

**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Concentrated Phosphate Export Assn., Inc., American Cyanamid Co., W. R. Grace & Co., International Minerals & Chemical Corp., Tennessee Corp., and Socony Mobil Oil Co., Inc., U.S. District Court, S.D. New York, 1969 Trade Cases ¶72,719, (Mar. 25, 1969)**

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United States v. Concentrated Phosphate Export Assn., Inc., American Cyanamid Co., W. R. Grace & Co., International Minerals & Chemical Corp., Tennessee Corp., and Socony Mobil Oil Co., Inc.

1969 Trade Cases ¶72,719. U.S. District Court, S.D. New York. 64 Civ. 3914. Entered March 25, 1969. Case No. 1839 in the Antitrust Division of the Department of Justice.

**Sherman and Webb-Pomerene Acts**

**Export Trade Associations—Price Fixing and Business Allocations—Foreign Aid Transactions—Consent Decree.**—Following a ruling by the U. S. Supreme Court that transactions involving foreign aid were not “export trade” within the Webb-Pomerene Act antitrust exemption for export groups, members of a Webb-Pomerene association were prohibited by a consent judgment from establishing prices or dividing or allocating business by agreement or understanding with any competitor through a Webb-Pomerene association, where the transaction involved is known by any member of such association, prior to the submission of any offer or receipt of any order, to involve financing pursuant to any U. S. foreign aid program. The decree does not cover otherwise lawful Webb-Pomerene association activities.

For the plaintiff: Richard W. McLaren, Asst. Atty. Gen.; Baddia J. Rashid, Burton R. Thorman, and W. D. Kilgore, Jr., Attys., Dept. of Justice, Washington, D. C.

For the defendants: Hollabaugh & Jacobs, Washington, D. C., by Alan S. Ward, for Concentrated Phosphate Export Assn., Inc.; Donovan Leisure Newton & Irvine, New York, N. Y., by Samuel W. Murphy, Jr., for American Cyanamid Co.; Cahill, Gordon, Sonnett, Reindel & Ohl, New York, N. Y., by Lawrence J. McKay, for W. R. Grace & Co.; White & Case, New York, N. Y., by Edgar Barton, for International Minerals & Chemical Corp.; Guggenheimer & Untermyer, New York, N. Y., by Randolph Guggenheimer, for Tennessee Corp.; Howrey, Simon, Baker & Murchison, Washington, D. C., by Edward F. Howrey, for Mobil Oil Corp.

**Final Judgment**

**[ *Prior Proceedings* ]**

RYAN, D. J.: This cause was regularly brought on for trial before the Honorable Sylvester J. Ryan, United States District Judge, non-jury, on March 20, 1967, the record before the Court consisting of a stipulation of facts and annexed exhibits and an agreed statement of the issue. Said issue was agreed to be whether sales by the Concentrated Phosphate Export Association, Inc., of concentrated phosphatic fertilizer under the U. S. foreign aid program destined for the Republic of Korea were “export trade” within the meaning of the Webb-Pomerene Act and thus within the exemption provided in that Act from the Sherman Act's prohibitions of price-fixing and allocation of business. Upon consideration of the evidence, the briefs and argument of counsel, this Court in its memorandum opinion of September 11, 1967, held that the said conduct was immunized by the Webb-Pomerene Act. By its judgment entered September 11, 1967, the Court dismissed the complaint.

The plaintiff thereafter perfected a direct appeal to the Supreme Court of the United States to have this legal question of first impression decided by that Court. During the pendency of the appeal, defendant Concentrated Phosphate Export Association, Inc., was dissolved. On November 25, 1968, the Supreme Court of the United States rendered, its opinion that the transactions involved were not “export trade” within the meaning of the

Webb-Pomerene Act and accordingly reversed the judgment of this Court and remanded the cause for resolution of the controversy.

The parties by their respective attorneys and before the taking of testimony on the outstanding issues on remand, have consented to the entry of this Final Judgment without this Final Judgment constituting any admission by any defendant with respect to the remaining issues in this case;

Now, Therefore, It Is By the Court Ordered, Adjudged and Decreed that:

**[ *Jurisdiction* ]**

1. This court has jurisdiction of the subject matter of this action and of the parties hereto pursuant to Section 15 of the Act of Congress of October 15, 1914, as amended, 15 U. S. C. 25.

**[ *Vacation of Prior Judgment* ]**

2. The judgment of the Court dated September 11, 1967, is vacated and set aside.

**[ *Applicability* ]**

3. The provisions of this Final Judgment shall be binding upon each defendant and upon each defendant's officers, directors, agents, employees, members, subsidiaries, successors and assigns and upon all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

**[ *Definitions* ]**

4. (a) "Foreign aid program" as used herein, shall refer to any program pursuant to which funds are appropriated by the United States Congress and made available to foreign countries for purchases of commodities from United States and other suppliers and where such purchases are subject to the regulations of the Agency for International Development or any successor or similar agency.

(b) A "Webb-Pomerene Association" is an association organized to operate in accordance with the provisions of the Webb-Pomerene Act, 40 Stat. 516, et seq., 15 U. S. C. 61, et seq.

**[ *Prices and Business Allocation— Foreign Aid Transactions* ]**

5. Each corporate defendant is enjoined and restrained from establishing prices or dividing or allocating business by agreement or understanding with any competitor through a Webb-Pomerene association, where the transaction involved is known by any member of such association, prior to the submission of any offer or receipt of any order, to involve financing pursuant to any U. S. foreign aid program.

**[ *Webb-Pomerene Activities* ]**

6. Nothing in this Final Judgment shall be construed (1) as preventing any defendant herein from remaining or becoming a member of any Webb-Pomerene association which engages or plans to engage in transactions otherwise lawful and not expressly forbidden by paragraph 5 of this Final Judgment; and (1) as preventing any defendant herein while a member of a Webb-Pomerene association, from lawfully engaging as an individual seller to purchasers receiving financing pursuant to a U. S. foreign aid program.

**[ *Inspection and Compliance* ]**

7. For the purpose of securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant, made to its principal office, be permitted, subject to any legally recognized privilege, (a) access during reasonable office hours to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the

possession of or under the control of such defendant relating to any matter contained in this Final Judgment, and (b) subject to the reasonable convenience of such defendant, and without restraint or interference from it to interview officers or employees of such defendant, who may have counsel present, regarding any such matters; and upon such request, the defendants shall submit such reports in writing, under oath if so requested, to the Department of Justice with respect to any of the matters contained in this Final Judgment as may from time to time be requested. No information obtained by the means provided in this Paragraph 7 shall be divulged by any representative of the Department of Justice to any person, other than a duly authorized representative of the Executive Branch of plaintiff, except in the course of legal proceedings to which the United States of America is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

**[ Retention of Jurisdiction ]**

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