements with its sublicensees has adopted, and at all times enforced, a policy of limiting and controlling competition among its sublicensees on the one hand and between its sublicensees and itself on the other hand.

23. On or about September 5, 1934, defendant Dow entered into an agreement with I. G. Farben whereby I. G. Farben agreed to purchase certain quantities of magnesium from defendant Dow and defendant Dow agreed that it would not otherwise export any magnesium to Europe except for a specified limited annual quantity to a designated licensee in England. By its terms this agreement could not be terminated by either party until January 1, 1938.

24. On or about November 23, 1938, defendant AMC entered into a contract for the purchase of magnesium from defendant Dow. This agreement, effective for a period of five years after the termination of the contract of June 24, 1933, hereinbefore referred to, was similar to the agreement of June 24, 1933, in terms and effect.

All the foreign monopoly cases during this period, except *United States* v. *The Tannin Corporation*,[35] have involved this type of combination. That case, similar to the *Sardine* case already described, involved a combination among producers to fix prices of quebracho, a tanning agent produced in South America.

Some of these actions are pending; some of the criminal cases have been

[35]Civil No. 23-510 (S. D. N. Y. 1943); Criminal No. 18-31 (S. D. N. Y. 1942).

terminated by pleas of *nolo contendere*; in some, there have been consent decrees.[36] None has been tried.

Problems in Effective Enforcement

Classification of the problems involved in the cases discussed is difficult. The Sherman Act makes no such classification. The following groups are not mutually exclusive and are not necessarily all that may arise.

The foreign monopoly cases seem to fall into three major classes.

1. *The transportation cases*—These involve combinations of transportation companies operating between the United States and a foreign country. Parties to this combination may be both Americans and foreigners. The restraints affect carriage from or to our shores. Jurisdiction over such cases has been held to apply in the *Pacific and Arctic Railway* case.[37]

These cases heretofore have posed no specially difficult problems of enforcement. There is always jurisdiction over the party to the combination that touches our shores. This party may be either a domestic or a foreign corporation, but, in any event, it is always physically present here because of the nature of its business. It can, therefore, be indicted or enjoined from participating in discriminatory practices.

2. *The import cases*—These involve restraints of trade in an imported article. In moving against them the government has found the Wilson Tariff Act helpful. Such cases may present many variations in form. The usual parties to the combination are an importer or a group of importers and a foreign shipper or producer. From the point of view of effective enforcement, the place of control is important.

Control may be in the United States, as it was in the *Sumatra* and *Sisal* cases. If so, the problem for the Department of Justice is simplified. Because there is jurisdiction over all the necessary parties, an attack may be made directly on the head of the conspiracy. With the head lopped off, the foreign limbs will die of themselves.

A much more difficult problem is presented for the Department of Justice if control is abroad. The situation is illustrated by the *Potash, Quinine,* and *Sardine* cases. The effectiveness of the prosecution then will depend upon the strength of the combination, for unlike the previous situation, the government is in a position to hack only at the limbs, leaving the body intact. Under such conditions the department may win its case, but leave the monopoly essentially unaffected.

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[36] See Appendix.
[37] Page 44.

A reading of the terms of some of the consent decrees shows this to be true. In the *Quinine* case a tightly organized monopoly, directed from Holland, had control of the world supply of quinine. Control was simplified because virtually the entire supply came from Java, a Dutch colony. All the growers of the primary raw material, cinchona bark, were parties to a production limitation agreement and sold almost the entire world supply to a group of Dutch manufacturers who parcelled out supplies to a limited group of manufacturers throughout the world. Two of these were Americans. The Dutch also had an American agent who imported their products into the United States. Prices of the bark and the manufactured quinine were strictly controlled. Under these circumstances, the consent decree enjoined the defendants from:

(a) Fixing or maintaining resale prices, resale terms, resale discounts, resale allotments of territory or any resale restrictions or conditions whatever with respect to quinine derivatives sold to persons in or held within the United States.

(b) Restraining, preventing or hindering in any way the shipment and/or sale in the United States and/or the shipments or sale to, into, or from the United States of cinchona bark and/or quinine derivatives, except as provided in paragraph (f) following.

(c) Participating in any arrangement for the pooling or division of profits or territory with respect to or in consideration of any sales made within the United States.

(d) Discriminating in any way in sales made within the United States, between purchasers of quinine derivatives located within the United States when such discriminations are not based on:

(1) Differences in quantities purchased;
(2) Differences in costs of delivery;
(3) Differences in competitive conditions in a particular locality;
(4) Differences in grade or quality.

But no such discrimination shall be made for the purpose of restraining or destroying the trade of any competitor.

(e) Maintaining in force or carrying out within the United States, any existing contracts or entering into or carrying out within the United States, any new contracts or course of business on the condition, agreement or understanding that purchasers of cinchona bark and/or quinine derivatives only from the contracting party or parties or shall not use or deal in the products sold by a competitor.

(f) Provided, however, that nothing herein contained shall be construed to restrain or prohibit any defendant from doing any act or entering into any agreement which is entirely completed outside the United States and which does not require any act or thing to be done within the United States.

It is obvious that while such a decree may place some obstacles in the way of the smooth operation of the monopoly, the monopoly will not be destroyed. The most that can be said is that it cannot function quite as efficiently as before. Resale prices may no longer be maintained in our country, permitting a measure of competition at a lower level. Our manufacturers may be freed from certain burdensome requirements that would otherwise be imposed on them. With the greatest optimism we can say that once the product reaches our shores it is no longer subject to illegal controls. But the control at the source remains, as paragraph (f) clearly shows. Nothing in our antitrust laws can prevent a foreign monopolist from saying: "Here I sit in Amsterdam with the world's supply of quinine. If you want any, you may come here and buy it on my terms."

The *Potash* decree is very similar to the *Quinine* decree. There, too, some restraints were placed on the domestic activities of the monopoly. But no law of ours could force the French and Germans to compete for American business. The mechanism for their combination was, in fact, set out in the decree:

> (4) Provided that no provision of this decree shall be construed to prevent defendants from selling and delivering all or any part of their potash salts outside of the United States to a corporation organized under the laws of any country other than the United States regardless of any stock ownership or other interest in said corporation by any or all of the parties hereto; or to prevent said corporation from selling and distributing in the United States such potash salts so acquired, through usual facilities for sale and distribution, including agents, agencies, branch offices, and other normal channels; . . . .

The *Sardine* prosecution, in which control also lay abroad, was successful because the combination was not a tightly knit monopoly well controlled at home. Fifty Norwegian packers were held together by an agreement that apparently was not relished by many of them. They had been accustomed to competing among themselves for the American market, and as is usual in such cases, attempts from within the group to circumvent the agreement were not wanting. The blow delivered to the American market, their most important outlet, was sufficient to break up the combination.[38] The limb

[38]The pressure of the prosecution in this case was sufficient to cause the abandonment of the whole plan before the entry of the final decree. See J. COM., July 3, 1930, p. 3, col. 7. *Cf.* the recent Quebracho case in which the American parties pleaded ***nolo contendere,*** but the Department of Justice has in effect admitted its helplessness to destroy the foreign monopoly. See statement of Assistant Attorney General Wendell Berge before the Subcommittee on War Mobilization, Committee on Military Affairs of the Senate, Department of Justice Release, Nov. 24, 1943. A civil suit has since been instituted. Civil No. 23-510 (S. D. N. Y. 1943).

that was attacked was so important that the body could not sustain the blow. Present also was one more important factor. Norwegian sardines are not a unique commodity as were potash and quinine. There was plenty of competition from other products. Hence, the sardine packers, unlike the quinine and potash monopolies, could not safely sit at home and wait for orders to come to them on their terms.[39]

The effectiveness of antitrust prosecution in this field, therefore, seems to depend on the answers to these questions: Where is the dominant control? How tightly knit is it? What other factors—such as competition from other products—exist as a check upon its ability to remain aloof from active market activity here?

3. *The agreement cases*—These involve situations where, with or without any physical movement of products, there is established by contract a restraint of trade based on division of sales, territory, control of patents or processes, pooling of profits, or other variants of agreements not to compete. This is the type of situation on which the Department of Justice has recently concentrated. Everything that has been said with respect to the import cases applies here, but there are some special problems for the defendant, as well as the government, in this field. Jurisdiction over the foreign defendant is much more difficult to obtain. A foreign manufacturer, for example, who is not engaged in business in the United States may not have an office here and will not be subject to our process. He may, of course, be indicted and in some cases has been.[40] His goods often cannot be seized because he ships none here.

In some recent cases involving this type of violation, the Department has, however, sued civilly naming only the American parties to the restrictive contracts who are subject to its jurisdiction as parties defendant. Consent

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[39]American potash competition and substitutes for quinine had not yet developed at the time of the prosecution.

[40]For criminal cases naming foreign defendants see: United States v. Aluminum Co. of America, Criminal No. 109-189 (S. D. N. Y. 1941); United States v. Corning Glass Works, Criminal No. 108-164 (S. D. N. Y. 1940); United States v. Harbison Walker Refractories Co., Criminal No. 109-176 (S. D. N. Y. 1941); United States v. General Aniline & Film Corp., Criminal No. 111-136 (S. D. N. Y. 1941); United States v. General Electric Co., Criminal No. 108-172 (S. D. N. Y. 1940); United States v. Tannin Corp., Criminal No. 18-31 (S. D. N. Y. 1942).

Criminal cases excluding foreign defendants: United States v. Allied Chemical & Dye Corp., Criminal No. 753c (D. C. N. J. 1942); United States v. National Lead Co., Criminal No. 114-455 (S. D. N. Y. 1943); United States v. Sumatra Purchasing Corp., Criminal No. 15-35-36 (S. D. N. Y. 1918); United States v. Standard Oil Co. (D. C. N. J. 1942); United States v. E. I. Dupont de Nemours & Co., Criminal No. 878-C (D. C. N. J. 1942).

decrees have been entered in some of these cases adjudging the contracts to be illegal and restraining their enforcement.[41]

The adoption of this practice raises a number of questions, both legal and practical. The first of these is whether such a decree may properly be entered at all. If a court, at the suit of *X* is to rule on the validity of a contract between *A* and *B*, it would seem that both *A* and *B* are necessary parties defendant. This is certainly the general rule in civil cases in equity.[42] In these cases *B* is not before the court, yet the contract to which he is a party is declared to be illegal. Such a judgment necessarily cannot be binding upon the absent party who has not had an opportunity to litigate the merits. The result of consenting to such a decree may well be to store up for the consenting party a reservoir of post-war litigation with the foreign parties. The American defendant may perhaps believe that the illegality is so clear under our law that he could successfully defend an action brought against him in our courts for non-performance. But such an action might not be brought in our courts. The contract may contain provisions for arbitration which may take place abroad. Or, suit may be brought abroad in a court accustomed to enforce cartel agreements and unacquainted with our antitrust laws.[43] Whatever effect a judgment in a contested action holding

[41]United States v. Bayer Co., Civil No. 15-365 (S. D. N. Y. 1941); United States v. Alba Pharmaceutical Co., Inc., Civil No. 15-363 (S. D. N. Y. 1941); United States v. Schering Corp., Civil No. 1919 (D. C. N. J. 1941); United States v. Synthetic Nitrogen Products Corp., Civil No. 15-365 (S. D. N. Y. 1941); United States v. Aluminum Co. of America, Civil No. 18-31 (S. D. N. Y. 1942); United States v. Standard Oil Co., Civil No. 2091 (D. C. N. J. 1942).

[42]Minnesota v. Northern Securities Co., 184 U. S. 199, 22 Sup. Ct. 458 (1902); Garzot v. Rios de Rubeo, 209 U. S. 283, 28 Sup. Ct. 548 (1908); Niles-Bement Pond Co. v. Iron Moulders' Union, 254 U. S. 77, 41 Sup. Ct. 39 (1920); Commonwealth Trust Co. v. Smith, 266 U. S. 152, 45 Sup. Ct. 26 (1924).

I POMEROY, EQUITY JURISPRUDENCE (5th ed. 1941) § 114.

But cf. Osborn v. Bank of United States, 22 U. S. 738, 6 L. Ed. 204 (1820); United Shoe Machinery Corp. v. United States, 258 U. S. 452, 42 Sup. Ct. 363 (1921).

[43]The contracts attacked by the Government in United States v. Imperial Chemical Industries, Ltd., Civil No. 24-13 (S. D. N. Y. 1944), between Imperial Chemical Industries and duPont provide:

"XII. ARBITRATION. Should any difference or dispute arise between the parties hereto touching these Articles of Agreement, or any clause, matter, or thing relating thereto, or as to the rights, duties, or liabilities of either of the parties hereto, the same shall be referred to the President for the time being of E. I. duPont de Nemours & Company and the Chairman for the time being of Imperial Chemical Industries Limited, who shall arbitrate, and their award shall be final. Should they not agree, they shall appoint an umpire, whose award shall be final and the following provisions shall apply. If the question or matter to be decided is brought forward by I.C.I., the umpire shall be European, if, on the contrary, the question or matter to be decided is brought forward by du Pont, the umpire shall be an American. Should the President and the Chairman disagree as to the appointment of an umpire, then the umpire if a European, is to be appointed by the President of the Incorporated Law Society of England, and if an American to be appointed by the President of the Association of

such a contract illegal might have, it would seem clear that one entered on consent would have none at all.

But no absence of parties defendant can prevent the United States from prosecuting criminally any party within its jurisdiction for violation of its law. The American party to such an illegal contract is therefore impaled upon the horns of a dilemma of his own creation. He may attempt to resist a civil action at the peril of criminal prosecution; or he may yield to the immediate peril and face the prospect of future actions by the other party to the contract.

It is also interesting to note that there have been no recent decisions dismissing any of these cases as moot. This is somewhat surprising in view of the success of this defense during the last war.

The seizure technique has not been used recently. There are probably two reasons for this. Under war conditions the foreign elements of the combination are often no longer engaged in shipping their products into this country. Where there are imports, the disruption of trade caused by such seizures would be most unfortunate in these times.

An interesting variant of the seizure technique was, however, used in *United States* v. *Aluminum Co. of America.*[44] Service of process was made on an alleged agent of I. G. Farbenindustrie A. G.—a foreign defendant. Upon the failure of the defendant corporation to appear and plead, the government caused a writ of *distringas*[45] to issue. Pursuant to the writ, funds of the foreign defendant on deposit with the National City Bank were seized. The writ had the desired effect. The foreign defendant filed a notice of appearance.

The indictment of enemy alien corporations during the war is necessarily ineffective. Whatever pressure such an indictment might exert during nor-

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the Bar of the City of New York."

The decree in *United States* v. *Alba Pharmaceutical Company, Inc.*, to which only the American defendants are parties, declares illegal at least five separate agreements. Of the agreements annexed to the petition one provides that legal proceedings are to be brought in the court of the domicile of the defendant; two provide for arbitration in New York in accordance with the rules of the American Arbitration Association; two provide for arbitration (place not stated) by the International Chamber of Commerce.

[44]Criminal No. 109-189 (S. D. N. Y. 1942).

[45]The writ of *distringas* was used at common law to enforce the appearance of a corporation. See Rex v. Mayor and Aldermen of Hartford, 1 Salk. 374, 91 Eng. Rep. 325, 2 Salk. 699, 91 Eng. Rep. 591 (K. B. 1698); Reg. v. Birmingham & Gloucester Ry Co., 32 B. 223, 114 Eng. Rep. 492 (1842); State v. Western North Carolina R.R. Co., 89 N. C. 584 (1883); Commonwealth v. Lehigh Valley R.R. Co., 165 Pa. St. 162, 30 Atl. 836 (1895). 10 FLETCHER, CYCLOPAEDIA ON CORPORATIONS (Perm. ed. 1931) 4962.

The power to issue writs in aid of process is preserved to the federal courts by statute. 36 STAT. 1162 (1911), 28 U. S. C. 377 (1940).

mal times is of course absent now. The corporation could not appear even if it were desirous of doing so. No uniform policy is followed by the Department of Justice with respect to alien parties. In some cases they have been indicted; in others, not.[46]

CONSENT DECREES—SPECIAL CLAUSES

In drafting consent decrees dealing with foreign monopolies, some provisions of general application have emerged. One of these is a clause limiting the application of the decree to the territorial jurisdiction of the United States. This clause is a formulation of what the Department of Justice has heretofore considered to be its jurisdiction under the antitrust laws. It first appeared in general form in the *Quinine* case. It there read:[47]

> *Provided, however,* that nothing herein contained shall be construed to restrain or prohibit any defendant from doing any act or entering into any agreement which is entirely completed outside the United States and which does not require any act or thing to be done within the United States.

In one form or another the substance of this clause has been used since that time in cases in which careful counsel representing defendants has found it necessary to protect foreign business against coverage by a decree which would extend beyond the limits of the antitrust laws. Thus, it is used not merely in cases involving foreign monopolies as such, but by defendants drafting a decree directed to purely domestic transactions who desire to except from its operations the foreign aspects of their business which have not been drawn into question.[48]

There are two principal variations of this clause. One form excepts from the decree the specific situation contemplated by the defendant.[49] In this respect it may be assimilated to the "permissive clauses"[50] common in consent decrees. The other exempts

> . . . operations or activities outside the United States, its territories and

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[46]See note 39 *supra.*

[47]United States v. 383,340 Ounces of Quinine Derivatives, Admiralty No. 98-242 (S. D. N. Y. 1928).

[48]See United States v. Kraft Paper Association, Civil No. 10-329 (S. D. N. Y. 1940); United States v. Chrysler Corporation (N. D. Ind. 1938); United States v. Aluminum Co. of America, Civil No. 18-31 (S. D. N. Y. 1942); United States v. Imperial Chemical Industries Ltd., Civil No. 17-282 (S. D. N. Y. 1942).

[49]See par. (4) of the Potash decree page 55.

[50]By "permissive clause" is meant a provision of a decree excepting certain situations from the operation of the decree. "Permissive" is a misnomer, but the term is commonly used.

the District of Columbia not violative of the antitrust laws. . . .[51]

Both these forms would seem to be undesirable. The first gives an illusion of security by apparently approving a specific course of conduct. But business conditions change rapidly while consent decrees go on forever. It would seem to be unwise to make an exception of this kind specific and thereby leave room for doubts when a new plan is found necessary to which the specific exemption does not apply. The other clause also cuts down the generality of the exemption to which defendants are entitled by making as the test of application of the decree the question (always subject to answer after the event) as to whether the antitrust laws apply. A decree should not be an injunction against violation of the law, but a specific application of the law to the facts.[52] There is no reason why, if under a given state of facts, the decree does not apply, these facts should not be stated.

Some new forms of report clauses have recently appeared in consent decrees dealing with foreign monopolies. By a report clause is meant a provision of the decree requiring the defendant to report on specified matters to the Department of Justice. Such a clause has (with one inadvertent exception) been required by the Department of Justice in every consent decree since 1939.[53] In addition to the standard clause some special clauses of this kind have been used in foreign monopoly decrees.

The first foreign monopoly decree to have a special report clause was the *Synthetic Nitrogen Products* decree.[54] In substance it required the defendant to report to the Attorney General "the happening of events and full data concerning any agreement, combination or cartel mentioned herein," if the defendant or its parents, affiliates or subsidiaries should enter into any agreement which should violate the decree or if the agreement to which they are parties should become operative in such a way as to result in a vio-

[51]See United States v. Synthetic Nitrogen Products Corporation, *et al.*, Civil No. 15-36 (S. D. N. Y. 1941).

[52]United States v. Swift and Co., 196 U. S. 375, 25 Sup. Ct. 276 (1905).

[53]This clause first appeared in substantially its present form in the decree entered in United States v. Imperial Wood Stick Company, *et al.*, Civil No. 4-122 (S. D. N. Y. 1939). In substance it provides that for the purpose of securing compliance with the decree, the Department of Justice may inspect defendants' records or interview its employees and requires defendants on request to submit reports with respect to matters contained in the decree. For a more carefully worded form of this clause, see the decree in United States v. Kraft Paper Association, *et al.*, Civil No. 10-329 (S. D. N. Y. 1940). For recent forms of this clause, see any decree cited above. In United States v. Bausch & Lomb Optical Company, *et al.*, — U. S. —, 64 Sup. Ct. 805 (1944),; the Supreme Court considered this clause and held the provision requiring reports too indefinite for judicial enforcement and improper.

[54]United States v. Synthetic Nitrogen Products Corp., *et al.*, Civil No. 15-36 (S. D. N. Y. 1941).

lation of the decree. It also provided that the failure of the Attorney General to take action following the receipt of such information should not be construed as approval or bar the United States from subsequent proceedings. The benefits to be derived from such a clause are not readily apparent.

In *United States* v. *Schering Corporation*,[55] the clause reads:

> Each defendant company, its successors, subsidiaries, officers and employees, and all persons acting for or on behalf of said company, is hereby individually ordered to file with the Department of Justice copies of all contracts, agreements or arrangements not hitherto filed, affecting the business of said defendants, and entered into or adhered to by any company affiliated with or connected with said defendants where said contracts, agreements or arrangements restrict or determine territories for sale or the terms or conditions of sale.

Then follows a provision as in the preceding decree relating to the failure of the Attorney General to take action.

In *United States* v. *Aluminum Company of America*,[56] the report clause was made more specific. It is in two parts. The first, directed against I. G. Farbenindustrie A. G., the villain in most of the new foreign monopoly cases, enjoins the defendant from entering into any agreement whatever with that company without filing a copy of the agreement within ten days with the Department of Justice. The second part requires similar filing of contracts by Dow Chemical Co. The United States is thereupon given the right within forty days to petition the court to declare such agreement invalid under Section 2 of the Clayton Act. If the government does not so proceed, it loses its right under this paragraph.

The special report clause is apparently still in the process of being worked out, and, as the foregoing extracts show, is being progressively improved. The form used in the *Aluminum Company* decree may indicate an attempt to achieve a system of filing cartel information. The desirability of requiring such filing by law has been publicly discussed.[57]

Conclusion

The extent to which antitrust techniques have been effective in protecting Americans against foreign combinations has varied with the nature of the problem presented. Complete effectiveness in all fields is of course not to be expected. Our jurisdiction is limited to our territory and to acts within

[55]Civil No. 1919 (D. C. N. J. 1941).
[56]Civil No. 18-31 (S. D. N. Y. 1942).
[57]See J. Com., Oct. 27, 1943, p. 1, col. 6; see address by Attorney General Biddle to Harvard Law School Alumni Association, Feb. 23, 1944.

it. This slender control has, therefore, as might be expected, been insufficient in some cases. In others, it has supplied sufficient leverage to procure results far more favorable than might have been anticipated.

Where control of a commodity produced abroad is held by a tight, well organized foreign monopoly not subject to our process, a decree has only partial effectiveness. A reading of the *Potash* and *Quinine* decrees is sufficient to show how limited such effectiveness can be. Where the foreign combination is not too tightly knit, and the American market is important, as in the *Norwegian Sardine* case, the decree may be sufficient to break up the monopoly almost as effectively as though it were wholly subject to our jurisdiction. Again, as in the recent cases involving patent controls, control of the American end of the transaction may be sufficient. Certainly, on their face, the recent decrees would seem to go far to achieve the government's objectives.

The criminal and forfeiture procedures can have powerful effects. While at first blush an indictment of a foreign individual not subject to our jurisdiction would seem to be ineffective, experience has shown that the stigma of criminal prosecution has an effect far beyond the penalty imposed. The threat of seizure of commodities valued in substantial amounts may well give the foreigner cause to pause and may induce him to litigate instead of resting upon his immunity from process. In a peacetime economy, the possibility of competition from other sources may be decisive.

The effectiveness of the government's attack on cartels, particularly those under German control, will have to be evaluated after the war. Too much must not be expected in this field. In a world economic atmosphere of monopoly, the task of maintaining a free American island is too great a task for our antitrust laws alone. However, they are in many situations a more powerful force toward that end than has commonly been believed. The extent to which this force can be made effective still remains to be seen.

APPENDIX

TABLE OF FOREIGN MONOPOLY CASES[58]

CASE	PROCEEDING	DISPOSITION
United States v. *ABC Canning Company*, Equity No. 54-93 (S. D. N. Y. 1931)	Equity	Consent Decree

[58]Preparation of this list has involved questions of judgment with which not all readers will agree. A number of cases not cited here have involved foreign defendants. This list is intended to include only those eases which present those special situations which have been discussed in this article as foreign monopoly cases.

United States v. *Alba Pharmaceutical Co.*, Civil No. 15-363 (S. D. N. Y. 1941)	Civil	Consent Decree
United States v. *Alba Pharmaceutical Co.*, Criminal No. 110-311 (S. D. N. Y. 1941)	Criminal	Pleas of *nolo contendere* and fines
United States v. *Alkali Export Association, Inc.*, Civil No. 24-464 (S. D. N. Y. 1944)	Civil	Pending
United States v. *Allied Chemical Dye Co.*, Criminal No. 106-12 (S. D. N. Y. 1941)	Criminal	Pending
United States v. *Allied Chemical Dye Co.*, Civil No. 14-430 (S. D. N. Y. 1941)	Civil	Consent Decree
United States v. *Aluminum Co. of America*, Civil No. 18-31 (S. D. N. Y. 1942)	Civil	Consent Decree
United States v. *Aluminum Co. of America*, Criminal No. 109-189 (S. D. N. Y. 1942)	Criminal	Pleas of *nolo contendere* and fines
United States v. *Aluminum Co. of America*, 44 F. Supp. 97 (S. D. N. Y. 1942)	Civil	Judgment for defendants
United States v. *Asbestos Corporation Ltd.*, Equity No. 44-268 (S. D. N. Y. 1929)	Equity	Petition dismissed because issues moot
United States v. *Bayer Company*, Civil No. 15-364 (S. D. N. Y. 1941)	Civil	Consent Decree
United States v. *Corning Glass Works*, Criminal No. 108-164 (S. D. N. Y. 1941)	Criminal	Pleas of *nolo contendere* and fines
United States v. *Deutsches Kalisyndikat Gesellschaft*, Equity No. 41-124 (S. D. N. Y. 1929)	Equity	Consent Decree
United States v. *Diamond Match Co.*, Civil No. 25-397 (S. D. N. Y. 1944)	Civil	Pending
United States v. *E. I. Dupont De Nemours*, Criminal No. 876-c (D. C. N. J. 1942)	Criminal	Pending
United States v. *General Aniline Co.*, Criminal No. 111-136 (S. D. N. Y. 1941)	Criminal	Pending
United States v. *General Electric Co.*, Criminal No. 108-172 (S. D. N. Y. 1940)	Criminal	Pending
United States v. *Harbison Walker Refractories Co.*, Criminal No. 109-176 (S. D. N. Y. 1941)	Criminal	Pleas of *nolo contendere* and fines
United States v. *Hamburg American Packet Co.*, 239 U. S. 466, 36 Sup. Ct. 212 (1916)	Criminal	Appeals dismissed because issues became moot
United States v. *Imperial Chemical Industries Lt.*, Civil No. 24-13 (S. D. N. Y. 1944)	Civil	Pending
United States v. *N. V. Amsterdamsche Chininefabriek*, Equity No. 44-384 (S. D. N. Y. 1928)	Equity	Consent Decree

United States v. *Merck & Co.*, Civil No. 3159 (D. C. N. J. 1943)	Civil	Pending
United States v. *National Lead Co.*, Criminal No. 114-485 (S. D. N. Y. 1943)	Criminal	Pending
United States v. *National Lead Co.*, Civil No. 26-258 (S. D. N. Y. 1944)	Civil	Pending
United States v. *Pacific & Arctic Railway & Navigation Co.*, 228 U. S. 87, 33 Sup. Ct. 443 (1913)	Criminal	The Supreme Court reversed in part a judgment sustaining a demurrer to the indictment. The corporate defendants then pleaded guilty and paid fines. The indictment was dismissed as to the individuals.
United States v. *Roche-Organon, Inc.*, Criminal No. 553 (D. C. N. J. 1941)	Criminal	Pleas of *nolo contendere* and fines
United States v. *Schering Corporation*, Civil No. 1919 (D. C. N. J. 1941)	Civil	Consent Decree
United States v. *Schering Corporation*, Criminal No. 550 (D. C. N. J. 1941)	Criminal	Pleas of *nolo contendere* and fines
United States v. *Swiss Bank*, Civil No. 1920 (D. C. N. J. 1941)	Civil	Consent Decree
United States v. *Sielcken*, Equity No. 9-188 (S. D. N. Y. 1912)	Equity	Petition dismissed May 29, 1912
United States v. *Sisal Sales Corp.*, 274 U. S. 268, 47 Sup. Ct. 592 (1927)	Equity	After the Supreme Court reversed a decree dismissing the petition, the case was discontinued, since the issues had become moot.
United States v. *Standard Oil Company*, Civil No. 2091 (D. C. N. J. 1942)	Civil	Consent Decree
United States v. *Standard Oil Company*, Criminal No. 682 (D. C. N. J. 1942)	Criminal	Pleas of *nolo contendere* and fines
United States v. *Sumatra Purchasing Co.*, Equity No. 17-317 (S. D. N. Y. 1920)	Equity	Consent Decree
United States v. *Sumatra Purchasing Co.*, Criminal No. 15-35-36 (S. D. N. Y. 1920)	Criminal	Pleas of *nolo contendere* and fines
United States v. *Synthetic Nitrogen Products Corporation*, Civil No. 15-365 (S. D. N. Y. 1941)	Civil	Consent Decree
United States v. *Tannin Corporation*, Criminal No. 18-31 (S. D. N. Y. 1942)	Criminal	Pleas of *nolo contendere* and fines

United States v. *Tannin Corporation,* Civil No. 23-510 (S. D. N. Y. 1943)	Civil	Pending
United States v. *Julius Weltzien,* Criminal No. 552 (D. C. N. J. 1941)	Criminal	Pleas of *nolo contendere* and fines
United States v. *5898 Cases Sardines,* Admiralty No. 105-37 (S. D. N. Y. 1930)	Forfeiture	Libel dismissed in view of consent decree in *U. S.* v. *ABC Canning Co.*
United States v. *383,340 Ounces of Quinine Derivatives,* Admiralty No. 98-242 (S. D. N. Y. 1928)	Forfeiture	Libel dismissed in view of decree in *U. S.* v. *N. V. Amsterdamsche Chininefabriek*