

HR:KM

September 24, 1942

MEMORANDUM FOR MR. EDWARD LEVI
Chairman, Interdepartmental Com-
mittee on International Cartels

At your request I submit to you a first report about the progress of my study on international cartels. The report may be used as the basis of a discussion of the interdepartmental committee on international cartels. It contains the following parts:

I.
Introduction

1. The definition of international cartels and the purposes of the discussion.
2. The principal causes of international concentrations in the period between 1918 and 1938.
3. The parties to the acts of economic international concentrations
4. Devices of international concentrations.

II.
Typical Instances

- A. European Instances
- B. Inter-continental instances
- C. Special American-European Problems.

III.
Preliminary Suggestions

1. Of immediate steps
2. Of a peace program
3. Of the transitory period.

I.
Introduction

The definition of international cartels and the purposes of the discussion
The usual definition of an international cartel is not helpful here because it is supposed to serve entirely different purposes. In 1928 Louis Domeratsky* based his discussion of international cartels, today not less helpful than fifteen years ago, on the definition - "A cartel is a voluntary association of independent enterprises with common interests and aims, for the joint regulation of production and distribution." (page 6). The final report of the German cartel investigation of 1930** using the same definition of international cartels excluded "patent combinations and private agreements relating to technical information" from its consideration.

Since the definition of the phenomena to be covered by this study follows more or less logically from the purposes of the pending investigation of the committee, our first aim must be to clarify the purposes of this investigation. In my opinion the purposes are the following:

A. To establish the following facts:

1. In regard to the war situation

a. What products and raw materials imported by the United States for defense purposes or civilian supply are controlled in the countries of export by a combination of international character or by a national cartel controlling the export of such country.

b. What material furnished under the Lease and Lend Act or otherwise to any allied nation comes under the control of any combination having any effect on the international market.

c. Are any products or raw materials in any neutral countries subject to any existing understanding in which any Axis country or any Axis firms directly or indirectly participate?

d. To what extent are enterprises in this country partners in or subject to combinations with foreign countries or business organizations.

e. To what extent do enterprises in this country feel themselves bound for the time after the war even if not for the period of the war.

f. To what extent is the material about these combinations of interest in a study of the industrial capacity of allied, neutral or enemy territory.

g. To what extent does the enemy use the device of control of industrial commerce or other enterprises other than war seizure or similar compulsory interference in his aim to make European or African commerce work in his behalf.

B. In regard to the activities of international concentrations before the war -

1. What was the effect of the restriction of production of raw materials on the United States, especially on the preparedness of the United States for war compared with the preparedness of the enemy.

2. What was the effect of the restriction of production in the manufacturing field on the United States in the same regard.

3. To what extent was the American crisis relieved by the international cartels or to what extent have the international cartels aggravated the crisis.

4. Was the price level for raw material dictated by international cartels outside the United States a cause of a prolonged crisis and especially of the breakdown of 1937?

5. Was the foreign policy of the United States or of any allied nation affected by the activities of international concentration?

6. Was the problem of over-production, or scarcity of material, distribution of markets or keeping of price level solved by the international cartel? If yes, was this solution in the interest of the common welfare?

7. Did the participation of American enterprises in international concentrations with their subsidiaries outside of the United States prove to be harmful to the interests of the United States?

C. To prepare the following conclusions from such facts:

1. How to protect the interests of the United States:

a. If goods shipped to the United States are or have been before Sept. 1, 1939 subject to control of concentrations in the countries from which the goods are shipped, if belligerent or neutral, especially if one of the Axis countries directly or indirectly is or has been a partner to the combination before Sept. 1, 1939.

b. If goods shipped from the United States to any neutral or allied country become subject to the same kind of control in the country to which they are shipped.

2. How to deal with means and devices of control, especially patents, trademarks, corporations and agreements under our jurisdiction or under the jurisdiction of any country with which we are allied, especially if the enemy

even if American or allied interests had also an interest in such means and devices.

3. How to overcome restrictions of production promoted by concentrations, especially if the capacity was based on the cooperation of territories now occupied by the enemy.

4. How to control nationally or internationally any international concentration which remains in effect.

5. How to counteract the establishment of combinations by the enemy in territory under his control to the extent as such combinations are intended to influence or exercise actual influence on the territories under allied or neutral control.

6. How to establish a post-war policy in regard to the combinations.

We are concerned with all private groups which seek to accomplish certain results. Forms or legal or economic structures of such private groups are of secondary significance. We are concerned with any cooperation between business organizations of different nationalities which actually bring under control or intends to bring under control, production or price of products in any country or the shipments from any country to any other country, by whatever means such control may be exercised. That covers straight agreements providing restriction of production or fixing prices as well as dealing with patents and financial interests in companies, provided that are used or are intended to be used for the purpose of regulating the market.

The experts of the League of Nations, reviewing the "economic aspects of several industrial agreements" confronted with similar situations

the following statement in their preface:

"The general term 'general concentration' includes, roughly speaking, any movement towards the cooperation in the sphere of private enterprise in the industrial and commercial undertakings in the different countries for the purpose of improving the organization of production and markets.*

We will follow these experts in using the words "industrial concentrations" for what we cover under our definition and with which we are concerned.

II.

The principal causes of international concentrations between 1918 and 1939.

The principal causes of international concentrations in the period between 1918 and 1939 were generally different from the causes of national cartels and concentrations. It should be helpful to work out certain types of causes of international cartelization or concentration:

1. Disturbance of the balance of competition between countries producing the same goods by causes not directly connected with the manufacture or sale of the specific articles involved:
 - a. On the money side
 - b. On the price side
 - c. On the side of the process of production
 - d. On the selling side.

* It is very much regretted that the experts, in spite of their broad definition, did not go into the investigation of any combination not covered by orthodox cartel definitions.

2. Intentional disturbance of the balance of competition -

a. By governments of producing or customer countries.

b. By business organisations themselves, by which disturbances the same effect is reached as under 1.

The balance of competition between countries does not mean a condition in which the enterprises of several nationalities can compete under absolutely identical conditions in each other's country or in each consumer country. The principle of the "Standort" alone makes substantial differences between competitors unavoidable. Furthermore, the price of several elements of the cost basis, for instance, wages, taxes, power, coal, etc., or even the general price levels differ in almost all countries. Balance of competition only means a condition in which the competitors take it for granted that a certain relation between costs, etc. exists, at least quasi-continuously. This balance permits the parties in interest to sustain a certain capacity which may produce a certain percent of the needs of the world market, subject to the ups and downs of the business cycle. The national economy of a country is quite often largely dependent on the continuance of this balance.

The balance of competition can be disturbed -

On the money side by inflation or devaluation in one of the producing countries. In those countries the costs become cheaper than in the other countries keeping the former money standard, whatever it may be. The country changing the money standard is able to undersell any competitor in foreign countries, even sometimes the competitor in the competitor's own country, but they destroy the minimum basis on which they themselves must sell again as soon as their general price level reaches the world price level. Although every economic entity will be

tempted to benefit from such a situation for a while it will be hesitant to go too far because of the destructive effect on the future. During the period between the two world wars this situation arose twice, once to the benefit of the Germans and once to the benefit of the Anglo-American economy.

Changes of the money level in customer countries do not disturb the balance between the firms supplying such market, since they charge in their own currency.

The balance of competition can be disturbed -

On the price side by changes in regard to any cost element usually considered as at least relatively stable. The price relations between the competitors may be affected in regard to the following elements: duties (export duties of the producing countries or import duties of the consumer countries); freight; labor; raw material, which was available in both countries or to be imported by both countries equally under equal conditions, whence it comes now into the orbit of one of the competitive countries by political development, or discovery, or is needed in one country for other purposes but not in the other, e.g., in the case of war.

The balance of competition can be disturbed -

On the side of the process of production by the temporary occupation of a territory which supplies one of the competitors but not the other. A territory which supplies one of the competitors may be occupied or some of the raw materials in one of the countries may be needed for war.

All of these cases have in common to be even if only theoretically, of a temporary character. The industrialists of several countries are inclined to try to overcome the existing difficulties by agreements with each other which

intend to accomplish the re-establishment of the broken balance by fixing prices in gold or in other so-called stable currency, or by providing calculation schemes with the aim to make the calculation stable, or by providing quotas of the articles of which only limited sources exist, in favor of the customer, or by restriction of production if sufficient customers can no longer be found.

Distinguished from temporary disturbances of the balance of competition is the final destruction of the balance which may happen by the discovery of a complete substitute for the article involved, or by the final occupation of territory from which a certain percentage of the production or all raw material is supplied, provided that the occupying country intends to use the entire production for itself. In these cases a new balance of competition becomes necessary if possible at all. An understanding with the inventor of the new substitute may be found which permits the producers of the original article to remain on the market and makes them parties to a combination. In the case of a final occupation of a country not previously in the game of an international understanding it could be attempted to persuade the occupying power to export certain parts of its production in exchange for goods which it needs and to cooperate in the game of a combination.

All these temporary or final disturbances are to be distinguished from intentional interferences by governments or the business organizations themselves with the balance of competition in the particular article involved.

Business men having some interest in a certain product but no monopoly in it, may get control over certain cost elements of such production, for instance, over freight, or much more often, over processes or over important consumers.

Under these conditions they can clearly disturb the balance of competition and actually establish one of the situations which we already realize as a disturbance and a cause of international concentration. If that happens the next step always will be an invitation to overcome the undesirable situation by going into an international agreement with the same people who made the situation which now shall be overcome.

The government of a producing country or of a consumer country under the influence of one of the interested groups may interfere with the balance of competition by subsidizing (dumping) the production in the producing country or of the consumption in the consumer country, or by establishment of lower freight or transportation rates from one of the competitive countries into the consumer country than from the other one, etc. The government of a consumer or of a producing country might furthermore, open some of the patents upon which one of the competitors based the commercial game.

All of these cases would disturb the balance of competition and establish conditions from which international cartels may easily develop and take place as a counter-action.

All of these intentional interferences of business organizations or of governments may be a part of a general political plan independent from the actual involved article, which plan might be dictated by the governments even against the ideas of the industry.

A typical case is if two imperialisms are moving in different directions. One imperialism wants to cover the entire European and African orbit, the other imperialism wants to cover the whole Asiatic orbit. It is logical that the in-

disturb each other in their spheres of interest. Another case is the condition in which one imperialism in its beginning phase meets another imperialism in its satisfied phase. The dynamic imperialism is just beginning a phase of conquest. It may move in the one or in the other direction. The satisfied imperialism will be inclined to agree with the dynamic imperialism to permit it to penetrate spheres in which it is not interested in consideration for being let alone.

Both forms affect the balance of competition to the extent that one group ceases to supply certain territories in which it could compete, considering the cost of production, the cost of transportation and the other general consequences of the "Standort". I call these concentrations geopolitical concentrations.

The instances between 1930 and 1939 of each of these types are well known to the well informed reader.

III.

The parties to the acts of economic international concentration.

The following parties may participate in acts of concentration:

1. Governments on all acting sides
2. Governments on one side and private business organizations on the other side.
3. Private business organizations on all sides.

The business organizations may appear either -

1. Individually
2. As cartels on all sides.*
3. Individual business organizations on one side and cartels on the other.

* German writers call international concentrations "cartels".

IV.

Devices of International Concentration

Production, prices, including currency, and distribution of markets can be affected by the following devices:

A. Agreements.

(a) Simple agreements between business organizations powerful enough to sustain any level of prices or production or distribution on the international market.

The agreements may affect:

1. The price side directly by fixing prices of the product itself or by fixing prices of any element of the product, especially by minimum royalties for the use of any process necessary for the production of the product involved.
2. The production of the merchandise by minimum or maximum quotas of production or of export.
3. The consumer side by distribution of markets.

(b) Agreements between the producers and in addition identical agreements between each of the producers and a managing agency situated in a country considered as most inclined to help the interests of international concentration.

The principal distinction between (a) and (b) is that in the case of (b) not only every contracting party may enforce the promise of each of his partners, but also the managing agency of the cartel, a bureaucratic entity. An important effect is the submission of the international arrangements under the law of the country under which the managing agency is organized. I am preparing a paper discussing the law governing the relationship between the partners to an international concentration, which paper will be submitted to the interdepartmental committee on

(c) Submission of contractees to the decision of a committee, an arbitration court or the managing agency in regard to future prices, quotas and distribution of market. This device is a decisive one because it deprives each of the partners to the concentration of his own freedom of action and of a chance to preserve the interest of his country.

B. Patents

(a) Mere patents.

Patents without any additional agreement may control a process necessary for the manufacturing of the product involved or of one element of such product in all countries with the effect that an international concentration is accomplished. The patents may be distributed among competitors so that each competitor can only manufacture, use and sell in the country in which he has control over the patents but in this country he is undisturbed.

(b) Patents in connection with agreements.

Patents combined with an agreement containing the provisions mentioned under A may make easier the accomplishment of ^acontinuous control. This device is used to secure the joint control not only of present inventions but of future inventions made in the same field.

C. Participation in business organizations of other nationalities to control or to participate in the control of more than one national market.

(a) Controlling interest in foreign corporations, provided that the involved business organizations have controlling influence over the market. The typical case is the so-called "concern" in which one manufacturing corporation controls the corporation producing the same product in other countries (subsidiary).

(b) The same device in connection with...

leading to exchange of management. This form gives the business organizations of several nationalities direct influence on each other's production, prices and any elements of the cost without any more explicit understanding. However, this form will mostly be connected with the next form.

(d) Participation in connection with agreements or in connection with patents or in connection with both.

(e) Same device as in a - d, however no shareholding but other financial interests sufficient to control the business (guarantees, loans, bonds).

(f) Same device as in a - e, however financial interests in firms not in the hands of the manufacturing firm but of holding companies controlling such manufacturing firms.

D. Special government methods establishing or strengthening international concentration.

(a-1) Monopolization of all import by the government of a consumer country or of a producing country which needs the import of certain raw material.

(a-2) Monopolization of all export by the governments of the producing countries.

(b) Quotas of the import of certain clearly defined goods or raw material from certain countries.

(c) Quotas for preferred import tariff rate or the transportation rate in regard to such goods or raw material to be imported from a certain country.

(d) Quotas for payment in foreign currency or any currency outside of the importing country in regard to such goods or raw material to be imported from a certain country.

(e) Corresponding quotas as in (a) to (d) in regard to export of raw material or finished products to certain countries.

(f) Subsidizing of national industry or trading companies under the condition that production or import from a certain country does not exceed a certain level or positively reach a certain level, or that certain market regulations are kept.

Part II.

Typical instances of international concentration* -

A. European instances:

1. European monopoly of natural products
2. European concentration regulating European commerce not affecting other parts of the world.
3. European leadership in the manufacture of products based on technical monopoly.
4. European offensive concentration.
5. European defensive concentration.

In all these cases a monopoly is either accomplished or aimed. Monopoly does not mean the exclusive ability or right to produce but the power to regulate markets, prices and production in all countries or in certain limited territories. Monopoly goes as far as that power goes.

* All instances reported in the Reports on Hearings before the Committee on Patents, U.S. Senate, 77th Congress on S. 2303 are supposed to be known to the interdepartmental committee and therefore are not used here.

Germany's position in all such European concentrations in which she participates is very strong for the following reasons:

1. Germany's productive capacity is the greatest in Europe, and always increasing.
2. Germany is the largest consumer of the controlled articles.
3. Germany as consumer of other articles, especially of agricultural goods, had a strong bargaining position in European economic negotiations.
4. Germany disposed of almost all raw material which existed in Europe.
5. Germany had the best experience in the problem of cartel organization.
6. Germany had the best organized patent and corporation system.
7. Germany had the closest economic relations with Russia before the war.
8. Germany's industry and commerce needed more than any other economic entity, European foreign markets and was therefore most active in the whole of Europe.

The distinctions between the subdivisions are self-explanatory and become perfectly clear by a study of the following examples:

1. European monopoly of natural products -
 - a. Potash. Potash salt is used very extensively by manufacturers of fertiliser. In 1937 the world production was the following:

France (Alsace Lorraine)	350,000 tons
Germany	1,250,000 "
Spain	100,000 "
Poland	35,000 "
Russia	75,000 "
United States	140,000 "
Dead Sea	7,000 "

These figures give Europe a relative monopoly. Before 1918 Germany alone had this position, while the United States at this time had practically no production of its own. (Compare the opinion of the Attorney General, 31st Op. Att. Gen. 545). After the separation of Alsace Lorraine from Germany a competition began on the world market, of which the United States was the beneficiary.

After some preliminary agreements beginning in 1923, a permanent agreement between the French and German industry — the French mines were owned by the government and the German syndicate subject to special legislation — was reached on April 10, 1926. A copy of this agreement can be found in the attached complaint, U.S. v. Deutsches Kalisyndikat Gesellschaft, et al, U.S. District Court for the Southern District of New York, Equity No. 41-124. The agreement provided:

1. The fixing of prices.
2. The division of the world market on the basis of 70% for Germany and 30% for France.

Poland joined in 1927, whereafter practically only Spain remained on the outside. This showed what a relatively weak outsider can do to the price fixing. The Spanish competition on the Netherlands market compelled the German-French-Polish cartel to decrease the potash price on this market by 38% in the period of a few months in 1933.* In the final end Spain joined the cartel.**

In 1929 the District Court for the Southern District of New York issued a final decree prohibiting any price fixing at sales to the United States and any agreements providing a joint sales agency. Did this decree accomplish anything?

b.
Mercury - Mercury is needed for pharmaceutical and chemical industries and especially for percussion caps. Italy, which is annually producing 67,000 bottles, and Spain produce together 88% of the world production. The United States just produces enough for its own needs (about 950 tons). Germany produces about 10% of her needs, in the Palatine. Japan (Yamas Industrie Works Ltd.) commenced production in Hoakkaeo. Some mercury is mined in Mexico and Bolivia.

Before the Spanish civil war Italy and Spain had a cartel which was, however, managed by an English firm. After the civil war the cartel was reorganized on July 20, 1939. The headquarters of the cartel are now in Rome, from where prices, production and every single sale is controlled. What is the effect of this cartel on the western hemisphere?

2. European concentration regulating European commerce not affecting other parts of the world.

One of the many instances is -

Timber - The principal European exporters of timber established a European Timber Exporters Convention (E.T.E.C.). The total export quota has been decreased from 4 million standards to 3.5 million in 1938 and from 3.5 million to 2,903,200 in 1939.* The cartel explained this decrease of export quotas by the fact that only Germany gave orders on an increasing scale while the other European consumer countries, especially England, gave less orders.

The basic quotas of the producing countries were established as follows:

Finland	804,000	Poland	250,000
U.S.S.R.	760,000	Roumania	196,900
Sweden	656,000	Yugoslavia	134,400
		Latvia	101,600

* Shortly before the outbreak of the war the quotas were increased as follows:

Watch the policy of decrease of production by the timber cartel and the establishment of the export quotas! It became the most harmful device of all. Was the decrease of the English demand a consequence of the cartel policy or the cartel policy a consequence of the decrease of the English demand? In any case, in 1937 England tried to establish a cartel of importers to counteract the terrific price demands of the export association. England invited French, Dutch and Belgian consumers to a conference which had no direct result, but it was very symptomatic.

3. European offensive concentration
4. European defensive concentration
5. European leadership in the manufacture of products based on technical monopoly.

These groups have one thing very much in common, they are directed against the world outside of Europe, especially against the United States. They are to be distinguished in their aims against the outside world, in that -

- a. the most technical monopolies intend to make Europe free from the needs of overseas raw material (dyestuffs (indigo) nitrogen, rubber, oil, etc.). They intend to compete with the synthetic material against the natural material in all parts of the world.
- b. the offensive concentration tries to impose its influence on the world market. It may be based on technical progress or prevailing organizations.
- c. The defensive concentration is based on the reverse situation than we have in "a" and "b". They are determined to get rid of the attack of an aggressive combination of foreign firms based on technical progress or otherwise.

It is obvious that a number of concentrations may belong to two or even to three of such groups, but the distinctions remain of importance.

The offensive and defensive concentrations are not determined to keep their character for a long time. The offensive combinations either conquer the entire

either successful in finally driving out the aggressor or to come to an understanding with him. Whenever the success of the offensive or the defensive or the technical cartel is to come to terms, the result is an inter-continental regulation of the market. Examples are (1) steel; (2) electrical industry (bulbs, radio) and (3) dyestuffs and nitrogen.

Interesting instances of European offensive concentrations are to be found in the insurance field and in the scrap business.

1. Insurance - Two European groups, the group around the Munich Re-insurance Company and the group around the Swiss Reinsurance Company, worked out a system of control of national insurance corporations by the device of reinsurance and the device of share-holding, or by both. These re-insurance concerns obtained control over all European re-insurance companies. Every insurer, wherever he may be, depends on obtaining a re-insurance agreement. The European re-insurance companies divided the European market between themselves and acquired the greatest part of the Latin American market by using their monopoly position in regard to the grant of reinsurance agreements. The American insurance corporations only became active to a very small extent in the Latin American market. Competition was so small that a special agreement with the American group was not even necessary. The German and Swiss re-insurance corporations obtained control over the Latin American insurance market. The tremendous political and strategical significance of this domination has been proved by the material submitted by Harry Conover of our Division.*

* In regard to international transportation insurance an international agreement exists in which 25 countries participate. The first agreement dated March 5, 1937, the so-called joint Hull understanding, covers the same insurance as the

2. Scrap - The following countries had mostly to rely upon the import of scrap - Germany, England, Poland, Italy, Czechoslovakia, Austria, Hungary, Roumania, Yugoslavia, Sweden, Finland and Japan. These countries purchased freely on the markets of the United States, Belgium, Holland and France. In the beginning of 1937 a number of countries restricted their export and required special licenses, especially France, Belgium, Poland and Sweden. Finland, Roumania and Portugal prohibited any export, while the British Iron & Steel Corporation made an agreement with the organization of scrap dealers, which agreement provided that no scrap shall be exported from England.

Under this situation the price of scrap increased very much; in Belgium up to 810 Belgian francs cif Duisberg, in Holland 55 gilder cif Duisberg and in U.S.A. \$31 cif Continent.

In the beginning of 1937 a cartel agreement of the European purchasers was established, the International Scrap Purchase Commission (I.S.C.) which regulated the prices to be paid and the quantities to be purchased.

In justification of this cartel it has been alleged that the increase of the price was not based on the amount of real demand but on the fact that so many different purchasers appeared on the market. After the establishment of the cartel of the purchasers the price was decreased by 50%.

The I.S.C. controlled every single purchase in the United States and enforced the rule that only the absolutely necessary amount shall be purchased on the U.S. market and only ^{by} the cartel itself.

The increasing necessity of rearmament made it necessary to return to the American market increasingly. At the end of 1938 a committee was sent to the United States. Some purchases were made in April, 1939, however after these purchases on

This decision could not be sustained very long since in June, 1939 England informed the committee they needed 250,000 tons of scrap more than expected and Poland and Italy required each 75,000 tons more than expected.

It is obvious that the effect of the cartel was not only a decrease of the price which this country could obtain but it gave the Japanese a chance to buy their scrap cheaper and to find enough scrap here. To what extent Japan cooperated in this agreement with Germany is unknown. -

The most typical instance of a European concentration based on technical monopoly, besides the dyestuff concentration, is the nitrogen concentration. Europe was absolutely dependent on the Chilean nitrate. Between 1909 and 1924 four different chemical processes to produce nitrogen were patented in Europe. In 1929 the world production was the following:

Chile	390,000 tons	
Ammoniasulphate	430,000	" (Gas plants)
Norwegian	20,000	"
Calcium nitrate	230,000	"
Synthetic	930,000	"

All the production outside of Chile was in Europe in 1929. In an always increasing manner Chilean nitrogen came under the mercy of the good will of the European competitors. Agreements between all producers of artificial or synthetic nitrogen were made from year to year, which made the competition for the Chileans extremely difficult. In 1930 the Chilean producers themselves entered an agreement with the European producers. In 1932 however, they dared to try a last free competitive fight, with devastating results for themselves.

On July 11, 1934 a final agreement between the European and Chilean producers was signed containing provisions relating to export quotas for all such countries which have any production of their own. In the other countries some competition

was permitted with the understanding however, that Chile has a minimum import quota in these countries.

The European cartel became an inter-continental concentration to which the United States was subject although certain American interests existed in the Chilean nitrogen industry and are still active. Japan also was subject to the commands of the concentration, but between 1935 and 1939 Japan built its own plants, supported by I.G. Farben. Today Japan must be considered as self-sufficient while the United States is partly dependent on Chilean production.

The policy of the nitrogen concentration was a policy of restriction of production to sustain prices. The productive capacity was permitted to be used only to 50%. The "success" of the cartel was so absolute that in spite of this existing capacity the world demand of 2,680,000 tons (in 1936-37) could only be met with 2,590,000 tons of nitrogen. (Figures of the British Sulphate of Ammonia Federation).

We should find out why this European technical monopoly came to an understanding with Chile and permitted the building of Japanese plants without finding sufficient American competition in the American domestic field, although all decisive processes were known in America since the end of the last war. A copy of the complaint and decree in the nitrogen case is attached hereto. -

A typical instance of a European defensive concentration is steel. The European steel industry established a unified export policy (I.R.E.G.). This cartel had the aim to sustain the former supremacy of Europe in the export trade in the Latin American market. The export association was based on the continental steel cartel agreement of 1925 between Germany, France, Luxemburg, Saar and Belgium.

Later Austria, Czechoslovakia and Hungaria joined. Domeratsky in "The International Cartel Movement" page 45 ff. reports that the estimated world production was increased between 1913 and 1925, the year of the establishment of the continental cartel from 38,000,000 to 89,500,000 tons. The proportion of the United States including Canada, increased from 42 to 54%, while the share of Europe decreased. However in the export trade the United States remained a comparatively small competitor.

In May, 1933 the distribution of the quota among the European members was as follows:

<u>May, 1933</u>	<u>Raw Steel Production</u>	<u>Quota</u>	<u>Utilization of Quota</u>
Germany	643,000 t	964,000 t	-321,000 t
Belgium	265,000	257,000	+ 8,000
Luxemburg	174,000	176,000	- 2,000
Saar	159,000	139,000	+ 20,000
France	594,000	660,000	- 66,000
	1,835,000 t	2,196,000 t	-361,000 t

The German Enquete Committee in its report on the iron industry, page 101 ff. states clearly that in the German opinion the continental steel cartel was not successful in regulating the export situation. The German market was very much interested in the overseas export, since the only potential competitor, the United States, was not very active in the world market during the first period of the cartel. About 25% of the entire German export of the rolling mills went to Central and South America, about 10% to British and Netherlands Indies and 10% to the Far East, especially Japan and China. Some U.S. competition appeared in the Far East and South America. The devaluation of the pound and dollar threatened to deprive Germany of its influence here. She made an agreement with the European

associations. The national association handles the orders and reports the sales to the international association. At the end of the annual period an amount of money has to be paid by the country which exceeds the national quota as established by the I.R.E.G., based on the average of the export during the period of Jan. 1, 1928 and October 1, 1929 and of the export figures for the first half of the year 1932. In January 1933 the I.R.E.G. permitted them to use 55% of these quotas. The international association fixed the price.

The I.R.E.G. did not remain a continental organization. On July 26, 1935 England signed the I.R.E.G. contract after she already had before a number of temporary agreements with the I.R.E.G. and after^{wards} the I.R.E.G. controlled the European export of iron 100% and the world export 80%. As far as the production is concerned, less than 50% is controlled by I.R.E.G. since the United States produced 30%, Russia 10% and Japan 4%. However, these countries did not become very active on the world market in 1935.

The international iron production was distributed as follows:

	Raw Steel Production in 1936 (In Million Tons)
Germany	18,85
France	6,71
Belgium	3,18
Luxemburg	1,98
<hr/>	
Continental (Founder) Group	30,72
English	12,09
Polish	1,14
Austrian	0,42
Czechoslovakian	1,54
International Raw Steel Export Assn. Total	45,91
<hr/>	
Other Europe	
Sweden	1,00
Italy	2,60
Russia	16,29
Other Countries	1,20
<hr/>	
Total	21,09

Cont'd.

Raw Steel Production in 1936
(In Million Tons)

European total	67,00
United States	49,43
Canada	1,13
Japan	5,00
Other Overseas countries	1,77
WORLD PRODUCTION OF IRON	124,33

The U.S. steel exporters came to terms with the I.R.E.G. The improvement of the economic situation in the United States induced the American steel producers to give up their just beginning interest in the world market, which became active at the time of the devaluation. In the spring of 1937 a preliminary agreement was reached between the I.R.E.G. and the leading American producer in which this American firm promised to keep the I.R.E.G. export price and not to exceed a certain quota in export. The quota granted to the Americans amounted to 375,000 tons for the first part of 1937. The temporary breakdown of the American domestic, economic upward trend of 1937 made increasing American export desirable. New negotiations took place in Dusseldorf in 1937. The Deutsche Bergwerkszeitung of Dec. 11, 1937 discussed the Dusseldorf negotiations as follows:

"The Americans were certainly very much interested in cooperation with the I.R.E.G. because of the changed structure of the entire world iron market. It is known that negotiations took place informally during the last few years and that especially the English tried to persuade the Americans to join the I.R.E.G. In the beginning of 1937 the last informal negotiations took place with a representative of the United States Steel Export Corporation. However, this corporation represented only two steel works, the Bethlehem Steel Co. and the United States Steel Products Company, which certainly could not make arrangements on behalf of the entire steel industry. The present negotiations

The Dusseldorf agreement had the effect that the American competition with I.R.E.G. disappeared absolutely, with the only exception of some competition in sheet metal in the Far East. In the Dusseldorf agreement the American industry was granted certain export quotas. In November and December 1938 these quotas were exceeded. However, this excess was equalized by payments in pursuance to certain provisions of the Dusseldorf agreement. All in all the I.R.E.G. expressed their satisfaction with the situation and made a new agreement with the American iron industry, valid up to October 31, 1939. It was expressly agreed that in the future the Americans should pay substantial fines if they export more than the quota permitted them. The prices which have been fixed since Dusseldorf for all foreign countries were given free so far as China, Manchukuo and Japan were concerned. In consideration for this policy of the American industry the U.S. market became closed to the Europeans. No change of price was permitted without previous understanding between the American and European groups. The execution of the agreement was supervised by a London committee meeting every two weeks. -

Inter-continental concentrations.

a. Shipping:

- Atlantic Shipping Conference
- Australian Conference
- Baltic & International Maritime Conference
- Batavia Conference
- British India Conference
- Far East Conference
- Java New York Conference
- Java Pacific Conference
- La Plata conference
- Lavanta Conference
- East Asia Conference
- North Atlantic Conference
- Pacific Coast European Conference
- South African Conference

All these conferences definitely regulate the price of passage and the freight rates. A special form of shipping cartel is the International Tanker Owners Association which does not only fix prices but which has a system of distribution of orders in accordance with which at the end of the year payments are made to the owners of tankers which did not receive their quota of the orders. Agreements between such conferences and other cartels relating to special rates for the transportation of cartelized goods are very significant. The agreement of the LaPlata conference with the I.R.E.G. or the so-called iron and steel shipping conference dealing with the transportation of iron and steel to England are typical instances. -

b. Communication:

1. Radio - from land to land. Almost the entire radio traffic between the United States and foreign countries is monopolized by agreements between the Radio Corporation of America or Mackay and foreign monopoly powers which are partly governmental organizations and partly private. Attached hereto as Exhibit _____ is a chart of the contracts of RCA, and as Exhibit _____ a chart of the contracts of Mackay with the contractees in other countries. These charts indicate to what extent these foreign contractees have the monopoly in their own country. The contracts between the American firms and the foreign firms contain a provision like the following:

"Radio Corporation of America will transmit over the said circuit or circuits every message within its control destined for the state of _____ or to countries for which messages would necessarily transit through the states of _____ unless otherwise routed by the sender. Reciprocally, the foreign firm shall transmit over the said circuit or circuits every message within its control destined for the United States of America or the country for which messages would necessarily transit through the United States unless routed otherwise by the sender."

This agreement makes it impossible for the foreign firm to send any message through any other circuit but through RCA respectively Mackay. Even if the American government through the Federal Communications Commission should license the establishment of another circuit the entrepreneurs of the new circuit could not get any messages sent to the United States, because of these agreements. Therefore no entrepreneur can take this risk.

The exception mentioned in the agreement that RCA or Mackay shall be bound if the sender "routed" another circuit has no practical significance. Its only purpose is to comply literally with the provisions of the consent decree of 1932.

2. Radio - from land to ship. Marconi International Marine Communication Co. Ltd. of London had an absolute monopoly in all shipping communication before 1911. This monopoly was changed by agreements between Marconi and the American Marconi (now Radio Corporation of America) and the German corporation Telefunken. Marconi however, before this war broke out, controlled all British ships plus about one-fourth of the remaining world volume of the ships. On January 1, 1934 RCA entered into an agreement with Marconi that "each of the RCA stations will use its best efforts to transmit in the most direct and practical way to the appropriate Marconi station, every message within its control destined to any vessel in which Marconi Marine Communication Co. owns or operates a radio telegraph station except as to such message, if any, which may be otherwise routed by the sender thereof. Marconi undertakes that its radio telegraph stations on board ocean-going vessels --"will use its best efforts to transmit in the most direct and practical way to the appropriate RCA station every message within its control destined to the United States of America, its territories and possessions, except as to such messages, if any, which may be

3. Radio - from ship to ship. The Radio Marine Company of America, a subsidiary of RCA, and the Compagnie Radio Maritime, a subsidiary of Compagnie Generale de Telegraphie Sans Fils in Paris, and the S.A. International de Telegraphie Sans Fils in Brussels organized a cartel under the name Comitee International Radio Maritime (C.I.R.M.). This cartel, which we have not sufficiently investigated at this time, regulates the communication from ship to ship, in cooperation with Marconi.

4. Telephone. The telephone agreements of A.T. & T. with foreign telephone carriers contain the provisions which state that "nothing in this agreement shall prevent the American and the foreign firm to use the circuit for other purposes but for the telephone connection between the United States and this particular country." This established in the telephone field exactly the conditions which we have in the radio case.

5. Telegraph - The telegraph contracts vary. However the U.S.A.-Canada situation is an instance of a case of monopoly by international agreements. The contract of Western Union with the Canadian Northern Telegraph Co. and the Great Northwestern Telegraph Co. of Canada of May 1, 1915 provides in Sec. 3 :

"The Western Union and the Canadian Co. shall respectively exchange telegraph and cable and money transfer business with the other, and each shall from time to time, so far as it lawfully may, turn over to the other exclusively, during the continuance of this agreement, all such business which may be received by it or be otherwise under its control, and which may be destined to places within the territory of the other and its connections respectively, including return traffic or answers to messages.

"Neither the Western Union nor the Canadian Company shall extend its present system into the territory of the other without the consent of such other by an agreement to be made between them;

PROVIDED, that existing contracts or arrangements made by either party with any other company (including Railway Companies and Marconi Wireless), for the exchange of telegraph, cable or money transfer business or for the extension and operation of its lines, may, without constituting a breach or violation of this agreement, be carried out, continued, extended or altered; Provided further, that in carrying out, continuing, extending and altering the same, regard shall be had to the objects and intentions of this agreement, and nothing shall be done or agreed to which would interfere with the carrying out of the provisions hereof according to their true spirit and meaning; but the observance of this proviso is left to the honor and good faith of the party, and it shall not be accountable to the other for any alleged breach of such proviso."

c. Lead :

In September, 1938 in London, the Lead Producers Association was established, which controls 75% of the production of lead outside of the United States. The production inside of the United States amounts to 12 million tons; of Canada and Newfoundland, 5 million; of Mexico, 5 million; of Spain, 2 million; of Yugoslavia, 1 million; of Australia, 4 million; of Africa, 1 million, of South America, 2 million; of Germany, 2 million; of other European countries, 2 million; of Asia 2 million - Total, 38 million.

Members of the cartel are Australia, Burma, Yugoslavia, Canada and Mexico. Germany, Italy, Japan, France and Russia were not members. While American business organizations are not members the U.S. firms control a large part of the production outside of the United States. If the whole world outside of the United States is cartelized with the active support of the U.S. firms it is

only a matter of form that the U.S. firms themselves are not partners inside of the U.S. market.

The following firms are affected by this international concentration:

Brokenhill, Australia
Burma Corporation, Burma
Trepka (English controlled)
American Smelting & Refg. Co.
American Metal Co.
Consolidated Mining & Smelting Co. of Canada (to the extent that they own mines outside of the United States)
Mexican mines controlled by American interests.

d. Platinum: An international cartel was organized in 1931 in the form of Consolidated Platinum, Ltd. in which Russia obtained 50% of the entire market, Canada 26%, South Africa 16% and Colombia 9%. The agreement was renewed in 1936. The influence of the International Nickel Company on this cartel is to be considered as important.

e. Nickel: International Nickel Company of Canada controls 4/5ths of the world production. Compared with this power, the influence of the other producers, Australia, Burma, United States and some European countries, has no significance. The price policy of the world market is absolutely controlled by the International Nickel Company which acquired almost all new mines, especially in Finland.

The German import statistics indicate the increasing use of substitutes, especially in metallurgy and in connection with the building of cars, machinery and electro-technical equipment. Light metals are used as substitutes.

e. Tin: The tin cartel was renewed for a period of five years on January 5, 1937. It can be cancelled if 15% of the world producers should be outsiders. The purpose of the international tin cartel is not only to regulate exports but also production, and the international tin committee has power to restrict production. In this committee the distribution of the votes will be as follows: Malay 5, Bolivia 4, Netherlands Indies 4, Thailand 2, Belgian Congo 2, Nigeria 2, Indo-China 2. The standard quotas are the following: Belgian Congo 13,200 tons, Bolivia 46,419, French Indo-China 3,000, Malay 71,440, Netherland East Indies 36,330, Nigeria 10,890, and Thailand 18,000.

During the last years the industrialists active in Thailand were anxious to and successful in increasing their quota at the expense of Bolivia and Belgian Congo, the principal source of supply now remaining in the hands of the United Nations. One of the reasons for this demand expressed in Thailand and Malay was the allegation that Bolivia restricted its production even beyond the quota by 22,378 tons in 1937.

The success of the restriction was that the world production of tin in 1938 amounted to 148,000 tons compared with 208,300 tons in 1937. The cartel committee was not satisfied with this development; wherefore the production quota in 1938 was decreased to 53½% of the standard quota. During the eleven months from January to November, 1938, the use of tin was as follows:

	Jan.-Nov. 1937	Jan.-Nov. 1938	Increase & De- crease in %
United States	79,776	47,293	-40.7
United Kingdom	23,821	17,051	-28.4
Soviet Russia	23,449	14,966	-36.2
Germany	11,037	12,500	+13.3
Japan	7,422	9,655	+30.1
France	8,192	8,465	+ 3.3
Italy	3,205	4,175	+30.3
Sweden	1,736	2,730	+57.3
British Indies	2,323	2,280	- 1.9
Canada	2,375	2,222	- 6.4
Poland	1,120	1,670	+49.1
Belgium	1,393	1,497	+ 7.5
Netherlands	1,265	1,273	+ 0.6
Switzerland	951	1,222	+28.5
Other Countries	13,645	13,201	- 3.3
Total	181,700	140,200	-22.8

Based on these figures the international tin committee decreased the export quota for the time from April to June, 1939, to 40%.

In spite of all this restriction the price was not satisfactory to the producers. Wherefore, a tin pool was established to take over all material not sold in order to avoid any decrease in prices. The effect of the pool increased the prices distinctly. October 1938 the price amounted to 207 pounds while the tin collected in the pool amounted to 33,359 tons. In February 1939 the price was 214 pounds and the tin collected was 33,560 tons.

Under the immediate effect of the rearmament the export quota was increased for the third quarter of 1939 to 45% and for the fourth quota to 60%. The United States should be considered as the greatest

consumer of tin. In 1937 U.S. purchased 44% or 87,000 tons of the world production. In 1938 the U.S. purchased only 51,000 tons because of the decrease of production of automobiles and tin cans.

The restriction of production and the keeping of prices gave Germany a chance to accomplish successes in finding a substitution for tin, especially for tin ore, by using lead and aluminum. Germany began manufacturing of cans out of aluminum or glass in 1935.

f. Copper: The copper cartel has been investigated extensively by T. N. E. C. However, the following facts should be stated here: On March 31, 1935, a conference in New York established a new copper cartel. The agreement became effective June 1, 1935. The principal point was a restriction of production by 20% amounting to 240,000 tons. On July 1, 1935, the production was reduced by another 10%.

The American production was not officially included in the agreement. However, the leading German newspaper Frankfurter Zeitung on March 31, 1935, reported the following: "It can be expected that America will bring its share in the supply of the world market only in conformity with the restrictions of the other producers. It is assumed that America will be satisfied with an export quota of 9,000 tons a month, which would amount to a very strong reductions, since the American export amounted to 260,000 tons per year. The 1935 agreement did not contain a fixing of prices. The assumption existed that the restriction of production would influence the price sufficiently. In 1937 the

production outside of the United States was estimated to be 1,120,000 tons. It is expected that some of the Latin American and African mines will restrict production by 30%."

On June 21, 1938, the Deutsche Bergwerkszeitung reported a continuation of the restrictive policy. However, at this time the quota was 105% of the standard quota, in November 1939, 110%.

The parties to the cartel are Chile, Rhodesia, and the Congo. That means the following mines:

Rhokana, Roan Antelope, Mulfulira (Rhodesia)
Chile Copper Co., Chile
Andes Copper, Co., Chile
Braden Company, Chili
Unions Miniere du Haut Katanga, Belgian Congo

The American firms are very much interested in the Chile and Congo business since Anaconda controls the Chile Copper Co., and the Connecticut Copper Corp. controls the Braden Company. The Anaconda mine in Chile is the second largest in the world (Chuquibambata). The Nichols Copper Corporation controls Katanga in the Belgian Congo.

In 1939 the restriction was continued. The alleged justification was decrease of the European needs. Germany was successful in substituting light metals for quite a lot of copper.

The same condition was everywhere: to keep prices by restriction of production, although the prices were so high as to encourage the production of substitutes, which was not possible without this cartel policy.

g. Rubber: On July 1, 1933, the cartel of the rubber producers became effective. Export quotas were established by the Netherland Indies, Malay, Ceylon, British Indies, Burma, British North Burma, Serewaak, and Thailand.*

The international committee regulated the export quotas in 1934. The total export quota amounted to 1,019,000 tons. Only 12,950 tons of export rubber were not influenced by the agreement.

The agreement provided that new plants shall be prohibited. In 1939 5,900,000 acres were planted with rubber, of which 46.8% were owned by native Chinese and Japanese, 45.9% by English and Dutch, and 7.3% by other Europeans and Americans.

The rubber firms were not satisfied with the first success of the rubber restriction program. In August 1935 the English firm of Henry Gardner & Co. expressed its disappointment since the original cartel agreement overestimated the actual demand, which was in 1934 about 70,000 tons monthly. The report indicates that the existing export quota of 65% is low enough to meet the situation. At this time stocks of rubber in the world amounted to 728,000 tons. The restricted territories sent monthly 60,300 tons on the world market, while the uncontrolled territories sent 2,000 tons. Under these conditions only 7,700 tons monthly could be used out of the stocks.

On September 25, 1935, the international rubber regulation committee decided to decrease the export quota to 55%. This resolution

had the immediate consequence of a price increase from 5 1/2 to 5 3/16 D. and a decrease of the price of shares of the plantation companies. The economic situation did not improve but the rubber committee had no other idea but to continue its restrictive policy. For the first eight months of 1936 the export quota was exceeded by 30%.

It shall not be overlooked that during the world crisis the price of rubber became relatively lower than all the other prices of raw material. In the middle of 1932 the price was about 4% of the price of 1935, while the sugar price did not go below 27% of the price of 1935, the raw oil not below 14%, and the tin price not below 37%.

For a short time in 1937 the international rubber committee changed its policy and increased the export quota to 90% for the second half of 1937. The prices were going up to 12.38 D. in London. The bulletin of the international rubber restrictive committee of August 5, 1937, reports that the world export of natural rubber amounted to 108,167 tons in June 1937. The world's stocks of rubber outside of the restricted territories, which were 728,000 tons in 1935, decreased to 374,406 tons on May 31, 1937.

In fixing the quotas the committee was especially interested in in watching the figures of the United States which usually needed more than 50% of the world consumption. In September 1937 the United States needed 47,500 tons, equal to September 1936. The third quarter of 1937, brought a decrease of 40,000 tons compared with the preceding year.

The American rubber manufacturers association answered the question for September 1937 as follows:

	September 1937	August 1937	September 1936
Arrivals	56,049 t	48,785 t	46,386 t
Consumption	43,893	41,456	46,330
Daily Consumption	1,756	1,594	1,853
Stocks (Traders)	57,863	49,909	77,664
Stocks (Manufacturers)	124,692	121,144	150,813
On the Way	83,288	80,439	62,240

The stocks of the six principal countries outside of the restricted territories were 438,873 tons at the end of September 1937 compared with 422,185 tons at the end of August 1937, 391,534 at the end of May 1937, and 541,507 tons at the end of December 1936. The British stocks were 50,300 tons in October 1937, compared with 99,000 on October 17, 1936.

At the end of October 1937 the old game began again since the rubber prices were again on the decreasing level. The American needs went down from 49,000 tons in August to 43,000 in September 1937, while 49,000 tons arrived in August and 56,000 tons in September. The international committee again restricted the export quota for the first quarter of 1938 to 70% of the basic quota. The price immediately went up. While in Europe the rubber needs were great because of the rearmament, the needs of the United States decreased from 41 in August 1937 to 38 in October. The decision of the committee to return to the policy of restriction was greeted by interested people with great satisfaction. It was hoped that the new decrease in the export quota would finally help to dissolve the American stocks. We have to keep in mind the

following about experience. The development of stocks of rubber in the United States and other countries under the cartel policy up to the beginning of 1938 was as follows:

Period	Consumption in lt.			Stocks in lt.		
	U.S.A.	Other Lands	Total	U.S.A.	Other Lands	Total
1934	46,200	457,100	919,100	361,000	389,537	730,537
1935	489,500	443,700	933,200	312,000	327,948	639,948
1936	575,000	462,359	1,037,359	223,000	235,261	458,261
1937	553,860	527,248	1,082,014	256,617	256,958	513,575
1937 1 qtr	156,769	131,141	288,110	191,928	244,532	436,460
1937 2 qtr	155,328	144,639	299,967	169,646	232,752	402,398
1937 3 qtr	128,999	134,938	263,937	182,556	265,648	448,204
1937 4 qtr	112,770	117,230	230,000	256,617	256,958	513,575

On May 31, 1938, when the international rubber committee was going to establish the quota for July to September 1938, they did not find the rubber stocks in United States sufficiently dissolved. Wherefore, they decreased the export quota to 45 for the time from July to September 1938 and increased only slightly to 50 for the first quarter of 1939, in spite of the beginning rearmament boom. In the second quarter of 1939 the stocks in the United States were decreased to 237,800 tons and the price improved.

Germany made an understanding with Standard Oil to increase the oil price in Germany to such a level that I. G. Fabren could compete with its synthetic oil. Germany utilized the price policy of the cartel which intended to dissolve the American stocks with great success to establish the synthetic rubber industry. The official German figures

relating to the import of rubber in 1937, 1938, and the first quarter of 1939 show the following trend. The import in 1937 amounted to 123,000 tons, in 1938 to 108,000 tons, in the first quarter of 1939 to 26,000 tons of rubber. This substantial decrease was coincidental with the greatest rearmament the world has ever seen, that was possible not because of the German stocks of rubber but because of increasing production of buna.

h. Sugar: The sugar case differs from the other cases discussed up to now since all continents participate in sugar production. In 1938 the following gives statistics on the world sugar production.

World Sugar Production (1000 m/t)

Beet Sugar	1938/39	1937/38	1936/37
Europe	8,798	9,660	8,761
United States	1,635	1,295	1,318
Canada	75	61	76
Argentina	1,3	1	2
Uruguay	1,5	1	1
Japan	46,8	45,4	43,6
Australia	6,0	6,0	4,2
Iran	35,0	29,0	18,9
World Beet Sugar Production	10,598,6	11,097,8	10,225,4
Cane Sugar			
North and Central America	6,479,2	7,768,8	6,616,2
South America	2,332,5	2,077,4	2,107,6
Africa	1,222,5	1,218,6	1,160,9
Asia	7,107,0	7,289,2	7,830,7
Ocean Islands	934,0	958,4	946,3
Total Cane Sugar Production	18,085,2	18,324,6	18,677,5
Total Beet Sugar Production	10,598,6	11,097,9	10,225,4
Total World Production	28,683,8	29,422,5	28,902,9

The strong distribution of the sugar production made a cartel arrangement less dangerous but more complicated. On May 9, 1931, the so-called first world sugar agreement was signed by the representatives of Cuba, Java, Czechoslovakia, Germany, Hungary, and Belgium. The agreement covered 80% of the entire world export and about 50% of the world production. The governments of the involved countries participated in the negotiations but not in the agreement itself. The agreement alleged to have as its aim to normalize the world sugar industry by reestablishment of the balance between production and consumption. The so-called Chadbourne Plan intended to liquidate the existing stocks of 2,500,000 tons within five years. The Plan was administered by the international sugar committee organized in the city of The Hague, and in this committee Cuba had 35 votes, Java 8, Czechoslovakia 6, Germany, 6, and Poland 6, and Belgium 2 votes. The committee collected information and statistics relating to the entire field of the sugar industry and was authorized to establish the quotas of export.

At the end of 1931 Peru and the Dominican republic joined, whereby Russia remained the only outsider. The sugar cartel alleged to need 2 cents per lb. to give the cartel members a reasonable profit, while the price was 1 1/4 cents when the cartel was made. It was established that the export quotas should be increased by 5% if the price of 2 cents can be obtained.

Early in the fall of 1931 serious difficulties came up since the sugar producers of Java alleged that Cuba had too large a quota. Cuba, however, complained that Java exceeded its quota. On March 20, 1932, Cuba cancelled its membership. The other cartel members were very much concerned about this step and alleged that the real reason was that Cuba could not persuade its farmers to restrict production to such an extent as was necessary to sustain the export restrictions. Mr. Chadbourne, representative of the American banks interested in Cuba, could not persuade the government of Cuba to decrease the production. The sugar price went down sharply and at the end the Cubans appeared again at the conference table.

The second sugar cartel was signed. It contained a restriction of the sugar production itself. Cuba was permitted to produce 2,500,000 tons per year while the other producers, Europe, Java, and Peru, were limited to export 3,300,000 tons with the understanding that any excess of the export of Java beyond this quota would go on the expense of the European-Peruvian quota. Producers in Java in turn promised to decrease their production so that no danger of an export in excess of the quota of the country existed. The Cuban government restricted production without being bound by the cartel arrangement to do so.

In 1933 a new outsider came up. British India increased its production by 12.3% in one year. This fact was only the symptom that sugar restriction does not work as in the other fields, since the more the old sugar countries restricted production new sugar countries began

to produce. Just then in 1934 the world crisis had its heaviest effect. While the world market before the crisis could consume 6,000,000 tons, the producing countries could sell only 3,500,000 tons in 1934. The production of the countries which had signed the Chadbourne Plan decreased from 6,300,000 tons in 1930 to 3,300,000 tons in 1933, while the production of the outsiders increased from 8,700,000 tons to about 12,000,000 tons, just 23%.

In 1937 the so-called London Agreement, a new cartel agreement, was signed to which twenty-one countries belonged including Germany, England, Australia, Dominican Republic, Peru, etc., Even countries which did not ratify the agreement, as for instance Canada, observed the commands of the international sugar committee for a certain time.

According to this agreement the total export quota was fixed at 3,620,000 tons which was divided by thirteen countries. The following export quotas were published.

Netherlands & colonies, especially Java	1,050,000 tons	
Cuba	94,000	"
Dominican Republic	40,000	"
Peru	33,000	"
Czechoslovakia	25,000	" plus
	the above-mentioned special quota.	
Russia	23,000	tons
Germany	120,000	tons
Poland	120,000	"
Brazil	60,000	"
Hungary	40,000	"
Haiti	32,000	"
Portugal	30,000	"
Belgium	20,000	"

This agreement more or less fulfilled its task until in the year 1938-39 the situation changed entirely. Since a certain shortage of sugar began to develop after 1939 the sugar cartel had only price effects.

The sugar cartel case teaches us that restriction of production encourages countries which were not producers at the time the cartel was made to assume production. If we compare the experience of the sugar case with the tin and the rubber cases, we realize that the consequences are similar since in the tin and rubber cases the international cartel and its policy encouraged countries which had no tin and rubber to produce substitutes.

C. Special American-European Problems.

The Senate Committee on patents in "Hearings before the Committee on Patents, U. S. Senate, 77th Congress, Second Session on S. 2303, A Bill to Provide for the Use of Patents in the Interest of National Defense or the Prosecution of the War, and for Other Purposes," collected a very great amount of material to which it is referred in its entirety. The agreements in the chemical, electrical, and optical industries show this same pattern which is indicated best by a quotation of the contract of January 1, 1938, by a German corporation, Schering Corporation in Bloomfield, which contains the following clause: "Schering Corporation undertakes not to export either directly or indirectly from the United States of America or knowingly to sell for purposes of export

to any third party any such prepossessions unless Shering A.G. shall have previously given its written consent."

The effect of these agreements is best described by a reference to an interview with the former head of the subsidiary of I.G. Fabren in Chile. He informed us that under the existing cartel arrangements between the Germans, English, French and Swiss, 95% of the total turn-over of dyestuffs in Chile is sold by the German and the Swiss firms. The German firms sell 91% of this 95% and the Swiss 9%. Five per cent of the total turn-over was sold by National Aniline Chemical Corporation, a United States firm. Why does no other American firm appear?

He reported that I. G. Fabren did not meet any American competition in pigments and other heavy chemicals. The only exception is bichromats, and in this field the American competitor split up the market with I. G. Fabren fifty-fifty. This is a statement of the former manager of the Chilean subsidiary of I. G. Fabren, "We exchanged a list of the quantities with the names of the customers and the prices listed."

In the electrical industry is another case, which could be duplicated and triplicated and which seems to be especially informative. In Netherland West Indies "just around the corner" from the United States no American radio sets can be sold because of the agreements between the Radio Corporation of America and N. V. Philips, a Dutch firm, and the German radio concerns' distributing markets in Latin America. The American Consul, Mr. Russell M. Prooks, reported to the Secretary of

of American radios as well as other non-licensed sets into the Netherland West Indies. The firm has done so by the simple method of threatening to take legal action against importers, dealers, distributors, or any person or concern having to do with the importation of other than Philips sets licensed by N. V. Philips Gloeilampen, to date only the German-made 'Telefunken'."

The American Consul describing the situation in Netherland Indies did not know the agreement between RCA, Philips, and the German firms in which it is provided: "The exclusive territory of the Philips Company shall be the following countries together with their respective colonies, possessions, dependencies, dominions, and protectorates.... Holland." Compare the radio agreement between Philips, RCA, etc. of July 22, 1925.

The reports of the Patents Committee make the use of the patent device in connection with the distribution of the market so clear that any addition of further material is unnecessary.

In regard to the use of trademarks to control the market, especially pharmaceutical products and dyestuffs, it shall be referred in addition to the previous statements about this matter to three statements of highest authorities.

1. Doctor Bosch, the former president of I. G. Fabren, stated in a committee of the German Parliament, "Our foreign market in pharmaceutical products has been affected by the loss of patents or similar industrial property rights, especially in the United States,

England, Russia, Italy, and France. We lost our rights protecting our interests in pharmaceutical products in France, England, and United States. We have overcome this problem now by an agreement to which we came with the owners of our protective rights. The most efficient protection of our interests in pharmaceuticals in this field is not to be found in the protected labels and trademarks. We cooperate now in the United States with the present owner of our rights. He gives us a part of the profit. He is independent in his business but he is under duty to give us a part of the profit."

2. The firm of Dr. Zeiss, president of Schurin, Kahlbaum, A. G., Berlin, made the following statement at the same hearing: "A seizure of patents and trademarks took place, especially in the United States. We lost 49 patents and 34 trademarks. We felt especially bad over the loss of our trademarks. Especially in the United States we feel this loss since we are compelled to begin a new business. Another firm acquired our trademarks and made a good business. The introduction of new trademarks is very expensive."

3. At the same hearing Dr. Fuchs, the president of G. D. Reidel Edde Haen, A. G. made the following statement: "In a number of countries new enterprises were established which used the patents and possessions taken from us. For instance, in United States all our patents and trademarks, even our own name, have been seized. We entertained a subsidiary in New York, Reidel & Co., on whose name our protective rights were registered. This firm was seized by the Alien

Property Custodian and acquired by an American who is doing his business under our name, Reidel & Co. He is doing very well."

The end of all these cases was the same. The trademarks of the firms, which purchased the trademarks from the Alien Property Custodian, came again under the control of the Germans or became the basis of a new understanding between the American firm and the German firm relating to the distribution of market.

Another example is the Merck case. The trademark Merck together with the enterprise Merck were seized by the American Alien Property Custodian and sold to Merck and Co., Inc. a corporation organized under the laws of the State of New Jersey. The trademark outside of the United States remained under the control of E. Merck in Darmstadt, Germany. E. Merck of Darmstadt and the American firm made an agreement on November 17, 1932, providing the following:

"E. Merck recognizes and confirms the right of Merck & Co., Inc. to the exclusive use of the word "Merck" in the United States, its territories and dependencies, and Canada, and the right to use said name jointly with E. Merck in Cuba, the West Indies and the Philippines, whether said word "Merck" is used alone or in conjunction with or combination with any other word or in connection with any patent or trademark or in any other way.

"E. Merck & Co., Inc. recognizes and confirms the right of E. Merck to the exclusive use of the word "Merck" in the entire world, except the United States, its territories and dependencies, and Canada, and except in Cuba, the West Indies and the Philippine Islands, where Merck & Co., Inc. recognizes the right of E. Merck to use said name jointly with Merck & Co., Inc. The right of E. Merck to use the name "Merck" as herein recognized and confirmed by Merck & Co., Inc. means the right to use said name alone or in conjunction with or combination with any other word or in connection with any patent or trademark or in any other way.

These two provisions amount practically to a full distribution of the markets and work out practically this way.

In this war we are already on the way to getting new experiences. Mr. Alfredo Moll for many years was one of the managers of the Argentine subsidiary of I. G. Fabren. He was appointed "confidence man" for Ilgner according to testimony of Mr. Neisser, former manager of the Chilean subsidiary of I. G. Fabren. Neisser was the head of the political organization of I. G. Fabren, collecting all political and economic information available in any Latin American country. Mr. Moll managed now to be the sales agent of the General Dyestuff Corporation in New York owned and controlled by the United States Government represented by the Alien Property Custodian. In this capacity Mr. Moll used the trademarks of I. G. Fabren in the dyestuff field. On February 2, 1942, the lawyers of I. G. Fabren in Argentina wrote the following letter to Senor Alfredo E. Moll:

"We got evidence through our relations that you have offered to merchants of this market dyestuffs and auxiliaries for dyestuffs of United States origin, under denominations like: "RAPIDOGEM", "IMMEDIAL" - "INDOCARBON" - "IGEPON" - "IGEPAL". As legal attorneys of I. G. Farbenindustrie Aktiengesellschaft, we take the liberty to call your attention upon the fact, that all the mentioned expressions, as well as many others, have been duly registered as trademarks in favour of I. G. Farbenindustrie Aktiengesellschaft, so that our constituents may be considered the only and exclusive owners of them.

"The improper use of trademarks or denominations for merchandise in detriment of the exclusive rights of his owner, gives the right to start against you a lawsuit, as well as to embargo the merchandise labeled with improper trademarks. We also want to

correspondence, offers or price lists in order to compare or to establish an eventual identity with the offered products, means as well an infringement, similar to the direct use of the trademarks.

"We furthermore have known, that you have displayed to merchants of this market sample cards, in which in addition to mentioning trademarks registered in the Argentine by I. G. Farbenindustrie Aktiengesellschaft, it is referred to I. G. Farbenindustrie Aktiengesellschaft, with the aggregate that the sample cards show superscription; "Printed in Germany", in such way that the clientele may easily be induced into the mistake, that those are original products of I. G. Farbenindustrie A. G. In addition, besides the improper use of the trademarks of I. G. Farbenindustrie, the sample cards have been made up in such a way, that they induce or can induce into mistake the clientele about the origin of the dyestuffs. Also this is a lesion to the commercial interests of I. G. Farbenindustrie A. G., which can be listed as unfair competition.

"With this letter we want to state the damage occasioned to the trademarks and other commercial interests of I. G. Farbenindustrie A. G. or may occasion in the future, and we only abstain from adopting other measures in the belief that the present letter will induce you and your suppliers to suppress the lesions we referred to above.

"Supposing that this should not happen, we keep open the right to proceed legally against you and your supplier without further notice, in defense of the interests of our constituents.

"We beg you to kindly confirm the receipt of this letter."

Another "special American-European problem" is the problem of restriction of production which has also been sufficiently discussed in the Bone Committee. It may only be added that the German economic magazine "Wirtschaftsdienst" discussed the problems of the international manufacturing cartel and pointed out the following. "From the point of view of war economy international cartels are objectionable

if the German productive capacity should be decreased in any way. International cartels are not objectionable if German export is increased." This statement admits practically the entire problem as we see it. It was the aim of the Hitler economy to weaken the industrial capacity of other countries by whatever means possible and to increase its own productive capacity without any regard of so-called economic reason. As shown in the examples of raw material discussed above, the price and restrictive policy of the international raw material cartels in which Germany had no voice supported practically this aim and trend of the Hitler economy.

A PRELIMINARY PROGRAM

A. Immediate Steps.

I.

1. All agreements between American business organizations and any Axis business organizations which have, or were intended to have, any effect on price, quantity or quality of production, or the distribution of markets, or the selection of customers, are to be dissolved.

2. All instrumentalities to the performance of the agreements mentioned under No. 1 shall be made unuseable by opening patents and trademarks which have been or which are instrumentalities to the agreements and by changing the names of all business organizations established as subsidiaries or affiliates of Axis firms if such business organizations have been or are instrumentalities to the agreements. In especially urgent cases, the business organizations shall be dissolved.

3. The President has the power to execute Nos. 1 and 2 (Section 5-B of the Trading with the Enemy Act). It shall be suggested that the President delegate this power to the Attorney General since he is entrusted with the execution of the Antitrust legislation.

II.

1. All purchasing agencies of the United States Government should refuse to purchase any material in any neutral or allied country from any firm which sustains any agreement in the scope of No. 1 in which any Axis organization participates. The purchasing agencies should request any firm

to submit a statement to the effect that all such agreements are definitely cancelled. In especially urgent cases, the Inter-departmental Committee may authorize the purchasing agencies to purchase material without filing such statement.

2. All business organizations in neutral countries which are known to consider themselves bound for the time after the war by any agreement in the scope of No. 1, shall be considered as firms with which the doing of business is undesirable.

3. The sale of merchandise to belligerent or neutral countries by governmental agencies if accomplished under the Lease-Lend Act, or otherwise, shall be made under the condition that such merchandise shall not become subject to any agreement in the scope of No. 1, no matter if any enemy organization or any other organization participates in any such international agreement.

4. In proper cases, the export license authorities shall make the grant of a license dependent upon the filing of a statement of the consignee or any person in whose behalf he acts, that they are not subject to any agreement mentioned under No. 1.

III.

1. The United Nations shall agree about a uniform policy in regard to patents or trademarks which are or have been registered at any time since January 1, 1939 in the name of any Axis or Axis controlled firm

and in regard to corporations or other business organizations which are to be considered as a part of an Axis concern.

2. The following contents of an understanding is suggested:

(a) All patents covered by III-1 which are not opened by an act of one of the allied governments before December 1, 1942 shall be put in an inter-allied pool. An inter-allied pool committee may establish rules under which licenses to make, use and sell the patented products shall be granted to any firm situated in the country which issued the patent.

(b) Each business organization organized under the law of any of the United Nations shall be entitled to sell products in the territory for which the license is granted, under the same conditions as the licensee can do.

(c) All trademarks covered by III - 1 shall be open to the public unless the pool committee permits another regulation in special cases. In those cases, however, the use of the trademark is submitted to a permanent control of the inter-allied committee in regard to all its business connections. The inter-allied committee shall have the power to revoke the trademark at any time.

IV

1. The presumption shall be established that a critical shortage exists for all United Nations and neutral countries of such raw materials which have been on September 1, 1939, or at any time since that date subject to any international understanding and which come to any percentage from any of the territories at present under Japanese control.

2. The committees administering these international agreements shall be requested to submit all statistical information, correspondence, and files to the inter-allied committee.

3. The inter-allied committee shall suggest to the government of all countries in which those materials can be found that the entire production shall be considered as sold to the inter-allied pool.

The inter-allied pool committee shall immediately inform all governments of the United Nations and all neutral countries of the percentage of this material which can be shipped to them. This decision may be based on the material of the previous cartels, which material was prepared partly by the governments involved.

4. In case there is any difference of opinion about the price to be paid to the producing country, an arbitrary international court shall be authorized to decide finally. However, the delivering

of the raw material shall not be stopped until the decision of the court has been reached. It is up to the pool committee to make the necessary agreements with the customers of such raw material.

V

1. The Attorney-General, to whom the pertinent powers of the President shall be delegated (I 3), after consultation with the Secretary of State shall issue rules and regulations under section 5 B of the "Trading with the Enemy Act", under which all agreements between American business organizations and any foreign business organizations, which have or intend to have any effect on price, quantity or quality of product, or the distribution of markets, or the selection of customers, shall be made subject to a license to be issued by the Attorney-General. All existing agreements shall be registered and subject to special rulings of the Attorney General.

B. Post-War Aims.

1. The Axis countries shall join the pool established in pursuance to A - III with the understanding that all those patents in Axis countries which correspond to the patents opened in allied countries or licensed by the inter-allied pool committee in the scope

as in allied countries. Thereby it will be accomplished that the present Axis patents would not have the effect to exclude any import. These patents would only have the significance to impose the burden of payment of a royalty on the importer. Since the amount to be paid as royalty will be established in allied countries by the inter-allied committee during the times of war, it will be necessary to give the power to fix reasonable royalties to the international committee. The same royalties must be paid by any Axis producer.

2. The United States government shall establish a policy to settle those problems which in the past led to international concentration in the interest of common welfare.

The following cases shall be considered as subject to the machinery to be organized: scarcity of raw material or finished product in any place of the world, or the overproduction, or disturbance of the balance of competition by devaluation or inflation in any country, or by subsidizing of industry or export trade, or discrimination against other countries, or domestic arrangements between competitors in pursuance to which the domestic prices shall be higher than the export prices. The signatory governments shall establish:

- (a) a permanent international economic committee .
- (b) a permanent international economic court.

Any country, any enterprise or any consumer organization which can prove interest can make a motion to the international economic committee to make a statement to the effect that scarcity, or overproduction, or disturbances of the balance of competition is resorted to for other reasons than the general business cycle. The committee shall establish the real reasons and suggest the necessary measures to overcome such reasons. In all cases in which the committee establishes that scarcity, or overproduction, or price increase or decrease, or any disturbance in the balance of competition is a consequence of any action of a government, or of a private business organization, or a group of such organizations, the committee is authorized to enjoin the governments or the business organizations within any country to cease such policy.

In cases of scarcity the committee is entitled to establish pools and to grant quotas to the countries involved. In cases of overproduction, which are established to be the consequence of the appearance of a substitute of higher quality or more economic use, the committee is entitled to establish a transitory period under which the suffering industry is able to be transformed into any other useful business.

In cases of devaluation or inflation in any country the committee is entitled to establish minimum prices for a period to be

3. The committee is entitled to issue injunctions by which an immediate regulation of a temporary character can be found. The committee is obliged to establish the facts within four weeks after the motion has been filed and to come to its decision after a further four weeks. An extension of time requires the consent of the international court and cannot exceed four weeks in regard to the establishment of the facts and another four weeks in regard to the decision. The signatory governments are liable for the keeping of these time limits. Any petitioner, government as well as enterprise or consumer organization, can enforce this liability in international court which may decide to whom and to what extent payments should be made or what other forms of restitution shall be made.

4. Any government, business enterprise or consumer organization which can prove interest is entitled to ask the international court for judicial review of the decision of the international committee. An overruling of the decision of the committee can only be based on the following reasons;

(a) That the decision of the committee is arbitrary.

(b) That the decision violates rights based on international law.

(c) That the decision can support the rearmament of those countries which are subject to special disarmament regulation.

5. The execution of the decision of the international committee shall be entrusted to another division of the same committee. Any complaint of any party in interest in regard to the execution of the decisions shall be decided during the same time limits as provided under B - 3. The international court, however, shall establish rules and regulations clarifying what parties in interest shall be entitled to file motions relating to the execution of the decision.

6. The same division of the international economic committee entrusted with the execution of decisions--which division may be called "executive committee"-- is entitled to establish that any business organization in any country has obtained an influence on the international market to such an extent that it is able to regulate price, production, or distribution of market, and therefore, to be considered as an "international public utility." The committee may establish rules and regulations under which such enterprises may be supervised and kept in line with the policy of common welfare.

The involved enterprise and the government of any country in which the enterprise is domiciled can appeal to the international court against the finding that the enterprise is to be considered as an international public utility. An appeal is also possible against any order imposed on an international public utility. However, such appeal can only be based on the allegation that the order is arbitrary, absolutely unjustified.

7. All the international concentration which exists at the

nated unless this concentration is put under the control of the international economic committee, executive division, and made subject to all rules and regulations established by this committee and to the powers of the committee to dissolve the concentration at any time. Any signatory power, however, shall be entitled to enjoin its own subjects from the continuance of any such agreement and from utilizing the right to put the agreement under the control of the committee.

All future international agreements which affect price, production, and distribution of market if permitted in the involved countries shall be put under the control of the international economic committee, executive division, in the same manner as 6.

8. Patents and trademarks or any other industrial property shall be considered as abandoned if the international economic committee, executive division, should find that this industrial property has been used for purposes other than the purposes for which it has been established. Any party in interest can ask the international court for judicial review.

The same division is entitled to establish all such measures including the opening of patents or establishing of compulsory licenses in any country if it finds that such measures are necessary in connection with the execution of a decision under B - 2 (b).

REASONS

A. Immediate Steps.

I. From the point of view of the American partners, the international concentration as existing on September 1, 1939 served three basic aims:

1. To keep the prices of raw materials on a level which seemed to be reasonable to the producers without any consideration of the purchasing power of the customer nations.

2. To distribute the markets of the world in a way which saved American and English industry in its own sphere no matter what happened to the rest of the world.

3. To avoid any disturbance of the raw material interests of American business organizations, inside or outside of the United States, or any existing industrial capacity inside of the United States by the establishment of any industrial capacity by which substitutes of the raw material may be produced or which may permit a cheaper production of manufactured goods.

The political result of this international concentration was:

1. Before 1933: In connection with the international credit policy of the banks to deny to Republican Germany her natural share in the raw materials of the world and to prepare the separation of Germany from the world market - what in effect means Hitler.

2. After 1933: To recognize Hitler's new order in advance by exposing the entire European market and large parts of Latin-American markets to Hitler and by making possible the tremendous increase of the

Industrial capacity of Germany, especially to the extent as the production of substitutes for raw materials was concerned. All aims and all results of the international convention as existing on September 1, 1939 are opposed to the ideas for which the United States is fighting the present war. Therefore, whatever anyone's general attitude to the institution of concentration or international concentrations may be, or whatever the defense of concentrations may be, the re-establishment or even the continuance of organizations which have aims and results opposed to our war aims are out of the question. The United States Government must be absolutely free to act and to go ahead with any new policy which this Government thinks fit when the war is won. The must be unhampered in building up the war policy, especially in regard to Latin-America.

certain short-sighted business organizations, or one or the other governmental agencies, found a so-called "legal" theory in pursuance to which certain agreements and other contract agreements are to be considered as long-term agreements, and, therefore, only suspended for the time of the war, but not cancelled. They rely upon old English decisions dealing mostly with ninety year long leases of real estate and holding that such agreements are only interrupted for the time of the war. International combinations affect the quantity of production, the price, and the consumption of raw materials, or of half-finished or finished products in which not only individuals but the Nation or the nations have an interest. Who can dare to compare such agreements with the contracts of an old English lord in which no other person but the lessor and the tenant had any interest? There cannot be a more important distinction between contracts than whether persons outside of the contractual relation are affected by such contract or not. The broader the group of the affected persons, the more far-reaching the national and international public interest. It is impossible to apply a doctrine dealing with an entirely personal relationship between two people on a relationship affecting the existence of thousands of consumers and workers and the policy of the nation. The aim of the war is superior to everything. The aim of this war has very much

to do with the distribution of raw materials, the purchasing power of the people, the productive capacity, and the prices from which the existence of the middle class and of the workers in all countries may depend. Who can dare to compare contracts affecting these fields with a lease of an estate?

Contractual relations between so-called private groups which actually distributed the economic markets of the world in the scope of Hitler's "new order", which diminished the industrial capacity of England and America and increased the armament powers of the enemy, cannot go on. Otherwise, at the end of this war, we would be confronted with exactly the same situation which lead to this war and to our temporary inferiority.

The interested people on both sides of the fence do not realize these implications when they are going to rely upon the contract rule in time of war.

In July 1942, Bendix Aviation asked the Treasury of the United States for a license permitting the sending of letters to Tokyo Keiki Seisakusho, Ltd., Tokyo, Japan and Mitsui & Company, Ltd., New York City, and to a number of German firms. These letters, if sent, should make sure that these honest Japanese and Nazi friends are not too much disturbed by the consent decree of

an American court declaring unlawful a number of provisions in the cartel arrangements between Bendix and the Japanese and Nazis. The statement is made in those letters: "Nothing herein contained (the consent decree) shall be construed as affecting in any manner whatsoever any other provision of said agreement of the liability of T. K. S. or Mitsui thereunder." Only a few days after this application was filed, the Treasury received another application filed by the Standard Oil of New Jersey to permit them to give I. G. Farbenindustrie and Ruhr Chemie the same assurances as Bendix intended to give to its friends.

The Radio Corporation of America, International General Electric and Westinghouse divided the world in the radio field with Philips Gloeilampenfabriken in Eindhoven, Holland, and with the German firms of A. E. G. and Siemens. Switzerland was "given" to Philips. RCA disappeared from the Swiss market with the understanding that the said Philips pay a royalty and service charge amounting to five percent on goods manufactured in and imported to Switzerland. Later, a flat sum of \$350,000 was agreed upon. During eight and a half years (the period between July 1, 1925 and December 31, 1933) five per cent was paid and from December 31 to May 31, 1941, \$350,000 was paid annually. The claim of RCA

for the payment up-to-date is not directly against any Swiss firm but against Philips Gloeilampenfabriken, Eindhoven which in itself has a claim against the Swiss subsidiary of Philips. On April 3, 1942, the New York office of Philips asked the Swiss office of the same corporation to approach the "Swiss Clearing Institute", entrusted with the enforcement of the agreement between Switzerland and occupied Netherlands relating to the clearing of debts between subjects of Netherlands and subjects of Switzerland, to permit the payment of \$350,000 to RCA. This fact does not only show that the international agreement distributing the world in accordance with Hitler's "new order" is going on undisturbed by Pearl Harbor, but that the performance of such agreements does not even stop where the consent of the enemy is necessary since the Swiss Clearing Institute has no power to permit any payment in cash to America in performance of any obligation to a firm in Netherlands unless occupied Netherlands and its authorities give their consent. We have indications that the exports to Latin-America, especially in the electrical field, is seriously affected by the opinion of American firms that they are bound by the international agreements with enemy firms affecting the export of American goods to Latin America.

All that proves that not only the post-war policy of the United States is seriously handicapped by the continuance of the agreements with Axis firms even if interrupted for the time of the war, but that the immediate American war policy is also seriously affected by this situation. It is necessary to establish a procedure by which these contract can be dissolved once and for all, either by a general rule or by special rules relating to each of the involved cases. The investigations of the Antitrust Division and its files, ^{the} forms TFR-300, as filed with the Treasury, as well as the form APC-2, as filed with the Alien Property Custodian, makes it quite easy to collect the necessary factual material. The investigative power of the agency to be authorized, if sufficient, should furnish all additional material which may be necessary.

Under the existing legal situation, all agreements affecting production, prices, or consumption with business organizations situated abroad can be dissolved by the President or by any agency which he may designate.

In Title III of the "First War Powers Act" it is provided under the heading "Trading With the Enemy" that during the time of war the President may through any agency which he may

designate, nullify, void, prevent, or prohibit any dealing in, or exercising any right, power, or privilege with respect to transactions involving any property in which any foreign country or a national thereof has any interest.

The word "property" in its meaning has been interpreted continuously to include contracts to the largest extent.

It would be only logical to give power to dissolve all contracts affecting price, production, and consumption to the Attorney General, who is entrusted with the enforcement of Antitrust legislation and with investigative power relating to all agreements and other devices affecting production, prices and consumption in national or international matters. To the extent that involved agreements violate Antitrust legislation, no additional conflict with existing powers of the Alien Property Custodian and of the Treasury can arise since the Attorney General has the power to intervene in such agreements anyhow and since neither the Public Custodian nor the Treasury have shown any interest in this problem yet. Under it, the Attorney General has the necessary machinery and experience to investigate all connections.

A certain jurisdictional difficulty may arise to the extent that instrumentalities of the performance of international agreements between American and enemy business organizations are concerned. If, for instance, patents or trade marks, or corporations

or other business organizations are used as instrumentalities in performance of international agreements violating Antitrust legislation, the Attorney General should be able to do the whole job at once by one and the same procedure, to dissolve the agreement and to demand to make unuseable the instrumentalities of the agreement by one and the same act. In the Morton Salt case, the Supreme Court finally settled the principles that instrumentalities of organizations which violate Antitrust legislation shall be made ineffective. Our interpretation of Section 5-B of the "Trading With the Enemy Act" is doing nothing more than to apply the principles of the Morton Salt case.

Most of the agreements between American and foreign firms affecting price, production, and consumption violate Antitrust legislation. However, in a certain number of cases that may be doubtful; it would be an unnecessary and avoidable difficulty to make a distinction in regard to the jurisdiction between such agreements which violate Antitrust legislation and such agreements which do not. The jurisdiction of the Attorney General should cover all agreements and all instrumentalities of such agreements between American and foreign enterprises which affect price, production or consumption.

If the Alien Property Custodian should raise doubt about the practicability of conflicting jurisdiction in regard to patents, trade marks and other devices used as instrumentalities of agreements

with foreign business organizations, the Attorney General should be authorized to certify to the Alien Property Custodian patents and trade marks, or other devices used as instrumentalities in the performance of agreements which he dissolved. In such case, the Alien Property Custodian should be obliged to vest and administer the property in such patents, trade marks and other devices in accordance with the instruction of the Attorney General. The Attorney General should be especially entitled to demand immediate change of the name of any firm seized by the Alien Property Custodian if such person was used as an instrumentality in the performance of dissolved agreements. Patents and trade marks of business organizations, as such were instrumentalities of the agreement, shall be subject to the procedure relating to instrumentalities in the same manner as other instrumentalities are dealt with.

II

The American purchasing and sales agencies can help very much in breaking off the international concentration in which the enemy has an interest even if no direct effect on this country exists. No one can blame us for following an imperialistic course if we use our bargaining position to dissolve the enemy contract system and refuse to buy from or sell to firms in allied or neutral countries, which firms consider themselves bound by agreements with the enemy for the time after the war or even for the war time itself. This measure is clearly a measure of self-defense which does not need any further justification. For the time being we should be satisfied to request the filing of a carefully drafted statement that no contract or relationship with the enemy or enemy-controlled firms exists.

In the meantime the Economic Welfare Board, especially its export division and its western hemisphere division, should in cooperation with the State Department and Antitrust Division make a fact-finding in regard to all involved firms. The principle should be established that all firms which have such agreements or consider themselves bound for the time after the war are to be considered as undesirable customers of the United States. The proposal as made provides for exceptional cases.

III

In a special memorandum submitted to Mr. Thurman Arnold in December 1941, I explained the reason why this international agreement

to refer to the statements made in the first part of the memorandum, especially under the heading "Special American-European Problems."

If the Alien Property Custodian of the United States sells the German patents, trademarks, and corporations without any consideration of the actions of the Alien Property Custodian in other belligerent countries, especially in England, the British Empire, and Latin America, we will be confronted with the following situation.

1. The American firms which purchase such patents, trademarks, or corporations cannot export to any other country since the patents and trademarks in the other countries are in other hands.

2. Suppose these other hands are local Latin American firms that cannot manufacture sufficiently. If in Chile some Chilean establishes a dyestuff plant with a capacity of 60,000 kilo. they must find out that they are unable to exist. They have to look for help which they may find in the United States or in Germany. The only supporter in the United States can be the same firm to which the Alien Property Custodian sold the patents and trademarks in this country, while the only supporter in Germany can be the former owner of the patents and trademarks. The local firm may be more inclined to approach the German firm because the German firm has a much older and more extensive experience in this field and is able to produce cheaper products. But even if he approached the American firm we would only accomplish the monopoly power of one American firm with all the weak-

nesses of a newcomer in the field. These weaknesses almost necessarily induce the American firm to come to an understanding with the German firm, which understanding would again make Latin America a political victim of a conspiracy of private interests.

The Alien Property Custodian may refuse to give the patents and trademarks and corporations to inexperienced firms. He may decide that he has no other choice but to give this property to the American cartel partner of the German firms. In this case nothing would be changed at all.

If we do not come to an interallied agreement now, after the war no action will be possible any more since we will be confronted with owners of all this property who acquired legal title not from the enemy but from the government of each belligerent country. The United States government, as well as the other governments of the United Nations, will be confronted with established facts and any new policy will be made impossible. If we want to accomplish a new economic policy, if we mean seriously to open the raw material to the world and to give a just share in the international market to all countries, we have to act now and cannot lose any chance.

IV

A. A. Berle, Assistant Secretary of State submitted to the peoples of the western hemisphere a plan to pool all resources. This plan was submitted to the public before Pearl Harbor when the problem

of the nations of the western hemisphere was not a problem of scarcity but a problem of "too much."

Today after the occupation of the eastern resources of the United Nations by the Japanese, we are confronted with the problem of immediate scarcity of vital products which can be found in Latin America. Almost all these products had been subjected to international cartel regulations before Pearl Harbor. I am suggesting now to revise the A. A. Berle plan and to base its realization on the material collected by the international cartels covering tin, copper, and all the other raw materials in Latin America which cartels have been administered either in England or in this country. We would exclude an exploitation of the urgent needs of the United Nations by private groups as the owners of the tin mines in Bolivia will make certain that the people of Latin America feel that they receive a just consideration for the materials with which they supply us. Everything that they produce would be taken over by the pool established by the interallied committee. Such action would impose the burden on this committee to take care of a just distribution of this material among the allied or free nations. The files and the materials of the cartels contain all information we need as far as the best needs of the nations are concerned. This information together with the war programs of the United Nations should make it possible to establish quite fast a program of distribution of all material taken over by the interallied pool.

This work would not only be useful in connection with the present needs, it would be an important step toward the future economic organization which shall be entrusted with the administration and the distribution of the raw materials of the world. This organization would be an important step toward the post-war program as outlined under B of the Preliminary Program.

V

Section 5 - B of the "Trading with the Enemy Act" gives the executive side of the government not only absolute control over the agreements of American business organizations with Axis or Axis-controlled business organizations but with any foreign business organization. The Legislature gives the government this power because it feels that in this total war every private understanding between American and foreign persons may affect the war effort or the war aim. The government has even the power to bring to an end all such agreements. However, that would not be practical. For the time being it seems to me sufficient to have all such agreements registered to the extent that this is not already done. The Attorney General can issue all such rules and regulations which seem to be necessary to control the effect and the performance of all those agreements. In all cases in which he considers it necessary he may dissolve the individual agreement.

However, as far as new agreements are concerned the licensing seems to be absolutely necessary to avoid any additional freezing of

the economic relations of our economy by private uncontrolled agreements which do not follow the general direction of a post-war plan.

I do not overlook the fact that the definition of contracts to be licensed is very difficult; however, I believe that parts 1 and 2 of this memorandum give sufficient basis to come to a proper description of all relationships subject to licensing, registration and supervision.

B. Post-War Aims.

The whole memorandum from the very beginning to the very end intends to give the reasons and the preliminary program of a post-war policy relating to international concentration. As far as the ^{sug-}gested machinery is concerned I have the choice of submitting an extensive commentary requiring many pages or of restricting myself to certain short statements of the basic aims. I decided to accept the second alternative since it is much too early to discuss problems of secondary significance.

The following points seem to me the real justification for the subject matter under B.

1. The international concentration deprived the natural representatives of the nations, the governments, of their power to build up the international organization under which the nations live and to have the exclusive control over the general foreign relations of the nations.

The material collected by the pool committee is sufficient to prove that the private international concentration builds up its own foreign policy and its own international organization, beside which international law and the political international organization have no room. I add to this material three instances which clarify the situation very much;

(a) During the Italian-Ethiopian war the League of Nations with the acquiescence of the United States Government imposed sanctions on Italy which intended to deprive Italy of vital material.

Recent German publications report about the practical execution of these sanctions as follows: The supply of Italy in pursuance to the international private agreements was a matter of the industry or commerce whose "exclusive territory" Italy was. In the majority of the cartel agreements the English Embassy could consider Italy as its exclusive territory. All these international agreements contained the provision that at the end of the year the national organizations of industry and commerce informed each other about any supply made in the exclusive territory of the other national organization. The committee administering the international cartel established the amounts to be paid by the country which supplied the exclusive territory of another country. Since Germany did not join the sanctions of the League of Nations the German industry supplied Italy and at the end of the year the German industry reimbursed the English industry for all "damages" the patriotic English industry suffered in obeying the

(b) As the Hitler economy came in power a strong movement arose in all countries to boycott Nazi products. In a large number of cases governments were in clear sympathy with this movement. I read, however, in the national socialists economic publication that nobody in the German industry was very much frightened about this movement since under the existing international cartel agreements the Nazi industry had to be reimbursed for any loss in the market of any cartelized product.

These two cases would not be much different as the form of the international concentration is not the form of an "agreement" but of a financial participation of the industry or the commerce of one country in the industry or commerce of the other country.

(c) Repeatedly I referred in this memorandum to the views of a number of American industrialists who believe that the agreements relating to the distribution of market are not finally terminated even if the contractee is an enemy, and even if the contents are inconsistent with the aims for which the nation fights this war. This view is a typical instance of the condition in which the policy of the international concentration is irreconcilable with the policy of this nation. In the memorandum submitted to Mr. Thurman Arnold I collected considerable very confidential material relating to the continuance of our business connections with the enemy in the occupied countries. Each of the cases included in this memorandum proves that the government lost its control over the foreign relations

The economic and technical development of our time makes regulations necessary to which business organizations of different nations are subject. However, these regulations can neither be issued or enforced by private organizations. The governments, which may complain that the suggestions made in this preliminary program interfere with the sovereign rights of the governments in their own territory, have only the choice to permit an international governmental organization subject to a strict judicial review to interfere with this "sovereignty" or to permit private organizations uncontrolled and directed only by the aim of self-preservation and profit to destroy their sovereignty altogether.

2. The international private concentration did not solve any of the economic problems. We learned the effects of restriction of production, of distribution of market, and of inflexible rigid price policy. It may be true that the private international concentration overcame temporary difficulties; however, it could not solve one of the major problems.

One of the reasons is that each of these international private organizations sees only its own problems without considering the direct connections between these problems and very many other problems which are not less significant from a public point of view. Only an international political organization is able to establish a policy which keeps in mind each and every aspect of the situation. It would be a

complete failure to establish this international public organization as a bureaucratic slow-moving organization. I suggest permitting any private enterprise or consumer organization to keep contact directly with the new international economic committee. The governments which establish this committee shall be liable for the ordinary work of the committee which shall as soon as possible give all information to the public. The suggestion has been made very often to bring the private international concentration under an "international control." The French industrialist, Loucher, as a representative of the French Government in the world economic conference of 1930, and the Italian Government suggested the establishment of such an international control by the League of Nations. England and Germany were opposed to this suggestion. It is obvious why these two governments disliked the idea of an international control.

As a matter of fact "international control" does not mean anything if the direction of such "control" is not established clearly. "Control" without direction means more paper and more disappointments. We have to instruct the controlling agencies what they have to accomplish and we have to give them the power to accomplish their aims. We have to grant to each nation and to each enterprise or consumer organization in any nation the right to submit to the controlling agency all material necessary to come to a solution of a problem of scarcity or overproduction or disturbance of the balance of competition.

Finally we have to make up our minds and to establish a

machinery which is able to enforce the rights of the individuals and the nations so as to be free from want.

The first aim of the machinery suggested here is to overcome difficulties which the international private organization tried unsuccessfully to overcome up until now. The new machinery will be confronted with other problems, especially credit which is outside of the scope of this memorandum.

This memorandum as pointed out in the beginning is the first report about the program of any study on international cartels. It does not intend to be more than a basis of discussion which enables others and myself to continue as fast as possible with the work and to come to final suggestions. I will submit a second memorandum relating to the problems of conflict of law in the international concentration. It may be of interest to the committee to learn that we are building up a bibliography on international cartels and a list of all material available in any department relating to international concentrations. It is intended to open this material to all governmental agencies interested in it.

HEINRICH KRONSTEIN