INTERNATIONAL TRADE AGREEMENTS.

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1. The problem which is raised by the increase of private international agreements of a contractual kind, as well as by private interlockings of interests which are not contractual, is that the industrial and political arrangements of the world are not in step with each other. The enterprise of capitalism in search for profit does not, because it cannot entirely, neglect the conditions imposed by political frontiers, but it is subordinating them to controls which are not subject to the law or sanction of any corresponding political unit of government. These controls over industry and trade are in a field which is regulated by each political government for its own area; this makes it an important question whether their international extension should have a similar range of regulation by treaty, convention, or other form of supervision. The question is more acute if these controls seriously affect, or are affected by, the actions of governments, or between governments, in individual cases of trade policy, such as tariffs, subsidies, or other such regulations and agreements as seem to be in the national interest. It cannot be an objection to capitalism, if there are spheres in which its most efficient organization is international; but if this also means monopolistic tendency, which is the chief danger of modern capitalism, political methods of overtaking it must be sought for. Even apart from monopolistic tendency, the existence of dual control, public and private, over so vital a field should as far as possible be overcome.

2. In the post-war system, there may be no place for private international trade agreements; they may be superseded by unforeseen plans of a co-operative kind, or by Import Boards, or other measures. But the seventh Article of the Mutual-Aid Agreement clearly does not exclude joint action for the approval and regulation of these international forms of private capitalism which have recently so strongly developed, often with the support or direct participation of governments. This paper deals with the system of private or approved international agreements on the assumption that they will be in the

field of post-war discussion. Then the whole question will be deeply coloured by the fact that the United States will be a chief party to the interpretation of Article seven, in view of the nature of its pre-war attitude to contractual trade agreements, at home or abroad.

3. Agreements do not represent the whole of the international influence of capitalistic organization. There is also a great spread of investment in allied, subsidiary, and affiliated enterprises, so complicated and mutual as often to baffle analysis. But it is the contractual agreements which are of first and fundamental importance, for two reasons; they seek to determine the general conditions of production, export, or sale to which the parties however constituted have to conform; and they have particularly been applied to the fundamental raw materials of production. So far as they have been effective, therefore, they have governed the market in a way which the distribution of investment, interesting and imposing as it is, could not by itself have done. It is therefore appropriate now to show what has been the strength of the tendency to make such agreements.

4. It was estimated by the chief authority that in 1914 there existed 114 private trade agreements, generally called international Cartels. The Great War dissolved them, because Germany had been the leader in the Cartel movement, at home and abroad. But in 1936 there existed about 160 such agreements. Many of these were revivals of pre-war agreements. But the rate of revival and the increasing spread of the movement were remarkable.

Their influence on the world economy is shown by the facts of their distribution. The following fundamental materials were in some degree cartelled: copper, aluminium, tin, zinc, lead, mercury, cement, wood-pulp, rubber, oil, and most important of all, steel. Among raw materials the notable exceptions were cotton, wool, and coal. The group of chemical industries had the longest list, including dyes, nitrates, potash, phosphates, bromine, bismuth, iodine, in all about 50 products. The shipping trade had long been subject to what were called Conference agreements, supplemented more recently by special agreements for certain routes or classes of transport. Among foodstuffs, the most important were sugar, wheat, and tea. The textile industry included

rayon, cellulose, and about a dozen others. The steel Cartel was diversified into sections controlling tubes, wire, castings, tinplates, rails, and other specialities, in all about 40 products. The electrical industry included lamps, radio, cables, and a few others. In the glass industry were bottles, porcelain, enamel, baths, basalt, and some types of glass. A general list included bone-glue, wagons, linoleum, as examples.

5. This resumption and extension in less than 20 years after the Great War shows that there are strong influences behind this feature of capitalistic organization. A first impression would be, that the increase of frontiers in Europe was converting into international forms Cartels which otherwise would simply have been national. It is well known that national trade agreements have long been common in European countries and in England. There were estimated to be 2,500 Cartels in Germany in 1925, and the British Committee on Trusts found even in 1919 that such associations existed "in every important branch of industry". But this impression would not be correct. The international agreements do not mean simply the spilling over national frontiers of domestic Cartels, but a new movement. There were only a few cases where the agreement was made between national Cartels, of which potash, steel, and nitrate were the most important. Some of the chief agreements were between producers in countries which were entirely exporters, so that the international Cartel was the only one; in other cases, it was the only one which mattered. Examples of this were rubber, tin, mercury, copper and the foodstuffs. The relation of the producers who spoke for their countries to any national Cartel is obscure, but it seems right to say that the international organization was of the nature of a new and independent proceeding. Apart from the above instances, few international Cartels regarded the whole market as one, and sought to regulate the international market as a national Cartel might regulate its home market. The frontier, and what could happen there, became a determining factor in a new, and usually more complicated, kind of agreement.

This, of course, is not to deny the influence of the spirit of producers' combination, simply as such, on its international spread, especially after governments had

sanctioned it by making some Cartels compulsory in most European countries and in England.

6. The formation of both international agreements and interlockings of interests may be said, in a quite positive use of the word, to have been normal to some conditions of world trade. It is not possible to point to a single condition. In some cases, probably the majority, the condition was large-scale production in a world market which was becoming narrowed for each group or locality by increasing facility of transport. Then private agreements had behind them the same idea as public tariffs. In other cases, it was small-scale producers who had to be defended against their own want of organization, and consequent tendency to overdo supply. Most writers on the subject have offered a common explanation on the ground that, though it is the business and justification of private enterprise that it takes the risks of the market, the risks were becoming inherently excessive, and that agreements are a quite normal aspect of enterprise or of policy in relation to a degree of risk. In most countries, contract is regarded as being as much an exercise of freedom as is competition; and the United States, which does not allow contractual agreements between producers at home, had to revise this attitude as regards the export market. Agreements are normal in the positive sense that they are a result which was to be expected in conditions, partly technical and partly accidental, with which production for the world market had come to be faced. While risk may be a good covering word, the nature of the risk of competition was quite different, for instance, in rubber from what it was in steel; and this diversity should be kept in mind. Agreements may be a more tenable solution of the problem in steel or chemicals than in rubber or coffee or sugar. In these latter cases, without derogation to agreements, other measures may also be necessary to a normal status of agreements.

7. Because the method of agreement is normal, it does not follow that all agreements have been good. It is also normal, a thing to be expected, that producers will try to obtain as much monopoly as they can get. They seek to extend their own influence under the motives of profit, power, prestige, or service, some of which motives apply also to

other groups and institutions. The explanation of monopoly is not found in business alone. Some of the inter-war trade agreements were bad; such as the first copper Cartel, the mercury Consortium, or the tobacco agreement. Some were too intricate to pronounce upon, like the steel Cartel. Others, like aluminium, look like fair proposals for regulation. It may therefore be an aspect of normality, in the future situation, that some international supervision should exist, such as exists in each country for itself.

8. It is held by many writers that trade agreements are the special result of trade depression. A condition of depression could be met by temporary arrangements, such as the short-time working agreement in the cotton trade of Lancashire. A permanent organization would seem, therefore, to go beyond what was necessary, and to be monopolistic in its intention. The evidence does not bear out this view. The oldest modern agreements were in shipping, and appear as quite direct measures of regulation. The tendency to form agreements has grown in the last fifty years as a feature of the evolution of capitalism. In another form, this argument has depended on representing the competitive regime as always so anarchic and cut-throat that depression was its most usual condition. Trade agreements do not require this window-dressing of their case.

If a degree of risk requires a degree of regulation, the regulation should be continuous if it is to be preventative as well as remedial. It is not to the credit of the American law against trade agreements that it had to be suspended in order hurriedly to create the Codes in order to face the depression; and it may be doubted if the Codes would have been later abandoned on their merits. The Cartels have never needed the exaggeration of their case which depends on applying absurd epithets to the competitive system. The social cost of bad Cartels can easily be much greater than that of competition without any agreement.

9. What the Cartels claim to do is to "adjust the supply to the demand" on the world market. Exception is often taken to this claim on the ground that the world demand for anything is a variable thing, which depends on the prices. This is quite

true, and all Cartel policy becomes in the end a matter of prices, whether the direct action of the Cartels is on prices or output or markets. The responsibility of the Cartels in raw materials in this adjustment of prices is a very large one, because their prices are accumulated in the processes of manufacture. The reasonableness of their claim must be judged by their technique in each case, and this is discussed later. But one general observation may be made. Supply can be profitably adjusted to demand either at high prices for restricted output, or at low prices for expanded output. This is what is called the elasticity of the demand. The objection to Cartel policy has been that it has regarded this elasticity as small, and has preferred the restrictive to the expensive method of making the industry profitable. In fact, the long elasticity may be great given its chance, though the short or immediate elasticity may be small. It is the merit of free competition that it gives this chance, but with fluctuations of error. Cartels should provide for a reasonable testing of the market. Otherwise the adjustment of supply to demand will remain on the safer side of restriction and high prices, and this is to an unknown degree preventive of a more extended use, also at profitable prices, of what they supply. This is an argument for making the organization of the Cartels as complete as possible, since they are then able to include provisions for research, propaganda, and statistical evidence. Many of the European Cartels had reached such a stage in organisation.

10. A complete Cartel is a joint-stock company, with a permanent office and staff. All the shares in it are held by the parties to the agreement, in proportion to their capacities of production. The members are in contract with each other and with the company. It has regular meetings and a standing executive. In various degrees of completeness, which depend on the nature and location of supplies and markets, sales are arranged for account of its members, or on a pool system. This was the original model in the German coal industry. It has been possible to apply it without strain to as large an area as Europe. For a more international Cartel, it would probably have to be adapted. This complete organization increased the power and responsibility of such Cartels, but it put them under the law

of the country where they were incorporated (Switzerland being a favourite choice), and made it more possible to know about them. It also enabled them to provide services, as well as price or output controls, in a way which a mere renewable contract did not do. In the cases where producers were too numerous and scattered for such higher organization, such as rubber, sugar, and wheat, governments have become parties to the agreements, so that there can be other provision for publicity and beneficial services.

11. The question now arises of the technique of Cartel policy. Do they obstruct economic development through what is essential in their methods, even when allowance is made for any general services they may provide? This question relates to the fact that they are fundamentally agreements between parties which remain independent, and not fusions of interests like the Trusts. Each party wishes to remain in the market on some terms, even if the total capacity of all parties is greater than the market can profitably use. But there may be great differences in the efficiencies of the parties, or those whom they represent. In some international cases, these differences have been very great, especially in raw materials like copper. But they are, in fact, not willing to fight the matter out, and may have the support of governments in this attitude. Whatever their first terms, agreements finally express themselves in prices, which must be such, or so arranged locally, as will keep alive productive capacity of less than average efficiency. Even when tariffs do this for the national markets, there is still the export market to consider; and, in the case of important raw materials, the export is the chief thing. Many writers therefore regard private or public international agreements of the Cartel type as, at best, a second-best arrangement for the world economy. Besides, as has been said, an international Cartel does not clear its market as a national one does; the sum of the capacities held in reserve by the international agreement may be greater than if the parties had not bargained by countries.

12. There is very great complexity and difference in the way in which different international agreements apply the adjustment of supply to demand, with this proviso (which is sometimes regarded as a democratic one) of maintaining the independence of the parties, or those they represent. But a study of the chief cases shows that the things which are fundamental are the quota, and the reservation of home or national markets. These

are what would have to be set against any other schemes for regulating the international market.

13. The quota is not an allowed percentage of capacity. There is an economic reserve of capacity in all modern production. The quota, in its simplest form, is a percentage of the operating capacity at a particular time, taken as base. If the quota is 80% of that output, the restriction is 20%, but the idle capacity is more than 20%. Every party is subject, in the simplest case, to the same restriction against his basal output. The rubber agreement was a fairly simple example. The price must be such that the least efficient (which may mean the least favourably localised) group or party can produce its quota. The variation from time to time of the quota is the instrument of adjustment of supply to the estimate of demand.

14. The defence of the quota is, that it is the most reasonable solution in the conditions where, for national or other causes, the interests remain independent. If it is not used restrictively, as above defined, it should mean the greatest output allowable to the greatest number. Again, the following corrections of the simple quota are usual. Agreements are for short periods, and the more efficient producers will not renew them unless the standard or basic outputs are revised, if they feel that they have been unduly restricted, or if they have made more technical progress in the interval. Also, quotas are often transferable. Also, any group which reduces its costs retains the whole advantage of that while the quota runs.

15. The main difficulty with the quota is that is has not retained this simple form, but is mixed in ways which make its effects often undecipherable. It may refer to output or to export sales, and may be transferable between them; it may be combined with quantums, or global quotas, on various conditions; it may have a sliding-scale arrangement depending on the total amount of export or production; it may be maximum or minimum, or be qualified by exceptions for particular interests. The European steel Cartel, which began with a fairly simple system of output quotas, reached a stage where it was difficult to see anything but the terms of a complicated bargain. If public sanction were sought for international Cartels, or they had to bear comparison with

other proposals for international regulation, the simplest use of the quota would have most chance of success. This is an important aspect of the improving technique of Cartels, on which some Enquiries rely for their future.

16. The reservation of home or national markets is a more formidable subject. It is an increasingly common part of Cartel agreements. It does not make tariffs superfluous, because tariffs have been an element in the bargain. But it gives private interests the power to supersede public policy, as expressed in the level of duties. They can impose a prohibition of import, and go beyond the terms of any commercial treaties which may exist. This is an invidious power, but its limitation should be observed, since there may be outsiders ready to take advantage of it. In some cases the reservation was also applied to the colonial markets of the nations concerned. The defence of this clause, that it is merely one way of varying the quota, does not seem to be adequate. It is true that governments were at the same time imposing global and tariff quotas, and even prohibitions, but that is a government sphere of action. The acceptance, in Cartel literature, of this condition is surprising, especially since it was applied to some fundamental materials.

17. It is a tenable proposition that international Cartels which are sufficiently organised for publicity and for services to their industries, and which apply the quota in simple forms, can beneficially control a market in which the national separation of producers has to be accepted. The history shows how much they have been checked by new sources of supply, and the competition of substitutes. This is much more important in respect of international than of national agreements. It has imposed a short term on most agreements, or compelled their frequent revision. Neither their internal arrangements, nor their external relations, have excluded a beneficial influence of competition. This is necessary for the transference, which they can beneficially control, of the world's resources to their most profitable uses. It follows that they cannot completely solve the problem of supply in countries where there is a lack of alternative occupations.

18. The relation of governments to such agreements has been twofold, either direct, or through their legislation concerning industrial combination.

The direct action of governments has had several aspects. In some cases, governments have themselves been parties to the agreements, for political reasons, which may have had regard to their own revenues as well as to the interests of their nationals. The rubber agreement was an instance of this. There were too many small producers to make a private agreement workable, and there was a lack of alternative occupations. They therefore agreed to "maintain and enforce the regulation of the production, export, and import of rubber" by a quota on exports and a control over planting and replanting. The wheat agreement of 1933 was also made in the name of governments. Then there have been cases in which governments have given support to agreements, by undertaking to see that suitable legislation was passed. This happened in the case of the Chadbourne sugar plan of 1931, and in the agreement of 1937. The tea agreement of 1933 was subject to government approval, and the undertaking to make laws limiting areas of production, and controlling exports by licence. The international tin agreement of 1931 was under statutory regulation and authority in each country, while the agreement of 1933 was made between governments. The Chilean Government urged the organization of its producers in order to make an agreement possible with the European Cartel. The Continental steel agreement of 1926 had active government support, and was in parallel with a Franco-German treaty, on which it depended; and the British Government in 1935 promoted the organization of its own industry for the bargain then made with the Cartel.

19. Governments have also in important cases entered the agreements as producing parties. In the potash agreement one of the French parties was the organization of mines which came into public hands as a result of the peace treaty; on the German side was a Cartel which had been made compulsory. In the mercury Consortium, the Spanish mines were public property, and in Italy some of the mines were public.

20. This amount of public support is not surprising, since in 1938 there was scarcely a country in Europe, including England, which had not made some Cartels compulsorily at home. A domestic Cartel may be controlled by foreign competition, so that international agreements are a new step; but the compulsory Cartels did give strong support to the international extension as a principle, and to the relation of governments to it.

21. But governments have sometimes acted so as to interfere with the Cartels. This has not usually been so deliberate as their support; it means no more than that this is a field which governments cannot stay out of. Bilateral treaties have included their own quota clauses, and these may extend so as to cross the terms of private agreements. In some cases, like potash and phosphates, governments have had their own reasons for controlling domestic prices. One agreement came to an end (zinc) because of a question of the German balance of payments. The Mercury Consortium broke up "for political reasons". Governments have for their own reasons imposed global or tariff quotas, and entered into exchange agreements, and the relation of these to Cartel policy is not clear.

22. Tariffs have been an important element in the bargaining of agreements. In the steel case, an understanding about tariffs was given by the German and British Governments. As a rule, there has been no relation, and the short period for which most agreements have been made may reflect the uncertainty of tariff policy. There would be agreements in the absence of tariffs, for they exist in home markets. But high tariffs enable export dumping to interfere with the normal market, and the avoidance of dumping is a frequent defence of international Cartels. In the absence or at a low level of tariffs, agreements would not have to have regard to this artificial condition. Also, at a low level of tariffs the reservation of home markets would be much more open to objection, as it ought to be; and the operation of the quota might be much simpler. If therefore the intentions of Article seven are carried out, for the freeing of international trade, agreements may have a more natural basis;

and variations in low tariffs will be less disturbing to them, as compared with what has happened when sudden high duties broke up the copper and lead agreements.

The chief German authority on Cartels has always held that tariffs and Cartels are two ways of doing the same thing, and have the same significance. Other authorities have suggested co-operation between these public and private policies. Necessarily, governments cannot keep out of the field. A degree of co-operation would exist if duties were and remained at levels which could not disturb the terms of agreements.

23. This leads to the question of the legislative attitude of governments to these agreements. It is an inter-continental question between the United States and Europe. The law of the United States is opposed to trade agreements; the laws of European countries are generally favourable or even make Cartels compulsory. The States are, in many fundamental commodities, the most powerful producers in the world. So far, therefore, as their laws do not allow their producers to enter into international agreements, they are a disturbing element in the attempts of other countries to form such agreements. Their export threat disturbs good agreements, and mitigates bad ones. It is difficult to see a world solution while this difference remains. But the legislation of the States has established for a continent of 48 States, some of them larger than European countries, a control over combines which might be the model for a completely international office of sanction and supervision. This is the nature of the problem; whether the U.S. can extend its own provisions, so as to overcome its own objections to the method of trade agreement.

24. The Sherman Act of 1890 is still regarded in the United States as a charter of economic freedom. It makes illegal, and subject to severe penalties, "every contract, combination in the form of Trust or otherwise, in restraint of trade or commerce among the several

States, or with foreign nations." The same applies to any person who shall "monopolise or attempt to monopolise, or combine or conspire to monopolise", in home or foreign trade. It was reinforced by the Wilson tariff law, which provides that "every combination, conspiracy, trust, agreement or contract is contrary to public policy and void, when the same is made between two or more persons or corporations each of whom, as agent or principal, is engaged in importing any article into the U.S., when such combination etc. is intended to operate in restraint of lawful trade or free competition, or to increase the market price in any part of the U.S." As there is less doubt whether there is an agreement than whether there is a Trust, the result has been to abolish agreements, and to drive the American combination movement into the form of amalgamations, and of financial interlockings of interests with foreign producers. The Clayton Act of 1914 forbad the practices of charging different prices to different buyers, and of making restrictive contracts. Its application to contracts with foreigners is not clear. These are the anti-Trust laws.

25. In the administration of these laws, the Courts came to adopt a "rule of reason". This meant that they had to distinguish between "good" and "bad" combinations in the interpretation of what was restraint of trade. Under this rule, some of the largest combinations were acquitted. But the rule has not been applied to contractual combinations, against which the law is strict.

26. The Federal Trade Commission Act was passed in 1914, and this practically embodies the rule of reason in law. The F.T.C. was given the power to investigate, on its own initiative or when ordered, the practices and tendencies of monopolistic bodies. There was a final reference to the Courts, but its findings of fact were conclusive. Thus the U.S. has set up a tribunal of evidence concerning combination in its own area, or as affecting that area. The significance of this fact remains, even though the Courts have often decided against the F.T.C.

27. A further important concession was made in 1918 by the passage of the Webb Act. This law excluded from the anti-Trust laws associations entered into by Americans "for the

sole purpose of engaging in export trade, or any agreement made or act done in the course of export trade by such association", provided this was not in restraint of trade in the U.S., or tended to lessen competition or raise prices there. All such associations had to file their papers with the F.T.C. As the proviso is a matter of evidence, this presumably gave the F.T.C. power to apply the rule of reason to such contracts. In 1940 over 40 associations were registered, which included export trade in paper, tyres, alkali, cement, copper, electrical apparatus, timber, glass, phosphates, potash, rubber, steel, sugar and textiles. The reason for this Act was that an Enquiry by the F.T.C. had reported that "other nations have marked advantages in foreign trade from superior facilities and more effective organizations", and that "doubt and fear as to legal restrictions prevent Americans from developing equally effective organisations". It was later ruled that an export association could make an agreement with foreign producers, in the export market. By this Act, and the reasons given for it, the attitude of the U.S. to contractual agreements on their merits was hardly consistent.

28. Then the U.S. enacted the Codes under the N.R.A. It was found necessary to allow agreements as a means of recovery from depression; for many of the Codes were similar to Cartel agreements. It is open to much question if they would later have been given up, had they been allowed to complete their term. They could hardly have been re-enacted at every depression, without reflecting seriously on the Sherman Act.

29. The U.S. has thus established for a Continent a rule of reason and evidence by special tribunal; and has conceded that for export trade always, and for home trade at special times, Cartel organization is desirable. As long, however, as her producers cannot enter fully into international agreements which include her own market, her export associations are a threat to other international agreements, which have depended precariously on an understanding or gentlemen's agreement that these associations will pursue a moderate policy. At a lower range of tariffs, the U.S. might become more interested.

30. The Sherman Act is one of the few laws, if not the only one, which in any country refer definitely to foreign as well as to domestic combinations. By the strictness of its terms, it is now out of date ; the responsibility and status of the F.T.C. would be greater if the law were liberalised. It might then be possible for the U.S. to agree with other nations on an international body corresponding to the F.T.C., which would require publicity and lay down minimum conditions for international agreements. The F.T.C. is a good model, if an international outlook is also adopted.

31. In 1941, there was published the final Report of the Temporary National Economic Committee of the U.S., which was appointed to consider the question of concentration of economic power. This Report shows, as does also the President's message on the appointment of the Committee, that the U.S. will not change its attitude easily. With great force of language, the Report records its faith in free competitive enterprise for profit, and its desire to "reverse the trend" which has led to the growth of great combinations. It draws special attention to the fact that international trade agreements do what the States of the Union are forbidden to do, by entering into foreign contracts which divide markets. But it does not seem impossible that a scheme could be devised under Article seven which would allow that contract was an aspect of enterprise, and recognise that the duty of law is not to restrain enterprise, but to be organised in relation to its forms. The reversal of the trend is now impossible; but if it is not allowed to express itself in agreements, it will, as the history of the States itself shows, take more and more the form of giant Trusts.

32. In England and Europe, the rule of reason is applied to trade combinations with more liberalism than in America. They do not forbid agreements; in many cases, in nearly all countries, they have made them compulsory. But it is never clear how their national laws apply to international agreements. This is the gap which can only be filled by some convention.

33. German economists and legislators have believed in the trend; their point of view has been more historical and less purely theoretical than that of most other countries. So that

Germany was the first home of the modern Cartel movement, and the chief influence on its international extension. In 1925, there were estimated to be 2,500 Cartels in that country. Under German law, a contract was not void if it was in restraint of trade. For this reason, the Trust movement was greatly retarded in Germany; when it did extend, it was bound up in a special way with the Cartels.

34. Germany applied the rule of publicity, reason, and evidence to the Cartels by a Decree in 1923. All agreements had to be in writing, without reservations. A Cartel Court was set up, to prevent the "abuse of economic power". Any contract could be declared void, or any party could withdraw from it without notice, if it endangered the public interest. This Court had an exclusive jurisdiction. There is no express mention in the Decree of foreign agreements. Since 1923, the powers of the Minister of Economic Affairs have been greatly strengthened, and became supplementary to those of the Court. He could enforce Cartels, or dissolve them, or interfere in many ways on his own initiative. But the position of Cartels in that country came to be a matter of publicity and evidence of conduct. The Cartel Court was more official and legal in its outlook than the F.T.C., but they were two ways of doing the same thing, within the scope allowed by their laws. There were many compulsory Cartels in Germany, and the government was favourable to international agreements.

35. France legalised syndicates or associations in 1884, and they then increased in the form of Comptoirs, a lower type of Cartel. In 1926, the text of her penal code against combinations in restraint of trade was amended, so as to require evidence of intent before there was a criminal offence. The ordinary Courts decide.

36. In England, repeated proposals have been made to set up a tribunal on the example of the F.T.C. or the Cartel Court. But it has been left for the ordinary Courts to apply the Trade Union Acts, which do not regard contracts in restraint as illegal, but will not

enforce them between the parties. When outside parties are concerned, the Courts have tended to a strictly legal view of the question, and have disclaimed the power to consider economic consequences. A future decision is always difficult to foresee, but the English position is another form of the rule of reason. Compulsory Cartels have been formed, and public support given to amalgamations, in one case (steel) in order to facilitate an international agreement.

37. The feature of legislation in Belgium, Holland, Italy, Spain and other countries has been the importance of compulsory powers to create Cartels.

38. In the British Dominions, the legislation of Canada, Australia, New Zealand, and South Africa is generally on the American model of publicity and investigation.

39. It thus appears that, both by their direct action and in their legislation, nearly all countries have accepted the method of trade agreements for their own areas; they could not therefore dis-allow it internationally, but neither national nor international law has kept up with the rapid extension of private international agreements.

40. Outside the sphere of legislation, these agreements have found support for their principle. The Geneva Conference of 1927 "recognises the growth of agreements as a development which may be either good or bad according to the spirit in which they are constituted and operated; within limits, they may serve to improve the organisation and reduce the cost of production". It was unable to recommend any policy except publicity. In 1931, a Committee of Experts set up at Geneva reported in their favour. The van Zeeland Report of 1938, which was very liberal in its general outlook, thought that "the suppression of (national) quotas by no means implies the suppression of international Cartels. Cartel agreements proceed from entirely different conceptions, and ought to be treated according to quite different rules. One might if necessary contemplate the maintenance of the quotas of importation necessary to ensure the working of such international Cartels as conform to the general interest."

41. Before the Great War, the Cartel principle had not obtained any such degree of assent as it had obtained by 1939. In particular, the British attitude toward combinations changed greatly after 1918. In the inter-war years, Cartels have strengthened their hold both on opinion and on the national and international markets. Both nationally and internationally governments were giving them support. But they had to contend with, and try to be a remedy for, a period of exceptional unsettlement, so that there were many failures and make-shift arrangements. In considering the end of this war, we should remember the rate at which international agreements revived and spread after 1918, and the amount of compulsion from governments.

42. The alternatives are several. First, that they should be left to themselves, and that we should rely on the natural checks of competition from outsiders or new sources of supply. Then their agreements, and the methods they might use against such competition, would be private and secret, and often contrary to public policy in the same field. In addition, the problem of "access to raw materials" could not be solved by leaving the raw materials Cartels alone, and they are a very important group.

43. Second, that no private international agreements should be allowed. This again would make for secrecy, or for loose kinds of understandings which can provide none of the services already referred to, or for Trusts which pass out of the agreement form. This would be a set-back to contract which is a genuine form of enterprise, and the evidence clearly is that there have been both good and bad agreements. In the complete absence of private agreements, it depends on tariffs how much the market is falsified by dumping and other methods.

44. Third, that there should be an international control. It is a simple thing to say, and the failure of the Convention on import and export restrictions might be a warning against facile suggestions. But under Article seven we are pledged with the United States to take some

such action in the field of international commerce; and we are pledged to some definite things, which come within the practices of private agreements. Control can be by convention or by organization. By convention, every country would have to impose on its nationals certain minimum conditions on which they could enter agreements with foreigners; one of these would plainly be publicity. By organization, every such agreement would also have to be communicated to an international office, which would have to sanction it in each case, or send it back for amendment. Organization has the advantage that it would enable agreements to be considered in relation to each other. Sanction would depend on minimum conditions, positive or negative, and would debar very complicated arrangements of quotas. A number of variants of this proposal have been put forward, in order that the political may overtake the economic organization of the international market. Any such arrangement requires the persuasion of the United States to apply to agreements the rule of reason which it has come to apply to Trusts; and, in view of the Webb Act, its arguing position is not very strong, if an international interest is concerned. It can be offered the compliment of having shown, by the example of the F.T.C., that it has itself applied these ideas of publicity, evidence and sanction to combines over a continental area. Further, one of the main proposals of the Temporary National Economic Committee is that there should be a "national charter" of corporations, and this is what is desired for the terms of international agreements. It would, of course, not be necessary to dispense with the authority of national tribunals in their own countries. As has been said, the United States is strong enough to affect the stability of international agreements which it does not enter.

It should be added that, if international control reaches the stage of organization, for instance at Geneva, and not only of convention, it becomes possible for the interests of consuming countries to be represented on the reviewing body.

45. There are two special questions which are related to that of the agreements. The first is the international use of patents. This has been made an important issue in America, where the licensing of foreign patents appears to

have been on conditions which restricted the growth of some of her defence industries. This, however, is not a Cartel problem; it can be dealt with, as has been proposed there, by patent legislation itself.

46. The second is the escape from the publicity or control over agreements by the direct method of financial interlocking of interests. The charts of these inter-connections are in some cases of a most baffling complexity. It is difficult to say where such concerns as the I.G. Farbenindustrie, the General Electric Company, or the I.C.I. have their limits. When we take out, however, those interlockings which occur within the same country, the charts of international investment are much simpler. Much of what is left represents subsidiaries in foreign countries, and the spread of these does not alone create a monopolistic problem. It is interlockings with foreign concerns which are most to be feared. Further investigation would be necessary of a group of cases where this has become serious. Over all, the most recent estimate was given for the United States in official evidence, to the effect that foreign investment in American corporations before the war was about five per cent. of all such investment. The view formerly expressed in this paper, that agreements are the chief problem, is based, first, on the fact that they include the producers of a number of countries at once, and second, that they so often apply to things which are, or are near the level of, raw materials.