

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,

Plaintiff,

v.

BEKAERT STEEL WIRE CORPORATION and  
N.V. BEKAERT S.A.,

Defendants.

Civil Action No. B-85-3870

Filed: *Sept. 12, 1985*

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action against the above-named defendants in three counts. As a first claim, the United States of America, in its capacity as a purchaser and consumer of gabions, brings this suit against the defendants under Section 4A of the Clayton Act, 15 U.S.C. §15a, to recover its actual damages resulting from defendants' violation of Section 1 of the Sherman Act, 15 U.S.C. §1 (Count One). As a second claim, the United States of America brings this suit against the defendants under the False Claims Act, 31 U.S.C. §§3729-3731, for double the amount of damages sustained, plus forfeitures (Count Two). As a third claim, the United States of America brings this suit against the defendants under the common law doctrine of Recoupment of Public Funds Paid by Mistake, 28 U.S.C. §1345, to recover its actual damages

resulting from defendants' illegal inflation of the price for gabions paid by the United States (Count Three).

COUNT ONE

I

JURISDICTION AND VENUE

1. As a first claim, the United States of America, in its capacity as a purchaser of gabions, brings this suit against the named defendants under Section 4A of the Clayton Act, 15 U.S.C. §15a, to recover damages which it has sustained due to defendants' combination and conspiracy in violation of Section 1 of the Sherman Act, 15 U.S.C. §1. The claims alleged in this Count are asserted as an alternative to those alleged in Count Two and Count Three to the extent that any transaction complained of may give rise to liability under more than one count.

2. Each of the corporate defendants named in this Complaint resides, is found, has an agent, or transacts business in the District of Maryland. Unlawful acts perpetrated pursuant to the alleged combination and conspiracy have been performed, in whole or in part, within the District of Maryland. Each of the corporate defendants is subject to the jurisdiction of this Court, and as to each defendant, venue is properly set in this District, under Sections 4A and 12 of the Clayton Antitrust Act, 15 U.S.C. §§15a and 22 (1976), and/or 28 U.S.C. §1391 (1976).

## II

### DEFENDANTS

3. Bekaert Steel Wire Corporation (hereinafter "BSWC") is hereby made a defendant herein. BSWC is organized and exists under the laws of the State of New York and has its principal place of business in Pittsburgh, Pennsylvania. During the period covered by this Complaint, BSWC manufactured and sold gabions, through its Terra Aqua Conservation Division, which was headquartered in Reno, Nevada.

4. N.V. Bekaert S.A. (hereinafter "Bekaert-Belgium") is hereby made a defendant herein. Bekaert-Belgium is a Belgian corporation that has its principal place of business in Zwevegem, Belgium. During the period covered by this Complaint, Bekaert-Belgium and one of its wholly owned subsidiaries, Bekaert Holding B.V., owned BSWC.

5. Wherever in this Complaint reference is made to any act, deed or transaction of any defendant company, such allegation shall be deemed to mean that such company engaged in such act, deed or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control or transaction of its business or affairs.



### III

#### CO-CONSPIRATORS

6. Maccaferri Gabions Manufacturing Company, Inc. (hereinafter "MGMC") participated as a co-conspirator in the violations alleged herein, and performed acts and made statements in furtherance thereof. MGMC is organized and exists under the laws of the State of Maryland and has its principal place of business in Williamsport, Maryland. During the period covered by this Complaint, MGMC manufactured gabions in Williamsport, Maryland. During at least part of the period covered by this Complaint, MGMC sold its gabions through its subsidiary, Maccaferri Gabions, Inc.

7. In addition to MGMC, various corporations and individuals, not made defendants in this Complaint, participated as co-conspirators in the violations alleged herein, and performed acts and made statements in furtherance thereof.

### IV

#### DEFINITIONS

8. "Gabion" means a compartmented container fabricated from a triple-twisted hexagonal mesh of galvanized steel wire, sometimes with an additional polyvinyl chloride coating, that is designed to be filled with hand-size stones and wired together with other gabions to form flexible and permeable structures used in river training and flood control, soil erosion control and shore and coastal protection applications.

9. "Contractor" means any nongovernmental entity purchasing gabions for resale to the United States, either directly or by incorporating gabions into construction projects performed under contract with the United States or paid for, in whole or in part, by the United States.

## V

### TRADE AND COMMERCE

10. Gabions are fabricated from a mesh made from coils of wire that are fed into a machine designed to weave the wire into the triple-twisted hexagonal configuration. Gabions are available in many different sizes and capacities to suit various applications and conditions of terrain. Gabions also are available with a polyvinyl chloride coating that protects the galvanized wire from corrosive environmental conditions.

11. Gabions, when filled with stones and wired together, form structures that are used in river training, flood control, landscaping and erosion control applications. Gabion structures possess several unique characteristics, such as flexibility, permeability, durability, versatility and economy, which differentiate them from other methods used in river training, flood control, landscaping and erosion control.

12. During the period covered by this Complaint, BSWC and MGMC were the only two manufacturers of gabions in the United States. BSWC manufactured and sold gabions through its Terra Aqua Conservation Division (hereinafter "Terra Aqua"). Terra

Aqua manufactured gabions at its plant in Reno, Nevada, from which it shipped gabions to many states throughout the United States, including the State of Maryland. MGMC manufactured gabions at its plant in Williamsport, Maryland, from which it shipped gabions to many states throughout the United States. During the period covered by this Complaint, substantial quantities of gabions, valued in excess of \$15,000,000, were shipped by BSWC and MGMC in a continuous and uninterrupted flow of interstate commerce. During the period covered by this Complaint, BSWC and MGMC sold gabions for use in numerous public works projects financed directly or indirectly by the plaintiff.

13. During the period covered by this Complaint, gabions were often sold by BSWC and MGMC throughout the United States, by means of sealed bids, usually made to government purchasers, or by means of oral or written quotations to contractors who incorporated gabion prices into sealed bids they submitted on construction projects financed directly or indirectly by the plaintiff.

14. During the period covered by this Complaint, the sale and shipment of gabions engaged in by BSWC and MGMC were within the flow of, and substantially affected, interstate commerce.

15. During the period covered by this Complaint, the plaintiff purchased substantial quantities of gabions directly from BSWC and MGMC. Also during the period covered by this Complaint, substantial quantities of gabions were used in



public works projects performed by state and local governments and by contractors hired by the plaintiff or by state and local governments. Many such projects were financed, in whole or in part, by the plaintiff under pre-existing, fixed-quantity, cost-plus contracts and other contracts and arrangements that were the equivalent of pre-existing, fixed-quantity, cost-plus contracts.

## VI

### VIOLATION ALLEGED

16. Beginning at least as early as 1976, and continuing thereafter until at least as late as February 1981, the exact dates being unknown to the plaintiff, the defendants and co-conspirators entered into and engaged in a continuing combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. §1).

17. The aforesaid combination and conspiracy consisted of an agreement, understanding and concert of action among the defendants and co-conspirators, the substantial terms of which were that:

(a) prices of gabions sold throughout the United States would be fixed, raised and maintained by the elimination of discounts off established list prices on bids, quotations and sales by BSWC and MGMC; and

(b) the United States gabion market would be divided geographically by the defendants and co-conspirators between BSWC and MGMC.

18. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendants and co-conspirators have done those things which they combined and conspired to do.

## VII

### EFFECTS

19. The aforesaid combination and conspiracy had the following effects, among others:

(a) prices of gabions sold throughout the United States were fixed, raised and maintained at artificial and noncompetitive levels;

(b) competition for the sale of gabions throughout the United States was restrained, suppressed and eliminated;

(c) purchasers of gabions throughout the United States were denied the right to receive competitive bids and quotations for the sale of gabions; and

(d) the plaintiff, as a direct and indirect purchaser of gabions, has been deprived of the benefits of free and open competition in the purchase of gabions.

20. As a result of the illegal combination and conspiracy alleged herein, and the acts of the defendants and co-conspirators in furtherance thereof, the plaintiff has been



compelled to pay substantially higher prices for gabions than would have been the case but for the illegal conduct complained of herein, and has been injured and financially damaged in an amount which is presently undetermined.

## VIII

### STATUTE OF LIMITATIONS AND FRAUDULENT CONCEALMENT

21. The United States has brought this suit within four years of the discovery of the aforesaid illegal combination and conspiracy. The plaintiff had no knowledge of the aforesaid combination and conspiracy, or of any facts which might have led to the discovery thereof, until sometime within four years of the filing of this Complaint, and it first became fully aware of the scope of the unlawful conspiracy during the course of grand jury proceedings.

22. The existence of the conspiracy to fix prices and to divide the market could not have been discovered earlier by the exercise of due diligence by the plaintiff inasmuch as the defendants and co-conspirators had fraudulently concealed the price-fixing conspiracy by, among other things, holding secret meetings outside of the United States to effectuate the conspiracy.

IX

PRAYER

23. WHEREFORE, the plaintiff:

A. Prays that the herein alleged combination and conspiracy among the defendants and co-conspirators be adjudged and decreed to be an unreasonable restraint of the aforesaid interstate trade and commerce and in violation of Section 1 of the Sherman Act, 15 U.S.C. §1.

B. Demands judgment against the defendants jointly and severally for the damages suffered by it due to the alleged combination and conspiracy in violation of the antitrust laws, as provided for in Section 4A of the Clayton Act, 15 U.S.C. §15a, together with such interest thereon as is permitted by law.

C. Prays that each defendant, its successors, assignees, subsidiaries, and transferees, and its officers, directors, agents and employees, and all persons acting in concert therewith, be enjoined and restrained from continuing, maintaining or renewing, directly or indirectly, the combination and conspiracy hereinbefore alleged or from engaging in any other combination or conspiracy having a similar purpose or effect, or from adopting or following any practice, plan, program or device having a similar purpose or effect.

D. Prays that it recover such other amounts and have such other and further relief as the Court shall deem just and proper, including the costs of this action.

X

DEMAND FOR JURY TRIAL

24. Pursuant to Federal Rules of Civil Procedure 38(b), plaintiff hereby makes its demand for a trial by jury of all issues so triable.

COUNT TWO

25. As a second claim, the United States of America, in its capacity as a purchaser of gabions, brings this suit against the defendants under 31 U.S.C. §§3729-3731, commonly known as the False Claims Act. The claims alleged in this Count are asserted as an alternative to those alleged in Counts One and Three to the extent that any transaction complained of may give rise to liability under more than one count.

26. The allegations contained in paragraphs 2 through 20, and the demand for jury trial contained in paragraph 24, are here realleged with the same force and effect as though set forth in full detail.

27. Inasmuch as the defendants are corporations, none of the defendants was in the military or naval forces of the United States, or in the militia called into or actually employed in the service of the United States, during the times involved in this action.

28. During the period covered by this Complaint, the plaintiff through, among others, the United States Army Corps of Engineers, the United States Forest Service, and the United



States National Park Service, purchased gabions directly from BSWC and MGMC. In connection with the purchase of the aforesaid gabions, the United States sought and obtained bids or quotations for gabions from BSWC and MGMC.

29. In connection with the purchase of gabions for use in public works projects financed, in whole or in part, by the United States, contractors and state and local governments sought and obtained bids and quotations for gabions from BSWC and MGMC.

30. Pursuant to the aforesaid combination and conspiracy, and as a result of the acts done in furtherance thereof, BSWC and MGMC have made sales to the plaintiff, state and local governments and contractors and have received payments from the plaintiff, state and local governments and contractors for gabions on the basis of bids or quotations which BSWC and MGMC submitted and which they directly or implicitly represented to be bona fide, independent, competitive, and not the product of any collusion or agreement. BSWC and MGMC directly or implicitly represented the prices of such bids and quotations to be normal and reasonable, and arrived at independently without communication or agreement for the purpose of restricting competition as to any matter relating to such prices, knowing said representations to be false and fraudulent in that the said bids and quotations were the product of collusion and agreement, and knowing that the prices, therefore, were unreasonable, arbitrary, noncompetitive, and secretly and wrongfully inflated.

31. With respect to the aforesaid bids and quotations, BSWC and MGMC presented or caused to be presented numerous claims for payment to the plaintiff, state and local governments and contractors, knowing such claims to be false or fraudulent, in that such claims were based on bids and quotations which were false or fraudulent by reason of the aforesaid illegal combination and conspiracy, and knowing that the amounts claimed were falsely or fraudulently inflated and excessive. BSWC and MGMC also knew, or had reason to know, that the claims submitted to state and local governments and contractors would cause state and local governments and contractors to submit claims for payment to the United States for purchase of gabions that were false or fraudulent because inflated and excessive.

32. As a result of BSWC's and MGMC's presenting or causing to be presented to state and local governments and contractors the aforesaid false, fraudulent and inflated claims, state and local governments and contractors have paid the false, fraudulent and inflated claims to BSWC and MGMC.

33. Based upon the payment by state and local governments and contractors of false or fraudulent claims, state and local governments and contractors have made claims upon the United States that were false or fraudulent because inflated and excessive and have received reimbursement from the United States for those claims.

34. The foregoing considered, BSWC and MGMC have presented or caused to be presented for payment claims upon or against the United States, knowing such claims to be false or fraudulent; have for the purpose of obtaining or aiding to obtain payment or approval of such claims made, used, or caused to be made or used false or fraudulent documents, knowing such documents to contain false or fraudulent entries; and have agreed, combined or conspired to defraud the United States by obtaining or aiding to obtain payment of such claims, all in violation of 31 U.S.C. §3729.

35. The aforesaid false or fraudulent claims were presented or caused to be presented to, and were paid by, the United States throughout the period covered by this Complaint, and for some period thereafter.

36. As a result of the illegal acts of the defendants and co-conspirators, the plaintiff has been compelled to pay substantially higher prices for gabions than would have been the case but for the illegal conduct complained of herein, and has been financially damaged by the combination and conspiracy, in an amount which is presently undetermined.

## XI

### STATUTE OF LIMITATIONS AND FRAUDULENT CONCEALMENT

37. The United States has brought this suit within six years of the payment of numerous false and fraudulent claims and within six years of the discovery of the aforesaid illegal combination and conspiracy. The plaintiff had no knowledge of



the aforesaid combination and conspiracy or of the existence of false or fraudulent claims or of any facts which might have led to the discovery thereof, until sometime within six years of the filing of this Complaint, and it first became fully aware of the scope of the unlawful conspiracy during the course of grand jury proceedings.

38. The existence of the aforesaid conspiracy could not have been discovered earlier by the exercise of due diligence by the plaintiff, inasmuch as the defendants and co-conspirators had fraudulently concealed the price-fixing conspiracy by, among other things, holding secret meetings outside of the United States to effectuate the conspiracy.

## XII

### PRAYER

39. WHEREFORE, the plaintiff:

A. Prays that the herein alleged conspiracy among the defendants and co-conspirators be adjudged and decreed to have presented or caused to be presented to plaintiff for payment or approval by it numerous claims, knowing such claims to be false or fraudulent; to have made, used or caused to be used false or fraudulent documents in obtaining or aiding to obtain payment or approval of such claims; and to have agreed, combined or conspired to defraud the United States by obtaining or aiding to obtain payment of such claims, all in violation of 31 U.S.C. §3729.

B. Demands judgment against the defendants jointly and severally in favor of the United States for two thousand dollars (\$2,000) for each false or fraudulent claim against the United States of America, and, in addition, for double the amount of damages plaintiff has sustained, and for such other forfeitures as are allowable by law, as provided in 31 U.S.C. §§3729-3731, together with interest thereon and the cost of this suit.

C. Prays that it recover such other amounts and have such other relief as the Court shall deem just and proper.

#### COUNT THREE

40. As a third claim, the United States of America, in its capacity as a purchaser of gabions, brings this suit against the defendants under 28 U.S.C. §1345 seeking Recoupment of Public Funds Paid by Mistake. The claims alleged in this count are asserted as an alternative to those alleged in Counts One and Two to the extent that any transaction complained of may give rise to liability under more than one count.

41. The allegations in paragraphs 2 through 20, the demand for jury trial contained in paragraph 24 and the allegations in paragraphs 28 through 36 are herein realleged with the same force and effect as though set forth in full detail.

42. During the period covered by this Complaint, and for sometime thereafter, BSWC and MGMC made sales of gabions to the United States, state and local governments and contractors.

BSWC and MGMC received payments for the aforesaid sales from the United States, both directly and indirectly through state and local governments and contractors on the basis of bids and quotations which the United States understood not to have been the product of, or to have been affected by, collusion, agreement or a conspiracy to fix, raise or maintain the prices of gabions.

43. Prices of gabions submitted to the United States for reimbursement, by BSWC and MGMC or through various state and local governments and contractors, were paid by the United States based on its understanding that the prices of BSWC and MGMC for gabions were not the product of and were not affected by collusion, agreement or a conspiracy to fix, raise or maintain prices.

44. Prices of gabions paid by the United States either directly to BSWC or MGMC or through various state and local governments and contractors were materially erroneous because they were illegally inflated.

45. The defendants and co-conspirators caused the prices to be illegally inflated by engaging in the aforesaid conspiracy.

46. The United States paid the inflated prices of gabions in the mistaken belief that the prices were not the product of, and were not affected by, collusion, agreement or a conspiracy to fix, raise or maintain prices.



47. The foregoing considered, the United States paid money to BSWC and MGMC directly and through state and local governments and contractors based on a mistaken understanding of the facts. BSWC and MGMC have been unjustly enriched thereby.

### XIII

#### STATUTE OF LIMITATIONS AND FRAUDULENT CONCEALMENT

48. The United States has brought this suit within six years of the discovery that payments were made to BSWC and MGMC in the mistaken belief that prices of gabions were not the product of, and were not affected by, collusion, agreement or a conspiracy to fix, raise or maintain prices, as required by 28 U.S.C. §2415 and 28 U.S.C. §2416(c).

49. The existence of the aforesaid conspiracy to fix prices could not have been discovered earlier by the exercise of due diligence by the plaintiff, inasmuch as the defendants and co-conspirators had fraudulently concealed the price-fixing conspiracy by, among other things, holding secret meetings outside of the United States to effectuate the conspiracy.

### XIV

#### PRAYER

50. WHEREFORE, the plaintiff:

A. Prays that the herein alleged conspiracy among the defendants and co-conspirators be adjudged and decreed to have caused the United States to make erroneous payments to

BSWC and MGMC, both directly and through various state and local governments and contractors.

B. Demands judgment against the defendants jointly and severally for the damages suffered by it due to the erroneous payments as provided for by the doctrine of Recoupment of Public Funds Paid by Mistake.

C. Prays that it recover such other amounts and have such other and further relief as the court shall deem just and proper.

  
\_\_\_\_\_  
CHARLES F. RULE  
Acting Assistant Attorney General

\_\_\_\_\_  
JOHN F. GREANEY

  
\_\_\_\_\_  
JOSEPH H. WIDMAR

\_\_\_\_\_  
J. ROBERT KRAMER II

\_\_\_\_\_  
JOHN W. CLARK

\_\_\_\_\_  
PHILLIP R. MALONE

\_\_\_\_\_  
FRANK N. BENTKOVER  
Attorneys, Department of Justice

Attorneys, Department of Justice  
Antitrust Division  
10th Street & Pennsylvania  
Avenue, N.W.  
Washington, D. C. 20530  
Telephone: (202) 724-7469

\_\_\_\_\_  
CATHERINE C. BLAKE  
United States Attorney  
District of Maryland