

## RESEARCH PROJECT

### TO ANALYZE THE OFFENSIVE AND DEFENSIVE MEASURES USED BY AMERICAN BUSINESS TO COMBAT FOREIGN CARTELS.

The purpose of this project is to examine the various means adopted by American businessmen to meet the challenge, both at home and abroad, of foreign cartelization. The "cartel" is solidly entrenched in the economic system of almost every country of the world with the exception of the United States. Although this concept is the antithesis of the "American plan" of free competition, no attempt will be made here to formulate an economic justification for either system; rather, the existence of both will be recognized and only the problems surrounding their coexistence will be probed. Neither will we be concerned with positive U.S. governmental activities to discourage or minimize the effect of cartelization such as commodity agreements, quotas, and the military off-shore procurement program. The focus will be on the reaction of American business to foreign cartels; the role of the United States government will be discussed only to the extent that the anti-trust laws and the exceptions thereto (such as the Webb-Pomeroy, Miller-Tydings, and McGuire Acts) hamper or permit private activities intended to meet the problem. The emphasis throughout will be on the legal framework within which the American businessman must work and will discuss his successes and failures within that context. The international-political aspects of these private activities, although important, will be avoided as much as possible.

Approaching the problem of foreign cartelization by stressing the counter-devices employed by American businessmen is somewhat unique. Most studies are more concerned with the efforts of our economists and diplomats to convince foreign governments that the most successful economy is one of free competition enforced through stringent anti-trust laws. Certainly such a change-of-heart on a world-wide basis would be a panacea for the cartel-caused problems of American business. Unfortunately, however, the dream of tomorrow is not the reality of today. If the American businessman is to continue to play a dominant role in international trade he must be prepared to overcome hurdles of the type presented by the competition and restrictive practices of foreign cartels. This project will attempt to show how that problem is met today.

The strength of foreign cartels (and state trading monopolies) is most effectively felt by the exporter. As sellers they are formidable competitors; as purchasers they force individual exporters to compete among themselves to their own benefit. The key to their success is the unified front they present. In 1918 the United States Congress passed the Webb-Pomerene act to allow American firms to unite for export purposes as an offensive measure to counteract their inequality abroad. This legislation incurred strong opposition in Congress because it was thought that such combinations would affect domestic trade as well and, as a result, its provisions embody many restrictive compromises

which theoretically make it unworkable. In addition to these theoretical difficulties, Congressional investigations in the 30's disclosed many abuses in the steel, copper, and alkali industries by Webb associations. Many of these export associations were joining international cartels rather than competing with them; world markets were divided and non-member American exporters were being forced out of business. Despite these problems, there was little attempt to police or define the limits of Webb association activities prior to 1945. Then the FTC, the agency charged with these duties, began making investigations of abuses and, in 1951, the first definitive judicial interpretations of the Webb act were handed down. Now, after 36 years, although some interpretive difficulties still await judicial determination, the legal framework within which Webb associations must act is finally beginning to take shape. As an offensive measure against foreign cartels it appears that the Webb act has many weaknesses - so many, in fact, that some of its critics deem it useless. This is hotly disputed by the many export associations organized under the statute. This project will choose one of the more prominent Webb associations - the Motion Picture Export Association - and detail its successes as a counter-device against foreign cartels. That that association has been successful is undisputed; foreign governments have even found it necessary to adopt quota restrictions as a counter-measure against its activities!

In contrast to its influence abroad, the foreign cartel is rarely able to assume a commanding position on the American

market due to the diversity of resources and industry in the United States. For this reason Congress has consistently refused to authorize combinations of importers to parallel the privilege granted exporters under the Webb-Pomerene act. (In fact, the Wilson Tariff act expressly prohibits such combinations.) There are instances, however, where foreign cartels are able to dominate even the American market as is the case with raw materials such as natural rubber and tin, or finished products like cheeses and watch movements. Here the American producer finds himself confronted with serious competition on his home market. One way in which this problem is met may be seen in the reaction of the domestic watch manufacturer to the Swiss watch cartel. Over 95% of the world's watch production is in Switzerland and the industry is completely cartelized. Movements imported to the United States are assembled here, the assemblers being closely controlled in their activities by the Swiss cartel. The importer-assemblers handling jewel-lever movements sell to the same market as the three domestic manufacturers. Yet the most prominent importer-assemblers fair-trade their products under the Miller-Tydings and McGuire acts as do the domestic manufacturers. Despite a substantial cost differential between domestic and Swiss production (e.g., \$4.00 vs. \$10.50 on 17 jewel movements) which is in no way balanced by tariff duties, the prices adopted by these "fair traders" are practically indistinguishable. The conclusion thus becomes inescapable that these "competitors" do not compete. This seems somewhat unusual as the Miller-Tydings' exception to the Sherman act permits only vertical price-fixing,

horizontal price-fixing among competitors being clearly forbidden. Regardless of whether such horizontal price alignment is intentional, the effect is certainly cartelization of this segment of the watch industry.

The price similarity between the "fair-traders" of the watch industry despite cost differential might well be explained as a purely voluntary adherence by the importer-assemblers to the domestic manufacturers' "price leadership." However, it is doubtful whether absolution for the domestic manufacturers should come so easily as there is every indication that they have no desire to sell on a competitive basis. This may be seen from their reaction to the introduction of "specialty" lines in the watch industry. Despite evident consumer popularity, there has been little attempt by domestic firms to produce the "specialty" watch; instead, they rely on Swiss imports. Yet there are no patents on this development and one domestic manufacturer has shown that this automatic watch may be produced cheaply here. (That manufacturer sells a 23 jewel automatic at the same price importer-assemblers sell their 17 jewel automatic - the over 17 jewel market being exclusive to domestic manufacturers because of high duties.) Thus, it appears that the American watch manufacturer is satisfied to keep a "status quo" division of the market in this country through price alignment - unless "protective" tariffs can be raised so high as to wipe out all competition.

If, as seems apparent, the domestic manufacturer is the "price leader" in the fair-trading group, the question arises as to why the importer-assemblers "voluntarily" adhere to the scale thus set. The answer would seem to lie in the "escape

clause" of the Tariff act. The importer-assembler well knows that if he tries to compete with a domestic industry not desirous of competition, his business life-line, imports, is open to attack. All the elements of a defensive cartel are therefore present: prices are fixed through "fair trade"; an "agreement" is created by means of the tacit assumption that "escape clause" protection will be called on if prices are not adhered to; and enforcement of the "agreement" is available through the Tariff Commission. The legality of this use of the Miller-Tydings and McGuire acts is extremely doubtful, however, even though it be assumed (as it must) that the horizontal price alignment is unintentional.

There are many other arrangements through which American business has contrived to coexist with the foreign cartel such as patent and processing agreements and interlocking ownership of a subsidiary. Many of these measures eventually come under the scrutiny of the Justice Department and are condemned as a violation of the anti-trust laws. There is no perfect answer to the problem of coexistence so far but the ingenuity of private American businessmen continues to search for the answer with much greater vigor and practicality than governmental planners. Their successes and failures should be examined by all who are interested in the problem.