CHAPTER 11. CONCLUSIONS AND RECOMMENDATIONS ON THE PUBLIC INTEREST

Introduction

285. Our reference comprises an immense variety of goods ranging from large plates and tubes weighing several hundredweights to wire and strip a few thousandths of an inch in thickness. There is also a wide variety in the machinery and methods used in their production. The concerns in the industry are hardly less varied in character, ranging from one of the biggest industrial organisations in the country with world-wide interests in many different industries to small manufacturers employing less than 100 workpeople. Some of them are specialists but most, even the smaller ones, make a wide range of products. Their trade is principally in the home market, direct exports accounting for less than 10 per cent. of production; but they supply vital components to industries, especially the engineering and electrical industries, whose products account for a large proportion of the United Kingdom's export trade. Frequently, the copper or brass forms only a small part of the finished article although it may be a vital part. For example, a motor car incorporates various semis to a value of some £4 10s. 0d., a refrigerator contains about £1 worth of copper tubing, a £2,000 house contains copper semis to the value of about £18 and a railway locomotive valued at about £40,000 contains copper plates, rods and tubing to the value of £1,000.

286. Apart from two large concerns and a few smaller ones every manufacturer of the goods covered by our reference belongs to one or more of twelve trade associations, each of which deals with a separate class of products and many of whose activities are co-ordinated by the British Non-Ferrous Metals Federation. The activities of the associations which are relevant to our inquiry have been described in the preceding chapters. We have now to assess the effect on the public interest of these activities, by far the most important of which, so far as restriction of competition is concerned, are the fixing by the associations of common minimum prices and trading terms in the home market and the price arrangements made by the Federation with overseas manufacturers. Of the other things done by the Federation and the associations which restrict competition, all but a few are directly related to the policy of fixing common minimum prices.

Minimum Prices in the Home Market

287. In considering the effect of these arrangements on the public interest we have had in mind the general arguments for and against common minimum prices. Any common price arrangement is suspect on the grounds (i) that there is a risk of exploitation of the market by the associated suppliers, even if at any particular time it can be shown that prices bear a reasonable relationship to costs; (ii) that it hinders the normal process by which low cost producers expand their business at the expense of high cost producers, and (iii) that it removes an important incentive to reduce costs. On the other hand, a common price system, by spreading the business among the associated suppliers, makes it harder for any single concern to obtain a virtual monopoly of the trade. For example, a company of large financial resources which is party to a common price agreement is thereby debarred from using those resources to drive financially weaker parties to the agreement out of business by continually underselling them at prices which do not cover its costs. Further, since common prices will tend to be more slowly adjusted to changes in market conditions than competitive prices, they may restrain the rise in prices in times of excessive demand, and will almost certainly steady their

fall when demand is slack. In a severe slump, they may alleviate the worst consequences, both for capital and labour. In weighing these opposing considerations, we have had in mind that since the war there has been a marked change from the restrictionist attitude of the 1930s and that there is now general acceptance of the view that it is the duty of the Government of the day to take positive action whenever necessary to maintain a high and stable level of employment.

The Industry's Case

288. The Federation have told us of difficulties in the rolled metal trade before the formation of the Cold Rolled Association in 1912 and of low profits, and consequent lack of capital for re-equipment, which the tube industry experienced when the common price policy was suspended by the Tube Association between 1911 and 1915. The Federation rest their case for the minimum price arrangements partly on such experiences of depressed conditions in the past which, they suggest, would recur in the long run, if not immediately, were the arrangements to be abandoned, and partly on the record of progress and development in the industry under the system of minimum prices.

289. The Federation claim that efficiency has increased, new enterprise has been encouraged, economies have been made in the use of labour, outstanding technical advances have been made, and the industry has in every respect satisfied the requirements of its customers in quality, volume and price. In the special circumstances of this industry which has, as we have pointed out above, an exceptionally wide range of products and methods of production, they claim that their commercial arrangements, and in particular common minimum prices, have encouraged a proper balance between specialisation and diversity of production. They say that although their members do not compete in price they compete keenly in the quality and service they offer; the level of their prices is said to be effectively controlled by competition from non-members, competition from alternative materials and potential competition from their own customers, many of whom are familiar with metal working techniques.

290. The Federation's argument has two aspects. First their price regulation cannot, they say, be against the public interest if it has been possible over the years when the system has been in operation for the industry to make such progress in efficiency and technique and to satisfy its customers. Secondly they claim that this progress and the service they provide have in fact only been made possible by their system of price regulation. If price regulation were abandoned, the Federation say, competition would force a deterioration in the quality of their products, expenditure on research and development work, technical education and such matters as the preparation of standards and statistics would have to be drastically curtailed: and co-operation between members in these matters would become difficult, if not impossible. Uncontrolled competition in price would, they say, lead to the development of highly specialised concerns, each with a virtual monopoly of its own narrow range of products, with consequent strategic as well as economic disadvantages.

Effect of the Minimum Price Arrangements

291. We have observed from the figures used by the associations in determining prices, as also from those brought out by our own accounting inquiry, a wide variation in the costs and profits of individual manufacturers on the main groups of products. There would thus appear to be considerable scope for reductions in prices of particular products by the lower cost

manufacturers, with consequent expansion of the market for such producers and encouragement of "the production . . . by the most efficient and economical means of goods of such types and qualities in such volume and at such prices as will best meet the requirements of the market." * Except in special circumstances the existence of the common minimum price prevents any such reduction by an association member. We recognise the difficulties of arriving at accurate costings figures for the production of most of the items covered by our reference and the resulting possibility of error in the costings themselves; but these difficulties emphasise, rather than detract from, the criticism which may be directed against a system of common minimum prices purporting to be based on the figures in question. The fact that on certain items there is room for considerable reduction in price by a low cost producer is illustrated by the recent history of building service tube prices (see paragraph 299). We consider that the effect of the operation of the associations' minimum prices is to maintain the price of certain products at a level higher than that which would otherwise be possible, and to deprive the public of the benefit which would accrue if the lower cost producer were free to utilise his cost advantage in reducing prices and so obtaining a greater share of the market. The associations, we think, would not deny that their arrangements have this effect: their case is rather that without the common minimum price arrangements the price would fall to an uneconomical level, with consequent damage to the industry and deterioration in the quality of the product. We come now to consider these arguments.

Conditions in the industry before price regulation

292. Whatever may have been the position long ago, before the fixing of minimum prices began in this trade, we have no evidence that in those sections of the trade in which minimum prices have been fixed only for the last few years conditions previously were worse than in other sections; indeed it is clear from the Federation's evidence that immediately before the Extruders' Association was formed trade conditions in that section of the industry were very good.

Quality

293. Many of the industry's customers who have given evidence have stressed to us that quality is the first consideration in determining their suppliers. There are published standard specifications covering quality as well as dimensional features for many of the industry's products. In most cases the technical knowledge of purchasers of these products is no less than that of the manufacturers and frequently the purchasers inspect the goods before either working on them or incorporating them in other products. It is not particularly difficult to determine the quality of these goods by suitable tests, and the Federation have impressed upon us that this is an industry in which the customer recognises, as does the industry itself, that quality is a factor of supreme importance. In these circumstances, while we do not question that the purchaser must be sure of getting the quality which suits his requirements best, we consider that even if there were no minimum prices neither producer nor consumer would be prepared to sacrifice essential quality in order to secure a reduction in price.

Growth of specialist producers

294. The plant for much of the production is expensive and, particularly in hot-working, the most modern plant has a large output and needs to be run continuously if the best return is to be obtained. This means that in

* Section 14(a) of the Act.

most sections there has been a tendency, which may well become even more pronounced in future, for large-scale production of many items to be concentrated in relatively few concerns. In a number of instances, companies in the various associations have amalgamated or large producers have absorbed smaller units and we understand that many of the amalgamations and absorptions have been accompanied by a measure of rationalisation. Such a concentration of production may have strategic disadvantages in an industry supplying material for armament manufacture but the Anglo-American Productivity Report on this industry expressed the view that the use of the most modern plant requires some rationalisation of production between manufacturers. In so far as this process of rationalising production, in which each concern concentrates on a fairly narrow range of products, leads to economies in production and reduction in costs, without sacrifice of quality, we regard it as being in the public interest. In this industry the possibility of abuse of monopoly power is remote because the resources of other manufacturers in the industry and of the industry's customers are such that in the event of such abuse there would be every prospect of competition being re-established.

Extent of Competition

295. The members of the associations produce a very high proportion of the total output of copper semis in the United Kingdom. In several products, the members account for all the production; only in copper tubes and a limited size range of copper and brass strip is a large proportion of the total production for sale made by non-member concerns. The Federation have submitted that, despite the existence of the minimum price arrangements affecting so large a proportion of the total sales, there is effective competition in the industry. Competition arises in five ways: (*a*) competition between members, (*b*) competition from non-members, (*c*) competition from imports, (*d*) potential competition from customers in a position to extend their range of production, and (*e*) competition from alternative materials.

(a) *Competition between members*

296. The Federation have stressed to us that there is keen competition between members in quality and service and that the exchange of costing information spurs high cost producers to reduce their cost of production. The Federation argue further that in fixing their prices the associations show "a constant bias towards the lower cost producer and the prices tend, therefore, to reflect the more efficient techniques". They add that, as a result of this tendency, high cost production is discouraged and they have given examples of some occasions when members ceased to make products for which their costs were high and the prices fixed were unremunerative, concentrating their production on products more suited to their particular facilities. We accept that in fact members compete in quality and service, and indeed the evidence from customers has been that quality is their first consideration. Partly for this reason, partly perhaps because there has been a long tradition of price-fixing in the industry, and partly because it is known that a large part of the price represents the metal cost, customers are not in general critical of either the price agreements or of the level of prices, but we do not think that concentration on quality or competition in quality and service can be regarded as eliminating the desirability of price competition between suppliers. The information available to members about other members' costs is not in our opinion sufficient, or sufficiently reliable, to have any great effect in encouraging cost reductions. We are not satisfied that the methods which the associations adopt in ascertaining costs and relating prices to average costs (as described in Chapter 8) do in practice relate the minimum prices to the costs of the lower cost producers; and

the evidence of production of particular lines being abandoned by those who cannot produce them efficiently is not such as to convince us that this happens to any substantial extent.

(b) *Competition from non-members*

297. In the lighter sections of the trade, such as fine wire drawing and re-rolling of sheet, there are numerous small concerns in competition with association members. We have no statistics for fine wire, but in the other light sections of the trade these small concerns do not account for a large proportion of the total output. In these lighter sections, the profit on sales made by association members is relatively high. There are two large concerns which are not members of an association; Ratcliffs (Great Bridge) Ltd. and the Wednesbury Tube Co. Ltd. Ratcliffs (Great Bridge) Ltd. makes a limited range of copper and brass strip and has no serious competitors within the associations on its range of products. The Wednesbury Tube Co. Ltd. specialises in building service tubes and has been able to sell at prices lower than those fixed by the Tube Association and still make a substantial profit. Competition from this concern has however been greatly restricted since the latter part of 1953, as recounted in Chapter 6. We find in the history of the agreement between the Wednesbury Tube Co. Ltd. and the Tube Association a remarkable illustration of the limits beyond which independent competition in this industry under present conditions is not effective.

298. Wednesbury's costs are exceptionally low, and their competition brought about a considerable reduction in the general price level of tubes. The information which our accountants obtained shows that during 1953 the members of the Tube Association were on average making losses on their tube production as a whole, although the price reductions which they had made were designed specifically to meet Wednesbury's competition and were limited to Wednesbury's speciality, building service tubes, which form only about a quarter of the total production of tubes by association members. Nevertheless, because they were also engaged in other sections of the trade on which they made profits, the members of the association were able to offset wholly or in part the losses on tubes brought about by the price reduction aimed at Wednesbury. Wednesbury, since they make nothing but tubes, were afraid that they would be unable to resist such under-cost price competition, and found it necessary to enter into the price agreement with the association which we described in Chapter 6. Any further reduction in Wednesbury's costs in the future can thus be reflected in the price to the consumer only with the consent of the association and competition from this source, formerly important, has now been restricted.

299. It is clear from the history of this matter that the existence of the price arrangements enables the associations to impose severe limitations on competition from independent producers, even on an independent as well placed as Wednesbury. Indeed the conclusion might be drawn from this incident that the prudent independent will be content to sell just below the association prices and will not allow his trade to expand beyond the point at which members of the association, knowing that those members who would then sell at a loss can recoup themselves on other branches of their trade which are protected by minimum prices and not exposed to any independent competition, will act together to undercut him.

(c) *Competition from imports*

300. For various reasons there have been few imports since the end of the war. The ad valorem duty of 15 to 20 per cent. gives substantially more

protection to-day than when it was imposed before the war. This is because the price of copper, having risen out of all proportion to the rise in conversion cost, now forms a much higher proportion of the total price on which the ad valorem duty is levied, and the duty paid is consequently much greater in relation to the conversion cost, which alone is relevant in assessing the protective effect on the home producer. Apart from this, imports from dollar countries have since the war been practically excluded for balance of payments reasons, and the Federation's arrangements with overseas manufacturers prevent imports from their main competitors in other countries from being sold here at prices below those charged by members of the associations. Under these conditions competition from imports is not material.

(d) *Potential competition from customers*

301. Competition from customers is more likely in some sections of the industry than others: for example, many wire users draw enough for their own needs. But in most branches of the industry there are considerable obstacles. If a customer, in for example the motor trade, decided to make the copper semis he required he would wish to make them as cheaply as possible and in order to do so would almost certainly have to produce far more than he himself needed and would have to sell his surplus production on the market. The conversion cost of the copper semis (there would be no saving on the metal cost) accounts for so small a part of the cost of a car or indeed of most other manufactured articles in which they are used, that it seems likely that the price would have to be extremely high before even a user with great financial resources would think it worth while to incur the heavy capital outlay involved and take the risk of selling his surplus in a market new to him, for the sake of satisfying his own requirements more cheaply.

302. In those branches of the industry where there is a real risk of competition from customers, we find that the associations have reacted to this potential competition in three ways: (i) by giving special prices to large users; (ii) by giving special consideration to the price of certain products sold largely to potental competitors (such as 20 s.w.g. brass wire); and (iii) by supplying non-standard specifications at less than the cost of producing them would justify. The effects of this potential competition on prices are limited in range and rather haphazard in their incidence. They result in discrimination in favour of the large customer and against the small one and they provide no safeguard against unreasonably high prices in general.

(e) *Competition from alternative materials*

303. Competition from alternative materials is undoubtedy important and the industry is very much alive to the disadvantages resulting from the manifold rise in prices of metals, particularly copper. The prices of metals themselves are not within the control of the federated associations and the metal cost represents from 60 to 90 per cent. of the price of most of the semi-manufactures. In co-operation with manufacturers of semis in other countries (see Chapter 7) the industry has been studying the increasing substitution of other materials for copper. In the opinion of the industry,

> "competition from alternative materials alone is a sufficient assurance that there can be no exploitation of consumers by price in the case of this industry's products."

We think that this is an overstatement: copper and copper alloys have properties which make likely their continued use for many purposes. Moreover, in the case of building service tubes, the fact that substitutes are available in other materials appears to have had less effect in bringing prices down than the temporary emergence of price competition within the copper tube industry itself. We are satisfied that for some products, and in the long run, this form of competition provides some safeguard against unreasonably high prices, but we do not think it operates very promptly, widely or powerfully.

Range of Costs and Profits

304. As already explained we have found evidence, both in the associations' costing data and in our accountancy inquiry, of a wide spread of costs and profits among the members. There are many reasons for treating both sets of data with considerable caution. Great difficulties face an association attempting to collect comparable costings from members producing a wide range of products and costing systems now in use have many imperfections. We have set out our criticisms of them in Chapter 8 and we note that some of the associations are seeking to improve the systems they use.

305. Had adequate and uniform costing systems been in use throughout the industry at the time of our inquiry, we should have been able to make a much closer study of the differences in costs between members and between products. Of the 70 member concerns only 30 submit costs to their associations but these 30 are responsible for a large part of the output of the industry. The methods by which the associations relate prices to average costs differ but none of them is precise, nor are savings in metal cost, by use of scrap or otherwise, generally reflected in the prices fixed. In our opinion the individual costs which are averaged are themselves unsatisfactory and further the prices fixed by the associations do not in fact bear any close relation to that unsatisfactory average. It follows that the relationship beween the price which an individual member is required to charge for particular goods and his own costs of producing those goods is remote. It may be that, if profit margins had been narrower, the members would have found it necessary to ascertain their costs more accurately, and there would have been a closer relationship between costs and prices. In making these criticisms we do not wish to belittle the efforts which some of the associations have made in recent years to establish more satisfactory methods of costing and to help their members in this important subject. On the other hand, we think that the difficulty experienced in relating the prices fixed to actual costs in so diverse an industry is itself an argument against a common price policy.

306. The profits which have resulted from the prices so fixed have nevertheless been generally reasonable and the average for the industry as a whole has not been high. There is however, as might be expected, a wide difference between the profits made in different concerns and the spread is greater in the three post-war years than it was in 1937. The lowest and highest results for each of the four years were as follows:—

Profit as a percentage of capital employed

	1937	1949		1952		1953	
		orig. cost*	repl. cost*	orig. cost*	repl. cost*	orig. cost*	repl. cost*
owest ...	loss of 1·3	8·6	3·4	9·3	6·5	loss of 3·2	loss of 4·5
highest ...	30·4	60·1	40·9	81·2	61·0	69·7	51·3

The general level of profit was higher in 1949 and 1952 than in 1937. In 1953 the general level was comparable with that in 1937 but the spread was considerably greater. Only two companies made losses, one in 1937 and one in 1953. Two of the members have made consistently high profits.

* For the difference in the computation of capital employed on the basis (i) of original cost and (ii) of replacement cost, see Chapter 8, paragraph 240.

307. Some sections of the industry, notably wire and extruded brass, are clearly more profitable than others, and the profits made on extruded brass were high. The average profit on conversion costs for the three post-war years for which we have figures was about 40 per cent. on wire and 60 per cent. on extruded brass. Expressed as a percentage on sales the profit for wire is reduced (because of the high cost of the raw materials) to 4·5 per cent. and that for extrusions is similarly reduced to 11·4 per cent. It is not practicable to make a reliable calculation or even a fair estimate of profits as a percentage of capital employed for each section of the industry, but in each of the four years for which we have figures the three concerns making the highest profits on capital employed, with a single exception in 1949, specialised to a considerable extent in extruded goods or in wire.

Effect of the price system on efficiency of production

308. All the evidence shows that in this industry the costs of different manufacturers for producing a given article differ, often very widely. These differences are, of course, to some extent due to differences in organisation, location and general efficiency. There is another factor of particular importance because of the great multiplicity of the industry's products and the frequency of small and special orders, namely the fact that different manufacturers' scales of production and layout of plant fit them to make certain products much more economically than others. For instance, one manufacturer's plant may be designed to produce economically long runs of standard sizes; another may set out to adapt standard products (in some cases intermediate products) to a great variety of dimensions in accordance with the customer's exact requirements. The latter is likely to be able to execute a small order for a non-standard product more cheaply than the former. The Federation tell us, for instance, that large producers capable of making cheaply 50 tons of a size and gauge are high cost producers when they have to manufacture small lots specially, whereas the small producers may be able to make small lots cheaply. The minimum prices which the associations fix, however, are based on an average of the costs of both kinds of producers, and are often further adjusted in order to bring the prices for one product into what is considered to be a reasonable relationship with those for others. This is true both of the prices themselves and of the extras for small lots.

309. These arrangements appear to have two consequences. First, since the price for each product is related to average costs and not to the costs of the manufacturer who can make that product most economically, it is higher than it need be. Secondly, since it is a common minimum price for all manufacturers, the most economical producer cannot use the most effective means—namely a reduction in price—of attracting to himself a sufficient volume of orders for those products which he can make most economically, and is driven to keep his works employed and to cover his overheads, albeit less efficiently, by taking orders for products which someone else can produce more economically. If the price list reflected the economies of specialisation—and still more, if there were no minimum prices list at all—each would be enabled, to a much greater extent than happens at present, to obtain the type and volume of orders which he could execute most economically; he would thus be able to employ his resources to better advantage, and in turn lower his costs further.

Conclusion on the Minimum Prices

310. Our conclusions from the foregoing discussion of the bearing of the industry's minimum price scheme on the public interest are:—

(a) The average level of profits in the industry has been comfortable, but not unreasonable. There has been, however, as might be expected in so diverse a trade, a wide spread both of costs and profits between one company and another, and the profits made by some manufacturers and in some sections have been high. High profits are not in themselves against the public interest, provided they are earned in open competition as the reward of efficiency, but in a trade which has a comprehensive system of minimum price fixing that practically excludes competition in price their existence inevitably suggests that the prices are unnecessarily high. In our opinion the general level of association prices, despite some restraint imposed by the various forms of outside competition which we have referred to above, is higher than it would be if members of the associations were free to compete in price against each other. The average level of costs has also, in our view, been higher than it would have been if there had been price competition not only for the reasons set out in paragraph 309 above, but also because the common minimum price system removes an important incentive to reduce costs. Both these results we believe to be against the public interest because the products of the industry, though they may form only a small part of the cost of individual articles in which they are used, nevertheless have a substantial aggregate value and are used widely throughout industry.

(b) We do not accept the argument that any advantages to the public interest from lower prices would be offset or more than offset by the damage which would be caused to the copper semis industry itself. Price competition would no doubt result in changes: for instance, it would enable those whose costs for any particular line were lowest to expand their trade in that line—something which the minimum price arrangements certainly hinder. Such changes we think are likely to be on balance advantageous. We have no reason to believe that they would involve any deterioration in quality. This we are satisfied would be precluded by the strength and knowledgeability of the buyers, as much as by the reputation of the producers. While we do not question the progress which the industry has made, or the value of the research and similar activities which it has conducted, we observe that most of this has been done by individual concerns, actuated very properly by consideration of their own interests no less than those of the public and the industry in general. This motive would remain, and might indeed be strengthened, in conditions of price competition; and would in our judgment suffice to ensure that adequate research and development work would proceed either jointly or individually.

On these grounds we conclude that the fixing of common minimum prices in this industry is, and may be expected to be, against the public interest. We recommend that all minimum price arrangements in the home market should be abrogated and that each manufacturer should be free to determine the price at which he will sell, to suit the circumstances of his own business.

Conclusion on the other trading practices

311. Certain other things done by some or all of the associations are consequences of, or closely linked with, the fixing of minimum prices. These are (i) collaborating on tenders, (ii) fixing common terms for the purchase of scrap from customers, (iii) regulating re-sale prices, (iv) regulating the commission which may be given to members' agents, (v) limiting the

acceptance of bulk contracts and (vi) fixing discriminatory prices to groups of customers. These practices do not arise in this industry except as incidents of the common minimum price system and it would be unrealistic for us to attempt to assess what their effect on the public interest would be if they were continued in the absence of common minimum prices. We look upon them as measures applied in support of a price system which we have found to be against the public interest and accordingly we find that all these practices are against the public interest and recommend that they should be discontinued. With regard to these matters we wish to make it clear that it is the agreement among a number of manufacturers which we find to be against the public interest; we express no opinion about the policy which individual manufacturers might find it expedient to pursue independently in certain of these matters.

312. Similarly, the obligations, which members of the associations assume, to observe common contract and quotation terms and common trading terms in such matters as transport charges and packing charges arise in part at any rate from the need to prevent concealed price-cutting under the common minimum price system. It is this which makes rigid collective agreements necessary, and it is the rigid and binding character of the arrangements which causes them, in our view, to operate against the public interest. We recognise that it may be convenient to all concerned that there should be some degree of uniformity and some recognised practice in these matters, but for this purpose much looser and more flexible arrangements are all that is necessary or desirable. Accordingly we recommend that the present obligations on members to observe these terms and conditions (described in paragraphs 120, 121, 123 and 124) should be ended. This would not of course prevent the Federation or the associations issuing model trading terms and conditions which members would be free to adopt or modify as they wished.

313. The last of the quota schemes was abandoned in 1951 and the Federation have assured us that there is no intention to reinstate any form of quota scheme; we therefore make no comment. The only form of allocation of business between manufacturers which remains for us to consider is that operated by the Cadmium-Copper Association on cadmium-copper line wire supplied to the General Post Office. We do not consider that the arrangements for allocating Post Office orders for this wire between members of the association are against the public interest, under the existing price regulation, but, if the common price arrangements are abandoned, as we recommend, it may well be that G.P.O. will wish to review this arrangement with the manufacturers concerned.

314. The prohibitions on the supply of certain specifications, described in paragraphs 126 to 128 and the restrictions on the supply of rough rod and rough strip, described in paragraph 79, arise from the members' desire to keep existing plant as fully employed as possible. Apart from the restrictions on rolling customers' own metal, the prohibitions are not of any particular importance in themselves, but they are further instances in which detailed matters of trading policy, which ought to be settled by each manufacturer for himself as best suits the needs of his customers and his own business, are governed by rigid and uniform regulations binding on all concerned in the trade. We think that for this reason they are against the public interest and should be brought to an end.

315. Similar considerations apply to the agreements among members of the Manufactured Copper Association to refuse to supply merchants with locomotive copper for the home trade, and among members of the H.C.A.

to refuse merchants any discounts and rebates irrespective of the size of their orders, as described in paragraphs 96 and 125. We therefore conclude that these agreements are against the public interest, and should be brought to an end.

316. In paragraph 139 we make reference to agreements between the H.C.A. and the Collaborators' Association and certain customers affording the latter special terms if they undertook to limit their capacity to manufacture products which could be supplied by members of either association. The Collaborators' Association has been absorbed into the H.C.A. and we are informed that the latter do not now favour such agreements. Nevertheless, as we have pointed out, there is one such agreement, made in 1946, still in operation. In our view there are potential dangers in agreements of this kind and if in this industry the use of them were extended the position might call for further examination in the public interest but the consequences in this one instance are not serious.

317. The loyalty and aggregated quantity rebates and discounts allowed by the associations are described in paragraphs 104 and 109 to 111. The loyalty rebates are represented by the Federation as "none other than the application of the principle of granting quantity rebates". Similarly the aggregated quantity rebates are represented as "a natural development of the well-accepted principle of graduated rebates according to the volume of the orders placed". An ordinary quantity rebate is designed to reflect the economies in production and distribution costs brought about by the placing of large orders with one manufacturer; the loyalty and aggregated quantity rebates, on the contrary, make it easy for buyers to spread their orders among all the members of an association and cannot be justified by any such economies.

318. The aggregated quantity rebates are, in the opinion of the Federation, a natural concomitant of the common minimum prices and to do away with them "would encourage monopolistic tendencies among the makers". If common minimum prices are abolished, as we recommend, this argument would lose its validity.

319. Both the loyalty and aggregated quantity rebates impede access to the market by independent producers because they provide a form of pecuniary pressure on buyers to confine their purchases to members of the associations. This is, of course, more pronounced in the case of loyalty rebates, but the inducement provided by aggregated rebates to buy from members of the associations rather than non-members can be very substantial when a customer's purchases have brought him close to the point at which he qualifies for a higher rate of rebate. We conclude that both loyalty and aggregated quantity rebates and discounts operate against the public interest and we recommend that they should be brought to an end.

Consideration of the Industry's Arrangements Concerning International Trade and the Common Minimum Prices for Exports

320. In this section we consider the effect on the public interest of the agreements and arrangements affecting imports and exports of copper semis to which the United Kingdom manufacturers are parties. They are:—

(i) the Lausanne Agreement, which requires signatory manufacturers to observe each other's home trade prices in each other's domestic markets and (except for H.C.A. products) an agreed prices list in most other markets,

(ii) the agreements which oblige members of the Export Groups and of the federated associations to charge common minimum prices for exports,

(iii) the as yet informal arrangements with manufacturers in Western Germany which are described in paragraph 213.

We record no conclusion about the arrangements, described in paragraph 206 for sharing the business in locomotive plate in certain markets because these were terminated in 1952.

321. The abolition of minimum prices in the home market will, in any event, necessarily involve some changes in the Lausanne Agreement and the Federation have told us that they find it difficult to envisage a practicable arrangement under which the United Kingdom market would be open to foreign competitors at free prices while price agreements would operate in other markets, including the domestic markets of the other parties. Similar considerations affect the agreements among United Kingdom manufacturers about export prices, since if common minimum prices no longer existed in the home market there would be occasions when merchants and others buying at home prices could undercut the agreed export prices. While we cannot ignore these possible consequences of implementing our earlier recommendations, they must remain more or less hypothetical, and we think it desirable and in accordance with the duty laid on us by our reference to consider the effect on the public interest of the agreements affecting international trade as they now exist.

322. The Federation claim to have entered into these agreements with the design of (*a*) regulating imports from European countries, (*b*) retaining the industry's traditional share of export markets in the face of severe and often subsidised foreign competition, (*c*) expanding the export trade wherever possible and earning the maximum amount of foreign currency.

323. In considering arrangements with such objectives it is important to know the competitive strength of the United Kingdom industry. We have no direct evidence which would enable us to compare the costs of United Kingdom manufacturers with those of manufacturers abroad, but we were supplied by the Federation with some figures indicating that the United Kingdom domestic prices are generally lower than those in most other European countries, Canada and the United States of America. They had no corresponding information about prices in Western Germany.

Imports

324. The Federation have emphasised the difficulties which the United Kindom industry experienced from subsidised imports in the pre-war years, and it is clear from the history of the negotiations leading up to the present agreements that their primary object was throughout to protect their home market. The Federation have told us that the fairly high United Kingdom ad valorem duty (which as we have explained, gives a greater degree of protection now than before the war) was insufficient then to enable them to compete with imported goods, and would be again if similar conditions recurred.

325. The primary function of this industry is to supply materials for use by other manufacturers, many of whose products are of great and growing importance in our export trade. There is a tendency in many other countries to develop the production of these semi-manufactures to satisfy the demands of their own using industries. In this trade, a manufacturer of any nationality who, as usually happens, has a protected price in his home market, will often find it profitable, in order to keep his plant fully employed, to sell the balance of his production abroad at prices below those he is getting at home, since they need cover only the marginal costs of producing the goods to be exported and these will usually be below the average costs on which his prices in his home market are based. Thus it

might well happen in the absence of the international agreements that, even without any subsidies such as exporters in some countries were said to have received before the war, foreign manufacturers could afford to export copper semis to the United Kingdom at prices which (before duty at any rate) would be both lower than those they charged in their home markets and lower than those which United Kingdom manufacturers could afford to charge in the United Kingdom.

326. The Federation argue that the present arrangements for dealing with any such competition are more flexible and more effective than any that the Government could make by increasing import duties or imposing quantitative restrictions on imports, and that the Government is now, in any event, prevented by its international obligations from increasing many of the tariffs. Although the Government has at present no power to impose anti-dumping duties and legislation would be needed, we understand that none of the treaties or agreements to which the United Kingdom is a party would prevent the introduction of proposals for such duties if the Government thought fit. Indeed, Article VI of the General Agreement on Tariffs and Trade permits contracting parties in certain circumstances to charge anti-dumping duties. The existing duty, at the present price of copper, amounts to some 80 per cent. or more of the conversion cost so that, unless copper prices fall a long way, there appears little risk that dumping will occur on a serious scale. In any event, if further action had to be taken to protect the United Kingdom industry, we consider that it would be against the public interest for this to be done by private arrangement among interested parties. Important and far-reaching issues of public policy are involved in these matters; no one industry can take adequate account of the repercussions of its action on other industries, which in the case of semi-manufactures used as materials by other industries may be particularly dangerous. We think that an industry which claims to need protection should have to satisfy the Government of its case; that others who may be affected should have full opportunity to put their views; and that the action taken should be publicly known.

327. For these reasons we consider that, in so far as they operate to protect United Kingdom manufacturers from competition from imports in the home market, the arrangements with overseas manufacturers are against the public interest.

Exports

328. We turn now to consider the effect of the international arrangements on our export trade. The Federation claim that they are advantageous on the grounds stated at (*b*) and (*c*) of paragraph 322. The long term outlook for exports, they say, is not encouraging because the relatively much greater rise in the price of copper than in prices generally makes copper semis vulnerable to competition from alternative materials and because of the tendency mentioned in paragraph 325 for other countries to manufacture their own requirements. This may result, as we have explained in that paragraph, in their surplus production being sold for export at low prices, and the United Kingdom manufacturers contend that they must be free to follow a common price policy and participate in international agreements in order to preserve their principal markets against competition of this kind.

329. The long-term interests of the United Kingdom demand a high and expanding level of international trade, of which the United Kingdom must maintain and if possible increase its share. Since the war, successive Governments in this country have taken the view that these objectives can best be

attained through a policy of increasing international trade by promoting jointly with other countries the freeing of international trade and payment systems. Thus, under the General Agreement on Tariffs and Trade, the contracting parties have reduced many tariffs and undertaken not to increase others, and, under the rules of the International Monetary Fund, multiple currency practices, the effect of which is to subsidise exports, have been prohibited. If this policy is to be consistently pursued our interest as an exporting country will be best served by arrangements which will provide the strongest inducements to the United Kingdom manufacturers to reduce their costs. The international agreements on copper semis, by restricting competition in price, militate against reductions in cost. Further the international price list and the minimum export prices referred to in paragraph 333 follow closely the price lists of the United Kingdom associations, so that our criticisms (see paragraph 309) of the domestic lists apply to these price lists to the extent that they remove the incentive to reduce costs and do not directly attract business to the low cost producer.

330. On the other hand, if the agreements about prices of exports were terminated, it may be that export prices would be, on the whole, lower. In that case the United Kingdom's net earnings of foreign exchange from exports of copper semis would be lower than at present unless the volume of exports at the lower prices rose enough to offset the fall in price and to cover the cost of the imported metal in the increased exports. A high proportion of the cost of these semi-manufactures is represented by imported metals and there is little net exchange gain from exporting them, especially in forms like wire in which the conversion element in the total cost is quite small: hence the rise in volume of exports needed to pay for even a small fall in price would be considerable. In the case of tubes, for example, imported raw materials now account for about 67 per cent. of the price, and if copper prices remain at their present level the volume of exports would need to rise by more than 3½ per cent. for every one per cent. by which the price fell merely to avoid a net loss of foreign exchange. The lower prices might, however, enable our manufacturers to increase the range and variety of their exports and to enter markets in which they cannot at present compete, and thereby to achieve a sufficiently substantial increase in exports to produce a net gain in foreign exchange.

331. These considerations point to no clear-cut conclusion about the effect of the industry's international arrangements on the country's export trade in copper semis either now or in future. There may be circumstances in which (though possibly only in the short run) they are advantageous, and we are not satisfied that, considered solely from the point of view of exports, they are necessarily against the public interest.

Conclusion on the International Agreements

332. We must, however, take the existing agreements with foreign manufacturers (paragraph 320, items (i) and (iii)) as a whole and say whether, considered in relation to imports as well as exports, they are or are not against the public interest. We have no doubt that they should be looked at primarily from the point of view of their effect on imports, because it is this which affects prices in the home market and this industry's contribution to the country's balance of payments arises less from its direct exports, in view of their high import content, than from its position as a supplier of essential materials or components to a great variety of export industries at home. From this point of view, the intention and the effect of the agreements unquestionably has been, and is likely to be, to help to keep prices up, and this in our view outweighs any possible advantages they may have for

the export trade in copper semis. We conclude, therefore, that they operate against the public interest and we recommend that the United Kingdom manufacturers should withdraw from them and should not in future enter into any similar agreements, either for the regulation of prices or the division of markets, which would have the effect of restricting imports into the United Kingdom.

Common Minimum Export Prices

333. The agreements between United Kingdom manufacturers on minimum prices for exports (see (ii) of paragraph 320) must be judged in the light of the considerations set out in paragraphs 329 and 330. We have also taken account of the argument that, whether or not there is any international agreement on price, it is to the advantage of the United Kingdom that United Kingdom manufacturers should not compete against one another on prices for export orders which would be secured by the United Kingdom in any case. In this industry, as we have explained in paragraph 330, the desirability of charging less in order to export more is open to some doubt. On the other hand, an agreement on export prices brings with it the danger that United Kingdom manufacturers may lose export orders to their foreign competitors which they would have secured if they had been free to quote lower export prices. Moreover, the lack of aggressiveness in going after export orders, which is apt to be associated with common price arrangements, may be expected in the long run to have cumulative effects on an industry's competitive power in foreign markets.

334. It is difficult in practice to strike a balance between these opposing arguments and the more general considerations of trading policy described in paragraph 329. Definite evidence of the effect of these agreements is scarce, and in view of market conditions in recent years we are not convinced that their operation up to now provides any clear indication of their likely effect on the public interest in the future when conditions may be different. We have drawn attention in paragraph 321 to the possibility that the abolition of common minimum prices in the home market may, in any event, lead to the abandonment of common minimum prices for export. On balance, we are not prepared to say that at present the agreements on minimum prices for export necessarily operate or may be expected to operate against the public interest, but we think that if they are not abandoned as a result of the abolition of minimum prices in the home market, their effect should be further reviewed in two or three years' time in the circumstances then prevailing.

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21st January, 1955.