



---

International Cartel Policy

Author(s): Bert F. Hoselitz

Source: *The Journal of Political Economy*, Vol. 55, No. 1 (Feb., 1947), pp. 1-27

Published by: The University of Chicago Press

Stable URL: <http://www.jstor.org/stable/1829385>

Accessed: 16/12/2009 23:25

---

Your use of the JSTOR archive indicates your acceptance of JSTOR's Terms and Conditions of Use, available at <http://www.jstor.org/page/info/about/policies/terms.jsp>. JSTOR's Terms and Conditions of Use provides, in part, that unless you have obtained prior permission, you may not download an entire issue of a journal or multiple copies of articles, and you may use content in the JSTOR archive only for your personal, non-commercial use.

Please contact the publisher regarding any further use of this work. Publisher contact information may be obtained at <http://www.jstor.org/action/showPublisher?publisherCode=ucpress>.

Each copy of any part of a JSTOR transmission must contain the same copyright notice that appears on the screen or printed page of such transmission.

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).



The University of Chicago Press is collaborating with JSTOR to digitize, preserve and extend access to *The Journal of Political Economy*.

# THE JOURNAL OF POLITICAL ECONOMY

Volume LV

FEBRUARY 1947

Number 1

## INTERNATIONAL CARTEL POLICY\*

BERT F. HOSELITZ

### CARTELS AND COMMODITY AGREEMENTS

THE past few years have seen the development of an extensive literature on international cartels. This literature was apparently provoked originally by the discovery that certain cartel agreements, especially mutual patent agreements between German and American firms, severely impeded the Allied war effort. The nature and effects of cartels were subsequently investigated by official bodies in the United States, Canada, and other countries, and these investigations produced numerous detailed facts about the organization and activities of international cartels. The official investigations were followed by a series of publications, based on careful research and analysis by economists and political scientists, making ample use of the materials unearthed by governmental committees and containing proposals for public policy and international action. The present paper presents an analysis, based upon findings and ideas previously published, of concrete policies which might be used by several countries jointly, or

by one country alone, to prevent or mitigate the harmful effects of international cartels.

A cartel is a combination of independent firms or individuals which has as its aim some form of restrictive (monopolistic) influence on the production or sale of a commodity or group of commodities.<sup>1</sup> In an international cartel the members to the agreement are located in different countries, with the activities of the cartel usually exercised in the world market or in a substantial part of it. Similar in their economic effects, but dissimilar in organization, are international monopolies such as the International Business Machines Company and the International Nickel Company. Since these organiza-

<sup>1</sup> Although it is often claimed that the definition of cartels in the text is the generally accepted one, this is not so. Ervin Hexner, in his *International Cartels* (Chapel Hill, N.C., 1945), devotes a whole chapter of twenty-four pages to a discussion of different definitions of cartels; his definition is both wider and weaker than the one in the text. J. A. De Haas, *International Cartels in the Postwar World* ("National Economic Problems," No. 404 [New York: American Enterprise Association, 1944]), declares that cartels are agreements which "regulate competition among the members and between members and outsiders." It is clear that an acceptance of this last definition would lead to quite different avenues of investigation from the one presented in this paper.

\*The author gratefully acknowledges the assistance of the Yale Institute of International Studies in the preparation of this paper.

tions are not made up of independent units, all parts being organized in a complex system of the holding-company type, the individuality of the various units is lost. For this reason the internal struggle for advantage, which is always present within a cartel—however united it may appear on the surface—is absent. Also, the fact that such monopolies are legally unified organizations calls for somewhat different administrative measures in dealing with them than with cartels.

Governmental commodity agreements frequently have economic effects resembling those of cartels. Depending upon the character of the commodity under regulation, four types of governmental commodity agreements—three genuine and one “spurious”—can be distinguished.<sup>2</sup>

1. The controlled commodity may be one which, if freely used and distributed, would endanger the health or safety of the community. This would be the case with narcotics and other intoxicating drugs, armaments, fissionable materials, and similar types of commodities. In these instances government regulation is carried out in the course of execution of the state’s police powers.

2. The controlled commodity may be one which is subject to excessive depletion when competitive exploitation is permitted. This is the case with certain marine resources, with fur-bearing animals, and possibly also with forest and certain mineral resources in short supply.

3. The most important type of genuine commodity agreements concerns chiefly agricultural commodities normally produced by a large number of

small farmers. Since, if unregulated, such commodities are subject to large and sudden price changes, and since excessive fluctuations of price and output involve serious hardships for a large mass of the agricultural population, a regularization of prices and output is eminently desirable. Because of the great number of interested producers (and consumers), governments must act as their representatives in the conclusion of international agreements for the production and distribution of the commodities in question.

4. But in some cases government commodity agreements have not been concluded either in the exercise of the state’s police power, or to conserve resources, or to represent unorganized groups of small producers; such agreements, which we call “spurious,” closely approach international cartel agreements and should be treated as such. Instances of this latter type of government agreement, which is really a governmental cloak for a cartel, are the International Rubber Regulation Agreement of 1934 and the International Tea Exports Regulation Scheme of 1933, in which the governments acted chiefly in the interests of several large producers; and the cartel agreements of the German-French alkali syndicate concluded by government-owned corporations.<sup>3</sup> True, genuine commodity agreements often produce effects

<sup>3</sup> Professor Davis (*ibid.*) is chiefly interested in the degrees of success of the various forms of commodity agreements. He finds that, apart from some instances of commodity agreements of types 1 and 2, the most stable and successful ones have been the “spurious” agreements. The greater relative success of these cartel-like control schemes seems attributable to the ease with which entry on the part of small producers can be restrained. Cf. V. D. Wickizer, *Tea under International Regulation* (Stanford University, Calif., 1944), pp. 92 and 132, and also Davis (*op. cit.*, p. 198), who gives as one objective of the rubber control scheme the aim “to hold in check the gradual encroachment of lower-cost native producers.”

<sup>2</sup> The following classification is based in part on the discussion of commodity agreements in Joseph S. Davis, “Experience under Intergovernmental Commodity Agreements, 1902-45,” *Journal of Political Economy*, LIV (June, 1946), 193-220.

—in the form of restriction of output and raising of prices to consumers—similar to those of cartels. But the advantages of conserving scarce resources or of stabilizing production and prices of commodities, upon the sale of which the welfare of large groups of the population of certain countries is dependent, may often outweigh the disadvantages. On the other hand, cartels, whether created by purely private agreement or under the guise of governmental commodity agreements, primarily seek to raise or maintain present or future profits of the participating firms regardless of their production costs, even though stabilization of output and prices is frequently, and even conservation of resources occasionally, a by-product of such cartel agreements.

The difference between a genuine cartel agreement and a commodity control scheme therefore lies in the primary purpose, the nature of the commodity, and the type of producers affected rather than in the official form under which the control is set up or in its precise economic effects.<sup>4</sup> This distinction is an important factor in the formation of cartel policy. Actions taken by governments in regulation of purely private agreements may take other forms than those directed toward regulating agreements to which government-owned enterprises are parties. But it should be plain that any policy devised to regulate or curb international private cartels will be doomed to failure if governments themselves enter

into activities which have economic effects identical with those of cartels.<sup>5</sup>

#### CARTELS AND COMMERCIAL POLICY

Since the primary economic purpose of international cartels is to create some form of monopolistic market control, they will be successful only if the partners of the cartel enjoy a high degree of monopolistic control in their domestic markets. In industries composed of a few dominant firms in each country, a direct agreement between those firms enjoying substantial monopoly power within their national sphere is easy. In other industries, where many small firms compete, cartelization on an international scale is possible only through the intermediary of trade organizations or similar agencies; through the intervention of governments, such as in the rubber, tin, and tea cartels; or through the setting-up of special organizations such as the Webb-Pomerene associations or the Japanese export guilds.<sup>6</sup>

If it is true that, in the majority of cases, international cartels are formed through agreements of organizations which have a monopolistic or near-monopolistic position in the domestic market, it appears that the same forces which facilitate domestic monopolization operate in favor of international cartels. Measures designed to combat or dissolve domestic monopolies will have similar unfavorable effects on the per-

<sup>5</sup> A discussion of the difficulties in distinguishing between cartels and government commodity control schemes and an analysis of the genuine characteristics of government commodity control schemes are presented in Bernard F. Haley, "The Relation between Cartel Policy and Commodity Agreement Policy," *American Economic Review*, XXXVI (May, 1946), 717-34.

<sup>6</sup> Cf. K. Fujita, "Cartels and Conflicts," *Journal of the Osaka University of Commerce*, No. III (December, 1936), pp. 65-109; and E. B. Schumpeter *et al.*, *The Industrialization of Japan and Manchukuo, 1930-1940* (New York), pp. 755-60.

<sup>4</sup> The cartel character of certain types of inter-governmental commodity agreements has created some terminological confusion. Thus, in his testimony before the Temporary National Economic Committee on January 15, 1940, Professor T. J. Kreps testified that governments were occasionally cartel partners. He specifically mentioned the International Rubber Regulation Agreement of May 7, 1934, as an instance of such a "government cartel" (cf. U.S. Senate, *T.N.E.C. Hearings* [Washington, D.C., 1940], Part 25, p. 13065).

manence and stability of international cartels. As a corollary to this observation, economic policies which make attractive various forms of restrictionism, public or private, will provide a stimulating atmosphere for the development of cartels. The cartel problem thus becomes a secondary problem in the field of economic policy and international economic relations, subordinated to that of the permanent attainment of high levels of production and trade. In fact, if a high level of employment can be attained and maintained in the major countries, the cartel problem will lose much of its importance. Cartels have been very attractive to producers in industries which showed a tendency to relative overproduction or overinvestment. It is clear, therefore, that a high level of employment and a continuous high demand for goods and services would go a long way toward easing the pressure favorable for the formation of cartels.

Of paramount importance, in addition to the maintenance of a high level of employment, are the establishment and maintenance of the freest possible international trade. As long as cartelization is regarded (together with other restrictive practices) as a suitable instrument of national economic policy, all measures taken against cartels will fail in the long run. Only international trade relationships based on formal and substantial nondiscrimination will provide an atmosphere conducive to the demise of cartels. In fact, compared with all other measures, attainment of full employment and maintenance of free trade are of overwhelming importance if cartel regulation is to be effective. If the world is to experience chronic unemployment and widespread trade restrictions, cartels will appear and reappear in new forms even if the old ones are outlawed.

Yet there remain two major problem areas which are of primary importance in an analysis of the kinds and prospective effects of specific cartel policies. Since international cartels operate in the sphere of trade relations between countries, one such problem area is the relationship between governmental barriers to the free movement of commodities across national boundaries and the measures taken by cartels which will affect the flow of internationally traded goods and services. Public and private measures may be complementary or contradictory. In either case, a clear understanding of their mutual impact is necessary for the elaboration of a sound cartel policy. The other chief problem area (which will be discussed further below) is the conditions which make for stability or instability in given cartel structures. We begin with a few remarks concerning the first problem.

The argument that tariffs and other protectionist measures are favorable to the formation of cartels is often repeated. There is no doubt that tariffs, by eliminating or curtailing foreign competition, produce domestic conditions which are favorable to monopolization. This thought was especially popular before World War I in Germany, where it was argued that tariffs permitted organizations of producers to make restricted sales at high prices on the domestic market and to "dump" the excess abroad.<sup>7</sup> Although high tariffs may stimulate do-

<sup>7</sup> This point is discussed at length with numerous examples from actual experience in Joseph Grunzel, *Economic Protectionism* (Oxford, 1916), pp. 223-27, and in Fritz Diepenhorst, *Die handelspolitische Bedeutung der Ausführungsunterstützungen der Kartelle* (Leipzig, 1908). The same idea is recognized in Canada, where the Combines Investigations Act (13-14 George V, Statutes of Canada, c. 9) provides (in sec. 29) that the Governor in Council may admit articles free of duty or reduce duty payments if an investigation shows that a combine exists at the expense of the public.

mestic combinations, they do not directly influence international cartelization. When companies located in various countries come together to make arrangements about the "excess" production which has to be "dumped" abroad, an international cartel may begin. At the same time rules and regulations about reserving the domestic market to each national group or partner will usually be set up. Cartel protection will thus be added to tariff protection. However, the higher the tariff protection, the less necessary is cartel protection and vice versa. One might, therefore, expect to find strong advocates of international cartelization in countries with relatively low tariffs. On the other hand, high tariffs provide a substantial degree of security as far as the domestic market is concerned and hence may serve as a strong argument in intracartel negotiations for quotas and other advantages.<sup>8</sup>

Although tariffs unquestionably played a role in the formation of early cartels, their importance in favoring combinations should not be exaggerated. There is a far from perfect correlation between the existence of high tariff walls and the development of monopolies; and, even before 1914, monopolies not only developed rapidly in the protectionist United States and Germany but flourished in free-trade Britain as well.<sup>9</sup> The development of international cartels, especially in the inter-war period, seems to

<sup>8</sup> See A. Wolfers, *Das Kartellproblem im Lichte der deutschen Kartellliteratur* ("Schriften des Vereins für Sozialpolitik," Vol. CLXXX, Part II [Munich, 1931]), pp. 123-24.

<sup>9</sup> Cf. Hermann Levy, *Monopolies, Cartels, and Trusts in British Industry* (London, 1927); Roman Piotrowski, *Cartels and Trusts* (London, 1933); and Louis Domeratsky, "Recent Trends in British Industrial Reorganization," *Regulation of Economic Activities in Foreign Countries* (Temporary National Economic Committee, Monograph No. 40 [Washington, D.C., 1941]), esp. pp. 6-10.

have been little affected by the relative height of tariffs in the various countries. In fact, in some instances, tariffs and other measures of general commercial policy have rather been regarded as a nuisance by members of cartels. In those instances where the particular distribution of sales territories between cartel members ran counter to governmental endeavors to direct trade in specific channels, cartels have maintained their own import and export prohibitions and have frequently been successful. A number of specific instances of this sort are reported by Professor Edwards, and one striking case where Canadian exporters of chemicals were prevented by the cartel from co-operating "in the efforts made by the Canadian Government to expand trade with the West Indies" shows that the more powerful cartels are able in some instances to frustrate commercial arrangements by governments.<sup>10</sup>

#### STABILITY OF CARTELS

Upon what factors does the durability, or power of continued existence, of the cartel depend? The degree of stability of a cartel may be affected by internal or external factors. Large discrepancies in the relative cost structures of the cartel members or opposing aims of the partners of a combination are internal factors which may affect the degree of cartel stability.<sup>11</sup> Examples of external factors influencing the durability of a cartel are fluctuations in the demand for the prod-

<sup>10</sup> Cf. Corwin D. Edwards, *Economic and Political Aspects of International Cartels* (U.S. Senate, Subcommittee on War Mobilization of the Committee on Military Affairs, Monograph No. 1 [Washington, D.C., 1944]), pp. 44-47, and *Canada and International Cartels* (Report of Commissioner, Combines Investigation Act [Ottawa, 1945]), pp. 20-21.

<sup>11</sup> See S. Tschierschky, *Kartellpolitik* (Berlin, 1930), pp. 23-27.

uct or products of the cartel, the emergence of outsiders, or the activity of governments. Certain kinds of legislation (e.g., patent laws) may unintentionally strengthen cartel stability. Others (such as legislation for compulsory or voluntary cartelization) may be intentionally designed to foster cartel stability. Still other kinds (e.g., antitrust legislation) may intentionally affect cartel stability unfavorably.

Of the more purely economic factors which affect the stability of cartels, the most outstanding are (1) the number and size of cartel members; (2) the investment policy in the cartelized industry; and (3) fluctuations in the demand for cartelized products.

1. For our purpose, an analysis of the optimum size of the firm is irrelevant, although such an investigation may have its place in determining what economic gains may be achieved by an efficient antitrust policy. The permanence of large firms in certain industries is largely the result of the difficulty which would-be competitors face in entering the industry. In order to compete efficiently, a new firm must start on a scale adequate to meet, and possibly to fight, the cartel or any of its members. This is almost always impossible, unless the new firm can raise a substantial amount of capital initially, and there are only relatively few cases where new entrants have been successful. But even the hardest new firms may ultimately find it more to their advantage to become members of the cartel than to continue the struggle. An example of this process is provided by Professor Edwards in his discussion of the manufacture of chemicals in Argentina.<sup>12</sup>

The consequence of this situation is the high degree of stability which such

cartels usually obtain. International and even domestic cartels have, of course, sometimes risen through the combination of many small producers. However, unless supported in some form by the government—as were the potash producers in Germany, or the associations set up under the Webb-Pomerene Act in the United States—such cartels have been fairly unstable. A case in point is the Norwegian sardine cartel which, even before its dissolution in consequence of American antitrust litigation, had been extremely unstable.<sup>13</sup> The strongest and most stable cartels are those in which few firms participate and where the size of each firm is large in proportion to the market. For this reason most modern cartels are found in mining and heavy industries, where giant establishments are the rule. The market situation leading to international cartelization is thus, in the majority of cases, one of oligopoly. Although equilibrium in an oligopolistic market may be theoretically determined if the conjectural variations of the various oligopolists are known, in practice each oligopolist is uncertain about the reactions of his competitors to his own changes of price or output.<sup>14</sup> This situation of “circularity” (i.e., of uncertainty) results in most cases in price rigidities almost as great as those in markets controlled by a single monopoly. The advantages to oligopolists in entering into a cartel agreement lie chiefly in the security gained and, in cases where markets are divided among cartel partners, in the exclusive monopoly achieved in the assigned market section.

This observation is of double impor-

<sup>13</sup> Cf. I. B. Oseas, “Antitrust Prosecution of International Business,” *Cornell Law Quarterly*, XXX (September, 1944), 52.

<sup>14</sup> Cf. on this problem R. G. D. Allen, *Mathematical Analysis for Economists* (New York, 1939), pp. 203-4.

<sup>12</sup> *Op. cit.*, pp. 48-49.

tance. First, it is often claimed that cartels are formed to escape "ruinous" or "disastrous" competition. Wherever cartelization was preceded by a situation of oligopoly (as, for instance, in tea, copper, steel, tin, chemicals, and electric light bulbs), such a claim is simply untrue. The situation may have appeared "ruinous" because of the peculiar instabilities of oligopolistic markets. Second, if such cartels are dissolved, the resulting situation may be a renewal of oligopoly and hence may bring little relief to consumers in the form of larger total output and lower prices. Dissolution of international cartels would have to be accompanied by the establishment of effective competition, an end almost impossible to achieve in practice.

2. In discussing the investment policy in a cartelized industry, two cases must be distinguished. Either an already existing cartel may pursue a definite investment policy or a cartel may be newly formed because of the already existing overinvestment in an industry.<sup>15</sup> In this latter instance, additional investment would hardly have taken place under competitive conditions, and the cartel is therefore superfluous. In the short run, a cartel may, of course, provide a vehicle for more orderly contraction. Under cartelization, however, contraction takes place far less often through elimination of the most inefficient plants than through output restriction and allocation of sales quotas. In the latter case, the "overcapitalization" in the industry, while apparently reduced, in reality con-

tinues on. The frequent consequence is the appearance of serious cost differentials in the industry which threaten the stability of the cartel.

But even if a cartel is not formed to reduce excess capacity in an industry, the investment problem may produce elements of serious instabilities for the cartel structure in the long run. This may best be explained by tracing the consequences of two extreme types of investment policies. At the one extreme, an existing cartel may not control new investment in the industry at all. Hence, new firms either become competitors of the cartel or are accepted as members in the cartel. In the former case, the market position of the cartel will be weakened, and the cartel will therefore try to bring the new entrants into the combination. Unless demand for the cartelized product increases commensurably, the increased investment in the industry will require a reapportionment of quotas, with the consequence that, as more and more investment is attracted to the industry because of the high profits made there, the actual scale of operations of the firms in the industry will depart more and more from the optimal point, and excessive capacity, with all its uneconomic consequences, will be the result. If it is contended that it is unrealistic to assume that many cartelized industries are threatened by new entrants, it may be answered that the outcome will be the same if the additional investment in the industry is provided not by new entrants but by expansion of the members of the cartel themselves.

It may be for such reasons as these that cartelized firms (and other monopolists) frequently spend large sums on investment in research activities. The possibility of large-scale research activities on the part of such organizations has

<sup>15</sup> This latter point is pleaded eloquently by Professor De Haas. His only remedy is, however, private "regulation" of production in the form of business agreements. He admits and deplors that the abolition of such agreements would eliminate "high-cost-producers," but he nowhere mentions what exact process of reducing excess capacity would or could be applied by cartels (*op. cit.*, pp. 9-11 and 26-29).

often been praised by cartel supporters.<sup>16</sup> But reductions in costs of production resulting from technical improvements have usually been passed on to consumers belatedly and then only for the purpose of increasing the profits of cartel members themselves. Furthermore, as has been shown repeatedly, a considerable amount of research has been devoted to methods of deteriorating the product sold in order to increase sales.<sup>17</sup>

At the other extreme, a cartel may have complete control over its members' investment in the industry. In its most rigid form, this policy may lead to a complete blocking off of investment in the cartelized or monopolized industry. Although large profits are made in the controlled industry, they are not reinvested, being frequently deflected into other industries where entry is easy. It follows that the marginal rate of profit in cartelized industries will get more and more out of line with that in competitive industries, and this discrepancy will introduce severe instabilities in the cartelized industry.<sup>18</sup>

In practice the investment policy in a cartelized industry will lie between the two extremes. But, whichever course is followed or whatever compromise adopted, a serious conflict exists between the interests of the cartel members, on the one hand, and those of the community as a whole, on the other. The investment policy of a cartel will, therefore, constantly oscillate between endeavors to

mitigate the effects of investment on conditions of instability of the cartel and the public interest in genuine economic progress.

3. The most serious element making for cartel instability is fluctuations in demand for the cartelized product, enhanced by the attempts on the part of the cartel to stabilize cartel prices. The stabilization of cartel prices has been praised by partisans of cartelization as one of the most useful functions of cartels in reducing cyclical fluctuations.<sup>19</sup> Cartel prices are admittedly less subject to cyclical fluctuations than prices of noncartelized commodities. This stability is due in part to the fact that, under cartel conditions, price changes frequently take the form of changes in the terms of sale or secret rebates, and in part to the practice common to all monopolistic and near-monopolistic enterprises to adjust to the declining demand rather by reduction of output than by lowering of prices. But the stability of cartel prices is primarily against price reductions; in a period of generally rising prices cartel prices will go up with the others.<sup>20</sup> Cartels, like other firms, have to adjust to cyclically fluctuating demand. If they maintain stable prices, the changes in production and employment will be larger; if they maintain stable output quotas, they will have to do so at the sacrifice of changing prices.

Although, in a period of good business, cartels may refrain from using their monopoly powers to the full for fear of new investment outside the cartel, such fears

<sup>16</sup> *Ibid.*, pp. 32-34. A whole issue of the *New York Journal of Commerce* (Vol. CXCIV of March 11, 1943) under the title "The Public Interest in a Sound Patent System" was devoted to the end of emphasizing the amount and importance of private industrial research in the United States.

<sup>17</sup> Edwards, *op. cit.*, pp. 32-37; *Canada and International Cartels*, p. 23.

<sup>18</sup> Cf. Paul M. Sweezy, *The Theory of Capitalist Development* (New York, 1942), pp. 274-75.

<sup>19</sup> Cf. De Haas, *op. cit.*, p. 24.

<sup>20</sup> E.g., Professor Edwards (*op. cit.*, p. 12) reports the relative movement of cartel prices and open-market prices in Germany and France. When free prices began to rise in 1927, cartel prices remained stable, but by January, 1929, the rise in cartel prices had not only caught up with but overtaken the rise in open-market prices.

are largely absent in a depression. But a lasting decline in demand will increase the difficulties of a cartel in maintaining prices at the previous level and will promote tension within the cartel. Its members may decide that they would gain by breaking the cartel, and ultimately the cartel may fall apart. Depressions have had notoriously unfavorable effects on cartel stability, with the consequence of a much more abrupt reduction in prices than would have taken place had the industry been competitive all the time.<sup>21</sup>

Thus, in the economic sphere, there are several important factors making for cartel instability. It is not surprising, therefore, that cartels have attempted to use whatever means were available to strengthen the internal stability of the cartel. The means for doing this were thought to be found primarily in two areas: the insertion of sanctions against unilateral dissolution of cartel agreements and, in industries where this was feasible, the use of patent cross-licensing agreements.

The specific types of cartel sanctions which might be considered have been classified as follows: (1) financial penalties; (2) a central office or agency which operates as a board of appeals with the power to impose fines or in other ways to punish violators; (3) a special court of arbitration before which claims may be brought by members; (4) governmental agencies which may be appealed to, to apply penalties and pressures; and (5) the moral sanction of "good faith."<sup>22</sup> Al-

<sup>21</sup> The prices of steel merchant bars and structural shapes, in which marketing controls had disintegrated in the depression, fell between 1929 and 1932 by approximately 57 and 65 per cent, respectively, while the price of heavy steel rails, a product in which marketing controls were maintained, was reduced by only 10 per cent (cf. Hexner, *op. cit.*, p. 92). In the United States, which was outside the cartel, the price of structural steel dropped in the same period by less than 20 per cent.

though, in some instances, the penalties imposed on violators of cartels have been very severe indeed, it is doubtful whether a single case is on record where a member was prevented from breaking the cartel by the threatened sanction if it was in his economic interest to do so. On the other hand, it would be wrong to attribute no importance whatsoever to sanctions. Although they may not be a means of holding the cartel together, they may prevent minor violations which, if made repeatedly, might seriously reduce the morale of cartel partners and thereby threaten the stability of the cartel. Cartel sanctions may be likened in their influence to penalty provisions contained in international treaties. If a country's "vital interests" are affected, it will act regardless of what penalties might be applied against it. But in minor matters it will act less selfishly in order to avoid the open application of sanctions.

A cartel built around patents can achieve far greater stability than one based only upon penalties and sanctions. Patents and resulting cross-licensing agreements support cartelization by reducing to an agreed system of control the relevant information for purposes of production and design.<sup>23</sup> The typical patent agreement, therefore, includes not only cross-licensing agreements but often additional agreements dealing with the distribution of market quotas or the setting of prices and the establishment of exclu-

<sup>22</sup> This classification is given by Payson S. Wild, "Sanctions of International Commodity Agreements," *American Journal of International Law*, XXX (October, 1936), 666. Wild (*ibid.*, pp. 667-72) also gives examples of the inclusion of such penalty provisions in cartel agreements and the extent of their application.

<sup>23</sup> The problem of international agreements in the field of technology, with special emphasis on patents, is discussed by Robert P. Terrill, "Cartels and the International Exchange of Technology," *American Economic Review*, XXXVI (May, 1946), 745-67.

sive sales territories. Cartels based on patent agreements, or on licensing agreements plus territorial market division, are probably the most stable form of cartels and are particularly difficult to handle. Whereas, in other cartels, one partner may easily break the cartel even if it has been in existence for a considerable time, such a break is almost impossible when patent agreements are coupled with market division. For example, the British Imperial Chemical Industries and Du Pont have for a considerable time maintained a patent cross-licensing agreement for certain chemicals whereby the British Empire was reserved to I.C.I. and the United States and certain adjacent areas to Du Pont. If Du Pont were forced to break the cartel, its competitive position in the British Empire would be made extremely difficult. For all Du Pont patents previous to the break, having been shared with I.C.I., could be used by the latter until the licenses expired, by which time the patents would often have little value. Du Pont would, therefore, have exclusive ownership of only those patents which were granted after the break and would for a long time be hampered in its competition with I.C.I., which would control all trade outlets for commodities produced under patents granted during the cartel relationship. Hence, the breaking-up of the cartel would not change the present situation; a virtually complete monopoly of I.C.I. in the British Empire would continue to exist, and Du Pont could become an efficient competitor only at severe cost. On the other hand, Du Pont would no longer share the benefits of whatever progress in chemical research was made in the laboratories of I.C.I. The illustration may explain somewhat the tenacity with which patent agreements are adhered to and may throw

light on the desire of some American manufacturers to resume cartel relationships, interrupted by the war, with their German partners.

We have examined some of the more important factors affecting cartel stability. The relevance of this analysis for practical measures in the field of cartel policy should be obvious. It clearly implies that a policy of indiscriminate cartel-busting may produce very undesirable results and that measures for regulating cartel activities must be fitted to the particular character of the various types of international business combinations.

#### THE ATTITUDE IN DIFFERENT COUNTRIES TOWARD THE REGULATION OF PRIVATE CARTELS

The actual means of regulating cartels unilaterally or multilaterally depend to a considerable degree upon the attitude toward cartels in the regulating country. This attitude is formed in two places: business and government. If the interests of private manufacturers and traders are unfavorable to international cartels, it is not likely that even strong governmental encouragement of cartels, unless undue political pressure is used, will lead to business participation in them. But if, as is more frequently the case, private firms are favorably inclined toward participation in international cartels, governmental regulation will have to take into account possible infringements and evasions of its rules, and the regulations will have to be so devised as to minimize such illegal action. The other source of opinion on cartels is government itself. If a country has internal legislation favorable to domestic cartels, it will be difficult though not impossible to prohibit the participation of domestic firms in international cartels. But if a

country is equipped with antitrust laws and other measures destined to prevent combinations in restraint of domestic trade, such a policy should be logically extended to the international field. However, that domestic antitrust legislation is not considered incompatible with governmentally tolerated international cartels is proved by the Webb-Pomerene Act.

Governmental attitudes toward cartels may be classified according to three types, represented by the legal status of industrial combinations in the United States, Germany, and Great Britain. In the United States the governmental attitude toward cartels is inimical in principle, and domestic monopolies and combinations in restraint of trade are outlawed by antitrust legislation. Germany has a cartel law explicitly legalizing domestic cartels but submitting them to some form of government supervision. The British attitude is neutral, without specific legislation favoring or discouraging cartels.

Even the United States is not completely free from laws promotive of cartels. We have already mentioned the Webb-Pomerene Act, confined to international trade. Special attention should be drawn, however, to the Interstate Commerce Act of 1887 as amended by the Transportation Act of 1920 (49 U.S.C. secs. 1 ff.), the Shipping Act of 1916 (39 Stat. 728), and the Civil Aeronautics Act of 1932 (52 Stat. 977). These acts contain provisions which come very close to Articles 2 and 3 of the German Cartel Decree of 1923. The Shipping Act provided in section 15 for the filing of agreements between carriers

fixing or regulating transportation rates of fares . . . and controlling, regulating, preventing, or destroying competition, pooling or apportioning earnings, losses, or traffic,

allotting ports or restricting or otherwise regulating the number and character of sailings between ports, limiting or regulating in any way the volume or character of freight or passenger traffic to be carried, or in any manner providing for an exclusive, preferential, or cooperative working agreement.

As in Germany, where the Cartel Decree set up a special authority to administer the law, in the United States the Maritime Commission was authorized to disapprove, modify, or cancel any agreement "if it finds it to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers . . . or to operate to the detriment of the commerce of the United States." The Civil Aeronautics Act contains a very similar section, creating as supervising agency the Civil Aeronautics Board, while the Transportation Act of 1920 exempts all common carriers from complying with the antitrust laws if they operate in accordance with "the terms and conditions, if any, imposed by the [Interstate Commerce] Commission" (49 U.S.C.A., Suppl. 1943, sec. 5). Whatever interpretation might be given to these acts, there is no doubt that they have legalized domestic cartels in ocean shipping, air transport, and other common carriers within the United States. Insurance companies in 1945 were exempted up to January 1, 1948, from the antitrust laws (50 Stat., c. 20, sec. 3 [a]), and at present agitation is being carried on to exempt likewise newspapers and news agencies.<sup>24</sup> Judging from the enthusiastic reception which some of the N.R.A. codes enjoyed in certain industries, there is little doubt that an extension of the provisions from shipping and air traffic to other fields of transportation, to public utilities, and to manufacturing in general would not

<sup>24</sup> *New York Times*, May 24, 1945, p. 17, col. 7, and *ibid.*, November 14, 1945, p. 17, col. 3.

meet with too great resistance from interested parties. This does not mean that the United States is going to change its traditionally unfriendly attitude toward trusts, but there is no guaranty that the general provisions of the antitrust laws might not be narrowed down bit by bit by exempting specific industries.

It is likely, furthermore, that the cartels set up under the Webb-Pomerene Act exercised an unfavorable influence on competitive conditions within the United States in those industries in which export associations were formed. For example, the Temporary National Economic Committee hearings indicated that such an unfavorable influence was probably wielded by the copper export association which represented the major copper producers in the United States (who in addition controlled a substantial part of the Chilean and Canadian copper production).<sup>25</sup> It was admitted by one of the witnesses that the fixing of the world market price of copper was a factor in raising domestic copper prices.<sup>26</sup> Since the export association allocated production quotas among the different companies and the different regions of exploitation controlled by the member-companies, it could sustain certain high-cost mines which, without the cartel and without the American tariff on copper, would have had to close down. These mines continued to operate even though,

<sup>25</sup> See *T.N.E.C. Hearings*, Part 25, pp. 13126 ff.

<sup>26</sup> Cf. the testimony of C. F. Kelley, president of the Anaconda Copper Mining Company, in *ibid.*, pp. 13131-32:

"THE CHAIRMAN [O'MAHONEY]: Then would it not follow that whatever was done by the authority of the Webb-Pomerene Act through the policy of the Export Association would inevitably have an effect upon the domestic market as well as upon the foreign market?"

"MR. KELLEY: I think, to speak perfectly frankly, Senator, that you can't completely divorce the two markets."

under competitive conditions, the output would have shifted to lower-cost mines, and thus the world copper price, and with it the American domestic price, would have been lowered. A more recent charge that the associations formed under the Webb-Pomerene Act had a detrimental effect upon competitive conditions within the United States was made in the prosecution of the United States Alkali Export Association by the Antitrust Division of the Department of Justice.<sup>27</sup> The contentions of the Attorney-General show clearly that he regards this association as operating in restraint of domestic as well as foreign trade. This opinion was substantially maintained by the courts (65 S. Ct. 1120).

In spite of the difference in cartel legislation of the United States, Germany, and Great Britain, the development of industrial combinations has been fairly parallel. Obviously, antitrust legislation by itself is no sufficient guaranty against trusts if the execution of the law is not performed with sufficient vigor and if the Antitrust Division of the Department of Justice is not provided with sufficient funds. But, even if such funds were avail-

<sup>27</sup> The fact that combination solely for purposes of international trade, without affecting domestic trade, is impossible was expressed as early as 1919 in the Supreme Court decision in the case of *United States v. United States Steel Corp. et al.* (251 U.S. 417 [1920]). Answering the statement by the counsel for the government that "even if it would have been lawful for the many independent businesses . . . to unite to some extent to develop foreign trade . . . that can not justify the complete and permanent suppression of competition between them in domestic trade" (pp. 427-28), Justice McKenna, the author of the opinion of the Court, said: "We do not see how the Steel Corporation can be such a beneficial instrumentality in the trade of the world and its beneficence be preserved, and yet be such an evil instrumentality in the trade of the United States that it must be destroyed. . . . How can the Corporation be sustained and its power of control over its subsidiary companies be retained and exercised in the foreign trade and given up in the domestic trade?" (p. 453).

able, it is very doubtful whether under present conditions an antitrust policy would meet with success; for, when one large monopoly is destroyed, it is frequently impossible to create a large number of competitive firms which will step into its place and take over the production of the affected commodities. The best solution might be to provide sufficient capital from governmental sources (e.g., through the Reconstruction Finance Corporation) to the emerging independent competitive producers.

While cartelization has probably been driven farther in Germany than in almost any other large industrial nation, this results far less from the existence of a cartel law in Germany than from the particular methods of financing German industry and from the development of finance capitalism which is rather peculiar to Germany. The cartel decree in Germany was not a creation of the Hitler regime but was passed in 1923 under the Weimar Republic. Originally this cartel legislation was intended to control and regulate combinations, to supplement the law on unfair competition, and to be an instrument for a reduction of prices as well as for price control.<sup>28</sup> There is nothing in the German or Norwegian cartel laws (nor in the Czechoslovakian, Polish, or Hungarian drafts) which would have prevented a cartel supervisory board, if it had been so inclined, from using the law as an antitrust instrument rather than as a tool favorable to cartelization.

<sup>28</sup> A law patterned faithfully after the German cartel decree was passed in Norway in 1926, and drafts for similar laws were submitted in the Czechoslovakian, the Hungarian, and the Polish parliaments in 1929 and subsequent years and met with considerable approval. A similar "trust" law was in force in Denmark, without providing, however, for as extensive a supervisory authority as either the German or the Norwegian law.

The difference in legislative attitude has thus had little influence on the formation of cartels or in encouraging the participation of domestic firms in international cartels. Although it is probably true that, in the past, cartelization has been practiced to a greater extent in Europe (particularly in Central Europe) than anywhere else in the world, the explanation for this phenomenon is rather to be sought in attempts to adjust to a narrowly confined market than in governmental support of cartels. Governmental support in Germany probably originated as a consequence of concessions to industry demand rather than as planned governmental policy. This does not imply, however, that the already existing and vastly interconnected cartel structure of German industry was not used as a vehicle for the achievement of economic and political aims under the Hitler regime. Our analysis shows that governmental action in almost all cases has either been powerless to prevent cartelization or has actually fostered it because of pressures exercised by interested groups.

There is little doubt that the attitude toward postwar international economic organization among almost all the former cartel participants remains unchanged. Although representatives of many of the most notorious partners in international cartels in the United States and elsewhere have vociferously declared their devotion to the principle of freedom of international trade, there is ample evidence that cartel relationships interrupted by the war are expected to be resumed after the war. The Department of Justice has collected evidence that American firms have attempted to assure their former cartel partners in Germany and Japan that their obligations under cartel relationships would be considered only

temporarily suspended by the war.<sup>29</sup> The continuance of the tin cartel, which survived the virtual loss of substantial tin-bearing deposits through the Japanese conquests in the Far East, is a case in point.<sup>30</sup> The hearings before the Senate Committee on Patents in 1942 brought to light conclusive evidence that at least one American company—Standard Oil of New Jersey—had made elaborate plans to safeguard its cartel relations during the war and to renew them after the war with companies situated in enemy territory.<sup>31</sup> This attitude was probably shared by a number of entrepreneurs who have had experience with international cartels.

Although those who have had favorable pre-war experience with cartels are hardly inclined to approve their discontinuance, they constitute only a small number of businessmen. The attitude of most businessmen toward cartels is determined primarily by a desire to increase, or at least to stabilize, their profits within a given institutional framework or to acquire a larger share, or protect their traditional share, in the hierarchy of imperfect world markets. In other words, businessmen were motivated in the past, and will continue to be motivated in the future, primarily by considerations of profit maximization rather than of national aggrandizement or maintenance of competitive conditions even though those may be the professed policies of their respective governments.

<sup>29</sup> See Leo Fishman, "Wartime Control of Tin in Great Britain," *Journal of Political Economy*, LIV (October, 1946), 421; and *New York Times*, October 6, 1942, p. 33, col. 5.

<sup>30</sup> Edwards, *op. cit.*, pp. 73-77.

<sup>31</sup> U.S. Congress, Senate Committee on Patents, *Hearings on S. 2303 and S. 2491* (72d Cong., 2d sess.), pp. 3409 ff. (testimony of Mr. P. A. Gibson). See also the testimony of Mr. Frank A. Howard of the Standard Oil Company (N.J.) (*ibid.*, pp. 5070-71).

Governments or certain of their officials may have thought of cartels as instruments of national policy, but it is not likely that many businessmen, even in Germany, thought so. American businessmen of late have been widely accused of having been tricked by their German cartel partners. Actually, both German and American businessmen regarded their cartels as instruments to do away with competition, which they felt to be disadvantageous. Although a fair claim can be made that, in certain strategic materials and mechanical devices, Germany has used cartels as instruments of national policy, it would be wrong to assume that this experience will change the attitude toward cartels held by businessmen in this country or elsewhere.<sup>32</sup> It is also well to remember that not all cartels were inaugurated or led by German firms and that numerous cartels were formed by firms situated exclusively in the United Nations. These cartels have not attracted as much public attention as the cartels in chemicals, optical instruments, and other strategic commodities to which German firms were partners, because their existence did not threaten the military preparedness of the United Nations. But, in a world without war, these cartels have economic effects not different from cartels formed with firms in former enemy territory. It is therefore alarming to note that cartelization has found so many and such important advocates in almost all the United Nations.

In Great Britain the idea of organizing postwar cartels seems to have found wider acceptance than in the United States. Among businessmen this attitude

<sup>32</sup> This attitude is well expressed by Mr. A. P. Sloan, chairman of General Motors, in a letter published in Guenther Reimann, *Patents for Hiller* (New York, 1942), pp. 280-81.

may be explained by the favorable results they experienced with trade associations (which in many instances are cover organizations for genuine domestic cartels) and by the rapid growth of such organizations during the war.<sup>33</sup> During the war the relations between the British government and trade associations were very close, and the associations in many ways served as quasi-official bodies in administering wartime controls of production and distribution in their respective industries. What is of special interest in connection with international cartels is that in 1940 some three hundred export groups, which were in many ways similar to the associations formed under the American Webb-Pomerene Act, were set up with the purpose of promoting exports.<sup>34</sup> Although these export groups are at present inoperative, they may be revived in short order if the pressure of an unfavorable balance of payments should call for it.

The attitude of English economists toward international cartels is divided. It is doubtful whether the majority of British economists have accepted the inevitability of cartels, but a sizable group of them have presumably become reconciled to the idea of state-supervised cartels. Even a statement drawn up by some leading British businessmen and economists—which in its general tenor is antagonistic to cartels and monopolies—contains the provision that firms may be allowed to participate in “cartel agreements with any firm or association operating outside Great Britain” if they obtain the sanction of the appropriate minister.<sup>35</sup> The advocates of cartels in

<sup>33</sup> “British Trade Associations,” *Planning*, No. 221, May 12, 1944.

<sup>34</sup> “Trade Associations and Government,” *ibid.*, No. 240, October 5, 1945, esp. p. 18.

<sup>35</sup> Nuffield College, *Employment Policy and Organization of Industry after the War* (London, 1943).

England tend to hide behind semantic smoke screens. They prefer not to speak of cartels but of “intercompany agreements,” and they take considerable stock in the influence which government can exercise in preventing the “abuses” to which these agreements might lead.<sup>36</sup> The British are particularly sensitive about their prospectively weak foreign-trade position, and there is little hope that they will dispense with most of the elaborate import and export controls which they have been forced to set up during the war. Illusions that Britain would be willing to return to a genuine free-trade position must have been destroyed by the series of articles published in January and February, 1944, in the London *Economist*, a magazine which for such a long time had staunchly supported free trade.<sup>37</sup> Since more direct government controls than tariffs are to be maintained, English economists are attempting to find a place for governmentally supervised “intercompany agreements.” The content of recommendations made by English writers varies chiefly in the degree of govern-

p. 54. Among the participants responsible for preparing the statement are found T. Balogh, G. D. H. Cole, E. F. M. Durbin, N. Kaldor, Joan Robinson, and P. S. Cadbury, S. Courtauld, and Lord Melchett.

<sup>36</sup> A similar argument in favor of “mixed” cartels has been put forward in this country by Professor W. F. Brook. His mixed cartels, which he justifies by the virtual inevitability of development toward ever larger combinations, are to be different from existing private cartels in that they are to be governmentally supervised “public service” cartels. The supervising public authority is to perform a three-fold role: as over-all guardian, as guardian of consumers’ interests, and as guardian of labor. Mixed cartels have essentially the same defect as government cartels. For the very challenging views of Professor Brook, see his *International Policy in a Synthetic Era* (New York: Pamphlet Distributing Co., 1943).

<sup>37</sup> “The Principles of Trade,” *Economist*, January 2, 1944, ff.

ment control from superficial regulatory activity to complete exercise of cartel powers by government.<sup>38</sup>

The attitude of several influential British administrators and political economists toward postwar cartels is the more discouraging because an efficient policy to combat cartel activities will certainly not come from businessmen. Governments will be left to initiate a policy (either separately or jointly) which will efficiently break the power of the cartels and establish market conditions which will at least approach reasonably free competition for the more important internationally traded commodities. But, to make this policy succeed, governments themselves will have to refrain from agreements or policies constituting acts in restraint of international trade.

It might be contended that, unless joint international action is taken, there is little hope of preventing the emergence of strong postwar cartels; that, if at least some of the more important industrial countries become active supporters of private or governmentally sponsored cartels, the rest of the world will be forced into this pattern also. The suggestion has been made, therefore, that only world-wide agreements and commitments will prevent the final victorious emergence of cartels. On the other hand, competent analyses of the policies of a country desiring to maintain free-market conditions in its foreign trade have shown that such a pessimistic outlook is not necessarily warranted.<sup>39</sup> It will,

<sup>38</sup> Representative statements concerning the British attitude may be found in Edward Levi, Joseph O'Mahoney, and Redvers Opie, *What Should Be British and American Policy toward International Monopolies?* ("A University of Chicago Round Table," No. 319, broadcast April 30, 1944), and G. H. C. Hart, "Ten-Point Plan for Post-War Control of Raw Materials," *Great Britain and the East*, February 20, 1943, pp. 19 ff.

therefore, be useful to investigate the policies which a country (more specifically the United States) could adopt to prevent international cartels from imposing their undesirable influences on its domestic economy. A world-wide or at least multilateral agreement to re-establish the freest possible international trade relationships would, of course, be most desirable. But, lacking this, it will be worth while to show whether and to what degree unilateral regulation of monopolies can preserve economic relationships valued by the majority of the American people.

#### MULTILATERAL AGREEMENTS FOR CARTEL CONTROL

Suggestions to deal with private international cartels through multilateral action have been made on two levels of generality. During the war most of the suggestions made dealt only with limited objectives,<sup>40</sup> including the following:

1. The making of international treaties in regard to patents and trademarks on which cartels may be based is recommended. Such international treaties should be so designed as to make cartelization on the basis of patents and trade-marks impossible or at least very difficult. Such action would have to make provision for some standardization of national patent and trade-mark laws and for international information in these fields. These treaties would especially call for some measure of com-

<sup>39</sup> Jacob Viner, *Trade Relations between Free-Market and Controlled Economies* (Geneva, 1943).

<sup>40</sup> A complete set of proposals comprising controls for all types of cartel activities was contained for the first time in the *Suggested Charter for an International Trade Organization* published by the United States Department of State in September, 1946 (Department of State Publication 2498, "Commercial Policy Series," No. 93 [hereafter cited as "*I.T.O. Charter*"]). These proposals appear in the next section below.

pulsory licensing of patents maintained merely for the purpose of preventing outsiders from entering into competitive production, and they might contain provisions preventing undue concentration of patents in the hands of a few large corporations. It has been contended that, under such conditions, many of the large firms which now find it possible to maintain research laboratories would discontinue or greatly contract their research activities. This deficiency would have to be made up by government-supported research or the setting-up of governmental or private "research pools," and it could be argued that inventions made in government laboratories would become the property of the government and could be made available to all organizations asking for a license upon the payment of certain fees.<sup>41</sup> Representatives of certain large business corporations interested in the maintenance of the most restrictive patent legislation argue that such action would seriously interfere with free enterprise. This argument is fallacious in suggesting that large-scale private monopolies made possible by the concentration of many patents in one hand are conducive to free enterprise. Talk about free enterprise is only too often prone to overlook the fact that free enterprise really means freely *competitive* enterprise. The monopolies can certainly not claim that a monopoly based on patents is more conducive to maintaining genuine freedom of enterprise than a situation in which patents and special processes are available on equal terms to all who are willing to pay the price. Provisions involving compulsory licensing of patented products or processes which are not exercised by the owner of the patent have

found entrance in the legal systems of certain European countries (the pre-1938 Austrian patent law contained such a provision), and there is little doubt that the introduction of such a clause in the American patent law would be at least a forceful instrument to break monopolistic power based on patents.<sup>42</sup> It has not come to the attention of the writer that the legislation of any modern country provides for governmental ownership of patents which are available to all who want them. Even the patent law of the Soviet Union contains provisions in which the inventor's private ownership of patents is guaranteed, although certain inventions of special interest to the armed forces of the U.S.S.R. may be appropriated for the common good.<sup>43</sup> It seems probable that the system of government-owned patents, at least in those fields where strong concentration based on patents is possible, would be a forward step in the furthering of economic welfare.

2. Another suggestion is that of forming international agreements to abolish such organizations as the Webb-Pomerene associations and similar organizations in other countries. The chief *raison d'être* for such cartels has been claimed to be purely defensive. As this idea is enlarged, a vicious circle ensues similar to that experienced by competitively more restrictive types of exchange control,

<sup>42</sup> Even if a compulsory licensing clause were introduced in the American patent law, it would hardly bring any improvement unless efficiently enforced. The beneficial effects of such a clause should not be overestimated, since licenses would have to be sought through litigation, which often would be a lengthy and costly procedure. For a more extensive discussion of compulsory licensing see Richard Reik, "Compulsory Licensing of Patents," *American Economic Review*, XXXVI (December, 1946), 813-32.

<sup>43</sup> Cf. Andrew Meyer, *The Patent and Trade Mark Laws in the USSR* (New York, 1944), pp. 7 ff.

<sup>41</sup> An exhaustive description of these measures is contained in Terrill, *op. cit.*, esp. pp. 758-67.

which were also defended on grounds that they were necessary to counteract the evil influences that exchange controls of other countries exercised on the domestic economy. If export and import associations are established in several important countries for allegedly defensive purposes, it is very likely that this will be taken as an incentive for the widespread extension of such practices. Defensive cartels will provoke defensive cartels, and these in turn will provoke more defensive cartels, until finally the entire trade of all nations will be organized under "defensive" cartels.<sup>44</sup> There is a need for international agreements outlawing this type of defensive cartel, but such agreements should be coupled, if possible, with agreements whereby nations undertake to maintain the utmost degree of competition in their international trade relationships.

3. The third type of international agreement proposed is compulsory registration of cartel agreements, supplemented by an interchange of governmental information about such agreements which would make it hard or impossible for firms to evade domestic registration. A bill submitted by Senator O'Mahoney in 1943 would require the registration of international contracts involving objectionable practices, and a good argument can be made for such registration, since publicity is likely to discourage such contracts.<sup>45</sup> But there is no reason why registration should be the only control of truly objectionable prac-

<sup>44</sup> The establishment of the Japanese Import Associations in the 1930's was defended by citing the need of Japanese importers to meet foreign monopolies. Similar considerations are sometimes argued in the recent economic literature in Great Britain.

<sup>45</sup> S. 1476, Foreign Contracts Act (78th Cong.), submitted by Senator O'Mahoney, October 25, 1943; also H.R. 3786 (78th Cong.), submitted by Representative Voorhis, December 6, 1943.

tics. Objectionable practices not already subject to existing antitrust legislation should be declared unlawful and appropriate penalties imposed. On the other hand, it would be difficult to justify burdens on international transactions of a kind which is fully legal in domestic trade. It is, therefore, unlikely that registration would have important results. If businessmen wanted to enter into clearly unlawful arrangements, they could certainly evade registration by forming secret gentlemen's agreements. If, on the other hand, harmless contracts had to be filed and their contents made public, publication not only would burden international trade with unnecessary hardships but would frequently provoke legitimate grievances on the part of persons engaging in international trade. While it is, of course, a matter of contention how far publication of data should go under compulsory registration, frequently there may be valid reasons, such as family controversies, confiscatory legislation, discriminatory taxation, etc., for concealment of assets. If compulsory registration of agreements affecting international trade is undertaken, then any action should be cautious and should deal only with areas known to be doubtful. If registration is driven to excess, considerable embarrassment, possibly forced retreat, and general discredit of the system might ensue.

4. A very interesting and extremely useful proposal has been made by Professor V. W. Bladen.<sup>46</sup> He advocates an international agreement which would forbid cartels to allocate markets. Though this prohibition would not completely abolish all economic effects of cartels, since there are frequent agree-

<sup>46</sup> This proposal was made in a speech before the University of Chicago Political Economy Club, November 17, 1944.

ments concerning price maintenance only, it would abolish some of the most oppressive cartels and could furthermore make easier the unilateral enforcement of competition. Even in the presence of price-maintenance agreements, competing firms would sell in the same markets, and then cartel agreements would be easily discernible owing to the absence of price competition. In what way such situations could be remedied would depend upon actual circumstances and the legislative provisions of the affected country. Possibly an international agreement which aimed at eliminating allocation of markets would be powerless against secret agreements providing exclusive markets. But abstention from competing in given markets by firms which are well-known producers of certain commodities would be too conspicuous a behavior for many firms to enter into. In this field publicity of such behavior might have fairly good effects.

#### THE CARTEL PROPOSALS OF THE I.T.O.

Some of these measures, among others, have been incorporated in the recent proposals of the United States Department of State. The charter provides for the formation of an International Trade Organization, which would exercise considerable powers in all fields of international commerce. One section of the charter is wholly devoted to the problem of restrictive business practices in the field of international trade.<sup>47</sup> Under the charter the Organization would have the following powers in regard to international private cartels.

1. It could receive and consider written complaints from any member-country, or from an individual or firm located in such a member-country, charging that a particular practice or group of practices

engaged in by a combination, agreement, or other arrangement, had monopolistic or other effects detrimental to the free exercise of competition. If the Organization found that a complaint deserved examination, it might proceed to gather evidence, including the conduct of hearings, in order to determine whether the charges were justified. If it found that a particular complaint was justified and had the alleged effects, it might "make recommendations to the Members concerned for appropriate remedial measures, including but not limited to abrogation and termination of agreements and arrangements, dissolutions, reorganizations, business divestitures, and licensing of patents, to be implemented in accordance with their respective laws and procedures."<sup>48</sup> It might then request reports from member-countries as to their action implementing the recommendations and publish reports concerning complaints, findings, recommendations, and actions taken on the basis of such recommendations.

In this function the Organization would act as a cartel court, where the execution of its recommendations was left to the member-countries concerned. The right of the Organization to publicize findings, recommendations, and actions taken on such recommendations would be an instrument to enforce action. It would be very important for the Organization to be as candid as possible in its published reports, in order to avoid pseudo-actions on the part of some member-countries. The Organization itself would have no power of compulsion, and its influence on anticartel action would be only indirect and limited to appealing to world public opinion. Since all anticartel action taken by the member-countries would be in accordance with

<sup>47</sup> *ITO Charter*, Arts. 34-40.

<sup>48</sup> *Ibid.*, Art. 35, par. 5.

the member-countries' domestic legislation, execution of the Organization's recommendations might vary considerably between countries and might be more effective in some countries than in others. The proposed charter does not explicitly call for periodical review of the effects of the Organization's recommendations in regard to restrictive business practices, nor does it provide for measures to be taken if member-countries should not respond to the recommendations of the Organization, or if the measures taken by member-countries were not effective in removing the conditions which formed the basis of the original complaints, except as such activity might be subsumed under the provisions of Article 36, paragraph 2.<sup>49</sup>

2. The Organization would also be authorized to make studies, either on its own initiative or at the request of a member-country, the United Nations, or another international agency, relating to business practices which might restrain competition or impose some form of monopolistic market controls. These investigations would not be limited to actual agreements or other arrangements between firms only, but the Organization might also examine national legislation and international conventions designed to regulate and control cartels and other monopolistic organizations. In this role the Organization might serve as an organ of publicity of cartel relations, even though no special complaints were made, and as a clearing-house of national and international action in cartel legislation and administrative procedure designed to curb international business agreements.

<sup>49</sup> This paragraph reads: "The Organization is authorized to call general consultative conferences of Members and to carry out such additional functions, within the scope of this Chapter, as may from time to time be assigned to it."

The proposed charter, furthermore, provides that member-countries may cooperate in cartel-curbing activities without recourse to the Organization and that countries may enforce unilaterally national statutes or decrees directed toward preventing monopolies or restraints of trade.<sup>50</sup>

It is also proposed that a Commission on Business Practices be set up which would have to perform the major functions of the Organization in regard to international cartels. The actual recommendations of the Organization regarding action to be taken in cartel matters would be made by the executive board of the Organization on the basis of the information and suggestions supplied by the Commission on Business Practices. If the recommendations of the executive board were not followed, or not followed adequately, the matter would presumably have to be brought before the conference of all members of the Organization. The conference might make a ruling on the case, and if the member-country still remained recalcitrant, the matter might, with the consent of the conference, be submitted to the International Court of Justice by any party to the dispute.<sup>51</sup> This procedure is extremely cumbersome and might find only rare application. The major value of the Organization in combating international cartels would therefore be twofold: (1) it would serve as an internationally respected and presumably unbiased organ of publicity and (2) it might by judicious rulings and recommendations provide a set of precedents in international action in regard to cartels which would form a basis for a generally acknowledged body of future international law. If it could achieve these two objectives, it would

<sup>50</sup> *ITO Charter*, Arts. 38 and 39.

<sup>51</sup> *Ibid.*, Arts. 65, 60, 55, and 76 (par. 2).

provide a climate in which universally approved rules of cartel control could develop.

#### UNILATERAL ACTION FOR CARTEL CONTROL

If no such international agreement on the treatment of cartels can be reached, or if the agreements reached prove insufficient or do not produce desirable results (either because there are loopholes in the agreements or because the international agencies dealing with cartels function badly or are administered in a slovenly manner), one country may want to act by itself. If the country is small, or if its economy is dependent largely on international trade, it may find it difficult to undertake anything on its own and either will support cartels and attempt to gain a favorable place in them or will protect itself by the traditional measures of protectionism—tariffs, quotas, and similar devices—thereby increasing barriers to world trade. Only one set of recommendations by a small country, Canada, has come to the attention of the writer. The Canadian cartel report shows conclusively that, apart from the extension and faithful enforcement of antitrust legislation, the major avenues open for cartel control in Canada are by means of “making of representations to other countries the nationals of which are found on investigation to be engaging in restrictive practices which prejudice the Canadian public [and] effective measures of international collaboration to check the abuses of cartelization.”<sup>52</sup> Canada is obviously reluctant to travel the road toward higher protection, and the quoted passage indicates clearly that its major hope of protection against the abuses of

cartelized markets lies in international action.

In some small countries government-owned or government-controlled monopolies have been set up as defensive organizations. This has been true of some Latin-American countries, especially in those instances in which the operation of international cartels has run counter to national interests in industrial development. Such a policy has been particularly popular in Chile, where a law was passed in 1932 by which the state has the exclusive right to import, distribute, and sell petroleum, its by-products and substitutes. Although the law has not been put into effect, the Chilean government subsidized a petroleum import company, the Copec, which actively competes with the leading foreign companies, which are subsidiaries of Shell and Standard Oil.<sup>53</sup> A bill, similar in tenor to the Chilean law, was introduced as early as 1912 in the German Reichstag. When the American Standard Oil Company entered into cartel agreements with its major British, Dutch, and French rivals, the combination dominated German petroleum imports. It was proposed to set up a government-controlled corporation which would have power to monopolize the entire wholesale trade in petroleum in Germany. Since the bill was not passed, the German import monopoly in petroleum was never set up.<sup>54</sup>

Proposals to combat international cartels by means of domestic monopolies have been made recently in many countries, including the United States. The chief argument against such monop-

<sup>53</sup> Cf. Agnes Roman, “State Regulation in Chile,” *Regulation of Economic Activities in Foreign Countries* (Temporary National Economic Committee, Monograph No. 40 [Washington, D.C., 1941]), pp. 146-47.

<sup>54</sup> Cf. Gruntzel, *op. cit.*, pp. 268-69.

<sup>52</sup> *Canada and International Cartels*, p. 68.

olies is the same as that against export associations. Although established originally for defensive purposes, these monopolies soon take on a life of their own and exercise restraints of domestic trade. In small countries in which governmental monopolies are established, the excuse is made that numerous cartelized imports are of such vital importance to the country's population that their control is in the public interest.

The situation for the United States is different. Unlike Canada and other small countries, the United States has a relatively small proportion of imports and exports in relation to its national income; also this country already has existing antitrust laws and a vast experience in handling combinations in restraint of trade. Finally, the American public has become more conscious and, at the same time, more suspicious of cartels and has, on the whole, taken a hostile attitude toward them. Even though this attitude may never be implemented by political action, there is always a possibility that the past experience of trust-busting (with all its political implications) may be revived and that a future cartel-smasher may gain considerable support from the American public. There are political, legal, and economic possibilities in this country of inaugurating, if needed, a policy of combating the influence of international cartels domestically even if international agreement cannot be reached or if international action should prove insufficient.

The specific measures which were advocated for use by the United States are the following two.

1. The breaking-up of American participation in any schemes of international restraint of trade. Such action might be supplemented by the requirement that American companies file statements with

a governmental agency or agreements or contracts made with foreign companies. Some of the difficulties of adequate regulation of international cartels through registration have been discussed above. It may be added here that an additional problem brought up by compulsory registration of cartel agreements is the registration of contracts involving the investment of American funds in foreign countries. The complete disclosure and unconditional publicity of such contracts could have highly undesirable effects. A possible way out of this dilemma could be provided if the registering agency were given the right to withhold disclosure of the contents of contracts in all cases in which in its judgment no public interest would be served by disclosure. In order to clarify the issue completely, a list as comprehensive as possible of all agreements not requiring registration should be made public. Such a list would include, for example, sales contracts or other types of contracts regularly occurring in the course of foreign trade.

2. A proposal frequently made is that the activities of private cartels in the United States should be taken over by the government. It is argued that, at the present stage of world economic development, giant enterprises cannot be abolished without loss in efficiency, and the United States would therefore weaken its position if it unilaterally enforced competition and atomized its industries, which would then be confronted in the international markets by large-scale competitors. However, governmental participation in cartels could, on the one hand, maintain the advantages of large-scale production and, on the other hand, prevent private American entrepreneurs from increasing their profits at the expense of the national welfare. It is furthermore argued that such an arrange-

ment would be more acceptable to the British and that it would meet Russian state trading on a more equal basis. But, as has been shown earlier, such a procedure would hardly be conducive to a real eradication of the adverse effects of cartels on the American economy. It would also increase the potentialities of state trading in the United States. An additional argument against this alternative would be that whatever governmental agency is set up to deal collectively in the international market is likely to be dominated by representatives of the affected industries. In this case, private cartels would gain governmental sanction and support.

Thus, the first course, registration of international cartels, is largely insufficient, and the second course, governmental participation in cartels, is in all likelihood undesirable. Apparently, therefore, the only positive contribution which can be made toward mitigating the influence of international cartels will be purely domestic measures to discourage and impede the formation of international cartels which have American partners or which exercise their influence on the American economy. It is generally held that an international cartel is possible and can exercise influence on a country's economy only if its partners have a reasonably tight monopoly in their respective countries and that, therefore, successful abolition of domestic monopolies would go a long way toward abolition of international cartels. This is true to a large degree, though there seem to have been some exceptions. The understanding between the American Steel Export Association and the Entente Internationale de l'Acier is a case in point. The American Steel Export Association was never a member of the European steel cartel, but, through a

gentlemen's agreement, mutual competition in third markets between the giant combinations was reduced to a minimum.<sup>55</sup>

The specific action which might be taken in the United States would involve the following four measures.

1. The antitrust law should be amended in such a way as to make illegal all forms of participation by American firms in any type of international cartels. The wording of the antitrust law, which forbids contracts, combinations, or conspiracies in restraint of trade and the monopolization of commerce in quite general terms, would probably be inadequate. It might be more useful to list specific well-known practices of international cartels and possibly supplement the list if new forms of international cartelization are devised.<sup>56</sup> But even if the antitrust laws are amended and their scope extended specifically to international cartels, their complete efficiency would be rather doubtful. Specific action has to overcome a host of legalistic obstacles. It would involve lengthy and costly court procedures and would be extremely slow in its effects, since, in many cases, years would pass until Supreme Court decisions could be reached.<sup>57</sup>

2. The Webb-Pomerene Act should be reconsidered and changed. Such action would undoubtedly produce immediate results, since the act has admittedly not only influenced forces abroad but has also tended to increase the ease with which cartels could control the American

<sup>55</sup> See E. Hexner, *The International Steel Cartel* (Chapel Hill, N.C., 1943), pp. 199-216.

<sup>56</sup> This procedure is followed in *ITO Charter*, Art. 34, par. 2.

<sup>57</sup> This slow and cumbersome procedure under the antitrust law is also a source of constant complaint in cases of domestic combinations in restraint of trade and seems to be one of the chief reasons for the relative ineffectiveness of the law.

market, even though the primary purpose of the export associations was to exercise control in foreign markets. The abolition of the Webb-Pomerene associations could, furthermore, be used as a strong argument in inducing third countries to curb their support of international cartels.

A survey of the export associations which have been formed under the Webb-Pomerene Act shows that its alleged benefits have been greatly exaggerated. The commodities that lend themselves best to Export Trade Act organization are raw materials and semi-manufactured products. In the case of some commodities—such as metals, certain food products, rubber, sulphur, and other minerals—the largest producers formed the association. The average total value of exports under Webb-Pomerene associations was only \$255,000,000 per year during 1920–38, or less than 7 per cent of the total exports of the United States. The 120 associations which were in existence at some time between 1918 and 1940 represented a total of 2,074 companies, which is a small minority of all American companies engaged in export trade.<sup>58</sup> This seems to be sufficient evidence that many American firms have found it satisfactory to carry on their export trade without entering into export associations. Further analysis of the firms participating in the 120 associations will show that a considerable number of these firms were of large size and that several of the associations were not true export associations because their members were strongly bound together by mutual financial control.

There may, nevertheless, arise cases of genuine hardship for American ex-

<sup>58</sup> See Federal Trade Commission, *Export Prices and Export Cartels* (Temporary National Economic Committee, Monograph No. 6 [Washington, D.C., 1941]), pp. 133 ff.

porters if they are relatively small compared with foreign cartels. A suitable remedy in such cases might be governmental support through extended consular services or through the negotiation of trade agreements containing provisions aiming at strict nondiscrimination or, in extreme cases, through direct government assistance in the form of credit guaranties or the use of state trading in the international field.<sup>59</sup>

3. Another important step would be a change in the American patent and trade-mark laws. The effects of such a change have been sketched above, but, even if international agreement on collective action in the same direction could not be reached, unilateral action in the United States would lead to a considerable weakening of the strongholds of American cartels in controlling the domestic market.

4. Another important requirement of cartel control is the downward revision of the American tariff. In numerous cases the tariff has assisted domestic combinations to maintain their monopolistic structure and has indirectly helped maintain high prices. It has provided third countries with a strong argument for applying discriminatory restrictions against the United States, and the scarce

<sup>59</sup> Professor E. S. Mason argues that the maintenance of Webb-Pomerene associations is desirable in view of the extensive development of state trading organizations in many European countries, which are "shopping around for the cheapest markets." (*Controlling World Trade* [New York, 1946], p. 73). If purchases are made by these state trading bodies on the basis of commercial considerations, the maintenance of export cartels could hardly be advantageous to American exporters unless it can be shown that associations can sell cheaper or better goods than single firms. If considerations of long-term credits or long-term contracts (such as the British-Canadian wheat-purchasing agreement) are paramount, then it is doubtful if American firms—associated or not—can effectively operate in the international market without direct assistance from the United States government.

world supply of dollars has been frequently cited to support cartelization. It has been argued in the United States that a unilateral tariff reduction would place this country in an economically more difficult position without contributing substantially to a general liberalization of trade relationships. Although multilateral agreements at least partially abolishing the severest restrictions of international trade would be preferable to unilateral action, American unilateral tariff reduction might, in the long run, produce wholly desirable results if judiciously applied and if carried through in such a way as to affect especially those industries in which inefficient producers are subsidized and which exercise a strong monopolistic influence on the domestic market.

All the measures listed will go a long way toward reducing the possibilities of domestic cartelization in the United States and thus toward weakening the chances of open or secret cartels being formed with American participation. But such unilateral action as outlined above will have hardly any effect on cartels having all foreign partners or controlling commodities which are not produced in the United States. Those who argue for international cartel control probably have in mind primarily these cartels. But, while wholly effective results can be achieved only by international action, under certain conditions even unilateral action would be sufficient to deal with these cases.

1. The United States has had experience during the war with black-listing foreign companies, and this device could be adopted also to combat foreign cartels. It will be useful only where the foreign cartel has competition or where suitable substitutes for the cartelized commodities are available.<sup>60</sup> Black-listing

may then be eminently successful in some cases but will produce only limited results in combating the tightest and most injurious cartels.

2. Although the antitrust acts apply to interstate and foreign commerce, American courts would in principle lack jurisdiction over persons or organizations which have their seat of business in foreign countries.<sup>61</sup> But if foreign cartels have subsidiaries or branch agencies located in the United States, the American jurisdiction could clearly be extended over these subsidiaries or agencies situated in United States territory. Such organizations could be dissolved under the antitrust laws or their activities regulated. Under our law a decree of dissolution could not be enforced, however, on those parts of the cartel outside United States' territory. In contrast, the Czechoslovakian cartel bill of 1929, which became law with only small changes in 1933, provides for the specific jurisdiction of Czech courts for the regulation of foreign cartels. Article 19 of the bill reads

The provisions of this law are also applicable to combinations of entrepreneurs [cartels, etc.] which have their seat of business in a foreign country provided their activity is exercised in the territory of the Czechoslovak Republic.

In the report accompanying the bill, the following explanation is given:

<sup>60</sup> This policy can hardly be called discriminatory if it is made plain (1) that black-listing will be exercised only against firms or combinations of firms and not against the countries where American imports originate; (2) that domestic producers of similar commodities or substitutes will be prohibited from entering into any combination with other domestic or foreign producers to restrain international trade; and (3) that firms will be removed from the black list if they can bring satisfactory evidence that they have dissolved the cartel or that they effectively compete in the American market.

<sup>61</sup> This problem is discussed at length in Oseas, *op. cit.*, pp. 43-50.

According to Article 19 of the bill, foreign cartels also are subjected to its provisions if their activities are exercised on the whole territory of the Republic. This is necessary because from an economic point of view, and especially from the point of view of protecting the national economy and national welfare, the cartel's seat of business is not decisive, since it is frequently determined by accident. What matters is whether or not the territorial effectiveness of the combination affects the domestic economy. If such regulation were not provided for, danger would arise that the combinations of entrepreneurs [cartels] would transfer their seat of business to a foreign country in order to avoid the applicability of the law.<sup>62</sup>

American courts could adopt a similar reasoning in dealing with cartels which influence economic relationships (prices, supplies, or production) in the United States.

American courts have in the past been concerned on several occasions with the applicability to international cartels of Article IV of the Sherman Antitrust Act. When, before World War I, several European shipping companies entered into an agreement regulating passenger rates between Europe and the United States, action was taken against them on the basis of the Sherman Act. The case was tried in the district court of New York, and the jurisdiction of the American courts was assumed to be given because the companies maintained branch offices in New York and because the transport of passengers between the United States and Europe formed part of the international trade of the United States. The court considered as irrelevant that the participants of the agreement were foreigners, that the agreement was concluded in foreign countries, and that it was carried through outside the United States and with the use of foreign

vessels.<sup>63</sup> In the Sisal case several American bankers and some of their subsidiary companies were accused of having monopolized the import of sisal. There was no quarrel about the jurisdiction of American courts, since all the incriminated companies were American. It is significant, however, that the judgment emphasized that the combination affected economic relationships within the United States.<sup>64</sup> In the action taken against the Franco-German alkali cartel, the incriminated companies were the European firms participating in the cartel and the American sales organization of the syndicate. The case ended with a consent decree.<sup>65</sup> The case against the Dutch quinine cartel also ended by consent decree. Finally, in the Canadian asbestos case, American firms were listed among the defendants, and for that reason the jurisdiction of the American courts was clearly established.<sup>66</sup>

From the available historical evidence, it must be concluded that, so far, the Supreme Court has passed judgment only in cases of cartels which were organized in the United States or had branch offices, agencies, or participating members in the United States. The suits against the shipping cartels have been decided only by district courts; the sisal and the asbestos cases involved American firms, and the alkali and the quinine cases ended by consent decree. But the evidence also shows that the United States Supreme Court has considered foreign cartels under its jurisdiction if

<sup>63</sup> *United States v. Hamburg Amerikanische Packet Fahrt-A. G. Company*, 200 Fed. 806; cf. *Oseas, op. cit.*, p. 46.

<sup>64</sup> *United States v. Sisal Corporation et al.*, 274 U.S. 268, 47 Sup. Ct. 592.

<sup>65</sup> *Kartell Rundschau*, 1929, p. 212.

<sup>66</sup> *Ibid.*, p. 55. For both cases see also *Oseas, op. cit.*, pp. 47-50.

<sup>62</sup> Ervin Hexner, *Grundlagen des tschechoslowakischen Kartellrechtes* (Berlin, 1929), p. 123. (Translated from the German by the present writer.)

their activities affect competitive conditions in the United States. A generalization of this principle might provide considerable breadth of action against cartels organized by foreigners or controlling commodities which are wholly imported.<sup>67</sup>

3. One shortcoming of unilateral cartel control is that it does not protect individual American competitors in third markets against the cartel. It has been argued, especially in support of Webb-Pomerene associations, that American firms could meet the competition of foreign cartels in third markets only if they themselves were cartelized, at least for export purposes. This contention is true to some degree, though only if the American firms forming the association are relatively small. Such arguments could hardly be used by firms like General Motors, General Electric, Du Pont, or Standard Oil. Certainly these giant companies are large enough by themselves to be able to compete without cartelization in foreign markets—in fact, it could be argued that most cartels

could be broken if they met competitors of that size. In some instances American producers are at a disadvantage because their costs of production are high. But in most fields of manufacturing, technological conditions and the advantages of large-scale production place American firms in very favorable competitive positions. In most manufactured products—certainly in fields in which we encounter today some of the most powerful cartels, such as chemicals, machinery, and electrical appliances—one competitor of the size of the leading United States firms may break cartels.

The analysis shows that unilateral action, if carried through with energy and wisdom, can bring a fair degree of relief from the undesirable effects of international cartels. It cannot, of course, completely eradicate the adverse effects of cartels, but the only alternative policy which would have more favorable results in the long run is one of genuine international collaboration. It would remain a feasible policy for the United States if its efforts to provide for international control of restrictive business practice should fail.

<sup>67</sup> Oseas (*op. cit.*, pp. 61-62) arrives at a similar appraisal of the effectiveness of unilateral American prosecution of foreign cartels.