

CHAPTER 6. CONCLUSIONS

108. Our present reference requires us only to answer a question of fact. In the 1953 report the merits and demerits of practices then existing in the imported timber trade were fully considered, and, as a result, the Commission recommended in that report that certain agreements and undertakings should be abrogated and should not be replaced by any other arrangements or undertakings having similar effects. We are now concerned only with the question whether and to what extent the parties concerned have complied with the recommendation. The agreements and undertakings which, it was recommended, should be abrogated were:

Hardwood: The individual undertakings entered into by every importer and agent whose name was included in the Approved Lists of hardwood importers and agents; these undertakings were in common form, as set out in Appendix (x) of the 1953 report.

Softwood: The individual undertakings similarly entered into by every importer and agent whose name was included in the softwood Approved Lists; these were also in common form, as set out in Appendix (ix) of the 1953 report.

Plywood: The Bye-Laws of the Plywood Section of the Timber Trade Federation (as set out in Appendix (vi) B of the 1953 report), which each member of that Section was bound, as a condition of membership, to observe and conform to (see Appendix (vi) A of the 1953 report, Rule 3 (h)).

The parties concerned with these agreements and undertakings were: as regards hardwood, principally the members of the National Hardwood Importers' Section (N.H.I.S.) and the Hardwood Agents & Brokers Association Ltd. (H.A.B.A.); as regards softwood, principally the members of the National Softwood Importers' Section (N.S.I.S.) and the Timber Agents & Brokers Association (T.A.B.A.); and as regards plywood, exclusively the members of the Plywood Section.

(i) The former agreements and undertakings

109. We first have to decide whether, and to what extent, these agreements and undertakings were abrogated. We have described in paragraphs 3 and 4 the actions taken by the Sections and Associations concerned. The Federation submits that the agreements and undertakings were effectively terminated by these actions, and we see no reason to dispute this. We are satisfied that the particular agreements and undertakings which were the subject of the Commission's recommendation were fully abrogated by the resolutions of February and March, 1954 and the action taken to make these known to all the parties concerned.

(ii) The subsequent position

(a) Some general considerations

110. We have therefore been particularly concerned throughout this inquiry with the evidence pertinent to the second part of the question we have to answer, namely, whether the former agreements and undertakings have been replaced by any other arrangements or undertakings having similar effects. Some of this evidence is in writing; for some we have had only the recollections of witnesses as to events which happened three or four years ago. Thus, on the one hand we have the precise text of letters, minutes and other documents; on the other we have received evidence, sometimes vague

and conflicting, of events such as the meeting of the hardwood liaison committee on 27th July, 1954 (see paragraphs 13 and 14), and the hardwood importers' and agents' dinners of 14th September and the 6th October, 1954 (see paragraphs 18 to 25). Of the dinners there are no contemporary written records at all. We have carefully considered this evidence in the light of all the circumstances, appreciating that we ought not to conclude that arrangements or undertakings of the kind precluded by the Commission's recommendation have been entered into unless we are satisfied that this is a probability amounting to a reasonable certainty.

111. It is relevant at this point to consider what were the effects of the former agreements. In form, they were contracts in writing, with provisions for sanctions in the event of breach. But in the 1953 report the Commission said this of their effects:

"We doubt whether, at any rate in recent years, the system [of Approved Lists supported by the agreements and undertakings] has had any very pronounced effect, except in the case of hardwood, in determining the channels of trade; if it had not existed, the great bulk of timber imports (again excepting hardwood) would probably have been handled in much the same way as they have in fact been".*

The Federation has drawn particular attention to this and other passages in the report to the same effect, and urged that we should not infer that absence of change in methods of trading must be due to agreement to prevent change. It has, indeed, been one of our difficulties in this inquiry that the visible effects, over the trade as a whole, of any arrangements or undertakings of the kind postulated by the reference would not, as far as we can judge, differ much from the effects of uninhibited trading. We think the Federation's argument, however, should also be applied in the opposite sense; if the effects of the action taken since the agreements were abrogated appear slight, it does not follow that they were not sufficient to be similar to the effects of the agreements themselves. The hardwood trade is clearly the one in which activity in support of the structure of the trade was most intensive after the agreements were abrogated, and in this connection we recall that hardwood was mentioned in the 1953 report as an exception to the general rule.

112. In the Federation's letter of 23rd December, 1954, to the Board of Trade (see paragraph 44) it is said that "it is, of course, the function and duty of each Section and Association Committee to formulate policy on practically all aspects of trade, to advise its Members of that policy, and to express the hope that the policy will be adhered to". It is an important feature of the case which the Federation has submitted to us that the committees concerned felt bound to exercise this function in some positive way in the situation created by the abrogation of the former agreements. But it can scarcely be argued that it is the function, and still less the duty, of the committees to urge upon their members a course of conduct calculated to nullify, either wholly or in part, the effects of the undertakings they have given. The Federation contends that the members were bewildered when deprived of the guidance provided by the agreements, and that all the various actions taken subsequently are explained by their need of advice on how to preserve their trade from chaos while honourably observing the undertakings to carry out the Commission's recommendation. At the same time the evidence shows, and the Federation freely admits, that all concerned deplored the recommendation and its consequences. We think that in such a situation those concerned would need to exercise considerable discretion

* See paragraph 300.

and restraint if they were to formulate a policy which was to find favour with their members and at the same time to accord with the undertakings given to the Minister; this is all the more so when, as appears to be the case in this trade, the free play of economic forces and custom would have been likely of their own accord to produce a situation not very different from that which prevailed under the agreements.

113. We have, therefore, to bear in mind when examining the evidence of what has actually happened in the trade since the spring of 1954, that (1) we do not have, and cannot expect to have, complete evidence of every detail of these events; (2) there were no independent witnesses from whom evidence could be taken about a number of important events; (3) the visible effects on methods of trading of any arrangements, if they existed, would be slight, and such evidence as we have about methods of trading since 1954 does not, by itself, prove either the existence or absence of such arrangements; and (4) the Sections and Associations concerned have, on their own submissions, pursued a policy which they hoped would minimise the consequences of the Commission's recommendation, and which, in our view, was difficult to formulate or adhere to consistently with their undertaking to the Minister.

(b) The principal events

114. The principal events we have to consider are (1) the incident involving Agent A at the meeting of the hardwood liaison committee on 27th July, 1954 (see paragraphs 12 to 14); (2) the sending of letters, recommending the maintenance of the structure of the trade and enclosing lists of importers or agents, by the H.A.B.A. and the N.H.I.S. on 5th August, 1954, and by the T.A.B.A. and the N.S.I.S. on 14th and 16th September respectively (see paragraphs 15 and 36) and the events which led up to them; (3) the testing of the market by an important consumer of hardwood from April, 1954, onwards and, between 25th August and 24th September, 1954, the successive refusals, on the part of the three agents who had sold hardwood direct to him, to continue dealing with him (see paragraphs 11, 16 and 17); (4) the dinners which the Chairmen of the N.H.I.S. and the H.A.B.A. gave to certain hardwood importers and agents respectively on 14th September and 6th October, 1954 (see paragraphs 18 to 25); and (5) the sending by the H.A.B.A., the N.H.I.S., the T.A.B.A. and the N.S.I.S., between 18th and 22nd February, 1957, of further letters announcing the withdrawal of the letters of August and September, 1954, referred to in (2) above (see paragraph 57). All these events concern hardwood, but only (2) and (5) directly affect softwood, while plywood is not involved in any of them. Although to some extent we must consider the significance of each event in isolation, we must bear in mind that each was also part of a sequence of events, and that our conclusions must be reached in the light of the evidence as a whole. We have found it useful in this connection to keep in mind the time-table of events in 1954 which is contained in Appendix 3.

115. The Federation has submitted that there is no evidence that the incident involving Agent A prompted or accelerated the resolution of the hardwood liaison committee which led to the issue of the letters and lists, or that it had any other effects except in so far as Agent A's disclosure of what he had been doing may have caused some importers to decide individually to stop trading with him. We think this submission leaves too much out of account. Nearly every witness who has told us about this incident has agreed that the discussion was "heated", and two of them believe, or think it possible, that some importers present told Agent A at the meeting that they would withhold business from an agent who traded with a consumer. The scene was, in any case, likely to have a daunting effect

on Agent A ; and Agent B, who was not present, has told us that in reaching his decision to stop dealing with the consumer he was partly influenced by accounts he had heard of the incident, including remarks said to have been made by importers (see paragraph 17). We are satisfied that some importers present on that occasion said, in effect, that they would stop trading with Agent A unless he stopped trading with a consumer. That is not to say that Agent A's experience at the hands of importers after the meeting or the similar experience of Agent B at about the same time were necessarily results of an arrangement made at the meetings ; we consider that possibility again in paragraph 127. As for any effect the incident may or may not have had on the committee's resolution and the action which flowed from it, this does not appear to have any great relevance for our purpose ; we know that the committee had already, on 12th May, 1954, resolved that "the present structure of the hardwood importing trade is essential for its orderly conduct and that for this reason it should be so preserved" (see paragraph 10), and we accept that the letters and lists of 5th August, 1954, might have been issued in any event.

116. On the question of the letters and lists of August and September, 1954, the Federation says that these did not inhibit the recipients' freedom to choose their own methods of trading ; they were legitimate recommendations which went no further than the Board of Trade itself went (in its letter of 8th October, 1954—see paragraph 43) in recognising the right of individuals to refuse to deal with those who disrupted their own trade. According to the Federation, the recommendation to maintain the structure of the trade meant preserving the several functions of shipper, agent and importer which the Commission themselves had recognised as proper ; it was not a disguised way of telling the members to behave as if the agreements were still in force. And even if the letters were held in some way to constitute arrangements or undertakings, their effects, the Federation says, were not similar to those of the former agreements, since there was no provision for sanctions, nor is there any evidence that they made any difference to anyone's trading. Thus the Federation's case, as regards these letters, is that the methods of trading they recommended were in line with the Commission's recommendation, that they did not set up any arrangements, and that even if it were thought that they did the effects could not be called similar to those of the abrogated agreements.

117. In seeking to discover what was meant by maintaining the structure of the trade, we have received a variety of explanations. We think that the expression is equivocal. It is correct that the Commission in the 1953 report recognised that shipper, agent and importer all had their functions, which were proper in the sense that the bulk of the United Kingdom consumers needed the services of all of them in order to get the specifications of timber they wanted delivered in the right place at the right time. It was clearly the Commission's belief that to this extent the structure of the trade would be preserved by economic forces alone. The Federation, as we understand it, agrees very largely with this view and says its Sections and Associations were doing no more than recommending their members to trade in the way that economic forces dictated. If maintaining the structure of the trade means no more than this, we find it a little difficult to understand why the letters were needed at all. But some of those who were responsible for sending or who received the letters have said or implied that they regarded them as recommending the recipients to trade only with the importers or agents named in the lists or, in other words, to trade as they had been doing before the Commission made their recommendation (see paragraphs 29, 30 and 32). We cannot see what other interpretation can reasonably

be put upon the phrase in the circumstances in which it was used, and we accept this interpretation.

118. On the question whether the sending of the letters involved the making of any arrangements, it seems to us clear at least that there must have been agreement in one form or another between the executive committees of the N.H.I.S. and the H.A.B.A., and between the executive committees of the N.S.I.S. and the T.A.B.A., to send the letters and lists. In the case of hardwood the first explicit proposal is in the resolution of 27th July, 1954, of the liaison committee. Although this was an advisory committee the letters drafted by the sub-committee it appointed were sent without formal prior approval by the two executive committees concerned; while the committee of the N.H.I.S. was informed before their despatch that the liaison committee had "directed" that they should be sent, there is no record that the committee of the H.A.B.A. approved them until it did so by implication when the correspondence with the Board of Trade was reported to it on 2nd November, 1954. Rather similarly, in the case of softwood, the letters were sent after discussion between the two Chairmen concerned and only approved by the executive committees at their next subsequent meetings. The responsibility of each executive committee for the letters sent to its own members has not, in any case, been disputed by the Federation, but we draw attention to these details because they appear to us to indicate the existence some time before the letters were sent of understandings between the committees of the N.H.I.S. and the H.A.B.A., and between those of the N.S.I.S. and the T.A.B.A., on at least the general lines of the policy which was eventually pursued. In both the softwood and the hardwood trades the minutes suggest that some action of this kind may have been contemplated in May.* However this may be, the simultaneous (or, in the case of softwood, nearly simultaneous) despatch of lists of agents to importers and of lists of importers to agents, accompanied by letters in terms which were largely identical, necessarily had to be concerted between the committees, and it can hardly be disputed that there was agreement between each pair of committees to make the recommendations to their respective members. It appears to follow that each recommendation was accepted, so far as their own trading was concerned, by the importers or agents responsible for making it.

119. The questions whether each recommendation was accepted by the body of the members, or any considerable or influential proportion of them, and whether the parallel action taken in the hardwood and softwood trades was the result of an underlying arrangement in the timber trade generally, must be considered in the light of all the evidence (see paragraphs 124 to 129). We also defer for the moment consideration of the Federation's claim that even if some such arrangement existed it did not have effects similar to those of the abrogated agreements (see paragraph 132). As regards the claim that the policy was in effect approved by the Board of Trade this would appear to be irrelevant having regard to the terms of our reference. In any event the Board of Trade's remarks in the letter of 8th October, 1954, related to what the individual trader might do of his own accord, not what he and his fellow traders might be jointly recommended and urged to do by their responsible trade organisations.

* We have noted that as early as 16th December, 1953, the executive committee of the T.A.B.A. agreed that the Commission's recommendation might be met by having "Recommended Lists" instead of "Approved Lists" (see paragraph 8). There is no other evidence that this possibility was in the minds of this or any other of the bodies concerned before, or at the time of, the abrogation of the agreements.

120. With regard to the testing of the market by an important hardwood consumer immediately after the abrogation of the agreements and the eventual refusal of the agents concerned to continue these transactions, the Federation has submitted that this was an isolated and peculiar case. The consumer, it is said, was one who was believed by the trade to have been active in opposition to their methods of trading and big enough to disrupt an importer's business; and the reaction of individual importers, as soon as it became known that he was "trailing his coat", was entirely to be expected. We think the exceptional position of this consumer—and we agree that it is exceptional by virtue of the amount of hardwood he uses—is significant in a sense other than that to which the Federation has pointed; his case appears to us to be exceptional principally because he is one of the few users who, as was said in the 1953 report,* prefer to buy directly from agents or shippers and should not be prevented by the organised timber trade from exercising their preference. It does not follow, of course, that he was so prevented. We have recorded in paragraph 115 our belief that at the meeting of the hardwood liaison committee on 27th July, 1954, some importers declared their intention of following a course which might have had this effect; our final conclusion on this point is a matter to be considered when reviewing the evidence as a whole (see paragraph 127).

121. As regards the dinners of hardwood importers and agents the Federation has submitted that the evidence shows the importers to have been disunited in their views and that the agents, being aware of this, could not have entered into any tight arrangement with them even had they wanted to. It is contended that the declarations made by some agents were declarations of individual intention and not binding undertakings; even if they were regarded as binding they could not, it is said, bind anyone not present and were made only to other agents, not to importers (who alone had the effective power of enforcement). While we agree that the evidence shows the importers expressing widely different opinions about their own methods of trading we do not think it follows that they were disunited in their attitude to the agents. The divergence in methods of trading is no different from that prevailing when the agreements were operative; the agents accepted their own obligations under the agreements in spite of this diversity.† As regards the agents' dinner we are satisfied that most of those present declared in more or less common terms their intention to trade only with recognised importers and that none actively dissented. We do not understand why they should have made those declarations unless they intended the others present to regard them as binding, and it appears to us that they were, in effect, declaring their acceptance of the recommendation made in the H.A.B.A.'s letter of 5th August, 1954. Considered in isolation, the evidence does not show conclusively that the declarations were prompted by anything that had been said or agreed at the importers' dinner; but for the reasons given above we think the evidence about the importers' dinner is not incompatible with the establishment of some kind of understanding among the importers themselves and between the importers and the agents. We consider this question further in paragraph 125.

122. The Federation submits that since, in its view, the letters of August and September, 1954, created no arrangements or undertakings, the withdrawals of February, 1957, are irrelevant to the Commission's purpose. Had

* See paragraph 294.

† For divergences in importers' trading methods see, for instance, the 1953 report, paragraphs 279 and 295. For the position of the agents under the agreements, see paragraph 297: "The arguments for the Approved List system are based almost entirely on its alleged necessity for the importers. We have had no evidence to show that the protection which it affords to the agents is necessary".

the letters not been withdrawn the agreements for the constitutions of the Sections and Associations concerned might have been registrable under Section 6 (7) of the Restrictive Trade Practices Act, 1956 as if they contained provisions by which the members agreed to comply with the recommendations in the letters ; but that is not to say that the letters constitute agreements, arrangements or undertakings in the ordinary sense or for any purpose other than under that Act. We agree that the question of registrability is not particularly relevant to our own purpose, though it is another illustration of the difficulties referred to in paragraph 112 above which are inherent in the course adopted by the Sections and Associations concerned. We also agree, of course, that withdrawal would be irrelevant unless what was withdrawn constituted or was part of an arrangement. We take the view that the action taken to withdraw the letters of 1954 was scarcely calculated to attract attention ; the letters of February, 1957, did not specifically withdraw the lists, or explain that there was any change of policy or, indeed, mention the subject matter of the withdrawn letters. The Federation says that the recommendations were the essence of the letters, and that to have cancelled the lists, which " exist in order to tell people who were carrying on various classes of business " and were not themselves the subject of objection, would have provoked questions from members on whether particular dealers were recognised as " genuine " importers or agents. Whether that is so or not, we think the explanation clearly indicates the uses to which it was assumed the lists were being put and would continue to be put. In this connection it is not without significance that we were told that the officers concerned took " the least action " necessary to withdraw the recommendations.

(c) *The case as a whole*

123. Our consideration of the principal events since the spring of 1954 leads us first to the following conclusions: (1) In the hardwood liaison committee on 27th July, 1954, some importers said they would stop trading with Agent A unless he stopped trading with a consumer (see paragraph 115); (2) The executive committees of the N.H.I.S. and the H.A.B.A. agreed together that they would recommend their members to maintain the structure of the trade and circulate lists of recognised agents and importers, and the committees of the N.S.I.S. and the T.A.B.A. agreed together similarly (see paragraph 118); (3) Maintaining the structure of the trade meant, in the context, confining dealings to persons named in the appropriate lists or, in other words, continuing to trade in the same way as when the abrogated agreements were operative (see paragraph 117); (4) The recommendations referred to in (2) above were accepted in respect of their own trading by those who were responsible for issuing them (see paragraph 118); and (5) At the dinner of 6th October, 1954, a number of important hardwood agents in one another's presence made positive declarations of their intended future policy which, in effect, constituted acceptance of the H.A.B.A.'s recommendations (see paragraph 121). It remains for us to consider certain further issues in the light of the evidence as a whole. These issues are: (a) To what extent did the members of the bodies of hardwood and softwood importers and agents, other than those referred to in (4) and (5) above, accept the recommendations of their respective committees and become parties to their concerted policy; (b) Was policy concerted between the hardwood and softwood trades, and if so, was this part of a wider understanding; (c) Do any of the understandings or concerted policies we may find to have existed amount to or involve " arrangements or undertakings "; (d) If so, have any of them yet been terminated; and (e) To what extent are the effects of any arrangements or undertakings found to be in existence, or to have existed, similar to those of the former agreements.

124. There were no replies from any of the members to the letters enclosing the lists, but we cannot infer from this that the members did not accept the recommendations. It has to be remembered that the committees responsible for making the recommendations were executive committees empowered to carry on the business of the Sections and Associations concerned; their recommendations would be likely at least to have a powerful influence on the actions of their members and might even be regarded as committing each Section and Association as a whole to the policy recommended. However this may be, the absence of any replies from members is at least as consistent with acceptance as with non-acceptance.

125. At this point, too, the sequence of events may be of significance. In the case of hardwood the letters were issued on 5th August, 1954, and were followed in September and October (which, having regard to the normal difficulty of assembling any representative collection of traders in the holiday period, was probably as soon as was practicable) by dinners given by the Chairmen of the importers' and agents' bodies. Nobody has suggested that these were part of the normal social routine in the trade and, inevitably, we must ask ourselves what was their purpose. The Federation says one reason why they were held was that the trade still required reassurance about the situation after abrogation of the agreements.* We think this explanation indicates that the Federation regards the persons who were present as representative of the hardwood sector of the trade. We are satisfied that the dinners were connected with the letters, at least in the minds of the two Chairmen who arranged them, and that they provided an opportunity to test the response of an influential nucleus of members to the recommendations in the letters and to emphasise their content. As we have already shown, we are satisfied that most of the agents present at the second dinner did, in effect, signify their acceptance; and it may be supposed that they would hardly have done so unless they believed it would be expedient from the point of view of their relations with the importers. The sequence of events suggests that at the agents' dinner some indication was conveyed of the intentions of the importers as expressed at the earlier dinner. The Chairman of the N.H.I.S. says it was in the nature of a reassurance that no great change was expected, while the Chairman of the H.A.B.A. says he understood that the importers' general view was that it was best to maintain the structure of the trade as individuals (see paragraph 21). We think that whatever form of words may have been used there must have been conveyed to the agents some sort of assurance that the importers were prepared not substantially to change their methods of buying provided that the agents were prepared to agree not substantially to change their methods of selling. After examining the events as a whole, and having in mind the considerations mentioned in paragraph 110, we think the evidence strongly supports this interpretation.

126. In the case of softwood there were no similar dinner parties. But we have noted that there was a general meeting of the T.A.B.A. a week after the issue of the letters and that it adopted, without questions asked, a report which included an expression of hope that the members shared the view of the committee, as set out in the letter, and would act accordingly (see paragraph 37). This appears to us to mean that the members of the T.A.B.A. endorsed the committee's policy and effectively accepted the recommendation. There is no record of any corresponding endorsement by

* Another reason mentioned was the expected allocation of dollars which would permit the resumption of imports of hardwood from North America. This is a cognate subject because before the war part of this trade had been done direct between importers and overseas shippers without the intervention of agents.

softwood importers, but it may be doubted whether the agents would have acted as they did unless they had reason to believe that their action was consonant with the policy of the importers. The evidence shows that the date of issue of the letters was advanced by arrangement between the Chairmen of the N.S.I.S. and the T.A.B.A., and it appears to us that the latter may have had the forthcoming general meeting in mind.

127. It is also relevant to the question of acceptance of the recommendation to consider how the members actually behaved. There is little evidence of change in methods of trading, either before the letters were issued or afterwards. The outstanding exception is the case of the large hardwood consumer, who was informed successively, on 25th August, 17th September and 24th September, by each of the three agents with whom he had been dealing that these transactions could not continue. The Federation says that each agent did this because of the spontaneous reactions of individual importers when they learned what had been disclosed at the liaison committee meeting. This is not impossible, but what happened is equally compatible with the exercise of concerted pressure by importers, begun by some of those who were at the liaison committee meeting and continued by means of the letters issued nine days later.* In the case of softwood, there is no evidence of any concern about particular cases at this time. Looking at these events as a whole we think that policy was in process of being evolved in both the hardwood and softwood trades when the incident at the hardwood liaison committee occurred. This, from the point of view of the hardwood agents and importers, turned what had so far been a largely hypothetical danger into an actual one. In this, the only actual case known to us to have happened at that time, the "danger" was in fact averted. We think this was the purpose of the policy concerted between the executive committees; the Federation may be right in saying that it was individual action that caused the three agents to withdraw, but we are satisfied that the policy embodied in the letters prompted such action and provided support for those who so acted.

128. Our answer to question (a) in paragraph 123 is, therefore, that, in addition to the persons mentioned under heads (4) and (5) of that paragraph, the softwood agents in general meeting endorsed their committee's recommendation and became parties to the policy concerted between the importers' and agents committees. The part played by the importers, as we have explained, is not brought out so definitely by the evidence, but we think that the adherence of agents to the arrangements can only be understood if there was a substantial degree of reciprocity on the part of a large and influential body of importers.

129. As regards question (b) in paragraph 123, as we have already shown, circumstances differed to some extent in the hardwood and softwood trades but the action taken was roughly parallel. We do not think these developments were isolated from one another. We think the parallel developments show that the policy evolved by the four committees was co-ordinated through the officers of the Federation and was the policy the timber trade as a whole wanted. This might be thought to have some significance in the case of plywood in spite of the absence of any direct evidence of a concerted policy in that section of the trade; and we have, indeed, been told by some witnesses that an agent or importer who deals in more than one of the three main sectors of the trade would find it difficult not to pursue the same

* According to the consumer's contemporary note Agent A actually told him that each member of "the Committee of the Agents' Section" had been requested to agree only to deal with importers on the approved list, but Agent A denies this, and this particular piece of evidence is not by itself conclusive.

policy in each (see paragraphs 17 and 38). On the whole, however, we think that in the case of plywood the advantages to all concerned of continuing to deal through the conventional channels were considered sufficient to ensure that the structure of the trade would be maintained without concerted action.*

130. As regards question (c) in paragraph 123, an arrangement or undertaking need not be in writing, or enforceable in law, or provide for sanctions. As regards both hardwood and softwood we are satisfied that a number of parties—the members of the executive committees—agreed together to make recommendations; that the recommendations were accepted in the first place by the influential persons who made them, including both importers and agents; that they were later endorsed and accepted by a number of important hardwood agents and by the softwood agents in general meeting; that there was no active dissent on the part of importers or agents; and that the consequence of acceptance was to create mutual obligations, since the importers and agents concerned were agreeing to deal only with listed agents and importers respectively and to recommend other importers and agents to do likewise. We are satisfied, therefore, that the parties who so concerted their policy entered into “arrangements”. The number of these parties cannot be determined exactly. We think it may be taken to include the members, at the time when the letters of August and September, 1954, were issued, of the four executive committees; it includes, in the case of hardwood, at least a majority of the most influential members of the H.A.B.A., and, in the case of softwood, the generality of the members of the T.A.B.A., and, in both cases, a large and influential body of importers.

131. As regards question (d) in paragraph 123, the only evidence which might point to the termination or modification of the arrangements is the formal withdrawal in February, 1957, of the letters of August and September, 1954. These letters did not embody the whole of the arrangements which we have found to exist, and we are not satisfied that the “withdrawal” gave effective notice to the parties that they were no longer recommended to trade only with those on the relevant lists or that it cancelled their acceptance of the recommendations. We do not think the arrangements have been terminated or effectively modified.

132. On question (e) in paragraph 123, the Federation has represented to us that even should we arrive at the conclusion that some arrangements were entered into, these could not be said to have similar effects to those of the abrogated agreements, which were formal contracts in writing with provision for sanctions. As we have said, an arrangement need not be in writing or contain sanctions, and we think that the “effects”, whether of a written agreement or an unwritten arrangement, must be judged not from its form but from the situation which results from it. Although the former agreements provided for sanctions it was said in the 1953 report that “there is no machinery for detailed enforcement of the obligations undertaken by the concerns on the various Lists, and minor breaches of the undertakings seem to go to some extent undetected or to be winked at by those who administer the scheme”.† The real sanction for any arrangement of this kind, whether formally provided for or not, is in the known existence of a substantial body of common opinion in the trade. We think Agent A and Agent B both felt the force of this sanction. As we have

* The case of Agent X (see paragraphs 78 and 80 to 82) may raise some doubts, but there is no evidence that the action taken was other than individual or that policy on methods of trading has been concerted or even discussed in the Plywood Section since the abrogation of its Bye-Laws.

† See paragraph 279.

already pointed out, the Commission were doubtful whether the agreements had had any very pronounced effect in determining the channels of trade in recent years, except in the case of hardwood ; and it is, again, in the hardwood trade that we have evidence of determined action to enforce the conventional methods of trading. We think that methods of trading have changed hardly at all in the timber trade since the agreements were abrogated. We agree that over a wide part of the field, including probably the whole of the plywood trade, this absence of change may be due largely to satisfaction with the existing methods. But it remains true that certain persons are prevented from doing business in the way they would wish principally because their names, or their customers' names, are not included in the lists recognised by the main bodies of importers and agents, and we think the effects of the arrangements which we find to have existed as regards hardwood and softwood have been and are similar to those of the former agreements.

(iii) Summary of Conclusions

133. Our conclusions may be summarised as follows:

- (1) The agreements and undertakings relating to hardwood, softwood and plywood which the Commission in the 1953 report recommended should be abrogated were abrogated by the parties concerned in or about February and March 1954.
- (2) The former agreements and undertakings relating to plywood have not been replaced by any other arrangements or undertakings having similar effects.
- (3) The former agreements and undertakings relating to hardwood and softwood have been replaced by other arrangements. All the parties to such arrangements cannot be precisely enumerated but, as may be seen from paragraph 130, they include, amongst others, as regards both hardwood and softwood, a substantial and influential body of the members of the Sections and Associations concerned. The nature of the arrangements is that the importers who are parties will not buy from, and the agents who are parties will not sell to, persons who are not named in the appropriate list. As regards both hardwood and softwood, the effects of the arrangements are similar to the effects of the former agreements and undertakings. The arrangements have not been modified or terminated.

R. F. LEVY (*Chairman*)
G. C. ALLEN
T. J. BARNES
ALAN BIRCH
ANDREW BLACK
BRIAN DAVIDSON
LEONARD GRAY
I. C. HILL
FRANK SHIRES

A. S. GILBERT (*Secretary*).
24th July, 1958.