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TRADING WITH THE ENEMY.

Report to the President of the Board of Trade
by the Committee appointed to advise the
Board of Trade on matters arising under the
Trading with the Enemy Amendment Act,
1916.

Presented to Parliament by Command of His Majesty.



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TRADING WITH THE ENEMY.

Report to the President of the Board of Trade by the Committee appointed to advise the Board of Trade on matters arising under the Trading with the Enemy Amendment Act, 1916.

The Advisory Committee to the Board of Trade under the Enemy Trading Amendment Act, 1916, was appointed on the 9th February, 1916.

The members of the Committee were Mr. Ernest Moon, C.B., K.C., Counsel to the Speaker, Chairman, The Hon. J. D. Fitzgerald, K.C., Sir George Croydon Marks, M.P., and Mr. Gershom Stewart, M.P. Sir G. C. Marks, however, resigned shortly after the sittings of the Committee commenced, finding that the time occupied by the business of the Committee would interfere with the discharge of other public duties, and Sir Edwin Cornwall, M.P., took his place. On the 1st June, 1916, Mr. A. A. Allen, M.P., was appointed in the place of Sir Edwin Cornwall, who found that other duties interfered with regular attendance at the meetings of the Committee.

In some important cases, in which complicated questions of law and fact had to be determined, Sir Robert Younger, who was appointed by the Lord Chancellor to deal with the winding up of Companies under the Trading with the Enemy Amendment Act, 1916, S. 1. s. s. 7, was good enough to attend the Committee, and the Committee wish to express their appreciation of the assistance they derived from his great experience and of the pains which he took to help them to unravel the complicated issues presented to them. The Hon. Evelyn Hubbard also assisted the Committee with his advice in a case which involved intricate financial considerations affecting Russian interests.

When the Committee was appointed, the Board of Trade had cognisance of over 500 cases which fell to be considered under the Act of 1916. Additional cases were being constantly reported to them and the Committee at once determined that their consideration of them must proceed as rapidly as the staff at their disposal and the necessary notices and enquiries permitted. The first sitting was held on the 22nd February, 1916, and sittings were held continuously during the time that Parliament was in session until the arrears of business were overtaken. The Committee have now held 139 sittings at which persons interested were heard and 960 separate cases have been dealt with. Cases are still being discovered and brought up for their consideration, but their number is not considerable.

The procedure to be adopted on the hearing was left by the Board of Trade to be decided by the Committee. They decided to give seven days' notice of the day on which the hearing was appointed to take place and that the parties interested might be heard by Counsel by the Committee's permission. In a considerable number of cases this permission was applied for and the Committee did not in any instance find it expedient to refuse their permission. Many of the well-known Counsel at the Bar appeared before them. When no Counsel or Solicitor was employed, the parties affected were given all facilities for stating their case in accordance with the established principles of the administration of justice in this country, and the Committee took care that in all cases a fair hearing should be given. In some instances persons were heard who had made complaints against the business which was being considered, but the Committee did not allow cross-examination by parties. In all cases the statements made were tested by the Committee themselves with the aid of the correspondence, Police reports and other documents in their possession, especially the reports of the Supervisors and Inspectors appointed by the Board of Trade. They generally found the facts in these reports to be fairly and accurately stated, and the reports were of great assistance to the Committee.

In considering the advice which should be given to the Board the Committee acted on the principle expressed in the Act that the presumption in all businesses which were found to come within Section 1 of the Act was that it should be put into operation, and in determining what constituted a special reason which would be sufficient to exempt the business under consideration from the operation of the Act the Committee were mainly guided by the speech of Sir G. Cave when he was Solicitor-General in moving the second reading of the Bill which subsequently became the Act of 1916. But the Committee almost immediately were convinced that, in cases in which businesses formerly carried on mainly for the benefit or under the control of enemy subjects were useful and successful businesses, it was more in the national interest to transform them into British businesses than to wind them up, and accordingly, after consulting the Custodian, they have on many occasions recommended that the enemy subject interests should be vested in him as the Custodian for sale. In this way a number of useful businesses are now carried on in British hands, which were formerly largely or wholly in the hands of enemy subjects. The Committee, however, only took this course if it appeared probable that a sale would eventuate, and when it seemed doubtful whether the enemy subject interest could be sold or not, they recommended a winding up Order in the event of no sale being found possible within a reasonable time. When the business did not appear to the Committee to be of sufficient trade importance to make it expedient to vest in the Custodian, so as to avoid a winding up Order, they recommended winding up. Some of these businesses have also passed into British hands by sale in the winding up proceedings. Sanatogen (Wulffing & Co.) is an illustration of the businesses last referred to. The object of the Committee in recommending vesting useful businesses in the Custodian instead of a winding up Order resulting in a sale was to avoid the discredit which would have attached to the businesses if a winding up Order had been gazetted.

In dealing with small retail businesses which was one of the categories of cases which Sir G. Cave included among those in which it would be inexpedient to order a winding up the Committee have been

guided by the Police report and the dossier of the owner of the business. If, in a case of this description, a favourable report was made by the Police the Committee did not recommend a winding up unless after examination they had reason to think that a winding up was desirable and the same course was adopted in cases in which enemy subjects had a son or sons in the fighting forces. In a few cases in which new businesses had been introduced into this country in competition with businesses which were formerly the monopoly of enemy countries and which depended upon the personal supervision of an enemy subject the Committee recommended exemption in respect of his individual interest, provided that in other respects they were satisfied that the enemy subject's record showed him to be trustworthy.

It will be seen from Schedule "A" attached to this report that in a number of instances the Committee advised that Section 1 of the Act did not apply. Some of these were cases in which one of the partners, who was an enemy subject, was resident in an enemy country at the outbreak of the war. The High Court has decided in Stevenson's case that under these circumstances the partnership was determined (Stevenson's case, L.R. 1916, 1 K.B. 763, 1917, 1 K.B. 842). In such cases the Committee have recommended vesting the interest belonging to the enemy subject in the Custodian, and in other cases in which it was not established that the business was mainly carried on for the benefit or under the control of enemy subjects and which were, therefore, not cases in which a winding up Order could be made, the Committee adopted the same course and recommended that the enemy subject interest should be vested in the Custodian with a power of sale. In many of the cases, therefore, in which the Committee have advised that they were not within Section 1 of the Act the enemy subject interest has in this way been eliminated.

Cases in which enemy subjects have been resident in this country for a long period of years, have married British wives, are the fathers of children who are British born subjects, and whose record was in other respects impeccable, have been strongly pressed upon the Committee as cases in which exemption ought to be granted, but the Committee, in view of the mandatory provision of the Act, have not felt justified in recommending exemption on those grounds only, although they have felt sympathy with some of the persons affected. Enemy subjects, for instance, with those ties, who came to England in the seventies and eighties, have had no connection with their country of origin for many years, but have not been naturalised because it did not occur to them that it was required, and whom it has not been thought necessary to intern, the Committee are inclined to think, are as much entitled to consideration as many of those who have come to England, especially of late years, and have become naturalised. The Committee have a strong suspicion that in many instances British nationality has been adopted purely as an armour of defence, and it is not at all improbable that the adoption of it has been made a condition of financial support. But such businesses are not within the jurisdiction of the Board of Trade either under Section 1 or Section 4. If, however, German trade penetration is to be fully dealt with, some of the cases in which it is carried on by recently naturalised Germans would seem to require consideration.

The business of Ettlenger & Co. is a case in point, in which the Committee submitted the following memorandum dated 15th February, 1917:

"There are two partners in this firm, Ettlenger, a German, naturalised in 1888, and Bernstein, a German, naturalised in 1903. The deed of partnership is dated 1st July, 1910. The business consisted in buying and selling ores and metals including those used in the steel and iron industry. The firm was before the war closely associated with firms with German interests, particularly with Beer, Sondheimer & Co., of Frankfort. Following upon other agreements with the last-named firm an agreement was entered into in June, 1912, to last till June, 1918, and if no notice to determine was given to 1921. By Clauses 1 and 2 Ettlenger & Co. were bound to act only for Beer, Sondheimer & Co., in buying and selling minerals and other materials suitable for the iron and steel industry and to carry out such business on joint account. Beer, Sondheimer & Co. were bound to conclude business in those articles only for joint account with Ettlenger & Co. Clause 7 contemplated financial operations outside the sphere of buying and selling to be shared in equally. It was under this Clause that the arrangement came about with Schroeder Schmidt & Co., which for present purposes need not be further referred to. By Clause 9 any business could be vetoed by either of the parties to the agreement, which means that Beer, Sondheimer & Co. had a power to veto the sale by Ettlenger of any of these materials to English buyers. No comment is needed.

"The profits of the business were to be shared equally.

"The case was brought to the Committee for hearing on the 15th February. It is a case of enemy association in which the Committee would recommend winding up without hesitation if it falls within the Act, and the Committee submit that, if it does not fall within the Act, further legislation would be desirable to enable them to deal with it.

"When the case came before the Committee they felt obliged to advise the Board that it did not fall within Section 1 of the Act on the ground stated in their minute."

An important category of businesses in which the Committee have recommended a large number of exemptions are those of persons who may be described as friendly aliens—Czechs, Ottoman subjects who are members of the fraternity of Spanish and Portuguese Jews, Christian Armenians, and Polish Jews. A very large export trade is carried on in Manchester goods with Constantinople, Basra, and the East by Armenian merchants and Spanish and Portuguese Jews—some of the latter under French protection. In many instances the export values had amounted before the war to two hundred or three hundred thousand pounds yearly, and unless there were reasons for not doing so, the Committee recommended exemption in the cases of such friendly alien businesses. In this connection a question arose as to the position of merchants carrying on business in Egypt—at the outbreak of the war they were Turkish subjects, and the question to be decided was what their nationality was after the British Protectorate was proclaimed. Counsel appeared for the merchants in question, and the Committee decided in accordance with authorities which he produced that after the Proclamation they became Egyptian subjects. The business in question was that of exporters of Egyptian cotton and importers of yarns, through a branch in Manchester.

As regards Hungarians the Committee were informed by a solicitor, who represented one of the businesses which was being considered, and who had a professional connection with a number of Hungarian businesses, that British businesses in Hungary were not being interfered with, and that a league existed in Hungary with 3,000,000 members pledged not to buy German goods. It was, however, decided by the Board of Trade not to exempt Hungarian subjects on the ground of nationality alone, but it was rarely found necessary to interfere with Hungarian businesses.

A great variety of cases have been considered by the Committee, and a synopsis of the businesses which have been dealt with is set out in Schedule "B" attached to this report. They have varied in importance

from the Siemens business with a capital employed of over £2,000,000 and the Badische Co., Ltd., with an annual sale of £354,000 of dyes to that of a tailoring business with a profit of £150 a year.

It was not part of the functions of the Committee to enquire into the genesis of the establishment of the extensive and important trade which has been conducted by enemy subjects, mainly German, in this country, and although such an inquiry would have been interesting the number of cases which it was the duty of the Committee to deal with precluded any consideration of matters which were not strictly relevant to the issues they had to decide. The sources for instance from which the financial support was obtained which enabled such an extensive trade to be established and carried on in this country could not be enquired into.

The cases of the German Banks operating in London were not dealt with by the Committee, and the businesses which came before them in which German Banks were directly interested were few in number.

The variety of trades in which German subjects were engaged was a noticeable feature of the Committee's work extending from the great chemical and electrical combinations to such businesses as the collection and export of rabbit skins, and disused cans for the purpose of extracting the tin, or the treatment of offals for the production of sausage skins.

Whatever the business was organisation, adaptability, personal application, and in case of necessity ruthless competition, produced successful results, for in few of the numerous cases upon which the Committee advised, was the business found to be unprofitable.

In the course of the Committee's inquiries, the necessity of the legislation for the registration of names has been fully demonstrated. Foreign traders have habitually substituted British names for their own for the purpose of misleading their customers into the belief that they were dealing with British principals instead of aliens.

On one day recently four cases of this kind came before the Committee for consideration, and they had lived under these aliases for years.

The free choice of titles which Joint Stock Companies enjoyed also enabled foreign traders to conceal their nationality and acquire whatever advantage may accrue to a business appearing to be a British business.

The practice of adopting the word "British" or some other title or name which disguised the fact that the business was German is now well known. But the extent to which German businesses were conducted through a British staff and by British employees, is remarkable. In case after case the Committee found that although the profits mainly belonged to the German proprietor of the business it was carried on entirely or almost entirely by a British staff and by British employees. Even in the case of the dye industry the staff of chemists employed in the important service of advising upon the application of the dyes to the stuffs to be dyed were almost entirely British, and when branches were established in this country for the manufacture of German patented articles they were usually British manned. In many of these cases by the operation of Section 4 of the Act the British managers and employees are now carrying on the businesses on their own account, and the businesses have become British businesses.

The methods by which German influence gained the control which it had obtained in certain of the trades carried on in this country is well illustrated in the following cases.

A Company was formed in 1897 to work certain important electrical patents taken out by a British subject whose relatives held the chief part of the capital, the remainder being held by neutrals interested in working the patents in France. The same patents were worked in Germany by a powerful combination. When the patents expired in 1904, practically the whole of the capital of the English Company passed into the hands of the German Company under the stress of the German Company's competition, and a territorial agreement was made, under which the British Company was restricted from selling outside Great Britain, even in British colonies. The German Company, having obtained control of the British Company, and sterilized its power of competition out of Great Britain, proceeded to utilize the manufactory of the British Company for the purpose of undercutting a very important business of a similar kind carried on by another British Company, until it was forced to accept an agreement under which it had to resign its foreign business, though it still held on to its business in the Colonies.

Another illustration was that of the manufacture of an article which is extensively made use of by the War Office and the Admiralty. Before the Company was formed in 1910 it had been manufactured at works in this country and contracts with the Admiralty had been held for many years. But the manufacturers had to meet the competition of a powerful German combination, with the result that prices were cut, and in 1910 a representative of the combination threatened to undersell them if a combination was not effected. The manufacturers were not financially strong enough to withstand a competition of that kind, and the result was that the Company was formed to take over the business, all the shares in the Company being held on behalf of the German combination by British Trustees. By the contract of transfer the proprietors of the business were to be employed as Managing Directors, but one of the covenants provided that they should not manufacture for any other persons than the purchasers. Half the product of the article in question manufactured in England before the war was manufactured at these works. The German proprietors exercised no control over the manufacture which was carried on under the name of the proprietors and managed by them as before. No dividends were paid, but profits were used to improve the works to the extent of £10,000. There was, in fact, no outward and visible sign of the German interest in the business or that it was not a purely British concern.

The Committee found that German producing houses commonly adopted means to avoid the payment of income tax in this country. An agency or branch was established here, frequently in the form of a limited company with a small capital, to which goods manufactured in Germany were forwarded for sale at prices which were arranged so as not to allow any considerable margin for profit after the payment of the expenses of the agency or branch, the profit being made by the parent house out of the prices at which they were charged to the branch. This practice, no doubt, is not confined to German houses, but the result has been to assist the competition of German manufactures. These agencies or branches have been usually carried on under British names and frequently by the employment of British salaried agents.

The important cases in which application was made to the Board of Trade under Section 2 of the Act to determine contracts have been mainly those in which the contracts were with enemy subjects for the delivery of metals or ores, some of them such as that of the Zinc Corporation, of great importance. These cases have disclosed the extent to which Germany had obtained the control of important metal industries.

The Committee are greatly indebted to their Secretary, Mr. Bowyer, and his assistant, Mr. Parke, for the admirable way in which they have performed the duty of preparing the cases for the consideration of the Committee, involving the selection of materials from large collections of documents and in assisting the

Committee in many other ways—duties which must have been extremely arduous, especially during the first few months of the work of the Committee when it was carried on at high pressure. Mr. Bowyer's long experience in the Bankruptcy Department of the Board of Trade also proved of great value to the Committee on many occasions in which he was able to offer valuable advice. Without this assistance, which facilitated the work of the Committee in a great degree, they would have had difficulty in performing the task of dealing with the multitude of cases which have been presented for their consideration. The thanks of the Committee are also due to Mr. S. L. Porter, barrister-at-law, who, for some time, volunteered his assistance in helping to prepare the cases for consideration.

ERNEST MOON.

16th April, 1918.

SCHEDULE "A."

Recommendations made by the Committee in cases considered by it to 19th March, 1918 :—

1. For Orders to wind up or prohibit...	507
2. For Orders to vest enemy interests for sale to British subjects under Section 4 in lieu of winding up	95
3. Cases found not to be within Section 1 of the Act	95
4. Cases in which owing to one of the War Departments having notified that the business was meeting some of its requirements at the time of consideration, no recommendation has yet been made	12
(NOTE.—In 5 of these cases winding up Orders have since been made by the Board of Trade.)	
5. Cases in which for a variety of special reasons no Order has been recommended	174
71 of these were those of friendly aliens.	
6. For Orders cancelling contracts	58
7. For non-cancellation of contracts	7
8. Cases in which consultation with the Foreign Trade Department was recommended	1
Cases the consideration of which stands postponed	10
Case in which an application to cancel a contract was withdrawn	1
Total	<u>960</u>

SCHEDULE "B."

SYNOPSIS OF BUSINESSES.

No. of Cases. 3 Advertisement, Inquiries, etc. 24 Agents. 12 Buttons, Trimming. 6 Cables, Wire. 13 Carpets. 32 Chemicals. 16 China, Glass. 33 Clothiers. 7 Clubs. 4 Coke Ovens. 4 Confectionery. 17 Dyes and Colours and Varnish. 41 Electrical. 36 Engineering and Building. 13 Fancy Goods. 12 Finance and Banking. 23 Furs, Skins and Hides. 17 Hardware, Tools and Cutlery. 10 Hotels and Restaurants. 3 Insurance. 22 Jewellery. 19 Lamps, Gas. 5 Leather, Boots and Shoes. 39 Machinery.	No. of Cases. 48 Metals. 19 Mining, Land and Coal. 44 Miscellaneous Merchants. 35 Miscellaneous Businesses. 18 Motors, Cycles and Accessories. 19 Music and Musical Instruments. 18 Oil, Glue, Offal, etc. 7 Optical, Glass, Photography. 24 Produce. 44 Publishers, Stationery, etc. 22 Rubber. 55 Shipping. 56 Soft Goods, Textiles, Wool, Cotton 9 Surgical, Medical. 10 Theatres, Cinemas. 8 Tobacco. 8 Toys. 7 Watches and Clocks. 4 Wax and Gum. 12 Wine, Beer, etc. 11 Wood, Furniture. <u>889</u>
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