

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

v.

N. V. NEDERLANDSCHE COMBINATIE VOOR
CHEMISCHE INDUSTRIE

N. V. AMSTERDAMSCH E CHININEFABRIEK

N. V. NEDERLANDSCHE KININEFABRIEK

BANDOENGSCHE KININEFABRIEK HOLLAND N. V.

ACF FARMACEUTISCHE GROOTHANDEL N. V.

N. V. BUREAU VOOR DER KININEVERKOOP

"BURAMIC"

BOEHRINGER MANNHEIM G.m.b.H.

VEREINIGTE CHININFABRIKEN ZIMMER & CO.

G.m.b.H.

BUCHLER & CO.

DART INDUSTRIES INC.

VANTOREX LIMITED

LAKE & CRUICKSHANK LTD.

MEAD JOHNSON & COMPANY

SOCIETE NOGENTAISE DE PRODUITS

CHIMIQUES, S. A.

R. W. GREEFF & CO., INC.

S.S.T. CORPORATION

CHARLES L. HUISKING & COMPANY, INC.

WALKER CHEMICALS, INC.,

Defendants.

CIVIL ACTION NO.
70 Civ. 2079

FILED: May 21, 1970

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COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action against the defendants named herein and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 4 of the Act of Congress of July 2,

1890, c. 647, 26 Stat. 209 as amended, (15 U.S.C. § 4), commonly known as the Sherman Act, and under Section 74 of the Act of Congress of August 27, 1894, as amended, (15 U.S.C. § 9), commonly known as the Wilson Tariff Act, in order to prevent and restrain further violation by the defendants, as hereinafter alleged, of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2) and Section 73 of the Wilson Tariff Act (15 U.S.C. § 8), as amended.

2. Dart Industries Inc., Mead Johnson & Company, W. R. Greeff & Company, Inc., S.S.T. Corporation, Charles L. Huisking & Company, Inc., and Walker Chemicals, Inc., maintain offices, transact business and are found within the Southern District of New York. Each of the other defendants transacts business in the Southern District of New York.

II

DEFINITIONS

As used herein, the terms:

3. "Manufacturer" means persons, firms or corporations (alone or through subsidiary or affiliated persons, firms or corporations) which manufacture quinine, quinidine or other cinchona products in commercial quantities, or which have cinchona products manufactured for them on a contract basis.

4. "Importer-dealer" means persons, firms or corporations which arrange for the importation of cinchona products into the United States, either for their own account or on behalf of a manufacturer, and sell the cinchona products within the United States to processors or consumers.

III

THE DEFENDANTS

5. Each of the corporations, the limited partnership and the companies with limited liability named below are hereby made defendants herein. Each of said companies is an alien firm or corporation organized under the laws of the foreign country indicated below. During all or part of the time covered by this Complaint said defendants were manufacturers.

<u>Defendant Companies</u>	<u>Hereinafter referred to as</u>	<u>Organized in</u>
N. V. Nederlandsche Combinatie Voor Chemische Industrie	"Nedchem"	Netherlands
N. V. Amsterdamsche Chininefabriek	"Amsterdamsche"	Netherlands
N. V. Nederlandsche Kininefabriek	"Nederlandsche"	Netherlands
Bandoengsche Kininefabriek Holland N.V.	"Bandoengsche"	Netherlands
ACF Farmaceutische Groothandel N. V.	"Groothandel"	Netherlands
N. V. Bureau Voor der Kinineverkoop "Buramic"	"Buramic"	Netherlands
Boehringer Mannheim G.m.b.H.	"Boehringer"	Federal Republic of Germany
Vereinigde Chininfabriken Zimmer & Co. G.m.b.H.	"Zimmer"	Federal Republic of Germany
Buchler & Co.	"Buchler"	Federal Republic of Germany
Lake & Cruickshank Ltd.	"L&C"	United Kingdom
Societe Nogentaise de Produits Chimiques, S.A.	"S.N.P.C."	France

6. Dart Industries Inc. (hereinafter referred to as "Dart"), Mead Johnson & Company (hereinafter referred to as

"Mead Johnson") and Vantorex Limited (hereinafter referred to as "Vantorex") are hereby made defendants herein. Dart, which is incorporated under the laws of the State of Delaware and has its principal offices in the State of California and changed its corporate name from Rexall Drug and Chemical Company in 1969, is the parent company of Vantorex, a wholly owned subsidiary organized and existing in the United Kingdom, and through Vantorex, of Carnegies of Welwyn, Ltd. (hereinafter referred to as "Carnegies"), which was wholly owned by Vantorex. Carnegies was a manufacturer; it is no longer in business. Mead Johnson is a corporation organized and existing for the purpose of this and other litigation under the laws of Indiana and has its principal offices in that State. Mead Johnson is the parent company of S.N.P.C., its wholly owned subsidiary, which was a manufacturer until 1967. On or about December 22, 1967, Mead Johnson was merged with and into Bristol-Myers Company, a Delaware corporation, and Mead Johnson was dissolved. On or about the same date, a corporation of the same name as Mead Johnson was organized and is in existence under the laws of Delaware as a subsidiary of Bristol-Myers Company. Within the period covered by this Complaint each of these companies possessed and exercised control of the affairs of said subsidiaries and each had knowledge of the actions performed by such subsidiaries in furtherance of the offense alleged herein.

7. Each of the corporations named below is hereby made a defendant herein. Each of said corporations is organized and existing under the laws of the state indicated below, and has its principal place of business in the state

indicated below. During all or part of the time covered by this Complaint said defendants were importer-dealers.

<u>Defendant Companies</u>	<u>Organized in</u>	<u>Principal Place of Business in</u>
R. W. Greeff & Co., Inc. (hereinafter referred to as "Greeff")	New York	New York
S.S.T. Corporation (hereinafter referred to as "S.S.T.")	New York	New York
Walker Chemicals, Inc. (hereinafter referred to as "Walker")	New York	New York
Charles L. Huisking & Company, Inc. (hereinafter referred to as "Huisking")	Delaware	New York

8. The acts alleged in this Complaint to have been done by defendant firms or corporations were authorized, ordered or done by their officers, directors, agents, employer or representatives while actively engaged in the management, direction or control of the affairs of the defendant firms or corporations.

IV

CO-CONSPIRATORS

9. Various corporations, firms and individuals not made defendants in this Complaint participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof.

V

TRADE AND COMMERCE

10. Quinine is an alkaloid extracted from the bark of the cinchona tree and then combined with acids to form a variety of salts used for medicinal purposes, including

the treatment and prevention of malaria, as a muscle relaxant, and as a cold remedy. It is also an important ingredient in tonic water and has found applications in the optical and other non-pharmaceutical industries. Cinchona trees, native to parts of South America, are also cultivated in other areas of the world, primarily the Congo, Indonesia, India and Guatemala.

11. Quinidine is found in small quantities in the bark of some species of cinchona trees. For commercial purposes, however, most quinidine is synthesized by the isomerisation of quinine. Quinidine is widely used and important in the treatment of cardiac arrhythmia and other heart disorders. It is taken in the United States by about a quarter of a million people at varying intervals. In 1966, there were approximately 1.9 million new and refill prescriptions for quinidine in the United States.

12. There are no facilities in the United States for the commercial extraction of quinine, quinidine or other cinchona products from cinchona bark, and only one firm in the United States (not a defendant or co-conspirator herein) is capable of producing synthetic quinidine in commercial quantities. Consequently, all the quinine and almost all the quinidine consumed in the United States is imported from abroad.

13. United States importer-dealers import bulk cinchona products in powdered or crystalline form for resale principally to pharmaceutical manufacturers who tablet and package the drugs and distribute them to hospitals, retail drug stores, and institutional purchasers, including agencies of the United States Government. In the

past ten years imports of cinchona products into the United States have ranged from a high of almost 3.8 million ounces valued at \$11.0 million in 1966 to lows of about 2.3 million ounces valued at \$1 million in 1958 and 1960 and \$4 million in 1967.

VI

BACKGROUND

14. Price-fixing, monopolization and other restrictive business activities have been common in the international quinine trade since at least the turn of the century. In 1913 the first formal "Quinine Convention" was signed by most of the world's quinine manufacturers and producers of cinchona bark, including several of the defendants and co-conspirators herein. This "Convention," administered by an organization called "The Kina Bureau" in Amsterdam, The Netherlands, actively monopolized the world quinine market until World War II. "The Kina Bureau" is the predecessor to defendant Buramic.

15. On March 29, 1928, the United States filed in this Court a civil antitrust suit (United States v. N. V. Amsterdamsche Chininefabriek, et al., Equity No. 44,374, March 29, 1928, S.D.N.Y.) against the members of the "Convention" (including, in addition to the Kina Bureau, Nedchem, Amsterdamsche, Nederlandsche, Bandoengsche, Boehringer, Zimmer, Buchler and Greeff, all defendants herein, and several officers and directors of these firms) alleging antitrust violations similar in nature to those alleged in this Complaint.

16. On March 30, 1928 a grand jury of this Court returned an indictment (United States v. N. V. Amsterdamsche Chininefabriek, et al., Criminal No. 54-546, March 30, 1928, S.D.N.Y.) against all of the defendants named in the

above-described civil suit, charging criminal violations of the federal antitrust laws.

17. On April 23, 1928, the United States filed in this Court a Libel of Information (United States v. 383,340 Ounces of Quinine Derivatives, Admiralty No. 98-242, April 23, 1928, S.D.N.Y.) and seized a quantity of cinchona products imported into the United States from The Netherlands by defendant Greeff, allegedly in violation of the United States Antitrust laws.

18. Most of the alien defendants did not appear to defend the 1928 charges, but on September 20, 1928, a Final Decree was entered by this Court in the civil action described above, with the consent of the plaintiff United States and, among others, Amsterdamsche, Nederlandsche, Bandoengsche and Greeff. Subsequently the indictment was nolle prossed and the Libel was dismissed by the United States.

VII

OFFENSES CHARGED

19. Beginning in or about the Fall of 1958 and continuing until at least the Summer of 1966, the exact dates being to the plaintiff unknown, the defendants and co-conspirators engaged in an unlawful combination and conspiracy to restrain and to monopolize the aforesaid foreign and interstate trade and commerce in violation of Sections 1 and 2 of the Act of Congress of July 2, 1890, as amended, 26 Stat. 209 (15 U.S.C. §§ 1 and 2) commonly known as the Sherman Act, and in violation of Section 73 of the Act of Congress of August 27, 1894, as amended (15 U.S.C. § 8), commonly known as the Wilson Tariff Act. Plaintiff

has reasonable cause to believe that defendants will continue or renew said offenses unless the relief hereinafter prayed for is granted.

20. The substantial terms of the aforesaid unlawful conspiracy to restrain and to monopolize the aforesaid foreign and interstate trade and commerce were:

- (a) To fix, stabilize and raise the bulk prices of quinine, quinidine and other cinchona products;
- (b) To fix resale prices of bulk quinine, quinidine and other cinchona products;
- (c) To allocate territorial markets for the sale of quinine, quinidine and other cinchona products;
- (d) To establish quotas for the sale of quinine, quinidine and other cinchona products;
- (e) To allow only Nedchem (and its affiliated companies), Boehringer and Buchler to manufacture synthetic quinidine;
- (f) To eliminate other producers of quinine, quinidine and other cinchona products, in part by utilizing selective price cuts;
- (g) To allocate, divide and share purchases of cinchona bark;
- (h) To rig the market for the sale of the United States government's stockpile of cinchona products by temporarily maintaining the prices for such products at fixed levels, and designating Nedchem to purchase the stockpile on

behalf of defendant manufacturers;

21. For the purpose of formulating and effectuating the aforesaid violations the defendants and co-conspirators have done those things which, as hereinbefore alleged, they conspired and agreed to do.

VIII

EFFECTS

22. The aforesaid violations have had the following effects, among others:

- (a) Prices of cinchona products in the United States were raised, fixed, and maintained at artificial and noncompetitive levels;
- (b) Competition among importer-dealers in the sale of cinchona products in the United States has been restrained and suppressed;
- (c) Competition between defendant manufacturers in the sale of cinchona products for the United States market has been restrained and suppressed;
- (d) Purchasers of cinchona products in both bulk and dosage forms in the United States have been deprived of the benefits of competition and have been compelled to pay noncompetitive prices for cinchona products;
- (e) Competition in the purchase of cinchona products from the United States government has been restrained and suppressed;
- (f) Potential competitors in the purchase of cinchona products from the United States

government and/or in the sale of such products in the United States have been excluded from said markets.

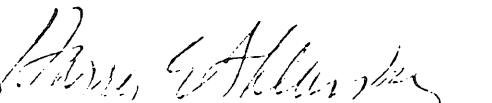
PRAYER

WHEREFORE, the plaintiff prays:

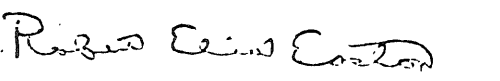
1. That the Court adjudge and decree that the defendants have engaged in an unlawful combination and conspiracy to restrain and to monopolize the aforesaid trade and commerce in violation of Sections 1 and 2 of the Sherman Act and Section 73 of the Wilson Tariff Act;
2. That each of the defendants named in this complaint, its successors, assignees, and transferees, and the respective officers, directors, agents and employees thereof, and all persons acting or claiming to act on behalf thereof, be enjoined from continuing, maintaining or renewing, directly or indirectly, the violations hereinbefore alleged, or from engaging in any other practice, plan, program, or device having a similar effect;
3. That each of the defendant manufacturers be enjoined from dealing with any customer agent in the United States on an exclusive basis and that each of the defendant importer-dealers be enjoined from acting as exclusive agent or customer for any defendant manufacturer, and that all financially responsible customers be allowed to purchase cinchona products on equal terms.
4. That the plaintiff recover the costs of this suit;

5. That the plaintiff have such other and further relief as the Court may deem just and proper.


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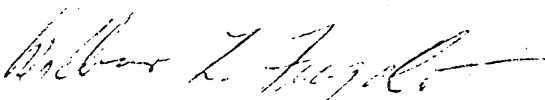

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