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An Inquiry Into the Administration and Utilization of the Webb-Pomerene Act[†]

The increasing competition from other exporting nations and trade blocs to gain a larger share of the world market, and the possibility of their dominating world trade, could seriously affect American exporters and domestic producers. With the conclusion of the "Kennedy Round" negotiations and the future tariff reductions projected for the next few years, American exporters may be facing foreign competition at a disadvantage, because they must compete with foreign cartels and state trading organizations in the world market. To meet this competition on an equal basis, U.S. exporting firms could now make greater use of the Webb-Pomerene Act by organizing export trade associations under its provisions to compete in international trade.

In 1918 the United States Congress passed the Export Trade (Webb-Pomerene) Act to promote export trade and permit the organization of export trade associations to engage in cartel-like activity in export trade. The Act provides an exemption from antitrust laws for the purpose of stimulating the export of American products. The intent of Congress was to help American business meet competition in foreign markets.

The Webb-Pomerene Act exempts export trade associations and member firms from the antitrust laws by permitting them to make agreements on sales policy as long as they do not affect domestic trade or restrain competition in exports among non-member firms. Although the Act provides a clear economic benefit to members of such an association, it has not been used widely and a need arises to determine why the Act has not been accepted by the business community.

The purpose of this article is to investigate why greater use has not been made by the business community of the provisions of the Webb-Pomerene Act in export marketing. A study is also made of the nature of export trade associations established under the Act and the need for their existence. An

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[†]This paper is based on a thesis submitted to the Graduate School of Saint Louis University.

attempt will be made to test the relevance, validity and usefulness of a 50-year-old law. The paper was also undertaken to determine to what extent the Webb-Pomerene Act has been utilized in export trade and how widely exporting firms have accepted its protection. A questionnaire was designed to obtain these answers.

Historical Background of the Export Trade Act of 1918.

Upon passage of the Sherman Act in 1890, many special interest groups began to lobby for specific legislation seeking relief from the restrictions imposed on them by the Sherman Act. In particular, the National Foreign Trade Council and the United States Chamber of Commerce, representing these groups, voiced their desire for passage of legislation which would exempt them from antitrust regulations by permitting cooperative export activity in foreign trade. At the request of President Wilson, the Federal Trade Commission conducted hearings to study the effects of foreign competition on domestic exports. The recommendation of the Commission consisted of a suggested legislation to permit cooperative joint ventures by exporting firms and the formation of associations for the purpose of promotion of export trade.¹

A bill was introduced in Congress in 1917 by Senator Atlee Pomerene and Congressman Edwin Webb. Senate hearings were conducted regarding its passage. Congressman Webb's major argument before the House was that American exporters entering the world market should do so on equal terms with their foreign competitors. He argued that,

"I want to help them by putting them on the same footing as their foreign competitors; and every foreign nation today permits its manufacturers to do what we want to permit them to do in this bill."

In his final remarks he stated:

"All that this bill does is to put the American Manufacturer and exporters on equal terms with his competitor, and every American wants to give them a chance to do that, and unless we do it may as well go out of the export business."²

Senator Pomerene's arguments in defense of the bill before the Senate presented the following question to the Senators:

"Does the American Congress wish to place our American businessman on equal footing with his foreign competitor or does it not? If we are seeking

¹FEDERAL TRADE COMMISSION, *COOPERATION IN AMERICAN EXPORT TRADE*, Vols. I and II. (Government Printing Office, Washington, D.C., 1916).

²U.S. Senate, *Foreign Trade and the Antitrust Laws*, Hearings before the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary, 88th Congress, 2nd Sess., July 22-29, 1964, p. 246.

foreign trade in some third country, should we compel our people to go singlehanded after a contract, while Germany and France and Great Britain and nearly all other competing countries allow their businessmen to enter into combination for the purpose of getting that contract.”³

During the debate, the argument was made that the bill would repeal the Sherman Act. To this charge Senator Pomerene replied:

“The Senator forgets that neither the associations, nor their agreements, nor their reactions can be in restraint of trade within the United States, nor in restraint of the foreign trade of any domestic competitor, and they cannot by any agreement, conspiracy, or act artificially or intentionally and unduly either enhance prices or reduce prices domestically, and if they do, they violate the law of the land.”⁴

The efforts of Congressman Webb and Senator Pomerene resulted in the passage of the Act, entitled “An Act to promote export trade, and for other purposes.” The Act provides exemption for exporting firms and associations from the prohibitions of the Sherman Act.

The passage of the Act permitted associations of exporters to limit competition among members in export marketing only. The Webb-Pomerene Act did not legalize participation of American firms in international cartels. Any association or member firm engaging in activities restricting competition in domestic trade becomes subject to prosecution under the provisions of the Sherman Act.

Section I of the Act defines export trade for purposes thereof, and specifically excludes production, manufacturing, or selling for consumption or resale within the United States:

“That the words ‘export trade’ wherever used in this Act mean solely trade or commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States or any Territory thereof to any foreign nation; but the words ‘export trade’ shall not be deemed to include the production, manufacture, or selling for consumption or for resale, within the United States or any Territory thereof, of such goods, wares, or merchandise, or any act in the course of such production, manufacture, or selling for consumption or for resale. . . . That the word ‘association’ wherever used in this Act means any corporation or combination, by contract or otherwise, of two or more persons, partnerships, or corporations.” 15 U.S.C. § 61

Section 2 includes the clause granting exemption from the Sherman Act:

“That nothing contained in the Act entitled “An Act to protect trade and commerce against unlawful restraints and monopolies” . . . shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade, or an agreement made or act done in the course of

³*Id.* at 251.

⁴*Id.* at 255.

export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: *And provided further*, That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such associations, or which substantially lessens competition within the United States or otherwise restrains trade therein." 15 U.S.C. § 62

The Act also includes a provision in Section 5 for formation of export trade associations. After 30 days in existence as an association, the organization must file a statement with the Federal Trade Commission stating its place of business, and the names and addresses of all officers, stockholders and member firms, as well as (if incorporated), a copy of the certificate of incorporation, and a copy of the articles of association. The Act also requires associations to file on the first of January of each year a statement of their activities and report any change in the organization during the year.

The Division of Export Trade in the Office of the General Counsel of the Federal Trade Commission is responsible for administration of the Act. While the Commission has administrative authority for the Act, it cannot impose prohibitions on associations it finds going beyond the provisions of the law. The Department of Justice, however, can investigate and prosecute an association without the Commission's prior instigation. The dual responsibility for the administration of the Act between the Federal Trade Commission and Department of Justice is one reason for discontent of the business community with the Act.

Since the inception of the Act 230 Associations have been established representing over 4,000 firms. At the present time there are 27 registered associations composed of 211 member firms. The associations act as export sales agents, arrange transportation for the products of member firms, make agreements on prices and terms of sale for member products in foreign markets and make arrangements for distribution. Association membership may consist of two or more firms, depending on the association activity and conditions in foreign markets.⁵ Table I shows the industrial breakdown of the present associations and member firms.

⁵FEDERAL TRADE COMMISSION, *Alphabetical List of Firms, Organizations & Individuals Registering Under the Webb-Pomerene Act Between April 1918 & May 1965*. (Mimeographed).

Table I
Active Export Trade Associations and
Member Firms By Industry
 March 10, 1967

Industry	Associations		Firms	
	Number	Percent	Number	Percent
Agriculture	10	37.0	106	50.4
Chemical	5	18.5	20	9.4
Film and TV	4	14.8	15	7.1
Machinery	3	11.1	32	15.1
Rubber	1	3.8	5	2.4
Wood	4	14.8	33	15.6
Total	27	100.0	211	100.0

Source: Federal Trade Commission, *Associations Registered Under the Webb-Pomerene Export Act, Members and Products*, (Mimeographed, March 10, 1967), pp. 1-30.

The liberalization of the antitrust laws by the Webb-Pomerene Act for the purpose of stimulating export trade has not been very successful. Export trade associations have been formed in almost every industry but after a short period of time they have become inactive and eventually been disbanded. Many theories are presented as to why the Act has not been utilized more fully, one being that the business community is unaware of the benefits that can be derived therefrom. Another theory pictures businessmen as reluctant to give up their independence and identity in a cooperative effort.

The result of the legislation has been different from the original intent. Smaller exporters have not organized associations, and those that have existed were composed of large firms.⁶ The firms that have organized associations have been enabled to pool their resources resulting in a better competitive position in the world market. By mutual sharing of costs and risks small firms may find exporting a profitable venture if an association is composed of small firms unable to export independently.

⁶Foreign Trade Subcommittee, *Small Business and the Act*, Senate Subcommittee Print No. 11, 79th Cong., 2nd Sess. p. 3 (Washington, D.C., 1946.)

Literature on the Webb-Pomerene Act

Very little has been written in regard to the effects of the Webb-Pomerene Act on export trade and on the reasons why the Act has not stimulated the expansion of foreign trade. A historical approach to the Act is presented by the Senate Hearings on Small Business and the Webb-Pomerene Act in 1946. The Senate conducted the hearings to determine if the Act can benefit small business in their export efforts. The hearings concluded that the Act can be a useful instrument for small business as a channel for export trade.⁷

Other articles and books deal with the Act from the legal viewpoint of its legislative relationship with the Sherman Act. A study of all available literature on the subject does not reveal any extensive treatment of the problem investigated in this paper.

Lewis mentions the problem briefly in a closing paragraph of an article on government assisting business in export trade. He states: "We in the government are frankly a little puzzled to know why the Act is not very useful, or whether it simply suffers from a lack of sufficient attention and sponsorship."⁸

Dowd suggests several reasons why there are so few associations formed under the Webb-Pomerene Act. He believes that the major reason for the business community's reluctance to join a cooperative effort under the Act lies in the fact that "The American businessman is a rugged individualist who likes to go his own way under his own power." However, he also adds that "There may be other reasons why business has not rushed to avail itself of the benefits offered by the legislation."⁹

Basic Controversy

The passage of the Webb-Pomerene Act exemplified a change in legislative philosophy from total prohibition of agreements restraining trade, to encouragement and permission to establish export combinations to assist domestic producers. The basic premise of the Act's legislative philosophy was that since foreign trade was subjected to the control of cartels, American exporters should be assisted in fighting foreign competition on the same level.

⁷U.S. Congress, Senate, *Small Business and the Webb-Pomerene Act*, Report of the Foreign Trade Subcommittee to Study Problems of American Small Business, Senate Sub-Committee Print. No. 11, 79th Congress, 2nd Sess., p. 83.

⁸Dean B. Lewis, *Doing Business Abroad—The Role of Government in Facilitating Exports*, 17 *ARKANSAS LAW REVIEW* (Winter 1964) 454, 462.

⁹LAURENCE P. DOWD, *PRINCIPLES OF WORLD BUSINESS* (Allyn and Bacon, Inc., 1965), p. 231.

It has been suggested that the exemption granted in the Webb-Pomerene Act is against the public interest, the major premise being that it is difficult for members of an association to keep their activities in foreign operations and domestic markets separated. It has also been suggested that the law be repealed or restricted to apply only to small firms, or firms showing cause why they should be granted legal immunity from the Sherman Act for export purposes.¹⁰ However, the major objection to the Act is that it is very difficult to prevent cooperation in foreign trade from affecting trade in domestic markets. Some contend that the Act has been used by firms as a cover for violations of the Sherman Act.

The basis for the argument in favor of the Act is that foreign cartels are permitted and encouraged by foreign governments and therefore the United States should permit the existence of a means whereby American firms can be permitted to organize their own cartels for export trade. The fallacy in this argument is that at the present time the United States is trying to reduce the barriers to international trade, yet permits the existence of its own form of cartels.

Limitations of Previous Studies

The available literature on the Webb-Pomerene Act deals mainly in legal interpretations and philosophical analysis of antitrust legislation. No attempt has yet been made to inquire into the practical applications of the provisions of the Act in everyday activity of an exporting firm's operations.

A need arises, therefore, to determine precisely why the business community has been so reluctant to participate in export trade under the Act. Hearings conducted by governmental agencies and scholars have failed to elicit facts from the business community to get to the base of the problem.

Impact of the Webb-Pomerene Act on Export Trade

The height of membership in export trade associations was reached in 1930 when Webb-Pomerene assisted exports amounted to 17.5% of the total United States exports. A decline took place after 1930 and continued until 1944 when the associations exported only .5% of total exports. It thus appears that the height of Webb-Pomerene activity as a proportion of total U.S. exports took place during the early depression years when the domestic economic situation probably forced exporters to combine their activities for mutual benefit. In 1964 the Federal Trade Commission reported ex-

¹⁰CORWIN D. EDWARDS, *MAINTAINING COMPETITION: REQUISITES OF A GOVERNMENTAL POLICY* (McGraw-Hill Book Company 1964), 54.

ports by associations amounting to \$1,103 billion or 4.2% of the total U.S. export of \$26,086 billion.

Functions and Organizations of Webb-Pomerene Export Trade Associations

To determine what types of firms belong to Webb-Pomerene export trade associations by volume of sales and percentage of sales generated through exports under the Act, several questions were asked of the associations and firms surveyed in this study regarding their organization and functions.

Ten of the fifteen associations responding were organized in the last fifteen years. Forty-six of the eighty-one member firms joined an association during the last fifteen years. Although the Act has been in existence for the last fifty years, only one association and six firms had been organized for over twenty-five years. The Federal Trade Commission statistics noted above show that since the inception of the Act, 230 associations were registered composed of over 4,000 firms, whereas in June 1967, twenty-seven associations were in active status with 211 member firms.

Fifty-eight of the eighty-one firms responded that they were independent enterprises and not subsidiaries or divisions of parent firms.

The major advantages of exporting under the Webb-Pomerene Act reported by associations were, (1) expansion of foreign markets (11), (2) efficient filling of orders (10), (3) reduction of foreign sales costs (9), (4) pooling of technical knowhow (9), and (5) consolidation of cargo (7). Less importance was placed on (1) allocation of foreign markets (2), (2) price and market control (5), and limiting competition (4).

In regard to advantages of exporting under the Act the responses by firms tended to be similar to those of associations except in two areas: A major difference of opinion was expressed in that price and market control was considered a major advantage by thirty-six firms.

The disadvantages of exporting under the provisions of the Act reported by associations were as follows, (1) fear of antitrust prosecution (7), (2) constant exposure to government scrutiny (7), (3) loss of firm's identity and brand image (4), and (4) limited freedom of export operations (4). A major difference between the reporting associations and firms was that seven firms were less concerned with antitrust prosecution and twelve with exposure to government scrutiny than the association executives. Another difference of opinion between the two groups is that twenty-five of the firms responding stated that lack of cooperation ranked as a major disadvantage of exporting under the Act.

In spite of the disadvantages reported, the majority of the respondents,

consisting of nine associations and fifty firms, would encourage others to organize new associations or join existing ones in joint export activity. Fourteen firms would not encourage membership in associations.

The functions performed by associations on behalf of member firms could apparently be independently performed by the firms themselves; this was the opinion of eight (53%) associations and forty-two (52%) firms. Both association and firm executives stated that member firms could maintain their own export departments if they were not members of an association; thirteen (87%) associations and forty-six (57%) firms so responded to the question.

In addition to maintaining membership in an industrial association under the Webb-Pomerene Act, forty-seven (58%) firms maintain their own export departments. Twelve (80%) associations reported that their members all maintain an export department. Of the sixty-two (77%) firms responding, no firm reported discontinuing its own export department as a result of membership in a Webb-Pomerene export trade association. Thirteen (87%) associations reported that their members still have export departments as well as maintaining their status as members in an export association.

To determine if associations have vigorously attempted to increase the membership of their associations, two questions were asked regarding their recruitment activity. Forty-three (53%) of the responding firms stated that their associations had taken steps to increase membership.

The results of associations' efforts to increase membership were not very successful. Twenty-one firms (26%) responding reported poor results in their efforts to increase the membership of their associations. Twenty-nine (36%) did not respond to the question.

Services of Export Associations

Services performed by associations for member firms are mostly administrative in nature. They include the following: export statistics, sales and market research, storage of products, arranging cargo space, insurance, financing, public relations, price scheduling, and technical sales assistance. No two associations function exactly the same. Each association is organized to serve a particular industry and its functions may differ widely from another association even in the same industry.

Export Sales of Webb-Pomerene Associations and Member Firms

Exports through the associations consisted of finished products, according to fifty-nine (73%) of the firms responding. The products exported are

agricultural, machinery, lumber, wood pulp and associated products, chemicals and fertilizers.

The major exports of Webb-Pomerene Associations are directed to Asia and Western Europe by eight of the responding associations. In addition, forty-six firms reported South America as a major exporting area for their products.

Financing of exports by government-sponsored programs was reported by only three associations and thirty firms. Concern was expressed by many associations as to the lack of financing by government-sponsored programs. An example cited was the case of the Department of State's Agency for International Development. In the past, the AID undertook financing of Webb-Pomerene associations' exports. However, in the last several months the Agency decided to discontinue the practice because of the associations' price fixing activity of which the Agency disapproved. The responding firms indicated their desire to obtain more government financing of their exports.

Six (40%) associations and thirty-two (39%) firms reported annual sales volume under \$10 million. Reported exports through the Webb-Pomerene associations in amounts under 10% of total sales volume was indicated by twenty-nine (36%) firms. Only fifteen (18%) firms reported their exports under the Act as over 10%. The remaining twenty-two (27%) reported no export sales under the Act in 1965.

Two contradictory responses were received regarding the increase of export sales under the provisions of the Act in the last five years, and plans of the respondents to increase exports in the future under the provisions of the Act. One question was asked to determine if a trend has taken place in the increase of export under the provisions of the Act. Eight (53%) associations reported an increase in export during the last five years. However, fifty (62%) firms stated a contradictory opinion that no increase had taken place.

An effort was made to obtain some idea of future plans of the associations and member firms regarding their export activity under the Act. Once again the plans of association and firm executives were contradictory. Eight (53%) associations reported planning to increase their export sales, while fifty-two (64%) firms had no plans to increase their exports.

Small business firms contemplating export of their products have a potential channel of distribution through the Webb-Pomerene associations already in existence, or they may combine and establish an association if one does not exist in their industry. The response to a question whether

small businesses could benefit more from exports under the Webb-Pomerene Act than by independent export activity brought the following response: twelve associations and forty-five firms agreed that small firms can gain an economic advantage through the Act.

Impact of Cartels on Export Trade

The validity of the hypothesis that the basic purpose of the Webb-Pomerene Act still applies to present world market conditions in contrast to the cartel system which existed at the time of the enactment of the Act has been questioned. Several questions were asked to test the relevance of the original purpose of the Act. Eight associations and forty-three firms concurred with the premise that the present world market discourages exports by small business firms; however, twenty-seven disagreed.

A question was asked to test the hypothesis that there is still strong cartel activity in the world market which would justify the existence of Webb-Pomerene associations. The response confirmed the premise that cartels are still considered strong and present by thirteen associations and fifty-two firms. Table II shows the detailed response received on this question.

Table II

*Strong Foreign Cartel Activity
Present in the World Market*

Category	Associations		Firms	
	Number	Percent	Number	Percent
Agree	13	86	52	65
Disagree	—	—	4	5
Undecided	1	7	15	18
No Response	1	7	10	12
Total	15	100	81	100

This response, like all the other responses reported here, are, of course, the opinions of executives of organizations receiving protection from the Webb-Pomerene Act. Their opinions are not necessarily founded on objective fact but could be motivated by special interests.

A question was asked whether cartels are still effective in each industry of the responding association and member firm. A majority of the respond-

ents from each industry were of the opinion that effective cartels exist in their industry. Of the associations responding to the question, eleven stated that cartels are effective in their industry. Forty-four responding firms also agreed. Eight firms stated that cartels were ineffective and seventeen firms were undecided.

Legal Status and Government Regulation of Webb-Pomerene Associations

The question whether there is a lack of awareness by American business of the provisions of the Webb-Pomerene Act brought the following response: eleven of the responding associations and fifty-six firms agreed that there is a definite lack of knowledge of the Act and its provisions. Table III indicates the opinions of the respondents.

Table III

*Lack of Awareness by American Business of
Webb-Pomerene Act's Provisions*

Category	Associations		Firms	
	Number	Percent	Number	Percent
Agree	11	73	56	69
Disagree	—	—	5	6
Undecided	3	20	12	15
No Response	1	7	8	10
Total	15	100	81	100

There was also agreement by the respondents regarding the conflict of interest and overlap of administrative responsibility among federal agencies. Ten associations and thirty-three firms concurred that there is a conflict of philosophy among federal agencies with regard to the administration of the Webb-Pomerene Act. Twenty-five firms were undecided about the question. Table IV shows the opinions expressed by the respondents.

Seven associations and sixteen firms responding agreed that there is duplication of administration and regulation by federal agencies with regard to the Webb-Pomerene Act. The remaining respondents, six associations and thirty-eight firms, were undecided on this issue. Their reluctance to give an answer may indicate a desire not to be identified as critics of the administration of the Act.

The opinions expressed by respondents indicate that the Department of Commerce advocates greater use of the Act's provisions, while the Federal Trade Commission, which is legally responsible for its administration, has not been as vigorous in advocating or encouraging its use by the business community.

Table IV

Conflict of Philosophy Among Federal Agencies as to the Webb-Pomerene Act

Category	Associations		Firms	
	Number	Perc	Number	Percent
Agree	10	67	33	41
Disagree	1	7	1	1
Undecided	3	19	25	31
No Response	1	7	22	27
Total	15	100	81	100

Table V summarizes the responses of the firms to the question whether any of the federal agencies fostered export under the Act. Ten associations

Table V

Federal Agencies Fostering Exports Under the Webb-Pomerene Act

Agency	Associations		Firms	
	Number	Percent*	Number	Percent*
Federal Trade Commission	5	33	8	10
Department of Commerce	10	67	23	28
Department of Justice	1	7	2	2
Department of State	3	20	7	9
No Response	3	20	57	70
Total	15		81	

*Percentage totals more than 100% because respondents indicated more than one agency.

and twenty-three firms stated that the Department of Commerce was more helpful in assisting them to export their products under the Webb-Pomerene Act than any other agency. The Federal Trade Commission was mentioned as a second major agency fostering the export activity by five associations and eight firms responding to the question.

The reason for the Webb-Pomerene associations' disenchantment with the Department of State is based on the fact that the Agency for International Development has declined to finance the exports of associations because they fix prices and allocate markets. As already noted, the associations consider the loss of AID financing a hindrance to their export efforts under the Act.¹¹

The Department of Justice has increased its scrutiny of Webb-Pomerene associations' activity in the last two years by filing suits (now pending trial) against two associations and their member firms.¹²

In addition, four such cases have been prosecuted by the Department in the last twenty years,¹³ and the FTC has issued eight cease and desist orders to associations and member firms.¹⁴

Fear of domestic antitrust laws was reported by eleven associations and twenty-seven firms as a major deterrent to the growth of export trade associations under the provisions of the Act. It is evidently unclear to some members of the business community whether Webb-Pomerene Associations can take collective action in export trade as specified in the Act and completely escape the possibility of prosecution under the Sherman Act. Table VI indicates the opinions of the respondents.

Summary

Several significant facts were brought out by the questionnaire survey of Webb-Pomerene associations and member firms. First, that despite the passage of the Webb-Pomerene Act to assist exporters in marketing their products in overseas markets, there is limited use of the provisions of the

¹¹*Federal Register*, Department of State, Agency for International Development, "Proposed Rules Regarding Webb-Pomerene Associations and Members Thereof," November 3, 1966, p. 2552.

¹²*United States v. The Concentrated Phosphate Export Association, Inc.*, Civil Action No. 64-Civil-3914 (filed Dec. 21, 1964 S.D.N.Y.) and *United States v. Anthracite Export Association*, Civil 9171 (filed Nov. 10, 1965, M.D. Penn.).

¹³*U.S. v. U.S. Alkali Export Association*, 86 F. Supp. 59 (1949). *U.S. v. Minnesota Mining & Mfg. Company*, 92 F. Supp. 947 (1950). *U.S. v. Electrical Apparatus Export Association*, 44 FTC 1421 (1947). *U.S. v. California Rice Exporters*, D.C. Calif. (1952).

¹⁴*Pacific Forest Industries*, 40 FTC 843 (1945). *Florida Hard Rock Phosphate Export Corp.* 40 FTC 843 (1945). *Phosphate Export Association*, FTC 555 (1946). *Carbon Black Export, Inc.*, 46 FTC 1245 (1949). *Sulphur Export Corp.* 43 FTC 820 (1947). *General Milk Company*, 44 FTC 1355 (1947). *Export Screw Association of the U.S.*, 43 FTC 980 (1947). *Pipe Fittings and Valve Export Association*, 45 FTC 917 (1948).

Act for this purpose. Second, the federal agencies responsible for the administration of the Act have not vigorously promoted greater use of the Act's provisions by the business community. Third, there appears to be a conflict of interest and philosophy regarding the enforcement of the provisions of the Webb-Pomerene Act and Sherman Act by governmental agencies charged with enforcing these laws.

Table VI

*Fear of Antitrust Laws a Major Deterrent
To the Growth of Webb-Pomerene Associations*

Category	Associations		Firms	
	Number	Percent	Number	Percent
Agree	11	74	27	33
Disagree	—	—	18	22
Undecided	1	7	17	20
No Response	3	19	19	25
Total	15	100	81	100

The following are some of the major findings of the research:

1. The Webb-Pomerene Act has not made any important contribution to expansion and promotion of U.S. export trade. Exports through Webb-Pomerene associations have not increased significantly in the last 20 years; in 1967 it was still 4.5% of total U.S. export trade. At its height in 1930, Webb-Pomerene assisted exports accounted for 17.5% of total U.S. exports.
2. A decline in export trade associations and member firms has taken place since the 1930's. The respondents state that a decrease of export trade through the associations has also taken place in the last five years, 1962-1967. The majority of the responding firm executives also state that their firms have no plans to increase exports under the provisions of the Act. Efforts to increase membership in the Associations have not been very successful.
3. In the opinion of responding (73%) associations and (69%) firms, there is a lack of knowledge of the provisions of the Act among the business community.
4. The responding (80%) association and (56%) firm executives believe that through Webb-Pomerene associations, small business firms can benefit more from export trade than by independent action. Use of the Act can benefit association members economically by cutting the cost of exporting and obtaining a larger sales volume in foreign trade.

5. Expansion of foreign markets and reduction of foreign sales costs are the major reasons reported by respondents, why firms join or form Webb-Pomerene associations. A majority of the respondents to the survey advocate that other firms join or form Webb-Pomerene associations.
6. A majority of the respondents maintain their own export departments in addition to their membership in an export association. Agricultural products and raw materials are most commonly exported through the associations and are most suitable for exporting bulk cargo through this channel. The majority of the exports is directed to Asia and Western Europe.
7. Government financing of export trade is desired by associations and member firms.
8. The responding (54%) associations state that the present world market discourages independent export activity by small firms because of competition, cartels and the high cost of exporting.
9. According to the opinion of the majority responding to the study, the original intent of the Webb-Pomerene Act to promote export trade by small business is as valid today as it was when the Act became law. In their opinion the world market is still characterized by cartel operations in international trade.
10. Increasing competition in domestic and foreign markets may seriously affect American business because of cartels, trade blocs and state trading organizations. Strong foreign cartels are reported to be in existence in the world market by (86%) the responding associations and (65%) firms. Effective cartels are also reported by these (74%) associations and (54%) firms in their respective industries.
11. The Department of Commerce is credited by 67% of the responding associations executives as being the major government agency encouraging and supporting the export activity of Webb-Pomerene associations.
12. Two recent suits pending trial indicate an increasing trend in anti-trust prosecution by the Department of Justice with regard to the Webb-Pomerene Act.
13. The respondents to the survey state that there is a definite need to clarify the scope of the Webb-Pomerene Act's provisions in relation to those of the Sherman Act. In their opinion the provisions of the Webb-Pomerene Act are in direct conflict with domestic antitrust legislation resulting in an ambiguity of legislative philosophy; and conflict in administration and enforcement of the Act by federal

agencies is reported by 67% of the associations as having confused and discouraged greater use of the Act's provisions by the business community.

14. Fear of possible antitrust prosecution as a result of exporting under the Act has been the major deterrent to the growth of the Webb-Pomerene associations reported by 74% of the associations' executives responding to the mail survey.

Conclusions

The slow growth of export trade associations created under the Webb-Pomerene Act has been in large part caused by pressure from governmental agencies enforcing the antitrust laws. Their inability to decide among themselves what is legal under the Act and forbidden under the Sherman Act has caused concern in the business community.

Respondents to the survey gave other reasons to explain the lack of growth of Webb-Pomerene Associations. One of these reasons is that competing products sold on trademark or quality basis lose their brand image and total identity when exported through the associations. The overriding reason, however, is the fear of antitrust laws and their relationship with the Webb-Pomerene Act. From the response to the questionnaire, it would seem that if the Act were amended to state specific permitted practices under its provisions, there might result a trend of growth of export associations.

The critics of the Webb-Pomerene Act believe that the haven provided by the Act reduces domestic and international competition. Repeal of the Act could be considered at a future time when cartel power has been reduced, but the critics of the Act should consider the future implications to American export competition resulting from state controlled economies, growth of trade blocs and the present status of cartels. Continuance of the Act should be maintained with an amendment to clarify the permitted activity of export associations. The exemptions should be more specific and made to apply only to small business firms, or firms in need of the protection of the Webb-Pomerene Act.

The questionnaire survey of the associations and member firms shows the existence of significant conflicts between the business community and governmental agencies responsible for enforcing antitrust laws. It appears that the conflict has prevented the growth of export under the Act. In view of the existing conflict of opinion expressed by the Department of Justice and Federal Trade Commission regarding the Webb-Pomerene Act, a

recommendation can be made to consider the following; 1) amend the Act and clarify its wording and intent and 2) transfer the administration of the Act to the Department of Commerce.

If the Federal Trade Commission and the Department of Justice cannot agree on one interpretation of the Webb-Pomerene Act and clearly state a guideline for the business community, the Congress should amend the Act in such a way that the wording of its provisions will be clear to all parties concerned. Since the Department of Commerce has an overall responsibility to promote trade, a logical transfer of the administration of the Act to the Department of Commerce should take place. The respondents to the survey express their confidence in the Department of Commerce and its efforts to promote export trade under the provisions of the Act.

The Department of Commerce should assume a greater role in promotion of the Webb-Pomerene Act by emphasizing its value to the business community. The Department of Justice should retain the power to enforce the limitations of the Webb-Pomerene Act and prosecute violators.

In any event, the governmental agency responsible for the direct administration of the Webb-Pomerene Act should take an active role to encourage export under its provisions. It should also disseminate more knowledge of the Act's provisions making the business community more aware of its existence. In addition, the Agency for International Development, Commodity Credit Corporation and the Export-Import Bank should foster the export activity of Webb-Pomerene associations by providing loans and financing their exports.

In the event that the Congress decides not to amend the Act, it should consider the feasibility of establishing a committee composed of representatives of the Departments of Justice, Commerce and State and the Federal Trade Commission to coordinate and set guidelines for associations and firms exporting under its provisions. Coordinating the administration of the Act by the concerned agencies could result in a consistent governmental policy toward the Act. Providing a single interpretation of the permitted activities would motivate the business community to engage in increased activity under the provisions of the Webb-Pomerene Act.

The basic purpose of the antitrust laws is not to hamper the reasonable expansion of commerce, but to promote and protect it by providing a coherent consistent set of guidelines for the business community to follow. In the case of the Webb-Pomerene Act and its relation to the Sherman Act, a need arises to clarify the guidelines.