

FINAL JUDGMENT.

The complainant, United States of America, having filed its complaint herein on Feb. 17, 1942; the defendants having appeared and filed their answers to such complaint denying the substantive allegations thereof; all parties hereto by their 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;

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 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 "Fertilizer Nitrogen" as used herein shall mean nitrogen chemically combined with other elements in substances intended for use as agricultural fertilizer whether alone or in admixture with other materials.

III

The defendant Imperial Chemical Industries (New York) Ltd., its successors, subsidiaries, officers or employees, or any of them, be and they hereby are enjoined and restrained from agreeing, combining or conspiring (a) with any mixed fertilizer manufacturer or dealer in or by any agency or resale price maintenance contract or agreement to fix, determine, maintain,

U.S. vs. IMPERIAL CHEMICAL INDUSTRIES, (NEW YORK), LTD., ET AL.

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

Civil Action No. 17-282.

UNITED STATES OF AMERICA, PLAINTIFF

VS.

IMPERIAL CHEMICAL INDUSTRIES (NEW YORK), LTD.,
RICHARD FORT, MICHAEL TATE, DEFENDANTS.

or adhere to prices to be charged in the sale of fertilizer nitrogen and (b) with any producer or distributor of nitrate of soda, ammonium sulphate or synthetic ammonia solutions, or with any producer or distributor of any other fertilizer nitrogen:

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

2. To fix, determine, maintain or adhere to prices to be charged in the sale of any particular fertilizer nitrogen product by them to others in terms of the relationship of such prices to the prices of any other Nitrogen products;

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

4. To exchange information as to prices to be charged for fertilizer nitrogen sold by them to others other than where such information is published to the general trade;

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

Nothing contained in the numbered subparagraphs (1) to (5), inclusive, of this paragraph III shall be deemed to prohibit the operation of any existing or future sales agency otherwise lawful when the operations thereunder do not involve any arrangements, agreements, or understandings, between the agent and the principal concerning sales or other disposition by the agent of products or commodities belonging to the agent or anyone other than the principal, and provided further that such principal is not in the particular transaction acting as an agent for any other manufacturer of

fertilizer nitrogen, nor shall the numbered subparagraphs (1) to (5) prohibit the purchase or sale of fertilizer nitrogen, otherwise lawful, by defendant Imperial Chemical Industries (New York) Ltd., its successors, subsidiaries, officers or employees, from or to any producer or distributor of fertilizer nitrogen.

IV

The defendant, Imperial Chemical Industries (New York), Ltd., its successors, subsidiaries, officers, and employees, are hereby ordered to advise and inform and to give full information to the Attorney General of the United States or the Assistant Attorney General in charge of the Antitrust Division of the happening of any of the events and full data concerning any agreement, combination or cartel mentioned herein:

(1) If the said Imperial Chemical Industries (New York), Ltd., or any of its parents or subsidiaries should enter into any agreement, combination, or cartel with any one or more other producers or distributors of fertilizer nitrogen, the effect or operation of which would result in a violation of any of the provisions of Paragraph III hereof.

(2) If any agreement, combination, or cartel to which Imperial Chemical Industries (New York) Ltd., or any of its parents or subsidiaries and any one or more other producers or distributors of fertilizer nitrogen are parties, should become operative in such a way as to result in a violation of any of the provisions of Paragraph III hereof.

The failure of the Attorney General of the United States or the Assistant Attorney General in charge of the Antitrust Division to take any action following the receipt of any advice or information from Imperial Chemical Industries (New York) Ltd., pursuant to Paragraph IV shall not be construed as an approval of the matters and things so advised or informed, and shall not operate as a bar to any action or proceeding, civil or criminal, which may later be brought pursuant

to any law of the United States based on the matters and things so advised and informed.

V

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 defendant made to the principal office of the defendant, be permitted, subject to any legally recognized privilege (1) access, during the office hours of the defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant, relating to any matters contained in this decree (2) subject to the reasonable convenience of the defendant and without restraint or interference from them, to interview officers or employees of the defendant, who may have counsel present, regarding any such matters, and (3) the defendant, 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.

VI

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 for the enforcement of compliance therewith and for the punishment of violations thereof.

VII

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 amplifications 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.

VIII

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 thereof.

Dated February 17, 1942. Approved.

SIMON H. RIFKIND,

United States District Judge.

Judgment rendered, February 18, 1942.

GEORGE J. H. FOLLMER, *Clerk.*

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 antitrust 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.