

MINUTES of the ninetieth meeting of the Directors of the Manufacturing Chemists' Association, Inc., held in the President Van Buren and Fillmore Rooms, The Greenbrier, White Sulphur Springs, West Virginia, on the evening of June 10, 1959. The meeting was preceded by cocktails and dinner, beginning at 6:30 p.m. (EST).

There were present:

Messrs.

Henry Bower	Harry B. McClure
John T. Connor	R. C. McCurdy
R. L. Cunningham	Glen B. Miller
Lee V. Dauler	Charles S. Munson
David H. Dawson	S. B. Penick, Jr.
C. B. Edwards	Mark E. Putnam
Raymond F. Evans	W. T. D. Ross
J. Robert Fisher	Hans Stauffer
Joseph Fistere	R. W. Thomas
Marlin G. Geiger	George R. Vila
John L. Gillis	James C. White
John E. Hull	M. F. Crass, Jr.
W. G. Malcolm	

Alternates:

A. E. Albright (for Hans Stauffer)
 John F. Daley (for David H. Dawson)
 Henry L. Ford (for James C. White)
 F. O. Haas (for D. S. Frederick)
 Richard J. Hefler (for Peter Colefax)
 John A. Hill (for Charles S. Munson)
 George W. Huldrum, Jr. (for R. C. McCurdy)
 Kenneth H. Klipstein (for W. G. Malcolm)
 William H. McLean (for John T. Connor)
 P. C. Reilly (for C. B. Edwards)
 Harold E. Thayer (for Joseph Fistere)
 Charles Allen Thomas (for John L. Gillis)
 Donald Williams (for Mark E. Putnam)

General Counsel:

H. H. Fowler - Fowler, Leva, Hawes &
 Symington
 Marx Leva - Fowler, Leva, Hawes & Symington

Present by Invitation:

F. H. Carman - MCA
 L. du Pont Copeland - E. I. du Pont de
 Nemours & Co., Inc.
 Henry B. du Pont - E. I. du Pont de Nemours
 & Co., Inc.
 J. D. Gunther - Air Reduction Company, Inc.
 Ernest Hart - Food Machinery and Chemical
 Corporation

Present by Invitation:
(Continued)

T. G. Hughes - Oronite Chemical Company
George L. Parkhurst - California Chemical
Company
T. L. Perkins - American Cyanamid Company
Frederick Powell - California Chemical
Company
C. F. Prutton - Food Machinery and Chemical
Corporation
Robert I. Wishnick - Witco Chemical
Company, Inc.

Messrs. Glen Perry and Cleveland Lane were present for that portion of the discussion relating to the Education Program.

Chairman McClure called the meeting to order at 8:20 p.m. (EST). He prefaced the discussion by expressing sincere appreciation to the Directors and staff for the cooperation and assistance which he had received from them during the fiscal year just past. He welcomed the alternates and guests who were present and urged them to enter actively into the discussion.

I. MINUTES OF MAY 12, 1959, MEETING.

The Minutes of this meeting were duly approved as submitted to the members.

II. REPORT OF THE EXECUTIVE COMMITTEE.

Chairman Connor briefly discussed items that had been taken up at a meeting of the Executive Committee held at 5:00 p.m. that evening. These items will be reported upon in their respective places on the Board agenda.

III. REPORT OF THE TREASURER.

(a) Financial Report. The financial report of the Association for the period June 1, 1958 - May 31, 1959, was summarized as follows:

(1) Budgeted Program.

Income

Membership Dues & Entrance Fees	\$ 716,415
Interest	24,372
Sale of Publications	20,214
Sale of CIAC Materials	1,950
Completed Special Projects & Meetings	17,566
Miscellaneous	105

<u>Total Income</u>	<u>\$ 780,622</u>
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(613)

<u>Expenses</u>	
Technical and Administrative	\$448,917
Research	51,000
Public Relations	199,226
<u>Total Expenses</u>	<u>\$699,143</u>
<u>Excess of Income Over Expenses</u>	<u>\$ 81,479</u>

- (2) Schedule of expenses versus budget -- fiscal 1958-59. A comparison between budget and actual expenditures for the year follows:

	<u>Budget</u>	<u>Actual</u>
Technical and Administrative	\$463,599	\$448,917
Research	51,000	51,000
Public Relations	209,301	199,226
<u>Totals</u>	<u>\$723,900</u>	<u>\$699,143</u>

The budget was under-expended by \$24,757, or 3.3%.

- (3) Education Program.

Balance - June 1, 1958 \$ 72,963

<u>Receipts</u>	
Contributions	\$172,247
Sale of Publications	3,920
Sale of Films	1,000
	<u>177,167</u>
<u>Total Available Funds</u>	<u>\$250,130</u>

	<u>Budget</u>	<u>Actual</u>	
<u>Deduct Expenses</u>	<u>\$224,020</u>	<u>\$175,335</u>	<u>\$165,335</u>
<u>Balance - May 31, 1959</u>			<u>\$ 84,795</u>

With respect to the balance, all but approximately \$11,000 has been committed for the 1958-59 program, and outstanding bills for such commitments will be received shortly. The remaining sum of approximately \$11,000 has been earmarked for the 1959-60 program.

ON MOTION duly made and seconded, it was

VOTED: That the Treasurer's report be accepted and placed on file.

CMA 067650

(b) Audit Report. The audit of the Treasurer's books by the firm of Bond, Beebe, Bond & Bond, Certified Public Accountants, was presented, and the summary, a condensation of which will be included in the Proceedings of the Annual Meeting, follows:

ASSETS

Cash in Banks and on Hand

National Savings and Trust Company

Regular	\$ 51,963.09		
Payroll	6,000.00		
Savings	<u>323,907.47</u>	\$ 381,870.56	
Bowery Savings Bank		13,229.79	
Petty Cash		<u>400.00</u>	\$ 395,500.35

Investments

U. S. Government Obligations			265,000.00
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Deposits

U. S. Superintendent of Documents		150.00	
American Airlines, Inc.		<u>425.00</u>	575.00

Sundry Accounts Receivable

Special Projects and Meetings			
Unreimbursed Expenses		2,290.87	
Travel Advances		<u>87.40</u>	<u>2,378.27</u>

TOTAL ASSETS

\$ 663,453.62

LIABILITIES AND SURPLUS

Liabilities

Taxes Withheld from Employees			\$ 7,398.02
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Reserve - Unexpended Funds

Sinking Fund		68,333.32	
Membership Fees - 1959-60		37,000.00	
Special Projects and Meetings		<u>26,175.12</u>	131,508.44

Restricted Funds

	Education Program	Plastics Program	
Balance - June 1, 1958	\$ 72,963.32	\$ 29,822.05	
Add: Excess Income (Expense)			
For Year Ended May 31, 1959	11,831.90	(13,167.32)	
Balance - May 31, 1959	<u>\$ 84,759.22</u>	<u>\$ 16,654.73</u>	101,449.95

Surplus

Balance - June 1, 1958		341,617.82	CMA 067651
Add: Excess of Income Over Expense for the Year			
Ended May 31, 1959		<u>81,478.39</u>	<u>423,097.21</u>

TOTAL LIABILITIES AND SURPLUS

\$ 663,453.62

In their report, the auditors stated that they found the Association's records to be well kept, supporting evidence readily available, and that the cooperation received from the staff enabled them to complete the examination promptly.

It was pointed out that the surplus of \$423,097 will approximate six and one-half months' operating expense at the level of the proposed 1959-60 budget.

The Treasurer stated that investments in medium-term Government bonds would be made as fee collections were received during the summer months. Such action will be in accordance with Finance Committee recommendations. He also stated that commitments for legal and economic counsel in connection with the re-determination of the chemical minimum wage under the Walsh-Healey Public Contracts Act, planned to be met during fiscal 1958-59, would accrue during the new fiscal year because of a delay in the proceeding. Although provision was made in the old budget for meeting such commitment, funds are not being carried over into the new budget for this expense. It may be necessary later to request a supplemental appropriation from surplus to meet these obligations.

(c) Sale of Publications. As set forth under Item (a)(1) above, income from the sale of publications was \$20,214, as compared with \$28,915 last year. As of May 31, 1959, the Association carried an inventory of publications totaling \$42,650 valued at cost. Approximately two-thirds of this inventory consists of safety data sheets and technical manuals.

(d) Physical Inventory. The Association charges acquisition of such fixed assets as furniture and office equipment to expense as purchased and, therefore, they are not reflected on the balance sheet. As of May 31, book value was \$34,300, representing depreciated cost of assets in the amount of \$61,400.

(e) Membership Fee Billings for Fiscal 1959-60. The Treasurer stated that, subject to approval of the budget and method of financing at the Annual Meeting the next day, invoices for membership fees would be mailed on June 15 from the Washington office. He urged those present to facilitate their company payments wherever possible.

IV. BOARD OF DIRECTORS.

(a) 87th Annual Report. Those present were handed copies of the printed Annual Report for the year ended May 31, 1959.

(b) 87th Annual Meeting -- Arrangements and Attendance. Printed copies of the program and attendance list were handed those present, in addition to an information sheet. The Secretary reported a net registration, taking into account last minute cancellations, of 859 from 151 member firms. Of these registrants, 38 were quartered in outside accommodations; the balance in the hotel proper.

Because of the large attendance expected next year and the limited capacity of the hotel, it has been suggested by a number of Directors that some type

of voluntary allocation of space be put into effect. The staff will prepare recommendations on this subject for submittal to the Executive Committee in September.

(c) Future Annual Meeting Dates. Arrangements have been made with the hotel for early June meeting dates for a period of ten years. The 1960 dates will fall on June 9 - 11. Balance of the commitments, while tentative and not binding upon the Association, are necessary in order to conserve the Association's priority with The Greenbrier management.

(d) Finance Committee -- Budget and Financing for Fiscal 1959-60.

(1) Regular Program. Chairman Dauler stated that, on the basis of approval already accorded by Directors to the new budget and method of financing, he was prepared to present both proposals to the membership at the Annual Meeting the next day. Copies of the budget and financing proposals were sent to the membership by the Secretary on May 20. The method of financing previously approved by the Board involves a 5% across-the-board reduction in classified fees for fiscal 1959-60 only; this being, however, a 5% increase over the fees which were in effect for the year just past. Mr. Dauler stated that anticipated revenue, both from membership fees and supplemental income, was expected to balance the \$780,000 budget.

(2) Entrance Fee for Fiscal 1959-60. Under Section 1 of Article IV of the By-Laws, entrance fees are set at an amount to be determined by the Board of Directors from time to time, in addition to the annual membership fee.

ON MOTION duly made and seconded, it was

VOTED: That for the new fiscal year this fee be set at \$350 -- the level of the minimum membership fee.

(3) Education Program. Mr. Glen Perry, retiring Chairman of the Education Advisory Committee, was called into the meeting at this point to present the Education Program and budget for fiscal 1959-60. Copies of the proposed budget, calling for new funds amounting to \$155,546, were distributed to those present, together with a summarization of the Education Program itself. The budget proposed is less than that shown in the proposal circularized to Directors at the May meeting. This is for the reason that the EAC has reached an understanding with Henry Holt and Company, Inc., publishers, whereby that firm will print, sell, and distribute the high school chemistry experiments and the teacher and student editions of "Superstition to Supersonics," major items in the General Science Program. Mr. Perry then summarized the over-all program, as proposed, and urged continued support of its objectives.

Following discussion,

ON MOTION duly made and seconded, it was

VOTED: That the report be accepted and that a budget of \$155,546 raised by voluntary subscription be approved.

(e) Membership Committee. Chairman Thomas reported that the Committee had before it four pending applications which would be considered by his group at a short meeting to be held the next day. The applications will be evaluated in the light of the proposals to amend Article III, Sections 2 and 4, of the By-Laws, which will come before the membership at the 87th Annual Meeting.

(f) Nominating Committee. Chairman Edwards stated that the Executive Contacts of member firms had been sent a report of the Nominating Committee by the Secretary on May 20. He reported that all nominees had agreed to serve if elected. Ballots have been prepared and will be available at the Annual Meeting in case further nominations are received from the floor.

(g) Program Committee -- 1959 Semi-Annual Meeting. Chairman Gillis referred to the 1959 Semi-Annual Meeting to be held in New York City on November 24 and urged Directors to suggest (1) topics for the technical panels; and (2) nominations for the banquet speaker. The Secretary will forward to the Directors this summer a list of panel topics scheduled at semi-annual meetings during the past several years in order to facilitate Directors' comments. It was agreed by all that the banquet speaker should be selected promptly and several suggestions were made with respect to specific individuals.

(h) October 1959 Regional Directors Meeting. This meeting will be held in Montreal, Canada, at the invitation of our Canadian friends. Inasmuch as the second Tuesday of the month falls on Canadian Thanksgiving, it would be desirable to schedule another date. It was agreed that this should be worked out by the staff in collaboration with Mr. Ross. (Later -- The dates of Monday and Tuesday, October 19 and 20, have been tentatively selected and are agreeable to Messrs. Ross and Allen). Directors will be advised of further developments.

(i) International Operations -- Proposed MCA Committee. In carrying out suggestions of the Board of Directors, as reported in the Minutes of the May 12, 1959, meeting, a meeting of the International Trade and Tariff Committee was held in New York City on June 4 to make appropriate recommendations concerning implementation and handling of foreign operations proposals, as listed under Exhibit "A" of the May meeting. Present, in addition to Committee members, were several foreign operations officers of member companies. Consensus of opinion stemming from the meeting included the following:

- (1) Foreign operations are becoming of increasing importance to MCA member firms.
- (2) The list of foreign problems, as a whole, reflects the interest of those responsible for foreign operations. Foreign operations officers present indicated interest in obtaining a chemical industry viewpoint on such problems.
- (3) Establishment of a committee on foreign operations may not accomplish more than provide a forum, but this could be useful to MCA members.

- (4) It was conceded that the subjects listed for discussion apply to many industries and that forums on many of these subjects may now be provided by many organizations, such as the National Industrial Conference Board, New York Board of Trade, etc. However, representatives present felt that there are sufficient foreign problems in this field to warrant a specialized program for the chemical industry.
- (5) Actions taken and policies developed by an augmented committee, or two committees, in the foreign trade and foreign operations fields, should be well coordinated to insure they are consistent with any over-all Association position.
- (6) That all of the foreign problems listed as typical do not fall within the scope of the IT&T Committee.
- (7) That a separate committee composed of member representatives responsible for foreign operations be organized to recommend steps that would be proper for the Association to take for those items not within the scope of the IT&T Committee.

Mr. H. H. Fowler then discussed a memorandum, entitled "Proposed Committee on International Operating Problems," which he had prepared in his capacity as MCA General Counsel. A copy of the memorandum, which dealt with legal aspects, suggested terms of reference, and some operational problems, is attached to these Minutes as Exhibit "A."

Following discussion,

ON MOTION duly made and seconded, it was

VOTED: That the Board establish a temporary working committee to submit to the September 15 Board meeting a report including (1) terms of reference for an MCA committee on international operating problems, exclusive of the jurisdiction of the International Trade and Tariff Committee, and primarily concerned with chemical operations outside the United States, and (2) a list of specific problems to which such a committee should direct early attention. In the meantime, the staff to circularize each member firm to determine its interest in this project and its willingness to participate in committee work.

(j) President's Contract. Mr. Connor stated that, subject to General Hull's reelection as President at the Annual Meeting the next day, the Executive Committee had renewed the contract of General Hull for an additional year on the current basis.

V. COMMITTEE APPOINTMENTS.

The following committee appointments were approved:

- (a) Air Pollution Abatement Committee.
David B. Andrews, Koppers Company, Inc.
Clement H. Nichols, General Aniline & Film Corporation.
L. W. Roznoy, Olin Mathieson Chemical Corporation, replacing
R. B. Worthy.
John C. Souder, Enjay Company, Inc., replacing
Charles H. Bunn, Jr.
- (b) Chemical Packaging Committee.
John C. Zercher, Celanese Corporation of America.
- (c) Committee on Tank Cars, Tank Trucks and Portable Tanks.
V. E. Beriault, Canadian General Transit Company, Limited,
as Associate Member.
- (d) Labels and Precautionary Information Committee.
Chester L. French, Mallinckrodt Chemical Works, as Chairman.
Edward J. Hogan, Allied Chemical Corporation, as Vice Chairman.
J. A. Mooney, Food Machinery and Chemical Corporation.
- (e) Legal Advisory Committee.
Richard S. Kyle, American Cyanamid Company.
- (f) Plastics Committee.
T. J. Kinsella, Allied Chemical Corporation, as Chairman.
Earle S. Ebers, United States Rubber Company.
T. T. Miller, W. R. Grace & Co.
J. C. Searer, Hooker Chemical Corporation.
Harry B. Warner, B. F. Goodrich Chemical Company
D. C. Williams, Eastman Kodak Company
- (g) Reactive Metals Steering Committee.
R. O. Baum, Tennessee Products & Chemical Corporation.
L. G. Bliss, Foote Mineral Company.
R. L. Cunningham, Ohio Ferro-Alloys Corporation, as Chairman.
H. K. Intemann, Union Carbide Metals Company.
S. S. Robinson, Interlake Iron Corporation.
E. R. Rowley, Titanium Metals Corporation of America.
F. H. Vandeburgh, Mallory-Sharon Metals Corporation.
- (h) Washington Advisory Committee.
Martin P. Hottel, National Lead Company.
Carroll W. Hayes, Celanese Corporation of America.

- (i) Water Pollution Abatement Committee.
O. C. Thompson, Union Carbide Chemicals Company, as Chairman.
Jerome Wilkenfeld, Hooker Chemical Corporation, as Vice Chairman.
L. W. Roznoy, Olin Mathieson Chemical Corporation, replacing
R. B. Worthy.
John C. Souder, Enjay Company, Inc., replacing
Charles H. Bunn, Jr.

VI. STAFF REPORT AND MISCELLANEOUS ITEMS.

(a) Public Relations and Education. General Hull stated that his remarks on these subjects would be included in the President's report to be presented to the membership at the Annual Meeting the next day.

(b) Technical Program.

1. National Defense Executive Reserve. The Secretary made a brief report on the status of the chemical and rubber segment of the National Defense Executive Reserve. To date, 30 member firms have nominated 70 reservists. He stated that there is room in the quota for approximately 15 to 20 additional nominees.

2. BDSA Administrative Adviser. The Secretary also reported briefly on the status of the Administrative Adviser program for the Chemical and Rubber Division of the Business and Defense Services Administration, U. S. Department of Commerce. Mr. Martin H. Fritch, Koppers Company, Inc., is the present incumbent, and his term will expire June 30, 1959. Chas. Pfizer & Co., Inc., and Wyandotte Chemicals Corporation have indicated willingness to supply WOC's for the two succeeding six months' terms; however, several additional nominations for subsequent periods are needed. Interested Directors who would like to cooperate in this worthwhile program were urged to contact the Secretary promptly.

3. Reactive Metals. With the appointment of a seven-man Reactive Metals Steering Committee (Item V (g) of these Minutes), the Association's Metals Program is expected to become more active. Committee nominations were made in accordance with terms of reference prepared by Counsel and approved by the Board of Directors.

4. Patent Office Fees. It was reported that the House Judiciary Committee had favorably reported H. R. 2739, upping present filing and final fees in accordance with recommendations contained in the Association's statement filed with the Committee on April 22. Observers feel that this development will sidetrack legislation for maintenance fees, which the Association opposes, for this session of Congress at least.

There being no further business to come before the meeting, it was unanimously resolved to adjourn.

APPROVED: Harry B. McClure
Chairman

M. F. Crass, Jr.
Secretary

June 10, 1959

MEMORANDUM TO: General J. E. Hull

SUBJECT: Proposed Committee on International
Operating Problems.

This memorandum represents some initial observations on some legal, policy and procedural aspects of the proposal that the MCA establish a new committee to consider foreign operating problems of its member companies, apart from tariff and trade matters currently handled by the International Trade and Tariff Committee.

SUMMARY

I have discussed this problem at some length, not only with Mr. Leva, but with several of my partners who have had substantial experience in this field. In summary, our observations would be as follows:

(1) LEGAL ASPECTS -- There are no legal reasons which render the establishment of the type of committee under consideration improper or undesirable. However, in view of the increasing tendency towards an extra-territorial application of our anti-trust laws and the legal framework, both under U.S. law and foreign law, of the concern of the proposed committee, it is desirable that legal counsel should maintain close touch with the conduct of the committee's operations. This should include participation in the preparation of agenda for meetings in consultation with the Chairman and Secretary, attendance at meetings of the committee and any important subcommittees, and advice from time to time on the legal aspects of presentations to agencies of our government or agencies of foreign governments.

(2) SUGGESTED TERMS OF REFERENCE -- The three basic functions of the new committee which might properly be incorporated in its terms of reference and to which its activities should be generally limited are:

(a) The collection, coordination and dissemination of information available primarily in Washington and New York on existing and future conditions affecting the conduct of chemical manufacturing and selling operations abroad by U.S. companies or their subsidiaries and affiliates.

(b) The formulation of proposed public or governmental policies and procedures to be followed by the U.S. government (both legislative and executive branches), affecting the conduct of chemical manufacturing and selling operations abroad by U.S. companies or subsidiaries and affiliates, and the advocacy of such policies.

(c) The formulation of proposed public or governmental policies and procedures to be followed by foreign governments and international bodies, affecting the conduct of chemical manufacturing and selling operations abroad by U.S. companies or subsidiaries and affiliates, and the advocacy of such policies.

(3) SOME OPERATING PROBLEMS -- There are several practical operating problems which should be considered and treated in the establishment of a committee of the type contemplated, e.g.:

(a) There should be some initial determination of the extent to which the collection and dissemination of information should be confined to unpublished information or to what extent the collection and dissemination of published information should be confined to a digest - bibliography - bulletin type service, leaving the major responsibility for the collection of the raw published information to the individual initiative of the individual company.

(b) The extent to which the collection of unpublished information, the making of appointments with interested government personnel (foreign and domestic), the processing of applications, etc. for an individual company or a small segment of chemical manufacturing shall be a responsibility of the committee or MCA staff assigned to it.

(c) The extent to which the operation of the committee and its staff shall be financed out of the regular MCA budget or by use of special assessments. The fact that the direct benefits of the operation of the committee will accrue to primarily a special group of companies and that the effective operation of this committee may require operating expenses of a substantially different nature and magnitude from that normally associated with the usual committee operation suggest this consideration.

Each of these points summarized above are developed in the discussion that follows.

I. LEGAL ASPECTS

It seems wholly appropriate for a trade association such as the MCA to establish a committee to assist its members along the lines in the suggested terms of reference. However, it seems necessary and advisable that this type of activity be conducted with the degree of legal counsel and advice that is characteristic of the operations of the Board of Directors of MCA proper.

Specifically, it is recommended that counsel participate, with the Chairman of the Committee and its Secretary or Staff, in the preparation of agenda for the meetings of the Committee and its subcommittees, sit in on the meetings, and review from

a legal standpoint its specific activities.

The reasons for this are apparent upon brief analysis. First, the very setting of the trade association function in the context of foreign operations is much more legal in content than would be the case with many of the MCA domestic functions. The U.S. government itself imposes a legal framework on the operations of its citizens abroad. In turn, each country permits and regulates the operations of foreign individuals, corporations and business groups within its borders according to legalized patterns of regulation and procedure.

For example, there are specific U.S. laws and regulations concerning activities of U.S. citizens relating to foreign relations. There is a criminal law having to do with private correspondence with foreign governments (18 U.S.C.A. Sec. 953); with financial transactions with foreign governments (18 U.S.C.A. Sec. 955). There are a number of significant public laws, apart from those regulating exports and imports of products which bear importantly on foreign operations of U.S. concerns.

On the other side of the coin, the operations of U.S. concerns in foreign countries are controlled, in varying degrees but always fairly heavily, by the laws and regulations of the governing bodies of those countries and, in some cases, by the regulations of publicly recognized private groups. Also, in many countries these operations must be carried on against a backdrop of state-owned or operated business or government trading and licensing. Therefore, to a large degree, the operation of a committee of the type contemplated must proceed against the backdrop of public law.

A second consideration is the increasing tendency towards and emphasis on an extra-territorial application of our U.S. antitrust laws. Here the normal antitrust concepts are complicated further by jurisdictional and comity questions, as well as the increasing emergence of a role for international or supra-state organizations in this field and, in some areas, the development of antitrust law approaches by the foreign countries similar to our own.*

* For those who would be interested in a more detailed study of the U.S. antitrust laws as they might apply to American companies doing business abroad, reference is made to the following: A treatise entitled "Foreign Commerce and the Antitrust Laws" by Wilbur Fugate; another treatise entitled "Antitrust and American Business Abroad" by Kingman Brewster, Jr.; see address of Victor Hansen, U.S. Assistant Attorney General in Charge of the Antitrust Division entitled "The Impact of the U.S. Antitrust Laws on Foreign Trade and Investment" (May 10, 1958); for a discussion of the effect of foreign antitrust laws on U.S. business, see paper on that subject by Ernest Goldstein in "The Antitrust Bulletin" Vol. 3, No. 6.

II. TYPES OF ACTIVITY RECOMMENDED, TERMS OF REFERENCE, AND OPERATING PROBLEMS.

The activities of a large and important trade association, such as MCA, in the field of this committee should be of the type which the Association could carry on in this country without inviting serious antitrust scrutiny or problems. The terms of reference for the committee suggested above are designed to keep the tenor of the committee's activities along lines acceptable for trade associations under our antitrust laws. Any types of activities in addition to those defined above to be carried on by the Committee on behalf of MCA ought to be subject to scrutiny on an ad hoc basis.

Perhaps some contemporary illustrations of the type of activity the Committee would carry on and the type of operating problems that will be encountered will be helpful.

(1) Collection of Information. The number of subjects on which information may be useful for companies contemplating or carrying on chemical manufacturing or selling operations abroad is enormous. A large amount of this information is readily available in published form, i.e., reports, press releases, bulletins, etc., issued by the U.S. government, foreign governments and international public agencies. This information is readily available to an individual company which is willing to devote the manpower or expense necessary to assembling it, digesting it, and distributing it internally to appropriate personnel.

An initial administrative problem arises in connection with the extent to which the MCA committee and its staff should attempt to substitute their activity in the field of published information for that of the staff of the individual company. MCA is confronted by the same situation with reference to Federal legislation, Federal administrative activity, and State and local legislation and administrative activity. The service generally rendered is typified by the Monthly Bulletin of MCA and the regular legislative reports. Should the MCA committee and staff undertake any information service in the field of published information in the international operations field beyond the type regularly provided in the domestic field through the general monthly and the legislative bulletins?

The most important new contribution the MCA committee could make in the field of information is to engineer a group-wide approach to the great amount of information bearing on foreign operations which is available in governmental and international public agencies which is not published.

For example, it may well be that a representative of the MCA or a group of companies acting together through the Committee would find it easier to obtain a confidential briefing from officials of the International Monetary Fund on developments about to take place in foreign exchange regulations in a given country than it would be for the representatives of any single company. Similarly, a group briefing for the benefit of the entire industry with officials of the World Bank about economic conditions in a country with important potential for chemical development might be feasible.

The same is true of other international public agencies, the various political desks in the Department of State, the various I.C.A. divisions, and the areas in the Department of Commerce concerned with foreign opportunities.

Often there is an understandable reluctance on the part of public officials to get into a position where they could be accused of playing favorites between competing companies by disclosing non-published information. This reluctance might be overcome through a device such as briefings where the understanding is that the information will be made readily available to all interested parties in an industry such as the chemical industry.

Collection of unpublished information in Washington or New York might be useful with regard to a number of the items listed in Exhibit "A" to the minutes of May 12, 1959, such as: future status of British Commonwealth Trade Agreements; Duty Preferences; Argentine - Brazilian - Indian Developments, etc.

Indeed the existence of a group activity of this sort might lead to some of these agencies making special efforts to prepare and compile and release information that normally they would not go to the trouble of publishing in their regular publications.

(2) Action with regard to U. S. Policy. This seems to be clearly an area for group effort akin and analgous to many activities being currently carried on by the Association with a different focus.

For example, if the interested members of the MCA should agree on a position desirable from the point of view of the chemical industry on the areas of disagreement between the Boggs Bill (H. R. 5) (the so-called "Foreign Investment Incentive Act of 1959") and the reports of the Treasury Department on these proposals, an appearance by an MCA witness at the anticipated hearings before the House Ways and Means Committee would be normal operating procedure.

Likewise, if the committee determines that such measures as Public Law 480, enlargement and modification of the scope of I.C.A. investment guaranties, negotiation of bi-lateral tax treaties, the development of a new international investment code or bi-lateral investment treaties, could benefit the foreign operations of member firms, the committee could be the focal point for preparation and presentation of these positions to the appropriate governmental officials.

This general area of U. S. government policy is a matter of lively current concern both on the part of the government and various business groups. For full development of the current areas of consideration, reference should be made to a special report prepared by Mr. Ralph Straus, a Special Consultant to the State Department, at the request of the Department of State known as the Straus Report entitled "Expanding Private Investment for Free World Economic Growth" (April 1959) and the "Report of the Committee on World Economic Practices" known as the Boeschenstein Report, prepared by a committee of well-known private industrial leaders at the request of the President.

The subject headings of pertinent chapters in the Straus Report are: "Taxation of Foreign Investment; U. S. Government Financing and Contracting for Private Enterprise Overseas; Anti-trust and Foreign Investment; and Gearing the Government Machine for Increased American Investment Abroad."

An examination of the coverage of the problems and proposals covered in these two reports, as they apply to the chemical industry, would be a first order of business for the proposed committee.

(3) Actions With Regard to Policies of Foreign Governments. The conclusion of investment guaranty treaties between the U. S. and Argentina and Brazil might be an example of an area of effort where the MCA committee could be effective in connection with action of foreign countries.

Representation by an industry to a foreign government to the effect that investments are being held up or slowed down because of the non-existence of such a treaty may well be more effective than either governmental or single company representations alone.

The same would be true of an effort to persuade a foreign government to change a planned tax increase from an increase in excise taxes to one in income taxes by explaining that such a shift would not diminish the government's revenue, but would remove the obstacle of new U. S. investment produced by an increase in excise taxes which can not be used as a foreign tax credit under U. S. tax law.

Action that might be harmful to American business operations in foreign countries, at times, can be prevented or at least modified by the intervention of the U. S. Ambassador or the U.S. State Department, or, by the intervention of an international agency such as the World Bank or the International Monetary Fund, whose internationally colored intervention need not be as careful as a purely national one must be. Both the World Bank and the International Monetary Fund are frequently consulted in advance about planned economic policies of their member countries.

An effective liaison between the MCA committee and the U. S. State Department, the various U. S. Embassies and, through the U. S. Embassies, the responsible government officials of the foreign country and with officials of the international public agencies might lead to new opportunities of educating foreign governments about problems of the chemical industry in a given country.

A good illustration of the interplay between governmental policies and the view of international agencies is the fate of Finance (3) Act of 1956 of India and the Rules subsequently published thereunder.

This act and the rules provided in substance that corporations had the choice of either losing their depreciation allowances for tax purposes or to make certain interest-bearing deposits out of earnings with the government that could be used by the depositing corporations only for development purposes and only with specific government approval. Among many others, the President of the International Finance Corporation (Mr. Garner) protested very strongly against this legislation. Thereafter, the rules were first modified, and finally dropped entirely.

The conduct of this type of activity requires careful conformity to sophisticated procedures and methods. For example, in

a given situation a representation made to the Embassy in Washington of a foreign country might be useless for all practical purposes whereas direct representation in the capital of the country under the aegis or with the knowledge of the U. S. Ambassador, might be of considerable consequence. The determination of when and under what circumstances the group point of view should be put forward abroad rather than in Washington, as well as the method and procedure for doing so, may be both important and delicate. In either case, it is important that liaison be maintained with those responsible in the U. S. government and direct contacts made only with the knowledge and consent of the appropriate officials.

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In conclusion, there are two practical operating problems that should be met at the threshold of the establishment and operation of the suggested committee.

The first is the extent to which the activities of the committee and the MCA staff should be responsive to the needs of a single company. For example, the spending of a great deal of time and effort to collect unpublished information of interest to only one company, the making of appointments with interested government personnel (foreign and domestic) for the officials of a single company, or the processing of applications for investment guaranties or loans for an individual company raise some practical problems. To follow this practice would be to substitute the MCA activity for the normal responsibilities of the individual company. It would be likely to lead, at the worst, to competitive misunderstandings and apprehensions of favoritism damaging to the MCA, or, at least, the diversion of the Association effort for the narrow benefit of an individual company rather than the benefit of a larger group of member companies.

A second and related question is the extent to which the operation of the committee and its staff should be financed out of the regular MCA budget or by the use of special assessments. The benefits of the committee are sure to accrue to a bloc of the membership substantially less than the entire membership, i.e., the companies which are importantly concerned with foreign operations. Also, the effective conduct of these operations may require expenses, such as cost of trips abroad for representation to government officials of foreign countries which are of a substantially different nature and magnitude from that normally associated with the usual committee operation. These and other circumstances suggest that consideration be given to the financing

of this operation by a procedure and method that will not cause it to be objected to or hamstrung out of consideration for those who do not receive any direct benefits.

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It is to be hoped that the pointing up of various legal and operating considerations in this memorandum will not be interpreted as, in any sense, negative. On the whole, it is felt that the concept of this committee is a sound and constructive one, wholly appropriate for MCA to conduct, and likely to be responsive both to the industry interest and the national public interest in the years ahead.

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