

Q. Was the establishment of the single distributor in Belgium a device for fighting nonmember competitors in Belgium?

A. The answer to that is no, and in addition to that I might say that the effect of preventing our own agent from cutting prices was an advantage to the outsider. It held an umbrella over him in that market.

Mr. Kayser's reply to Mr. Billings' letter to which he refers in his testimony, was dated April 5, 1938, and is in the record by way of photostatic copy as exhibit 591 A-B, the reference to Belgium reading as follows:

Altho the percentage of outsider business done in Belgium in 1937 declined markedly, no test of the soundness of our experiment with a single agent in a market is furnished by last year's figures. Far more than half of the total sales to Belgium for the year were made in the first half of it when the old system was in operation. In the month's interval between our announcement that our distribution would henceforth be carried on by a single agent and the effective date of the change two agents loaded several of the intermediate customers up with supplies which, in some instances, will carry them thru the year 1938. This operated to reduce the market of our single representative very materially. Experience with the new system is far too young to permit of a categorical statement that it is better or worse than the old one. While that indisposes me to discuss the relative merits of the two systems at this time, I do not want to let you draw false conclusions from a lack of facts.

Mr. Kayser testified that all markets of the world excepting Belgium were open to distributors. Exhibits 555 to 564, distributors' contracts referred to above, each contain a territory provision identical to the section from the Binney & Smith contract (exhibit 20 A-J) above reviewed.

Mr. Allan F. Kitchell, president of Binney & Smith Co., testified that his company is the domestic distributor for Columbian Carbon Co. of whose stock it owns a proportion under 2 percent. He stated that his company's research division is constantly at work solving its customers' technical problems and that such technical information is available for use of the association. Under its distributors' contract, it normally sells Columbian black in export, but on several occasions it has sold other member producer's black upon order of the association. Mr. Kitchell was familiar with the association's policy requiring its members to report sales to nonmembers as expressed in the resolution adopted May 25, 1937, exhibit 102 B discussed in paragraph IV B herein. Certain dealings with Mr. L. C. Herkness of the Chas. Eneu Johnson Co. had taken place several years earlier and Mr. Kitchell agreed that his arrangement with the association would not permit sales for export to Mr. Herkness. His prepared statement on this particular reads as follows:⁶⁷

I would like to state, however, that in years gone by we have often sold Charles Eneu Johnson Co. various quantities of carbon blacks, high-grade materials

⁶⁷ T. 925; 1605.

as well as ordinary ink grades. From the best recollection of those in the department here handling such business our sales during that period were limited to high-grade materials which are not under the jurisdiction of Carbon Black Export Corp.

However, we might well have accepted an order for ordinary black from them since that would only have been of a nature for domestic shipment and packed in the regular domestic bags. If such an order had been accepted we would have expected them to use it in their own manufacture here and that it would not have been exported. If we had had any idea that such black was to be moved into the export trade we would not have accepted the order.

Mr. D. H. Robinot of New York City, testified that he has been an exporter of steel and some chemicals since 1932. About a year before passage of the Lend-Lease Act, he attempted to purchase carbon black for export and made written inquiry of manufacturers Imperial, Cabot, Huber, and Columbian. They replied that they had local agents for the particular countries he inquired about or referred him to Carbon Black Export, Inc. The latter told him they had coverage in France. He reported a telephone conversation with United's New York City agent as follows:

I told them that the Carbon Black Export, Inc., being in the same game as mine naturally wouldn't be able to pay me the full amount of commissions that the manufacturer generally allows an agent. I asked him, "What do you think they will give me?"

He said, "1 percent."

I said, "I don't work on that basis."

He testified further that the Lend-Lease Act passed in the meantime and that only one of the manufacturers, Imperial, offered to sell him carbon black for delivery to Spain, which offer the war forced him to decline. He learned of Phillips' entry into carbon black production from the War Production Board. After less than a year of negotiation with the Phillips company, Mr. Robinot wrote the Secretary of Commerce (exhibit 430) on October 16, 1945. Thereafter on October 30, 1945, he addressed a letter to the Commission's Director of the Export Trade Office (exhibit 431) and on November 1, 1945, to the Phillips company (exhibit 432 A-B). At the latter date, Mr. Robinot had an inquiry from Greece for 20 tons of carbon black, for which, shortly after November 1, 1945, Phillips Petroleum Co. made him a quotation. At the date of his testimony, January 16, 1946, Mr. Robinot had completed arrangements with the Phillips company to sell their product, Philblack, in five small countries at a 5 percent commission. He plans to sell the product to the paint and ink industries in these countries because they have no rubber industry. His knowledge of Philblack is that it "is being made by a different process than ordinary carbon black is made."⁶⁸

⁶⁸ T. 869; 880.

Mr. W. H. Grote, of Phillips Petroleum Co., testified that he assumed the position of Export manager and established an export office for the company on December 1, 1945. He testified that the home office made all price arrangements and he did not know the relation of C. K. Williams & Co. to Phillips, but he was familiar with the territory assigned to Mr. Robinot, testifying as follows:⁶⁹

Q. In the assignment of territory, to Mr. Robinot, is there any particular reason why you, if you did, restrict the territories to those in which there was no rubber manufacturing potential?

A. I think you must be laboring under a misapprehension.

Q. I may be.

A. Because there is no restriction. On the contrary, I told Mr. Robinot that unless he could sell to the rubber industries in those countries, his volume wouldn't be very big. There is no restriction.

Q. I might have misunderstood him, then.

A. You must have, because we would rather have him sell to the rubber industry than to the ink industry.

Q. Let's just have it so that we may have it by way of contrast—I am not trying to trip you up or him up. What is the nature of your arrangement? Is there any limitation as to destination, as to industry destination?

A. No limitation whatsoever.

Q. There are limitations, though, as to countries?

A. Well, I wouldn't say limitations.

Q. Certain ones have been specified?

A. He was interested in certain countries which I granted to him.

Q. Is there a so-called rubber potential in those countries which he was assigned?

A. Yes, all those countries have rubber-manufacturing establishments.

Mr. Robinot's letters to the Phillips company relative to his request for an agency are not in the record, although two of Phillips' replies appear as exhibits 444 A-B and 445. Exhibit 444 A-B, from Phillips to Mr. Robinot, dated October 29, 1945, contains a paragraph reading as follows:

As we advised you some time ago we are withholding all commitments on export sales and shipments until we have established our export office in New York. Present indications are that this office will be inaugurated shortly after the first of December, and no final arrangements will be made except through the director of export sales.

If you are in position to have carbon black crated we will be happy to complete this order for any domestic point you might designate, and the price will be in accordance with our current price schedules, and no discounts will be allowed for agency fees. At the present time it is impossible for us to crate it as we do not have the equipment or manpower available to handle this work. We also wish to mention in this respect that we give no assurance that we will continue to accept orders as all later requests for foreign shipments must go through our export office as soon as it is in full operation.

We wired you today as follows: "Relet impossible to quote at this time on 20 tons of Philblack for Mediterranean area." We did not receive your letter

⁶⁹ T. 892; 894.

in time to wire you Saturday as requested, and sincerely hope that receiving it today has not caused you any undue inconvenience. We are also returning the correspondence you forwarded on your request to C. K. Williams & Co., and we wish to thank you for forwarding this to us. We have passed this on to our main office for their further information.

Their letter to Robinot dated October 19, 1945, refers to the Williams company as follows (exhibit 445) :

Our relations with C. K. Williams & Co. were established some little time ago, and we can make no exceptions in regard to selling our product to others where its ultimate use is in the coloring, or ink field. We regret that this is necessary but we are sure that you appreciate that agreements cannot be violated. We would suggest that you contact C. K. Williams and see if they are not interested in selling you.

Mr. Frank Andrews, sales manager of the Philblack Division of Phillips Petroleum Co., testified that he never discussed carbon black prices with Carbon Black Export, Inc., officers but assumed Phillips' prices were "close to them." He was familiar with the quotation made to Mr. D. H. Robinot and after testifying that the quotation was made on an f. a. s. basis because the company wanted to avoid paying insurance and freight as entailed in the c. i. f. basis, his testimony continues: ⁷⁰

Q. Do you intend to have such a person, say, as Robinot competing as to price in such a market as Greece, say, with another person to whom you sell such as Robinot?

A. I wouldn't plan to.

Q. How would you avoid that?

A. I would set up territories in which agents were given definite territory in which to sell.

Q. In other words, you would avoid competition among, we will call them "agents" abroad by limiting and restricting the territory which they serve so that they would not overlap?

A. Yes.

Q. How would that work out? You have no control over the product when it is shipped f. a. s., do you, Mr. Andrews?

A. We would probably enter into some kind of contractual arrangement with our agents.

Q. In other words, do you have such an arrangement with Mr. Robinot?

A. We have no contracts at the present time.

Q. But you do anticipate in a general way to enter into contracts whereby the independent exporter through whom you operate shall restrict his activities to certain fields?

A. That's right.

Q. The purpose of that is to avoid price competition between those men abroad?

A. No, to make it possible for each dealer to operate.

Mr. Louis A. De Smet testified that he operates as an individual trader under the name De Smet & Co. from his home at 6417 Wayne Avenue, Chicago, Ill. He is engaged in exporting Gilsonite and

⁷⁰ T. 1168-1169.

Bentonite. The main business was, prior to his father's death in 1938, the export of carbon black. The witness joined his father in 1923, though his father had operated since 1917 under the name George W. De Smet. Sales of carbon black were principally of the rubber black type and were made direct to consumers and in some instances to agents who resold to consumers. "In all cases we purchased and we sold the carbon black on our own account," he testified. His records disclosed dollar volume of export sales of carbon black for the years 1929-35 as follows: 1929—\$123,454; 1930—\$65,147; 1931—\$66,236; 1932—\$69,306; 1933—\$45,312; 1934—\$114,175; and 1935—\$157,887. The 1935 exports went to France, England, Japan, Poland, Germany, and Holland. Supplies of black had been purchased from Cabot, United, Keystone, Palmer, and Wishnick-Tumpeer. Keystone, after joining the association, on October 3, 1936, wrote him that all their export business would thereafter be handled through the association (exhibit 454). Thereafter, until 1945, he canvassed the industry but could not procure supplies. Contained in the record are a total of 37 items of correspondence relating principally to efforts of the witness and his father to affiliate with the association. These are identified in the record as exhibits 287-91 A-B, 421-3, 454-9, and 604-22. Representative of these are the following:

Exhibit 613, dated May 24, 1934, George W. De Smet to association:

We acknowledge receipt of your telegram of the 18th inst, and your letter of the 19th, confirming this telegram.

Since then we have received your letter of the 21st inst, in which you enclose the copy of the resale price schedule for various states in Europe for which we thank you but we are sorry that you did not send us a copy of the schedule for France. We have always done a fairly good business in France and would like to receive the schedule.

Please let us know when you expect your Mr. Kayser in New York. In his last letter your Mr. Kayser advised us that on his return from Europe he would be able to give us a definite answer in reference to securing a full agency from your company.

Exhibit 617 (also in record as exhibit 455) dated July 12, 1934, association to De Smet:

On June 5th I advised you that I would later again refer to your inquiry regarding agency arrangements.

At a recent meeting of the directors of the Corporation, I brought the matter up in connection with a discussion of our general representation. As a result of that discussion, I must now write you that the directors asked me to express to you their regret that, because of many problems not yet completely solved within our present distributing organization, they feel it necessary to take the position that they cannot make any other arrangements for the balance of this year.

I should like to have you understand that, although the matter is as I have now explained it, I should be very pleased to receive a call from you on the occasion of one of your visits in New York, to discuss the question of export in general and any means we can develop of cooperating together along other lines.

Exhibit 622, dated January 27, 1936, association to George W. De Smet:

Since my letter to you in July 1934 our distribution in export has been so organized as to be thoroughly adequate for our needs. Consequently I am compelled to reply to your courteous letter of January 21st last that we are unable to grant you an agency. Nor are we able to release any of our producing members from their contracts to sell us exclusively all of their black which goes into export. I can advise you, however, that our agents in the various markets are permitted to sell black to jobbers at our regular schedule prices without discount or commission allowance.

Continuing his testimony, Mr. De Smet said that in certain years the bulk of his export sales of carbon black were made to Michelin Tire Co. of France through a Paris agent named J. Bugnet who later transferred his agency to Mr. W. Van Lede. At times Mr. Van Lede, as De Smet's agent, sold Michelin, sometimes De Smet sold Michelin direct, reserving a commission for Van Lede and "at other times it was sold to Mr. Van Lede at a net price, and he sold it to them at a higher price." 1927 sales to Michelin exceeded 2½ million pounds. Since 1936, he has had offers from Mr. Van Lede on behalf of Michelin and others. One such inquiry, in 1938, was substantial. In connection with this inquiry, Mr. De Smet testified that Texas-Elf Carbon Co., an affiliate of the Cabot company, and the Imperial Oil & Gas Products Co., refused to sell him, the latter's letter of November 5, 1938, reading as follows (exhibit 457):

We have your letter of November 3 in which you inform us that the 700,000 lbs. order was offered to you by your French agent and that the material would go to France and Belgium.

Our arrangements in France and Belgium are such that at the present time we could hardly offer this in these markets. We therefore feel that we cannot quote on this business.

He testified that his company had purchased carbon black from Canada Carbon Black Co. at one time but that it advised him that they could not supply him. This was by letters, photostatic copies in the record as exhibits 458 and 459, dated January 28 and February 1, 1938. Exhibit 458 reads as follows: "We regret very much that we are not in a position to offer you any black at this time either for England or the Continent."

In May 1945 the witness was offered a proposition by Mr. R. L. Wishnick to act as his subagent in France at a commission of 5 percent. This he refused because "it was an entirely different way of handling it than I had done it before." He continued, "If I was to handle it for this company I would have to pay that 5 percent commission to an agent there to handle the business. Now, the only way that could be worked would have been to do away with the agent in France, and for me to go there myself and handle the business there myself."

Mr. Wishnick suggested that De Smet see Mr. Kayser. Mr. De Smet testified that in October or November 1945, he conversed with Mr. Kayser who told him that under the present set-up of Carbon Black Export, Inc., "it was impossible for them to appoint another agent," but that Mr. De Smet's application would be taken under advisement and if something could be done he would be notified. Nothing had materialized to the date of the testimony (February 4, 1946). He testified that Mr. Kayser had informed him of Columbian's acquisition of Keystone Carbon Co. and closing of that plant because of inferior quality of the product. To this, he said he told Mr. Kayser that he thought the quality of Keystone's product was excellent and that in the years when he handled it he had never had a complaint from an agent or customer.

Mr. De Smet testified that his company had sold carbon black under three brand names: "Stygian," "Jetta," and "Croak." Producers, including Keystone, had cooperated when questions of quality arose, but it was "never a question that made or broke a sale." The Stygian brand was sold to Michelin in competition with brands of other American suppliers and was well known throughout England and Europe, and it had a "marked brand preference," he added. He never had credit difficulties with his suppliers, and in selling he netted 10 percent profit after agent's commission, purchase cost, and other expenses. The only competition encountered was that of other American producers and he could not recall an instance of bad faith rejection to create a distress sale. He testified that since 1935, he has not been able to procure supplies of carbon black because Carbon Black Export, Inc., controls the export of carbon black to foreign countries; that it was his regular business which was terminated at quite a financial loss; and that the members of the association were nice people to do business with and men of their word but that nobody could break in "and those who were not in on it before were definitely out."⁷¹

Upon the suggestion of respondents' counsel made to the investigating attorney, Mr. De Smet gave the following additional testimony: Since 1938, sales of envelopes and domestic and export sales of Gilsonite has been his means of livelihood. From 1925 to 1938, witness and his father were importers and sellers of crude rubber, mushrooms, and canned fish. From 1925 to 1927, his father was president of De Smet Quartz Tile Co., Wauconda, Ill., which either went bankrupt or made a settlement with creditors. Witness has no knowledge of whether the Colored Cement Co. controlled by his father was able to pay its debts and judgments obtained against it. The importing of

⁷¹ T. 1308; 1336.

