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FINAL JUDGMENT ON MANDATE AGAINST  
ALUMINIUM LIMITED, ET AL., APRIL 23, 1946

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FINAL JUDGMENT ON MANDATE AGAINST  
ALUMINIUM LIMITED; EARL BLOUGH;  
AND GEORGE O. MORGAN, JR.

And now, on this 23rd day of April, 1946, this cause came on further to be heard in obedience to the mandate of the United States Circuit Court of Appeals for the Second Circuit, dated March 28, 1945, and filed herein on March 29, 1945, and was argued by counsel, and thereupon, upon consideration thereof, and in accordance with the opinion of the said court, it appearing that all the issues material to the claims alleged in the amended petition against the defendants, Aluminium Limited; Earl Blough; and George O. Morgan, Jr., have been determined, and that, therefore, a separate and final judgment against them should be entered, it is ORDERED, ADJUDGED AND DECREED as follows:

1. The mandate of the United States Circuit Court of Appeals for the Second Circuit, filed herein on March 29, 1945, as aforesaid, is hereby made the order of this court.

2. The final judgment, entered herein on July 23, 1942, dismissing the amended petition herein on the merits as against Aluminium Limited; Earl Blough; Edward K. Davis; and George O. Morgan, Jr., be, and it hereby is, reversed.

3. The following Findings of Fact and Conclusions of Law, among those dated and filed herein on July 14, 1942, are amended so as to read as follows, respectively, viz.:

Finding No. 368. Neither the Foundation Agreement of 1931, nor the Alliance Aluminium Compagnie as then organized, nor any action taken

pursuant to either of them prior to 1936, directly or materially affected the interstate or foreign trade or commerce of the United States. Aluminum produced by the companies signatory to the Foundation Agreement could be and was shipped to the United States without such aluminum being included in the amount which such signatories were permitted to produce under quotas fixed by the board of governors of Alliance Aluminium Compagnie for such signatories. The average prices at which Alliance Aluminium Compagnie from time to time agreed that it would buy aluminum from its stockholders were above the average prices at which aluminum was sold in the United States market during the period 1933-1935, inclusive, despite which fact there was a steady increase in the volume of importations of aluminum into the United States from countries in which such signatories were located. During the same period the average prices of aluminum in the United States constantly declined. The average prices at which Alliance Aluminium Compagnie bought aluminum from its stockholders and the average market prices for aluminum prevailing in the United States and importations of aluminum into the United States and sales of aluminum by Aluminum Company of America for the years 1931 through 1937 are set forth in Tables 19 and 20 of the opinion of this court.

Finding No. 371. The Foundation Agreement was superseded on February 14, 1936, effective as of January 1, 1936, by another agreement between the same foreign producers of aluminum, including Aluminium Limited (which agreement is hereinafter referred to as the 1936 cartel), whereby the

signatories gave up the practice in effect under the Foundation Agreement of imposing production quotas upon themselves and buying up their own surplus production, and in lieu thereof imposed royalties upon themselves payable to a central agency (Alliance Aluminium Compagnie) whose stock was owned in various proportions by the signatory companies. The royalties thus imposed were based upon the production of aluminum by the various signatories in excess of amounts designated for each company. The 1936 cartel has not been performed by any party thereto since March 31, 1938, at the latest.

Finding No. 373. The 1936 cartel was intended to restrict imports of aluminum into the United States but the evidence does not show whether it did in fact restrict such imports. There was an increase in the quantity of aluminum imported into the United States in 1936 and 1937, in contrast with preceding years, as set out in Tables 19 and 20 of the opinion of this court.

Finding No. 374. It was never the effect, nor does the evidence show, nor is there basis for an inference, that it was the purpose of the Foundation Agreement or of Alliance Aluminium Compagnie to suppress or restrain the exportation of aluminum to the United States for sale therein in competition with Aluminum Company of America. During 1932-1936, inclusive, such importations into the United States steadily increased annually and in 1937 fell but slightly below the 1936 figure, which decrease in 1937 was due to the greater use of aluminum in Europe in preparing for war.

Finding No. 378. The evidence does not show, nor is there basis for an inference, that at any time since March 31, 1938, any cartel or agreement existed between any of the European producers of aluminum or between them and Aluminum Company of America, or Aluminium Limited, or between Aluminum Company of America and Aluminium Limited, or between any of them, except that the 1936 cartel agreement was not formally terminated and except that (as to which there is no evidence) one or more of the agreements mentioned in Finding of Fact No. 376 may have continued in force after that date.

Finding No. 381. Except as found in Amended Finding of Fact No. 373, the evidence does not show, nor is there basis for an inference, that at any time Aluminium Limited has participated in any contract, combination, conspiracy, agreement, or understanding with any of the other foreign producers of aluminum, or any one else, with the intention or effect of restricting importation into the United States of aluminum, or fixing prices, applicable to the United States, of any such importation.

Finding No. 384. Except as found in Amended Finding of Fact No. 373, Aluminium Limited has not promoted contractual arrangements or understandings with other foreign producers of aluminum with the intention or effect of restraining the exportation of aluminum to the United States for sale therein in interstate or foreign trade or commerce, either in competition with Aluminum Company of America or otherwise.

Conclusion No. 79. At no time was Aluminum Company of America in contract, combination, con-

spiracy, agreement, or understanding, in violation of the Sherman Act, with any of the parties to the Foundation Agreement concerning any of the terms of that agreement or any of the activities of the parties thereto.

Conclusion No. 80. At no time did Aluminum Company of America enter into any contract, combination, conspiracy, agreement, or understanding with any of the parties to the 1936 cartel concerning any of the terms or activities of such cartel. Aluminium Limited violated Section 1 of the Sherman Act, inasmuch as the 1936 cartel was intended to restrict imports of aluminum into the United States, and it failed to sustain its burden of proof that the said cartel did not in fact so restrict such imports. This violation was not committed on behalf of, nor in any way instigated or furthered by, Aluminum Company of America.

Conclusion No. 87. Judgment should be entered adjudging that the defendants, Aluminium Limited; Earl Blough; Edward K. Davis; and George O. Morgan, Jr., in 1936 caused Aluminium Limited to enter into and to observe thereafter an international cartel agreement executed abroad, and to continue as a shareholder in Alliance Aluminium Compagnie of Switzerland, organized in accordance with an earlier cartel agreement, which agreement of 1936 was intended to, and did, affect United States trade and commerce in aluminum by limiting importations thereof into the United States, in violation of Section 1 of the Sherman Anti-Trust Act; and enjoining the defendant, Aluminium Limited, and its successors, transferees and assignees, from continuing to

be a party to said agreement and from continuing to be a shareholder in said company and from becoming a party to any agreement which is intended to, and does, restrain imports of aluminum into the United States, and directing Aluminium Limited, and its officers and directors, immediately to take such steps as may be necessary to terminate such membership and such shareholding.

4. The defendants, Aluminium Limited; Earl Blough; Edward K. Davis; and George O. Morgan, Jr., in 1936 caused Aluminium Limited to enter into and to observe thereafter an international cartel agreement executed abroad, and to continue as a shareholder in Alliance Aluminium Compagnie of Switzerland, organized in accordance with an earlier cartel agreement, which agreement of 1936 was intended to, and did, affect United States trade and commerce in aluminum by limiting importations thereof into the United States, in violation of Section 1 of the Sherman Anti-Trust Act (Act of July 2, 1890).

5. The defendant, Aluminium Limited, its successors, transferees, and assignees be, and they hereby are, enjoined and restrained from, directly or indirectly, continuing to be a party to the said international cartel agreement of 1936, from continuing to be a shareholder in said Alliance Aluminium Compagnie of Switzerland and from co-operating therein, and from continuing to be a party to any of the contracts or agreements formulated by or adopted as a basis for the functioning of said Alliance Aluminium Compagnie; and Aluminium Limited, its officers, and directors be, and they hereby are, directed and required to take such steps forthwith as may be necessary to terminate such membership in said

cartel agreement of 1936 and in said contracts and agreements and such shareholding in said Alliance Aluminium Compagnie.

6. The defendant, Aluminium Limited, its successors, transferees, assignees, officers, and directors be, and they hereby are, enjoined and restrained from, directly or indirectly, through subsidiaries, affiliates, agents, or otherwise, becoming or remaining a party or parties to any agreement which is intended to, and does, restrain imports of aluminum into the United States.

7. Except as to the claims sustained in Paragraph 4 herein, the amended petition herein is hereby dismissed on the merits as to the defendants, Aluminium Limited; Earl Blough; and George O. Morgan, Jr.; and also as to the defendant, Edward K. Davis, with respect to all claims alleged against him therein as an officer, director or stockholder of Aluminium Limited, or any of its subsidiaries.

8. Jurisdiction of this cause is hereby retained for the purpose of enabling any of the parties to this judgment, or their successors, to apply to this court at any time for such further orders and directions as may be necessary or appropriate for the interpretation or carrying out of this judgment, for the modification thereof, for the enforcement of compliance therewith and for the punishment of violations thereof.

9. This judgment shall have no effect with respect to operations or activities of Aluminium Limited outside the United States, its territories, and the District of Columbia, not violative of the Anti-Trust laws of the United States in force at the time, or to operations and activities of Aluminium Limited within the United

States, its territories, and the District of Columbia, relating exclusively to operations and activities outside the United States, its territories, and the District of Columbia, not violative of the Anti-Trust laws of the United States in force at the time.

10. None of the parties to this judgment shall recover costs.

FRANCIS G. CAFFEY,  
United States District Judge.