

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

R. P. OLDHAM COMPANY,  
WINTER WOLFF & CO., INC.,  
THOS. D. STEVENSON & SONS, INC.,  
BALFOUR, GUTHRIE & CO., LIMITED,  
JOHN P. HERBER & COMPANY, INC.,  
KINOSHITA AND CO., LTD., U.S.A.  
THE NISSHO CALIFORNIA CORPORATION,  
MITSUBISHI INTERNATIONAL CORPORATION,  
ATAKA NEW YORK, INC.,  
SUMITOMO SHOJI KAISHA, LTD.,  
DAIICHI BUSSAN KAISHA, LTD., and  
MITSUI BUSSAN KAISHA, LTD.,  
Defendants.

CIVIL ACTION NO. 36385

Filed: September 14, 1959

FINAL JUDGMENT

The Plaintiff, United States of America, having filed its complaint herein on April 25, 1957, and the defendants signatory hereto having appeared through their respective attorneys herein and having filed their answers denying the substantive allegations of the complaint; the parties signatory hereto through their respective attorneys having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without any admission by any party hereto with respect to any such issue;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and upon the consent of the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED, as follows:

This Court has jurisdiction of the subject matter of this action and of the parties signatory hereto. The complaint states claims for relief against the defendants signatory hereto under Section 1 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, entitled

"An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended, and under Section 73 of the Act of Congress of August 27, 1894, c. 349, 28 Stat. 509, as amended, entitled "An Act To reduce taxation, to provide revenue for the Government and for other purposes," commonly known as the Wilson Tariff Act.

## II

As used herein:

- (A) "Japanese wire nails" means bright common nails, bright smooth box nails, bright casing nails, and bright finishing nails manufactured in Japan by Japanese nail-makers;
- (B) "Person" means an individual, partnership, firm, association, corporation, or any other legal entity;
- (C) "Importers" means persons engaged in the business of purchasing or acquiring nails from Japanese nail-makers or exporters for resale to wholesalers located on the West Coast of the United States; a Japanese exporter who is engaged in the activity of selling nails in the United States directly to such wholesalers is an importer with respect to such sales;
- (D) "Japanese exporters" means persons and their agents, subsidiaries or affiliates in the United States, who arrange for the export of Japanese wire nails to importers;
- (E) "Japanese rod-makers" means steel mills located in Japan which manufacture wire rod from which Japanese wire nails are made;
- (F) "Japanese nail-makers" means nail manufacturers located in Japan who manufacture wire nails from wire rod purchased from Japanese rod-makers;
- (G) "Defendant importers" means defendants R. P. Oldham

Company, Winter Wolff & Co., Inc., Thos. D.

Stevenson & Sons, Inc., Balfour Guthrie & Co.,

Limited, and John P. Herber & Company, Inc.;

- (H) "Defendant exporters" means Kinoshita and Co., Ltd., U.S.A., the Nissho California Corporation, Mitsubishi International Corporation, Ataka New York, Inc., Sumitomo Shoji Kaisha, Ltd., Daiichi Bussan Kaisha, Ltd., and Mitsui Bussan Kaisha, Ltd.

### III

The provisions of this Final Judgment applicable to the defendants shall apply to the defendants signatory hereto and to their successors, assigns, affiliates, subsidiaries, officers, directors, servants, employees, and agents, and to all persons in active concert or participation with such a defendant who receive actual notice of this Final Judgment by personal service or otherwise.

### IV

Each defendant exporter signatory hereto is enjoined and restrained from directly or indirectly entering into, adhering to or claiming any rights under any agreement or understanding, or in concert with any other person maintaining any plan or program:

- (A) To allocate sales territories in the United States among importers with respect to Japanese wire nails;
- (B) To fix, establish or stabilize prices at which importers sell Japanese wire nails in the United States;
- (C) To select or designate what person or persons should be permitted to act as an importer or as importers.

For the purpose of this Section IV only, a defendant exporter and its parent Japanese corporation, or a defendant exporter and any Japanese business firm affiliated with it for whom it regularly acts as agent or representative in the sale and distribution of Japanese wire nails in the United States shall be deemed to be a single person,

provided that nothing contained in this paragraph shall make a defendant exporter liable for any separate act of such Japanese parent or affiliated business firm.

V

Each defendant exporter signatory hereto is enjoined and restrained from:

- (A) Entering into, participating in or enforcing any contract, agreement or understanding with any importer:
  - (1) To select or determine what importers should be permitted or not permitted to buy Japanese wire nails;
  - (2) to select or determine what exporters in Japan should be permitted or not permitted to sell Japanese wire nails to importers;
  - (3) to hinder, restrict, limit or prevent any importer from buying or selling Japanese wire nails;
  - (4) to determine or fix the amount of Japanese wire nails to be sold in the United States;
  - (5) to fix, establish or stabilize prices at which any other importer buys Japanese wire nails;
- (B) Discriminating in the sale of Japanese wire nails in favor of defendant importers against other importers by making available to the former quantities, prices or terms and conditions of sale not available to the latter.
- (C) For the purpose of furthering, directly or indirectly, any agreement or understanding prohibited by Section IV or by subsection V(A) of this Final Judgment:
  - (1) Refusing to sell Japanese wire nails, to the extent they are available, to any importer financially able to purchase such nails; and
  - (2) Discriminating in the sale or in the terms and

conditions of sale of Japanese wire nails among  
importers.

## VI

Each defendant importer signatory hereto is enjoined and restrained from entering into, adhering to, maintaining or furthering directly or indirectly, or claiming any rights under, any agreement, understanding, plan, program or common course of action among themselves or with any other person:

- (A) To select or determine what persons should buy or distribute Japanese wire nails in the United States;
- (B) To hinder, restrict, limit or prevent any person from buying or selling Japanese wire nails in the United States;
- (C) To allocate sales territories in the United States with respect to Japanese wire nails;
- (D) To fix, establish or stabilize prices at which importers buy Japanese wire nails;
- (E) To fix, establish or stabilize prices at which importers sell Japanese wire nails; and
- (F) To determine or fix the amount of Japanese wire nails to be sold in the United States or in any sales territory in the United States.

## VII

Each defendant importer signatory hereto is enjoined and restrained from:

- (A) Urging or suggesting, directly or indirectly, to any Japanese rod-maker, Japanese nail-maker, or Japanese exporter that such rod-maker, nail-maker or exporter refuse to sell wire rods or wire nails to any person or group of persons in the United States;
- (B) Accepting any exclusive or semi-exclusive agency or

other exclusive or semi-exclusive arrangement for the purchase or sale of Japanese wire nails; and

- (C) Purchasing any Japanese wire nails from any defendant exporter, knowing that such exporter is not complying with subsection B of Section V hereof.

#### VIII

Within 30 days after the entry of this Final Judgment, defendant Kinoshita and Co., Ltd., U.S.A. shall mail a copy thereof to each of the persons listed in Appendix I hereto.

#### IX

For the purpose of securing compliance with this Final Judgment duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal office, be permitted, subject to any legally recognized privilege:

- (A) Access, during office hours of defendants, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants relating to any matters contained in this Final Judgment.
- (B) Subject to the reasonable convenience of defendants and without restraint or interference from defendants, to interview officers or employees of defendants, who may have counsel present, regarding any such matters.

Upon such written request, defendants shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment.

No information obtained by the means permitted in this Section IX shall 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 in which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

X

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

Dated September 14, 1959

/s/ George B. Harris  
United States District Judge

We hereby consent to the entry of the foregoing Final Judgment:

For the Plaintiff:

/s/ Robert A. Bicks  
Robert A. Bicks  
Acting Assistant Attorney General

/s/ Lyle L. Jones  
Lyle L. Jones

/s/ William D. Kilgore, Jr.  
William D. Kilgore, Jr.

/s/ Marquis L. Smith  
Marquis L. Smith

/s/ Lewis Bernstein  
Lewis Bernstein

/s/ Gerald F. McLaughlin  
Gerald F. McLaughlin

Attorneys, Department of Justice

For Defendants:

R. P. OLDHAM COMPANY

By /s/ Carl J. Schuck  
Carl J. Schuck  
of Overtoh, Lyman & Prince  
Its Attorneys

WINTER WOLFF & CO., INC.

By /s/ Macklin Fleming  
Macklin Fleming  
of Mitchell, Silberborg & Knupp  
Its Attorneys

THOS. D. STEVENSON & SONS, INC.

By /s/ Frank J. McCarthy  
Frank J. McCarthy  
of Dreher, McCarthy & Dreber  
Its Attorneys

BALFOUR, GUTHRIE & CO., LIMITED

By /s/ Walker Lowry  
Walker Lowry  
of McCutchen, Brown, Doyle & Enersen  
Its Attorneys



JOHN P. HERBER & COMPANY, INC.

By /s/ Joseph L. Alioto  
Joseph L. Alioto  
Its Attorney

KINOSHITA AND CO., LTD., U.S.A.

By /s/ Whitman Knapp  
Whitman Knapp  
of Root, Barrett, Cohen, Knapp & Smith

/s/ Hajime William Tanaka  
Hajime William Tanaka

Its Attorneys

THE NISSHO CALIFORNIA CORPORATION

By /s/ A. J. Zirpoli  
A. J. Zirpoli  
Its Attorney

SUMITOMO SHOJI KAISHA, LTD.

By /s/ Henry W. Robinson  
Henry W. Robinson  
of Marcel E. Cerf, Robinson & Leland  
Its Attorneys

DAIICHI BUSSAN KAISHA, LTD.

By /s/ Salvatore C. J. Fusco  
Salvatore C. J. Fusco  
Its Attorney

MITSUI BUSSAN KAISHA, LTD.

By /s/ Kenji Ito  
Kenji Ito  
Its Attorney

APPENDIX I

| <u>Name</u>   | <u>Address</u>  |
|---|---|
| 1. Associated Metals, Inc.                                    | 593 Market Street<br>San Francisco, California  |
| Associated Metals, Inc.                                       | 75 West<br>New York, New York   |
| 2. James S. Baker Co., Inc.<br>(James S. Baker Imports, Inc.) | 311 California Street<br>San Francisco, California  |
| 3. Ataka New York, Inc.                                       | 405 Lexington Ave., Chrysler Bldg.<br>New York 17, New York                                 |
| Ataka New York, Inc.<br>(Branch Office)                       | 426 South Spring<br>Los Angeles, California   |
| 4. The Banton Corporation                                     | 24 California Street<br>San Francisco, California<br>(There is no longer a New York Office) |
| 5. Berelson Inc.  | 244 California Street<br>San Francisco, California  |
| 6. The Brookman Co.   | 2833 - 3rd<br>San Francisco, California   |
| 7. California Bag & Metal Co.                                 | 2425 Northwest Nicolai<br>Portland, Oregon  |
| 8. Commercial Steel Co.                                       | 5722 South Stover, Vernon Station<br>Los Angeles 58, California                             |
| 9. Del Rey International Company                              | 16 Beale Street<br>San Francisco, California  |
| 10. Del Valle Kahman & Co.                                    | 260 California Street<br>San Francisco, California  |
| 11. Export Pacific  | 900 Milwaukee Waterway<br>Tacoma, Washington  |
| 12. S. E. Edgar & Company                                     | 21 South Park<br>San Francisco, California  |
| 13. Getz Brothers   | 640 Sacramento<br>San Francisco, California   |
| 14. Great Empire Trading Co.                                  | 908 - 8th<br>Seattle, Washington  |
| 15. A. W. Horton Company                                      | 724 South Spring<br>Los Angeles, California   |
| 16. Heidner & Company   | Tacoma Building<br>Tacoma 1, Washington   |
| 17. Iwai & Company  | 350 - 5th<br>New York, New York   |
| 18. Lee Steel Company   | 7219 Cottage Street<br>Huntington Park, California  |

| <u>Name</u>                                | <u>Address</u>  |
|--|---|
| 19. Martin's Trading & Shipping Company    | Olympic National Building<br>914 - 2nd<br>Seattle, Washington                           |
| 20. H.L.E. Meyer Jr. & Company             | 149 California Street<br>San Francisco, California                                      |
| 21. Myers Sales Co.                        | 1953 South C. Street<br>Tacoma, Washington  |
| Myers Salem Co. (Branch Office)            | Colman Building<br>811 - 1st Avenue<br>Seattle, Washington                              |
| 22. McInnis & Co.                          | Northern Life Tower<br>3rd & University<br>Seattle, Washington                          |
| 23. Mohns Commercial Company               | 24 California Street<br>San Francisco, California                                       |
| 24. Pacific Asiatic Company                | 405 Montgomery Street<br>San Francisco, California                                      |
| 25. Parker Trading Company                 | 24 California Street<br>San Francisco, California                                       |
| 26. North America E.B. & Company           | 315 West 9th<br>Los Angeles, California   |
| 27. Philip Church Smith, Inc.              | 510 Battery Street<br>San Francisco, California   |
| 28. M. Paquet & Co.                        | 17 Battery Place<br>New York, New York  |
| 29. Frank L. Robinson Company              | 3901 Grand Avenue<br>Oakland, California  |
| 30. Schnitzer & Wolf Machinery Co.         | 900 Southwest, 1st Ave.<br>Portland, Oregon   |
| 31. B. Franklin Soffee & Associates        | 767 South Harvard<br>Los Angeles, California  |
| 32. The Transpacific Trading Company       | 700 Montgomery Street<br>San Francisco, California                                      |
| 33. C. T. Takahashi & Co.                  | Third & Main Building<br>220 Third Ave., South<br>P. O. Box 3626<br>Seattle, Washington |
| 34. Tricon, Inc.                           | 864 South Robertson<br>Los Angeles, California  |
| 35. Tuteur & Company                       | 52 Wall Street<br>New York, New York  |
| 36. Overseas Central Enterprises, Inc.     | 310 Sansome<br>San Francisco, California  |
| 37. Western Millwork & Builders Supply Co. | 509 Puyallup<br>Tacoma, Washington  |
| 38. Rodolpho Nelson                        | P. O. Box 351<br>Calexico, California   |