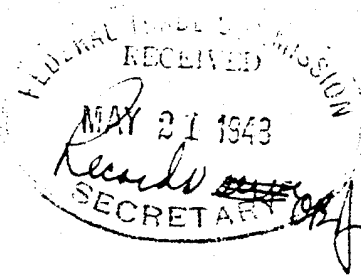


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



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In the Matter :
of : Docket No. 5253
NATIONAL LEAD COMPANY et al. :

-----X

EXCEPTIONS OF RESPONDENT, INTERNATIONAL
SMELTING AND REFINING COMPANY, TO TRIAL
EXAMINER'S RECOMMENDED DECISION AND TO
SAID TRIAL EXAMINER'S FAILURE TO INCLUDE
PROPOSED FINDINGS AND CONCLUSIONS RE-
QUESTED BY SAID RESPONDENT

COMES now the respondent, INTERNATIONAL SMELTING
AND REFINING COMPANY (hereinafter referred to as "Inter-
national"), by its attorneys, CHADBOURNE, WALLACE, PARKE &
WHITESIDE, and, pursuant to Rule XXIII of the Rules of
Practice of this Commission, submits the following excep-
tions to the Trial Examiner's Recommended Decision herein
and to the failure of said Trial Examiner to include pro-
posed findings and conclusions heretofore requested by
this respondent under Rule XXI of said Rules of Practice.

RECORDED AT THE NATIONAL ARCHIVES

EXCEPTIONS TO SECTION II OF THE RECOMMENDED
DECISION ENTITLED "PLEADINGS AND ISSUES"

1. Page 1, first unnumbered paragraph*, International excepts to the action of the Examiner in treating it and Anaconda Copper Mining Company as one and the same for the reason that such assumption is not supported by the record, is opposed to the reliable and probative evidence that has been received and contrary to the law. [Tr. 3537-3538; Martin v. Development Co. of America, 240 Fed. 42 (C.C.A. 9th, 1917); Majestic Company v. Orpheum Circuit, 21 F. (2d) 720 (C.C.A. 8th, 1927); Esmond Mills v. Commissioner of Internal Revenue, 132 F. (2d) 753 (C.C.A. 1st, 1943); Schenley Corporation v. United States, 326 U.S. 432 (1945).]

2. Page 5, third unnumbered paragraph, International excepts to this statement, it being an inaccurate and incomplete statement of its answer to the amended complaint.

3. Page 6, International excepts to the inclusion of the following as one of the "issues" herein:

* The pages and paragraphs referred to at the outset of each exception identify that portion of the Trial Examiner's Recommended Decision to which exception is being taken.

"Were the tendencies and effect of these transactions to restrain trade, suppress competition, or create monopolies through unequal cost factors and identical delivered prices."

[Amended Complaint, Paragraph "Eleven"; Federal Trade Commission Act, Section 5; Sherman Act, Sections 1 and 2.]

4. Page 6, International excepts to the inclusion of the following as one of the "issues" herein:

"Did respondent's employment of the zone system, as alleged, involve differences in price between customers (a) located in a zone and (b) located in different zones, which differences were more than differences in cost, sale and delivery?"

[Clayton Act, Section 2(a)]

5. Page 6, International excepts to the paragraph following the paragraph hereinabove quoted because of the inclusion of the words "so discriminate" on the same grounds as objected to in "4" above.

6. Page 6, International excepts to the second sentence in the paragraph beginning at the bottom of the page for the reason that it is improper to attempt to answer the issues by "inference" where it would conflict with reliable probative and substantial evidence.

7. Page 7, International excepts to the first three full sentences appearing at the top of the page for the reason that important parts of the evidence have not been set forth in the Recommended Decision, much reliable and substantial evidence has been ignored and little attention has been paid to the greater weight of the evidence herein.

EXCEPTIONS TO SECTION III OF THE RECOMMENDED
DECISION ENTITLED "REPORT UPON THE EVIDENCE"

COUNT I

8. Page 14, Paragraph (4) International excepts to the second sentence as being unsupported by the record.

9. Page 16, Paragraph (4-b) and Page 18, Paragraph (4-c), International excepts to these paragraphs on the ground that they are not supported by the record as to this respondent.

10. Page 19, Paragraph (5), International excepts to the next to the last sentence for the reason that it is improper to attempt to answer the issues by "inference" where it would conflict with reliable probative and substantial evidence.

11. International excepts to the following enumerated Paragraphs on the ground that each and all of such findings are unsupported by the record as to this respondent: Page 19, (5-a1); Page 20, (5-a2); Page 22, (5-b2); Page 26, (5-c1); Page 27, (5-c2); Page 33, (5-c8) and (5-c9).

12. Page 35, Paragraph (5-d), International excepts to that part of the Paragraph appearing on this page as being unsupported by the record. [Answers of all respondents to amended complaint.]

13. Page 37, Paragraph (6-c) and the second and third sentences of Paragraph (6-d), International excepts to the cited portions of these Paragraphs as being unsupported by the record as to this respondent.

14. Page 38, Paragraph (6-d), International excepts to the statement that Anaconda or International had a plant in Chicago. [Tr. 3489-3543]

15. Pages 39 and 40, Paragraphs (7-a3), (7-a4), (7-a6), (7-a8) and (7-a9), International excepts to these Paragraphs as being unsupported by the record as to this respondent.

16. Page 40, Paragraph (7-b1) and Page 41, Paragraph (7-b2), International excepts to these Paragraphs as they contain statements, inferences and insinuations unsupported by the evidence.

17. Pages 43 and 44, Paragraphs (7-c1), (7-c2), (7-c4) and (7-c5), International excepts to these Paragraphs as being unsupported by the evidence or directly contrary to the reliable probative and substantial evidence herein.

18. Page 44, Paragraph (7-d1), International excepts to this Paragraph. [National Industrial Recovery Act, Section 5; 48 Stat. 195, 198.]

19. Page 45, Paragraphs (7-d2), (7-d4) and (7-d5), International excepts to these Paragraphs on the ground that they are unsupported by the record as to this respondent. [Eugene Dietzgen Co. v. Federal Trade Commission, 142 F. (2d) 321, 329; Sugar Institute v. United States, 297 U.S. 553; Maple Flooring Ass'n v. United States, 268 U.S. 563; United States v. General Electric Co., 272 U.S. 476; United States v. Socony-Vacuum Oil Co., 310 U.S. 150, 198-99; United States v. U. S. Steel Corporation, 251 U.S. 417; United States v. International Harvester Co., 274 U. S. 693; United States v. Standard Oil of New Jer-

sey, 47 F. (2d) 288; Appalachian Coals, Inc. v. United States, 288 U.S. 344.]

20. International adopts as its own, and incorporates herein by reference, each and every exception and the authorities in support thereof to the Examiner's Recommended Decision which are taken by the other respondents herein to his report upon the evidence and conclusions as to conspiracy, collusion, agreement and cooperation between or among any or all of said respondents.

COUNT II

21. Page 46, International excepts to the third unnumbered Paragraph under this subject in so far as the same incorporates the items set forth in the Report Upon The Evidence at Pages 7 to 46 on the same grounds as hereinabove set out in this respondent's exceptions to Count I.

22. Page 46, Paragraph (8-a1), International excepts to this Paragraph as being unwarranted by the evidence or by law. [Clayton Act, Section 2(a); Corn Products Refining Co. v. Federal Trade Commission, 324 U.S. 726; Federal Trade Commission v. A. E. Staley Co., 324 U.S. 746.]

23. Page 49, Paragraph (8-a3), International excepts to this Paragraph as being unsupported by record references or any other portion of the record.

24. Page 50, Paragraph (9-a), International excepts to references that Anaconda charged consignment dealers in the per zone \$1.00 less per cwt. than its price to competing dealers at the same locations as being unsupported by the record as to this respondent.

25. Page 56, Paragraph (10-h), International excepts to this Paragraph as being unsupported by the record as to this respondent.

26. Page 57, Paragraph (10-l), International excepts to the first sentence as being unsupported by the record as to this respondent.

27. Page 57, Paragraph (10-m), International excepts to the word "discriminations" in the first line, and to the last two sentences of said Paragraph as being unsupported by the record as to this respondent.

28. Page 57, Paragraph (11-a), International excepts to this Paragraph for the reason that it is unsupported by the evidence and is contrary to law.

[Federal Trade Commis-

sion v. A. E. Staley Co., 324 U.S. 746; United States v. U. S. Steel Corp., 251 U.S. 417, 451; Swift & Co. v. United States, 196 U.S. 375, 400; United States v. Socony-Vacuum Oil Co., 310 U.S. 150, 198-99; United States v. International Harvester Co., 274 U.S. 693; United States v. Standard Oil Co. of New Jersey, 47 F. (2d) 288.]

EXCEPTIONS TO SECTION IV OF THE RECOMMENDED
DECISION ENTITLED "RECOMMENDED FINDINGS AND
CONCLUSIONS"

29. Page 61, Paragraph 1-C, International excepts to having all references to it and respondent, Anaconda Copper Mining Company, combined under the name of "Anaconda" in this and subsequent paragraphs of the recommended findings and conclusions. [Record references and authorities in support of this exception are the same as those cited by respondent in Exception "1," Page 2 herein.]

30. International excepts to the findings and conclusions in the following enumerated Paragraphs on the ground that each and all of such findings are unsupported by the record as to this respondent; Page 62, 1-G; Page 68, 4-C; Page 69, second sentence of 4-D; Page 69, 5-A1; Page 70, 5-A2 and 5-A3; Page 71, 5-B2

and Page 72, 5-B4.

31. Page 73, second sentence of the first un-
numbered paragraph of Paragraph 5-B5, International ex-
cepts to the finding that it or Anaconda sold dry white
lead on a consignment basis in Wisconsin. [Tr. 3533]

32. International excepts to the findings and
conclusions in the following enumerated Paragraphs on
the ground that each and all of such findings are un-
supported by the record as to this respondent: Page 74,
5-C1; Page 76, 5-C5; Page 77, 5-C8 and the first two
sentences of 5-C11; Page 78, 5-D; Page 80, 6-D; Page
81, 7-A3 and 7-A4; Page 82, 7-A6, 7-A7 and 7-A8.

33. Page 83, Paragraph 7-B2, International ex-
cepts to this Paragraph, with the exception of the se-
cond sentence, on the ground that the findings as to it
are unsupported by the record and cannot be "inferred"
from the evidence that has been received.

34. Page 84, Paragraph 7-C2 and Page 85, Para-
graph 7-C4, International excepts to these Paragraphs
as being without foundation in law and unsupported by
the record as to this respondent.

35. Page 85, Paragraphs 7-C5 and 7-D1, Inter-

national excepts to these Paragraphs on the ground that these findings are unsupported by the record as to this respondent.

36. International excepts to the findings in the following enumerated Paragraphs as being unsupported by the record and without foundation in law: Page 85, 7-D1; Page 86, 7-D2; Page 87, 7-D4 and 7-D5.

37. Page 87, the third unnumbered paragraph of Paragraph 8-A, International excepts to this Paragraph in so far as the same incorporates the facts relating to the parties, zone pricing, price differences, differentials and other features bearing on the issues under Count II, which are set out in the Report Upon The Evidence under Count I, and adopts as its exceptions and authorities thereto those exceptions hereinabove set out by this respondent to Count I.

38. Page 88, Paragraph 8-A1, International excepts to this Paragraph as being unwarranted by the evidence or by law. [Clayton Act, Section 2(a); Corn Products Refining Co. v. Federal Trade Commission, 324 U.S. 726; Federal Trade Commission v. A. E. Staley Co., 324 U.S. 746.]

39. International excepts to the findings and

conclusions in the following enumerated paragraphs on the ground that each and all of such findings are unsupported by the record as to this respondent:

Page 89, 9-A; Page 91, 9-E and 9-F; Page 93, first two sentences of 10-E and 10-F; Page 94, 10-H, 10-J and 10-L.

40. Page 95, Paragraph 11-A, International excepts to this Paragraph on the ground that it is unsupported by the record and contrary to law. [Federal Trade Commission v. A. E. Staley Co., 324 U.S. 746.]

41. International adopts as its own, and incorporates herein by reference, each and every exception and the authorities in support thereof to the Examiner's Recommended Decision which are taken by the other respondents herein to his recommended findings and conclusions as to conspiracy, collusion, agreement and cooperation between or among any or all of said respondents.

EXCEPTIONS TO SECTION V OF THE RECOMMENDED
DECISION ENTITLED "RECOMMENDED ORDER"

42. Page 96, Paragraph 1, Page 97, Paragraph 2 and Page 98, Paragraphs 4 and 5, International excepts to its inclusion in the Recommended Order for the reason that the record does not sustain the finding that it was

a party to, or was engaged in, any of the acts complained of in the amended complaint, and there is uncontradicted evidence that International is not engaged in any of the activities covered by the order, and the Examiner has found that it is no longer in the business of selling or manufacturing lead pigments and that there is no reason to believe International will ever reenter or reengage in the manufacture or sale of lead pigments. [Com. Ex. 836B; Affidavit of Frederick Laist, Vice President of International, in support of motion to dismiss amended complaint; pp. 2075-2077; 3541-3543; Trial Examiner's rulings on proposals for findings and conclusions submitted by counsel, March 31, 1948, p. 2.]

EXCEPTIONS TO THE TRIAL EXAMINER'S FAILURE
TO INCLUDE PROPOSED FINDINGS AND CONCLUSIONS
REQUESTED UNDER RULE XXI SUBMITTED
BY THIS RESPONDENT

43. International excepts to the Examiner's denial of the findings requested in Paragraphs "16," "20," "21," "22," "25," "28," "29," "30," "31" and "32" of its proposed Findings and Conclusions and Reasons therefor which were duly filed in this proceeding.

44. International excepts to the Examiner's denial of Paragraphs "1" to "8," inclusive of the Conclusions of Law requested by it and reasserts that these Conclusions

were proper statements of the law on the points involved and that the denial thereof was contrary to both the evidence and the law.

* * * *

Pursuant to the ruling of the Examiner herein, this respondent reserves the right to file further proposals and further exceptions at the time of submission of its brief on the merits and the argument of the case before the Commission.

This respondent respectfully requests argument on the above exceptions at the time of the argument before the Commission on the merits.

Respectfully submitted,

CHADBOURNE, WALLACE, PARKE & WHITESIDE

By

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