
U. S. vs. ALLIED CHEMICAL & DYE CORPORATION.

IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

Civil Action No. 14-320.

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

ALLIED CHEMICAL & DYE CORPORATION; THE BARRETT
COMPANY; SEMET-SOLVAY COMPANY; THE SOLVAY
PROCESS COMPANY; E. I. DU PONT DE NEMOURS &
COMPANY; HENRY FRANCIS ATHERTON; ELTON WATER-
BURY CLARK; FRED JOSEPH EMMERICH; JOSEPH NORTH
FORD; SIDNEY BURRITT HASKELL; WILLIAM CLARK
KING; ROBERT VINCENT MAHON; FRANCIS HUGER
MCADOO; WILLIAM NICOL MCILRAVY; FRED T. TECHTER;
CHARLES GILMAN TUFTS; CHARLES FRANK WEBER;
WALTER DANNENBAUM; E. A. HEDIN; R. W. MCCLEL-
LAN; FRED A. WARDENBURG; LEIGH WILLARD;

DEFENDANTS.

FINAL JUDGMENT

The complainant, United States of America, having
filed its complaint herein on May 29th; all the defend-

ants having appeared and severally filed their answers to such complaint denying the substantive allegations thereof; all parties hereto by their respective attorneys herein having severally consented to the entry of this final decree herein without trial or adjudication of any issue of fact or law herein and without admission by any party in respect of any such issue; and the complainant having moved the Court for this decree;

Now, therefore, before any testimony has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon consent of all parties hereto, it is hereby

Ordered, adjudged, and decreed as follows:

I

That the Court has jurisdiction of the subject-matter and of all the parties hereto; that the complaint states a cause of action against the defendants under the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies" and the acts amendatory thereof and supplemental thereto.

II

The term "Synthetic Ammonia Solution," as used herein, shall mean solutions for agricultural use made by dissolving any Nitrogen compound in synthetic Aqua Ammonia.

III

(A) Each of the defendants Allied Chemical & Dye Corporation, The Barrett Company, Semet-Solvay Company and The Solvay Process Company, and its successors, subsidiaries, officers and employees, or any of them be and they hereby are enjoined and restrained from agreeing, combining, or conspiring with (B) Chilean Nitrate Sales Corporation and its successors, subsidiaries, officers and employees, or any of them, or with (C) any other producer or distributor of Nitrate

of Soda, Ammonium Sulphate, Cal-Nitro or Synthetic Ammonia Solutions (other than the corporations and persons referred to in Paragraph III (A) above or a producer or distributor when acting (1) in the capacity of agent or reseller in the distribution of the product of any corporation or person referred to in said Paragraph III (A) or (2) in connection with a prospective sale to be made in the distribution of such product or (3) as a purchaser or prospective purchaser thereof for consumption) :

1. To fix, determine, maintain or adhere to prices to be charged in the sale of Nitrate of Soda by them to others;

2. To fix, determine, maintain or adhere to prices to be charged in the sale of Nitrate of Soda by them to others in terms of the relationship of such prices to the prices of other Nitrogen products;

3. To fix, determine, maintain or adhere to prices to be charged in the sale of Nitrate of Soda by them to others in terms of Unit Nitrogen or Unit Ammonia prices;

4. To fix, determine, maintain, or adhere to the terms or conditions for the sale of Nitrate of Soda by them to others, the discounts or the commissions to be allowed thereon or the freight or trucking allowances in such sale or freight differentials as between different purchasers in such sale or the charges to be made for bagging, storage, handling or reconditioning in such sale;

5. To quote prices in the sale of Nitrate of Soda by them to others only on the basis of f. o. b. certain ports or to select the ports which will be used for the purpose of such quotations by them to others;

6. To establish or designate the territories within which sales of Nitrate of Soda shall be made by them to others or the type of contract to be used in designated areas in such sale;

7. To prevent or restrain shipment or sale to, into, or from the United States and its territories and possessions of Nitrate of Soda, except in connection with the prosecution of any legal proceedings against importation or exportation for violation of the law of the United States;

8. To exchange information as to prices to be charged for Nitrate of Soda sold by them to others other than where such information is published to the general trade;

9. To exchange information as to production, sales, shipments, inventories, future imports of Nitrate of Soda, or private figures as to importation or exportation of Nitrate of Soda, other than where such information is published to the general trade;

10. To fix and determine the kind and amount of Nitrate of Soda to be sold by them to others;

11. To establish or designate classifications of purchasers of Nitrate of Soda or to classify such purchasers or to designate particular purchasers thereof as belonging to or not belonging to any specified class.

IV

Allied Chemical & Dye Corporation, The Barrett Company, Semet-Solvay Company, and The Solvay Process Company, their successors, subsidiaries, officers and employees, be and they hereby are enjoined and restrained (with respect to corporations or persons other than those referred to above) from:

(1) Refusing, when selling Nitrate of Soda by any method or on any basis to any purchaser located in the continental United States to permit said purchaser to elect to purchase said Nitrate of Soda f. o. b. cars point of production in carload lots at the seller's price, terms and conditions f. o. b. cars point of production, and if Atlantic or Gulf ports are being used as a basis of

quotation by the seller, then also to permit said purchaser to elect to purchase said Nitrate of Soda in carload lots f. o. b. cars any Atlantic or Gulf port that is then being used as a basis of quotation by the seller so long as Nitrate of Soda of the seller is available at such port for delivery to said purchaser at the seller's price, terms and conditions f. o. b. cars said port.

(2) Agreeing with any mixed fertilizer manufacturer or dealer in or by any agency or resale-price-maintenance contract or agreement to fix, determine, maintain, or adhere to prices to be charged in the sale of Nitrate of Soda by such mixed fertilizer manufacturer or dealer, acting as principal or agent, to others.

The operative date of subparagraph (1) shall be August 1, 1941.

The operative date of subparagraph (2) shall be July 1, 1943, but said operative date shall be subject to acceleration or postponement as hereinafter provided.

The Attorney General of the United States or the Assistant Attorney General in charge of the Antitrust Division may accelerate the operative date of subparagraph (2) above by serving upon said corporate defendants a certified copy of a final decree or judgment of a court of competent jurisdiction, not subject to further review, restraining, as violative of the Antitrust laws, the individual operation by any corporation or person of a producer-agency method of selling any product, substantially similar in legal effect to that employed by defendants for selling Nitrate of Soda, and in such case the operative date of subparagraph (2) above shall be the 1st of July next following service as aforesaid, *provided, however,* that, if any defendant herein shall be of opinion that the restraints and/or requirements imposed by the decree or judgment served as aforesaid are not substantially identical with those imposed herein or that the producer-agency method of sale restrained thereby is not substantially similar in legal effect to said defendant's

producer-agency method of sale, as of the date of such service, said defendant shall apply to the Court within twenty (20) days after receipt of a certified copy of said judgment or decree for determination of that question, and, in such event, the operative date of subparagraph (2) above shall not be accelerated until the Court shall have determined that such restraints and requirements are substantially identical with those imposed herein and that the prohibited producer-agency method of sale is substantially similar in legal effect to that then operated by said defendant.

The Attorney General of the United States or the Assistant Attorney General in Charge of the Antitrust Division may at any time prior to the operative date of subparagraph (2) above postpone such operative date by filing with the Court a written statement to the effect that the continuation of abnormal economic conditions in the Nitrogen industry and the continued use by any other producer or supplier of Nitrate of Soda of an agency method of distributing Nitrate of Soda makes it advisable that the operative date of said subparagraph (2) be postponed and any of said defendants may at any time prior to the operative date of subparagraph (2) above file with the Attorney General of the United States or the Assistant Attorney General in Charge of the Antitrust Division a statement requesting such postponement.

V

A. The defendant, The Barrett Company and its successors, subsidiaries, officers and employees, or any of them, be and they hereby are enjoined and restrained from:

1. Entering into any contract or arrangement for the sale of Ammonium Sulphate, through The Barrett Company as agent, whereby the producer thereof is required to sell its Ammonium Sulphate through The Barrett Company or any one of the defendant companies referred to in Paragraph III (A) of this decree as its exclusive agent.

2. Selling Ammonium Sulphate in an fertilizer year, as agent or reseller, for consumption in the United States, its territories and possessions, in any amount in excess of 35% of the total production of Ammonium Sulphate in the United States, its territories and possessions plus imports of Ammonium Sulphate thereinto minus exports therefrom during said fertilizer year.

3. Agreeing, combining, or conspiring with any producer of Ammonium Sulphate, Nitrate of Soda, Synthetic Ammonia Solutions of Cal-Nitro (other than corporations referred to in paragraph III (A) of this decree or a producer of Ammonium Sulphate when acting in the capacity of (1) a principal or prospective principal of The Barrett Company with respect to Ammonium Sulphate, and/or (2) a vendor or prospective vendor of Ammonium Sulphate to The Barrett Company):

(a) To fix, determine, maintain, or adhere to prices to be charged in the sale of Ammonium Sulphate by them to others;

(b) To fix, determine, maintain, or adhere to prices to be charged in the sale of Ammonium Sulphate by them to others in terms of the relationship of such prices to the prices of other Nitrogen products;

(c) To fix, determine, maintain, or adhere to prices to be charged in the sale of Ammonium Sulphate by them to others in terms of unit Nitrogen or unit Ammonia prices;

(d) To prevent or restrain shipment or sale to, into, or from the United States and its territories and possessions of Ammonium Sulphate, except in connection with the prosecution of any legal proceedings against importation or exportation for violation of the law of the United States.

4. Purchasing Ammonium Sulphate from any producer thereof under a contract or arrangement designed and intended by The Barrett Company not for the bona fide purpose of sale or resale but solely to keep Ammonium Sulphate off the market.

5. Reducing the price of Ammonium Sulphate sold on behalf of any producer-principal not in response to market conditions or to meet competition but in order to discourage the production of Ammonium Sulphate by such producer.

6. Discriminating in price in the sale of Ammonium Sulphate to bona fide cooperatives by refusing to give them quantity or seasonal discounts given to other fertilizer manufacturers on the basis of the amount of Ammonium Sulphate bought and delivered under similar terms and conditions.

B. The operative date of subparagraph 2 shall be July 1, 1945, but said operative date shall be subject to postponement as hereinafter provided.

The Attorney General of the United States or the Assistant Attorney General in Charge of the Antitrust Division may at any time prior to said operative date postpone the same by filing with the court a written statement to the effect that the continuation of abnormal conditions in the Nitrogen industry makes it advisable that said operative date be postponed.

C. For the purposes of this decree, the following terms shall be defined as hereinafter stated:

1. "Fertilizer year" shall mean the period from July 1, in any year to and including June 30 of the following year.

2. "Total United States production of Ammonium Sulphate" during any fertilizer year shall mean such production for the calendar year ending within said fertilizer year as determined on the basis of (a) reports or records of the United States Bureau of Mines with respect to by-product Am-

monium Sulphate production, and (b) estimates by The Barrett Company of Synthetic Ammonium Sulphate production, and reported to the Attorney General. In the event that the Attorney General disputes production figures thus reported, or import or export figures reported under Paragraphs V C (3) or V C (4) he may apply to the Court by supplemental proceeding hereunder for an ascertainment of the true production of any such producer, or the true imports and exports as defined in Paragraphs V C (3) and V C (4), and any determination by the Court thereupon shall be binding upon said defendant. The Barrett Company and the Attorney General may apply to the Court from time to time for any modification of the source of the figures to be used in determining percentages under this Paragraph V of this Decree.

3. "Imports of Ammonium Sulphate" during any fertilizer year shall mean total imports of Ammonium Sulphate into the United States, its territories and possessions for the calendar year ending within said fertilizer year, and reported to the Attorney General.

4. "Exports of Ammonium Sulphate" during any fertilizer year shall mean total exports of Ammonium Sulphate from the United States, its territories and possessions for the calendar year ending within said fertilizer year, and reported to the Attorney General.

D. In the event that, following the operative date of Paragraph V A (2) hereof, The Barrett Company in any fertilizer year sells as agent and/or purchases for resale more than the quantity specified in said Paragraph V A (2) said excess shall be deducted from the amount available to The Barrett Company for sale as agent and/or purchase for resale during the following fertilizer year.

VI

A. E. I. du Pont de Nemours & Company, its successors,

subsidiaries, officers and employees and each of them are hereinafter in this Paragraph referred to as "DuPont." Allied Chemical & Dye Corporation, The Solvay Process Company, and The Barrett Company, and their successors, subsidiaries, officers and employees and each of them are hereinafter in this Paragraph referred to as "Allied."

B. DuPont and Allied be and they hereby are enjoined and restrained (except within each constituent group of corporations and persons above referred to) from agreeing, combining or conspiring each with the other or with any other producer of Synthetic Ammonia Solutions, Anhydrous Ammonia, Uramon, Nitrate of Soda or Ammonium Sulphate:

1. To fix, determine, maintain or adhere to prices to be charged in the sale of Synthetic Ammonia Solutions, Uramon or Anhydrous Ammonia by them to others;

2. To fix, determine, maintain or adhere to prices to be charged in the sale of Synthetic Ammonia Solutions, Uramon or Anhydrous Ammonia by them to others in terms of the relationship of such prices to the prices of Nitrate of Soda or Ammonium Sulphate;

3. To fix, determine, maintain or adhere to prices to be charged in the sale of Synthetic Ammonia Solutions, Uramon or Anhydrous Ammonia by them to others in terms of unit Nitrogen or unit Ammonia prices;

4. To fix, determine, maintain, or adhere to terms or conditions for the sale of Synthetic Ammonia Solutions, Uramon or Anhydrous Ammonia by them to others or the freight allowances in such sale or freight differentials as between different purchasers in such sale;

5. To prevent or restrain shipment or sale to, into or from the United States and its territories and possessions of Synthetic Ammonia Solutions, Uramon or Anhydrous Ammonia except in connection with the prosecution of any legal pro-

ceedings against importation or exportation for violation of the law of the United States;

C. DuPont and Allied be and they hereby are enjoined and restrained (except within each constituent group of corporations and persons referred to in Paragraph VI (A)) from agreeing, combining, or conspiring each with the other:

1. To discourage producers of Synthetic Ammonia Solutions from increasing their capacity to produce such solutions by fixing, determining, maintaining or adhering to prices to be paid by either of them to other producers of Synthetic Ammonia Solutions in the purchase thereof, or the prices to be charged by them to others under exclusive sales agency agreements with other producers of Synthetic Ammonia Solutions.

2. To sell Anhydrous Ammonia at a lower price to particular purchasers than is offered by the seller to other purchasers on similar conditions, upon the agreement of the particular purchaser to refrain from manufacturing Anhydrous Ammonia.

D. DuPont and Allied be and they hereby are enjoined and restrained (except within each constituent group of corporations and persons referred to in Paragraph VI (A)) from refusing, when selling Synthetic Ammonia Solutions by any method or on any basis to any purchaser located in the continental United States, to permit said purchaser to elect to purchase said Synthetic Ammonia Solutions f. o. b. cars point of production in carload lots at the seller's price, terms and conditions f. o. b. cars point of production.

VII

For the purpose of securing compliance with this decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or an Assistant Attorney General and on reasonable notice to the defend-

ants made to the principal office of the defendants, be permitted, subject to any legally recognized privilege, (1) access, during the office hours of the defendants, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendants, relating to any matters contained in this decree, (2) subject to the reasonable convenience of the defendants and without restraint or interference from them, to interview officers or employees of the defendants, who may have counsel present, regarding any such matters, and (3) the defendants, on such request, shall submit such reports in respect of any such matters as may from time to time be reasonably necessary for the proper enforcement of this decree; *provided, however,* that information obtained by the means permitted in this paragraph shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice except in the course of legal proceedings for the purpose of securing compliance with this decree in which the United States is a party or as otherwise required by law.

VIII

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this decree to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this decree, for the modification or termination of any of the provisions thereof notwithstanding the administrative procedures set up in this decree, for the enforcement of compliance therewith and for the punishment of violations thereof.

IX

Nothing in this decree shall be construed to restrict or prohibit in any way any action taken by any defendant, its successors, subsidiaries, officers or employees in good faith and within the fair intendment of the letter of

the Attorney General of the United States to the General Counsel of the Office of Production Management, dated April 29, 1941 (a copy of which is attached hereto as Exhibit "A"),¹ or with any amendment or amplification thereof by the Attorney General, or in accordance with any arrangement of similar character between the Attorney General and any National Defense Agency in effect at the time, provided such letter or arrangement has not at the time of such action been withdrawn or cancelled with respect thereto.

X

This decree shall have no effect with respect to operations or activities outside the United States, its territories and the District of Columbia not violative of the Antitrust Laws or to operations and activities within the United States, its territories and the District of Columbia relating exclusively to acts and operations outside the United States, its territories and the District of Columbia not violative of the Antitrust Laws, or to operations and activities, wherever performed, authorized or permitted by the Act of Congress of April 10, 1918, commonly called the Webb-Pomerene Act, or by acts amendatory thereto.

Dated May 29, 1941.

Approved,

HENRY W. GODDARD,
United States District Judge.

1. For Exhibit "A" See Page 3304.

EXHIBIT "A"

APRIL 29, 1941

JOHN LORD O'BRIAN, ESQUIRE,
*General Counsel, Office of Production Management,
Washington, D. C.*

DEAR JOHN: The marshaling of the nation's industrial assets for a maximum productive effort in the national defense will doubtless require the allocation of orders, the curtailment of some kinds of production so as to increase production in defense fields, and the establishment of priorities and price ceilings. Furthermore, many of these steps must necessarily affect the production of goods used to satisfy our normal needs, as well as the production of materials and implements used directly in our defense effort.

Some of these acts if accomplished by private contract or arrangement within an industry and carried on for private advantage would probably constitute violations of the anti-trust laws. On the other hand, it is obvious that in the present emergency acts performed by industry under the direction of public authority, and designed to promote public interest and not to achieve private ends, do not constitute violations of the antitrust laws. In these circumstances, the Department of Justice recognizes that business interests which are asked to comply with public plans for increasing production and preventing inflation are entitled to the cooperation of agencies of the Government in eliminating any uncertainties which may exist as to the application of the antitrust laws to their activities.

Accordingly, this Department has formulated a policy which it proposes to follow in its relations with the Office of Production Management and the Office of Price Administration and Civilian Supply and with all industries or contractors acting in compliance with the orders or request of either of these organizations. The important points of this policy are:

Meetings of the industry with the Office of Production Management and the Office of Price Administration and Civilian Supply or their representatives are not illegal. In-

dustrial committees may be formed at the request of the Office of Production Management or the Office of Price Administration and Civilian Supply, to work with representatives of such offices on problems involving defense. There will be nothing unlawful in the industry cooperating in the selection of its representatives or in selecting members for committees, or in the activities of such committees provided they are kept within the scope of this letter.

Questions as to whether there is need for such a committee, and if so, how it shall be chosen, and by whom constituted, shall be the sole responsibility of the Office of Production Management or the Office of Price Administration and Civilian Supply. This Department will not participate in these decisions beyond the suggestion now made that any such committee should be generally representative of the entire industry and satisfactory to the Office of Production Management or the Office of Price Administration and Civilian Supply.

Each industry committee shall confine itself to collecting and analyzing information and making recommendations to the Office of Production Management or the Office of Price Administration and Civilian Supply, and shall not undertake to determine policies for the industry, nor shall it attempt to compel or to coerce any one to comply with any request or order made by a public authority.

All requests for action on the part of any unit of an industry shall be made to such unit by the Office of Production Management or the Office of Price Administration and Civilian Supply and not by the industry committee. That is to say, the function of determining what steps should be taken in the public interest should in each case be exercised by the public authority which may seek the individual or collective advice of the industry. But the determination shall not be made by the industry itself or by its representatives.

Requests for action within a given field, such as the field of allocation of orders, shall be made only after the general character of the action has been cleared with the Department of Justice. If the general plan is approved, thereafter each request for specific action in carrying out such plan shall be

made in writing and shall be approved by the Office of the General Counsel of the Office of Production Management or the office of the General Counsel of the Office of Price Administration and Civilian Supply, but need not be submitted to the Department of Justice. In the case of any change in the personnel of such offices or if serious practical difficulties arise, this latter arrangement may be revoked upon notice from me.

Acts done in compliance with the specific requests made by the Office of Production Management or the Office of Price Administration and Civilian Supply and approved by their General Counsel in accordance with the procedure described in this letter will not be viewed by the Department of Justice as constituting a violation of the antitrust laws and no prosecutions will be instituted for acts performed in good faith and within the fair intendment of instructions given by the Office of Production Management or the Office of Price Administration and Civilian Supply pursuant to this procedure.

In the case of all plans or procedure, however, the Department reserves complete freedom to institute civil actions to enjoin the continuing of acts or practices found not to be in the public interest and persisted in after notice to desist.

With kind personal regards,

Sincerely,

(S) ROBERT H. JACKSON,

Attorney General.