

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

UNITED STATES ALKALI EXPORT ASSOCIATION, INC.,
CALIFORNIA ALKALI EXPORT ASSOCIATION, IMPERIAL
CHEMICAL INDUSTRIES, LTD., IMPERIAL CHEMICAL
INDUSTRIES (NEW YORK) LTD., PITTSBURGH PLATE
GLASS COMPANY (INC.), CHURCH & DWIGHT CO., INC.,
DIAMOND ALKALI COMPANY (INC.), DOW CHEMICAL
COMPANY, INC., HOOKER ELECTROCHEMICAL COMPANY
(INC.), MATHIESON CHEMICAL CORPORATION, formerly
known as THE METHIESON ALKALI WORKS (INC.),
NIAGARA ALKALI CO., PENNSYLVANIA SALT MANUFAC-
TURING CO., SOUTHERN ALKALI CORPORATION, FOOD
MACHINERY & CHEMICAL CORPORATION, successor to
WESTVACO CHLORINE PRODUCTS CORPORATION, WYAN-
DOTTE CHEMICALS CORPORATION, WEST END CHEMICAL
CO. (INC.), PACIFIC ALKALI CO., LTD.,

Defendants.

Civil Action

No. 24-464

:Filed Jan.22,1951

FINAL JUDGMENT

This action having been dismissed as to the defendant Pacific Alkali Co., Ltd., after dissolution of said defendant, and having been duly tried as to all other defendants before the Honorable John Bright, District Judge, who died before rendering a decision herein, and this case, by order made and filed June 28, 1948 upon consent of the parties hereto, having been referred to the undersigned for reargument by all parties and for a decision on the entire record and the briefs, and reargument having been duly had before the undersigned, and the testimony and other proofs and the arguments offered by the respective parties having been fully considered, and this Court having filed its opinion herein dated August 12, 1949, and having made and filed its Findings of

Fact and Conclusions of Law dated

1950, it is now

ORDERED, ADJUDGED AND DECREED as follows:

I

As used in this judgment:

- (a) "Alkali" or "alkalis" means any one or more of the following:
 - (1) Bicarbonate of soda (sodium bicarbonate);
 - (2) Soda ash (sodium carbonate);
 - (3) Caustic soda (sodium hydroxide).
- (b) "Person" means an individual, partnership, association or corporation, and any other form of business entity.
- (c) "United States" means the United States and its territories and possessions.
- (d) "Webb Act" means the Act of Congress of April 10, 1918 (40 Stat. 516, c. 50), commonly known as the Webb-Pomerene Export Trade Act.
- (e) "Alkasso" means the defendant United States Alkali Export Association, Inc., and any future association formed pursuant to the Webb Act for the purpose of exporting alkalis, a majority of whose members were members, or are successors of persons who were members, of the United States Alkali Export Association, Inc., at the date of the filing of the complaint herein.
- (f) "Calkex" means the defendant California Alkali Export Association, and any future association formed pursuant to the Webb Act for the purpose of exporting alkalis, a majority of whose members were members, or are successors of persons who were members, of the California Alkali Export Association

at the date of the filing of the complaint herein.

(g) "ICI" means the defendant Imperial Chemical Industries, Ltd.

(h) "ICI (N.Y.)" means the defendant Imperial Chemical Industries (New York) Ltd.

(i) "Belgian Solvay" means the co-conspirator Solvay et Cie.

(j) "I.G. Farben" means the co-conspirator I.G. Farbenindustrie Aktiengesellschaft.

(k) "Export trade" means trade or commerce in alkalis exported or in the course of being exported, from the United States to any foreign nation.

II

The provisions of this judgment applicable to any defendant shall apply to such defendant, its officers, directors, agents, employees, subsidiaries, successors and assigns and to all persons acting or claiming to act under, through, or for, them or any of them.

III

(a) The defendants to the extent indicated in the findings of fact have contracted, combined, and conspired to restrain trade and commerce in alkalis among the several States of the United States and with foreign nations, in violation of Section 1 of the Sherman Act, with respect to the sale and distribution of alkalis in the United States.

(b) The defendants, to the extent indicated in the findings of fact, have contracted, combined, and conspired to restrain trade and commerce in alkalis among the several States of the United States and with foreign nations, in violation of Section 1 of the Sherman Act, with respect to the export from, and import into, the United States, of alkalis.

IV

(a) Each of the contracts, agreements and understandings

listed in Appendix A to this judgment, and all amendments, modifications, extensions, renewals or supplements thereto, are hereby adjudged to be unlawful under Section 1 of the Sherman Act, and each of them is hereby cancelled and annulled, and the defendants and each of them are hereby enjoined and restrained from the further enforcement and performance of any of the provisions of said agreements and of any agreements amendatory thereof or supplemental thereto.

(b) Any provision or understanding contained in or made a part of any agreement, combination or arrangement between any defendant and any other firm, person or corporation relating to the sale of alkalis the purpose of which is to restrict the use or resale thereof in export trade is hereby adjudged to be unlawful under Section 1 of the Sherman Act, and each such provision or understanding is hereby cancelled and annulled, and the defendants and each of them are hereby enjoined and restrained from the further enforcement and performance of any such provision or any revival or renewal thereof.

(c) The defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining, furthering, or claiming any rights under, directly or indirectly, any contract, agreement, understanding, or common course of action among themselves, or with any other person, the purpose or effect of which is to continue, revive, or renew any of the contracts, agreements, understandings or provisions thereof cancelled by subsection (a) or (b) of this Section IV.

(d) Within twenty (20) days from the date of the entry of this judgment each defendant that is a party to any contract, agreement, understanding or provision thereof cancelled by subsection (a) or (b) of this Section IV shall give notice in writing in the form hereto attached as Appendix B to each and every other party thereto who is not a party to this action of the cancellation of such contract, agreement, understanding or provision thereof as of the date of the entry of this judgment.

(e) Within sixty (60) days from the date of the entry of

this judgment, each defendant shall file with this Court a report showing the fact and manner of its compliance with subsections (a) and (d) of this Section IV and shall file a copy thereof with the Attorney General, or with the Assistant Attorney General in charge of the Antitrust Division.

V

The defendants are jointly and severally enjoined and restrained from entering into, adhering to, renewing, maintaining, furthering, or claiming any rights under, directly or indirectly, any contract, agreement, understanding, plan, program, common course of action, combination, or conspiracy, among themselves or with any other person, providing for, or for the purpose or having the effect of:

- (1) limiting or restricting the kinds, quantities, or qualities of alkalis to be manufactured, distributed or sold in the United States;
- (2) allocating customers, or allocating or dividing territories or markets for the manufacture, distribution, sale, or use of alkalis;
- (3) limiting, or withholding supplies of alkalis from any market or third person;
- (4) excluding any United States manufacturer, distributor or dealer in alkalis, whether or not a defendant herein, from, or restricting access by it to, any markets for alkalis;
- (5) limiting, restricting, or preventing imports into, or exports from, the United States, of alkalis or kinds, quantities or qualities of alkalis;
- (6) fixing, maintaining, enhancing, depressing or adhering to prices to be charged to others, or terms and conditions of sale to be imposed upon others, for alkalis;
- (7) refraining from competition in any area in the manufacture, distribution, sale, or use of alkalis;
- (8) collecting, compiling, disseminating, or communicating

to each other, or to any other person engaged in the production, distribution, sale, export or import of alkalis, or to any central agent, agency or association of persons so engaged, any information concerning production, demand, capacity, inventories, sales, shipments, orders, commitments, costs, prices, differentials, or other terms or conditions of sale of alkalis, or similar information pertaining to the alkali industry, or the identity or activities of any other person engaged in the production, distribution, sale, export, or import of alkalis, for the purpose or having the effect of furthering or promoting any of the matters and things enjoined and restrained by subsections (1) to (7) of this Section.

Nothing contained in this Section V shall be deemed to enjoin or restrain any defendant from:

(a) operating lawfully through any association formed pursuant to the Webb Act to the extent that such activities are in the course of the export trade of the United States and that the activities so engaged in are reasonably essential to the promotion of competition in such export trade, including preparation and dissemination of such reasonably essential reports, statistics and other information concerning the details of such trade as would be customary in the usual course of business;

(b) the making of contracts, between the defendants or by and between the defendants and their suppliers or customers, for the purchase or sale of alkalis

(i) in the usual and ordinary course of business

or

(ii) to obtain alkalis required in the conduct of their

respective businesses;

(c) the making of any valid patent license or secret process agreement.

VI

The defendants are jointly and severally enjoined and restrained from:

- (1) Restricting, limiting, or threatening to restrict or limit, any purchaser of alkalis in the import, or export thereof;
- (2) refusing to sell, threatening to refuse to sell, or discriminating or threatening to discriminate in the sale of, alkalis to any purchaser for the reason that the purchaser either sells, distributes or offers, or intends to sell, distribute or offer, alkalis in the export or import trade of the United States;
- (3) organizing, joining, participating in, or continuing any association or organization of persons engaged in the manufacture, distribution, or sale of alkalis for the purpose or having the effect of continuing, renewing, or reestablishing any of the practices, acts and things enjoined by the provisions of this judgment;
- (4) spying upon, investigating into, inquiring into, or by any other means acquiring or attempting to acquire details of the business of any other United States manufacturer or distributor of alkalis, other than in the regular course of business;
- (5) compelling or coercing anyone to refrain from, or to restrict or limit his activities in, the import into, or export from, the United States, of alkalis.

VII

The defendants Alkasso and Calnex are jointly and severally enjoined and restrained from:

- (1) Acquiring, buying, selling, exporting, storing, marketing,

dealing in, or disposing of alkalis manufactured or produced by any person other than their own regularly admitted and recognized members;

- (2) restricting, limiting, curtailing, preventing, or compelling, coercing or inducing anyone to restrict, limit, curtail or prevent, directly or indirectly, the manufacture, distribution or sale of alkalis in the United States;
- (3) restricting, limiting, curtailing or interfering with, or in any wise encouraging the restriction, limitation or curtailment of, imports of alkalis into the United States;
- (4) purchasing, receiving or storing alkalis in excess of their respective normal and usual business requirements;
- (5) admitting anyone to membership who has not first been supplied with a true copy of this judgment;
- (6) entering into, adhering to, maintaining, furthering, or claiming any right under, directly or indirectly, any contract, agreement, understanding, plan, program or course of action providing for, or for the purpose or having the effect of, granting or according to either such defendant exclusive rights of distribution or sale in any foreign market of alkalis produced by any member of such defendant.

VIII

Defendants ICI and ICI (N.Y.) are jointly and severally enjoined and restrained from restricting, or refraining from, the proffer, sale, delivery or distribution of, or the reasonable promotion of the sale and distribution of, or refusing to sell, alkalis in, or for import into, the United States, to the extent that each of said defendants has alkalis available for sale or distribution, where the purpose thereof is to continue, renew or reestablish any of the practices, acts and things enjoined by the provisions of this judgment.

IX

For the purpose of securing compliance with this 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 any of the defendants made to the principal office of such defendant, be permitted, subject to any legally recognized privilege, (1) access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession, or under the control, of such defendant, relating to any matters contained in this judgment and (2) subject to the reasonable convenience of such defendant and without restraint or interference from the defendants, to interview officers or employees of such defendant, who may have counsel present, regarding any such matters.

Information obtained by the means permitted by this Section IX 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 judgment in which the United States is a party or as otherwise required by law.

X

In their application to the defendants ICI and ICI (N.Y.), the provisions of this judgment, including, but without limitation, the provisions of Sections IV, V and VI, are intended to relate exclusively to acts, agreements, arrangements or understandings involving the foreign or domestic commerce of the United States.

XI

Jurisdiction of this cause is retained by this Court for the purpose of enabling any of the parties to this judgment to apply to the Court at any time for such further orders and directions as may be necess-

ary or appropriate for the construction or carrying out of this judgment, for the amendment, modification or termination of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

XII

Judgment is entered against the defendants for costs in the sum of \$738.04, as taxed by the Clerk of this Court.

Dated: January 22, 1951

/s/ SAMUEL H. KAUFMAN
U.S.D.J.

This judgment shall not become effective until April 1, 1951. Said judgment shall be stayed in the event that an appeal has been filed prior to April 1, 1951 and the stay shall continue pending such appeal if such appeal is diligently prosecuted.

January 22, 1951

/s/ SAMUEL H. KAUFMAN
U.S.D.J.

APPENDIX A

1. The agreement, understanding and arrangement between Alkasso and ICI evidenced by the written memorandum dated February 29, 1924, a copy of which is attached to the complaint as Exhibit "A", and which was modified and supplemented by an agreement evidenced by letter dated October 22, 1929, a copy of which is attached to the complaint as Exhibit "B".
2. The agreement, understanding and arrangement between Alkasso and ICI, described in paragraph 47 of the complaint, and evidenced by a memorandum of meetings held May 8 and May 9, 1933, a copy of which is attached to the complaint as Exhibit "C".
3. The agreement, understanding and arrangement between Alkasso, ICI, I. G. Farben and Belgian Solvay described in paragraphs 48 and 50 of the complaint, evidenced by a memorandum dated July 1, 1936, a copy of which is attached to the complaint as Exhibit "D".
4. The agreement, understanding and arrangement described in paragraph 52 of the complaint and evidenced by certain minutes, a copy of which is attached to the complaint as Exhibit "F".
5. The agreement, understanding and arrangement between Alkasso and Calkex described in paragraphs 55 and 56 of the complaint and evidenced by a letter dated December 2, 1937, and a memorandum attached thereto, copies of which are attached to the complaint as Exhibit "E".
6. Any and all agreements, combinations, understandings, or arrangements, howsoever the same may have been effected, whereby members of Alkasso or Calkex, or any other persons, firms or corporations who are not members of either Alkasso or Calkex, have designated either Alkasso or Calkex as an exclusive agent for the sale of alkalis or the export of alkalis from the United States, or have agreed to refuse to sell or refrain from selling alkalis in export trade or to others for export.

APPENDIX B

Sirs:

Please be advised that a Judgment of the United States District Court, Southern District of New York, entered on the day of , 1950, in the case of United States vs. U. S. Alkali Export Association, Inc., et al. (Civil Action No. 24-464), in which this company was one of the defendants, has adjudged to be unlawful and has canceled and annulled any provision or understanding contained in any agreement or arrangement to which this company is a party, whereby restrictions are placed on the use or resale of alkalis in export trade.

You are accordingly notified, as directed by said Judgment, that any provision contained in our contract with you dated 19 , which restricts the use or resale of alkalis in export trade, is hereby canceled and annulled in so far as it pertains to export trade and you are hereby relieved from compliance therewith.

The cancelation of the export restriction does not in any other way affect the other provisions of our contract with you which we intend to continue to fulfill.

Dated December , 1950.

Very truly yours,