afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Kingman Area Manager within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting.

The application will be processed in accodance with the regulations set forth in 43 CFR 2300.

For a period of two years from the date of publication of this notice in the Federal Register, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, cooperative agreements, and discretionary land use authorizations of a temporary nature, but only with the approval of an authorized officer of the Bureau of Land Management.

Dated: June 25, 1996.

David J. Miller,

Associate District Manager.

[FR Doc. 96–16948 Filed 7–2–96; 8:45 am]

BILLING CODE 4310–32–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Cancellation of Acceptance of the American Schools and Hospitals Abroad Application for Assistance

SUMMARY: This applicant notice is for private U.S. organizations requesting grant assistance for overseas institutions under Section 214 of the Foreign Assistance Act. ''Applicant'' refers to the United States founder or sponsor of the overseas institution. Due to budget cuts, The Office of American Schools and Hospitals Abroad (ASHA) will not accept applications for assistance on August 31, 1996 for consideration in FY 1997 and for future years.

FOR FURTHER INFORMATION CONTACT: The Office of American Schools and Hospitals Abroad (ASHA), (703) 351–0232.

SUPPLEMENTARY INFORMATION:

Title: American Schools and Hospitals Abroad.

Form No.: A.I.D. 1010–2.

OMB No.: 0512–0011.

Type of submission: Cancellation of Acceptance of Application.

Abstract: The application was used by U.S. founders or sponsors in applying for grant assistance from ASHA on behalf of their institutions overseas. ASHA is a competitive grant program. Decisions are based on an annual comparative review of all applications requesting assistance in that fiscal year, pursuant to Section 214 of the Foreign Assistance Act, as amended.

Annual Reporting Burden

Respondents: Not-for-profit organizations.

Number of respondents: 85.

Estimated total annual hour burden on respondents: 12.

Dated: June 27, 1996.

Howard B. Helman,

Director, Office of American Schools and Hospitals Abroad, Bureau for Humanitarian Response.

[FR Doc. 96–16988 Filed 7–2–96; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–739 (Final)]

Clad Steel Plate From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Japan of clad steel plate, provided for in subheading 7210.90.10 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective February 27, 1996, following a preliminary determination by the Department of Commerce that imports of clad steel plate from Japan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of March 13, 1996 (61 FR 10380). The hearing was held in Washington, DC, on May 7, 1996, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 25, 1996. The views of the Commission are contained in USITC Publication 2972 (June 1996), entitled ''Clad Steel Plate from Japan: Investigation No. 731–TA–739 (Final).''

By order of the Commission.

Donna R. Koehnke,

Secretary

Issued: June 25, 1996

[FR Doc. 96–16987 Filed 7–2–96; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 9, 1996 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–365–366 (Final) and 731–TA–734–735 (Final) (Certain Pasta from Italy and Turkey)—briefing and vote.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: July 1, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary

[FR Doc. 96–17182 Filed 7–01–96; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. American National Can Co. & KMK Maschinen AG; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have

been filed with the United States District Court for the District of Columbia in *United States* v. *American National Can Co. and KMK Maschinen AG*, Civil No. 96–01458.

The Complaint alleges that the defendants violated section 1 of the Sherman Act by entering a series of agreements, the purpose and effect of which was to eliminate competition between them in the North American markets for laminated tubes and laminated tube-making equipment and technology. The Complaint further alleges that pursuant to those agreements, KMK Maschinen AG (''KMK'') sold its U.S. tube-making affiliate to American National Can Co. (''ANC'') and agreed to sell its laminated tube-making equipment and to license its related technology exclusively to ANC, and ANC agreed to buy all its laminated tube-making equipment for use in North America from KMK and not to acquire or use anyone else's equipment or technology there while at the same time discontinuing its own manufacture of such equipment.

The proposed Final Judgment would end the extant exclusive, laminated tube-making equipment and technology arrangement between the defendants, and would bar them from collecting any payment from each other under that agreement. It also would enjoin defendants from entering agreements that restrict certain rights of any party relating to laminated tubes or laminated tube-making equipment or technology, where the parties compete directly against each other in the same segment of the laminated tube market (tubes, equipment, or technology) to which the restraint applies.

Laminated tubes are collapsible tubular containers of multiple, laminated plastic layers used to package virtually all toothpaste and many pharmaceutical products.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the Federal Register and filed with the Court. Comments should be directed to Mary Jean Moltenbrey, Chief, Civil Task Force, U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Suite 300, Washington, DC 20530 (202/616–5935).

Rebecca P. Dick,

Deputy Director of Operations.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

In the matter of; UNITED STATES OF AMERICA, Plaintiff, v. AMERICAN NATIONAL CAN CO., and KMK MASCHINEN AG, Defendant; Civil Action No. 96–01458, Filed June 25, 1996, Judge Thomas Pennfield Jackson.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto for purposes of this action, and venue of this action is proper in the District of Columbia;

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)–(h)), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court;

3. Each defendant agrees to be bound by the provisions of the proposed Final Judgment pending its approval by the Court; and

4. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: June 24, 1996.

For Plaintiff:

Anne K. Bingaman,

Assistant Attorney General.

Joel I. Klein,

Deputy Assistant Attorney General.

Rebecca P. Dick,

Deputy Director of Operations.

Mary Jean Moltenbrey,

Chief, Civil Task Force.

Robert J. Zastrow,

Assistant Chief, Civil Task Force.

Thomas H. Liddle.

Scott A. Scheele,

DC Bar No. 429061, Attorneys, Antitrust Division, U.S. Department of Justice, Suite 300, Liberty Place Building, 325 7th Street, N.W., Washington, DC 20530.

For Defendant American National Can Co.:

McDermott, Will & Emery

David Marx, Jr.,

A Member of the Firm.

For Defendant KMK Maschinen Ag:

Wilmer, Cutler & Pickering

Rajiv P. Santwan,

Chief Executive, KMK Maschinen AG.

C. Loring Jetton, Jr.,

A Member of the Firm, D.C. Bar No. 83766.

Final Judgment

Plaintiff, United States of America, filed its Complaint on June 25, 1996; plaintiff and defendants, by their respective attorneys, have consented to entry of this Final Judgment without trial or adjudication of any issue of fact or law, and defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court. This Final Judgment shall not be evidence against or an admission by any party with respect to any issue of fact or law herein.

Now, therefore, before the taking of any testimony and upon consent of the parties, it is hereby Ordered, Adjudged, and Decreed as follows:

I

Jurisdiction

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against defendants under Section 1 of the Sherman Act, 15 U.S.C. 1.

II

Definitions

As used in this Final Judgment:

A. ''Agreement'' means any contract, arrangement, or understanding, whether oral or written, or any term or provision thereof, together with any modification or amendment thereto;

B. ''Laminated tube'' means a collapsible, squeeze-to-use tubular package with a sideseam that consists of a body of multiple laminated plastic layers separated by a layer of either plastic or aluminum foil that serves as a barrier to moisture, light, gases, or other agents; a tube head attached to the body; and may include a cap;

C. ''Laminated tube-making equipment'' means machinery, apparatus, or devices for making and/or assembling laminated tubes, including forming a tube head, sealing or otherwise connecting it to a laminated tube body, or capping the laminated tube;

D. ''Laminated tube-making technology'' means any form of intellectual property relating to (i) the design, development, construction, or operation of laminated tube-making equipment or any component, feature, or use thereof; (ii) the fabrication of laminated tubes or any component

thereof; or (iii) the material used in making laminated tubes; but only to the extent such component, feature, use, or material relates to laminated tubes and not to other types of packaging;

E. ''North America'' means the United States of America, Canada, and the United Mexican States.

III

Applicability

This Final Judgment applies to each defendant; to each of its officers, directors, agents, employees, successors, assigns, subsidiaries, divisions, and any other organizational unit controlled by either defendant; and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

Injunctive Relief

Each defendant is enjoined and prohibited from:

A. Maintaining, enforcing, carrying out, or claiming any right or operating under the 1987 License and Technical Assistance Agreement (LTAA) between American National Can Co. and KMK Karl Maegerle Lizenz AG;

B. Collecting or attempting to collect any royalties, fees, or other payments under the LTAA for (i) the manufacture, sale, or use in North America of laminated tubes or laminated tube-making equipment or (ii) the license, sale, or use in North America of laminated tube-making technology;

C. Entering into, maintaining, enforcing, carrying out, or claiming any right under any agreement with any person who

(1) Owns or has the right to use, license, and transfer laminated tube-making technology that restricts the right of any party to the agreement to use, license, or transfer in North America laminated tube-making technology that it owns or has the right to use at the time of the agreement,

(2) Manufactures or sells laminated tube-making equipment that restricts the right of any party to the agreement to manufacture or sell such equipment in North America using or incorporating only laminated tube-making technology that it owns or has the right to use at the time of the agreement, or

(3) Manufactures or sells laminated tubes in North America that restricts the right of any party to the agreement to manufacture or sell, but not use, laminated tubes in North America.

The prohibitions of this Section IV.C shall not apply to either defendant's acquisition of substantially all of any person's assets or voting securities relating to laminated tube-making equipment or technology, provided that (1) the defendant gives the Antitrust Division of the United States Department of Justice written notice of the proposed acquisition at least 30 days prior to its consummation, and (2) if within that 30-day period the Antitrust Division requests additional information and/or documentary material relevant to the proposed acquisition, the defendant extends the consummation thereof for at least an additional 20 days after the date on which the Antitrust Division receives all the information and documentary material requested from the defendant.

V

Notification

Within 60 days of entry, each defendant shall provide a copy of this Final Judgment by mail or personal service to its officers, directors, and managerial employees responsible for defendant's laminated tubes and/or laminated tube-making equipment or technology businesses, and to its current laminated tube-making technology licenses in North America. Thereafter, each defendant shall distribute a copy of this Final Judgment to any new such officer, director, or managerial employee within 60 days of a person's assumption of duties as an officer, director, or manager of that defendant.

VI

Compliance Information

A. To determine or secure compliance with this Final Judgment, from time to time, duly authorized representatives of plaintiff, upon written request of the Assistant Attorney General in charge of the Antitrust Division, or reasonable notice to a defendant at its principal office and subject to any lawful privilege, shall be permitted:

1. Access during normal office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the defendant's possession, custody, and control relating to any matters contained in this Final Judgment; and

2. To interview the defendant's officers, employees, or agents regarding such matters, who may have counsel present, subject to the defendant's reasonable convenience but without its restraint or interference.

B. Upon written request of the Assistant Attorney General in charge of the Antitrust Division to a defendant's principal office, and subject to any lawful privilege, the defendant shall submit such written reports, under oath if requested, relating to any matters contained in this Final Judgment, as may be requested.

C. No information or documents obtained pursuant to this section shall be divulged by plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by a defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, ''subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then plaintiff shall give 10 days' notice to the defendant before divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendant is not a party.

VII

Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any party to this Final Judgment to apply to this Court at any time for further orders or directions as may be necessary or appropriate to implement or construe this Final Judgment, to modify or terminate any provision thereof, to enforce compliance therewith, and to punish violations thereof.

VIII

Term

This Final Judgment shall expire ten years from the date of its entry.

IX

Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

Court approval subject to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge

Certificate of Service

I hereby certify that copies of the foregoing Complaint, Stipulation (to which is attached a copy of a proposed Final Judgment), and Competitive Impact Statement were served this 25th day of June 1996, by first class mail, postage prepaid, upon:

David Marx, Jr., Esq., McDermott, Will & Emory, 31st Floor, 227 West Monroe Street, Chicago, IL 60606–5096

Counsel for Defendant, American National Can Co.

C. Loring Jetton, Jr., Esq., Wilmer, Cutler & Pickering, 2445 M Street, N.W., Washington, D.C. 20037–1420

Counsel for Defendant KMK Maschinen AG.

Thomas H. Liddle,

Attorney, Antitrust Division, U.S. Department of Justice, 325 7th Street, N.W., Washington, D.C. 20530.

Competitive Impact Statement

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b), the United States of America hereby files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust action against American National Can Co. (''ANC'') and KMK Maschinen AG (''KMK'').

I

Nature and Purpose of the Proceeding

The government filed this civil antitrust suit on June 25, 1996, alleging that defendants violated Section 1 of the Sherman Act by engaging in a combination and conspiracy that unreasonably restrains interstate trade and commerce in the manufacture of laminated tubes and laminated tube-making equipment, and in the license and transfer of related laminated tube-making technology. The Complaint alleges that this combination and conspiracy consisted of a series of continuing agreements between defendants, the purpose and effect of which was to eliminate competition between them in the North American markets for laminated tubes and laminated tube-making equipment and technology. Specifically, KMK agreed to sell its laminated tube-making equipment and license its related technology exclusively to ANC, and ANC purchased KMK's U.S. laminated tube-making facility. These agreements harmed competition in several ways:

(a) They eliminated KMK as a competitor in the laminated tubes market, thereby reducing competition among tube manufacturers in the United States;

(b) They precluded KMK from selling laminated tube-making equipment or from licensing laminated tube-making technology to persons other than ANC for 15 years, and gave ANC effective control over KMK's existing laminated tube-making equipment in North America, thereby reducing competition among equipment manufacturers in the United States; and

(c) They gave ANC effective control over KMK's laminated tube-making technology in North America, thereby reducing competition generally in the United States laminated tube, laminated tube-making equipment, and related technology markets.

The complaint seeks: (1) A declaration that these agreements violate section 1 of the Sherman Act; and (2) an injunction preventing defendants from enforcing, maintaining, or renewing any such agreement or entering into or engaging in any other agreement having a similar purpose or effect.

The United States and the defendants have stipulated that the Court may enter the proposed Final Judgment at any time after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h). Under the provisions of section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(e), the proposed Final Judgment may not be entered unless the Court finds that its entry is in the public interest.

II

The Practices and Events Giving Rise to the Alleged Sherman Act Violations

A. The Markets Involved

1. Laminated Tubes

Laminated tubes are collapsible tubular containers of multiple, laminated plastic layers used to package virtually all toothpaste and many pharmaceutical products sold in the United States. These tubes preserve the product within a flexible tube without permitting air or moisture to enter the tube. Other packaging materials either cost more than or lack the barrier characteristics of laminated tubes. Thus, there are no viable economic substitutes for laminated tubes. Annual retail sales of such tubes in North America are about $110 million, or 1.1 billion tubes, of which approximately 800 million are sold to toothpaste manufacturers; approximately 300 million are sold to pharmaceutical manufacturers and others.

The market for laminated tubes is highly concentrated. Three companies manufacture over 95% of such tubes sold in the United States. ANC is the largest competitor with total sales comprising over 60% of the United States toothpaste tube market. There are only two other competitors in the United States that have 5% or more of the laminated tubes market. It is not economically feasible to ship laminated tubes into North America.

Successful new entry into, or expansion within, the laminated tube market is difficult. To be successful, a new entrant must acquire expensive laminated tube-making equipment and essential, related patented and unpatented laminated tube-making technology. The up-front investment in plant, machinery, research, technology, and sales is substantial relative to the profit opportunity available in a commodity market like this one.

2. Laminated Tube-Making Equipment

Laminated tube-making equipment consists of machinery used to manufacture laminated tubes. This equipment cannot efficiently be used for any other purpose, nor can other machines easily or efficiently be converted or adapted to make laminated tubes. Thus, there are no viable economic substitutes for this equipment.

The market for laminated tube-making equipment is highly concentrated. Besides KMK, only two companies worldwide currently manufacture such equipment.

KMK is, therefore, one of only a very few firms in the world that can provide laminated tube-making equipment for sale in the United States. KMK has sold such equipment worldwide, and its equipment enjoys a good reputation in the industry. KMK has numerous patents in countries around the world, including the United States.

Successful new entry into, or expansion within, the market for laminated tube-making equipment is difficult. To be successful, a new entrant must acquire or develop essential patented and unpatented laminated tube-making technology. Such technology is expensive to acquire or develop relative to the sales opportunity for the equipment.

3. Laminated Tube-Making Technology

The use of both patented and unpatented tube-making technology is essential to the profitable manufacture of laminated tubes and laminated tube-making equipment. There are only a few competing forms of such technology today, and KMK, ANC, and an affiliate of ANC's parent hold the rights to three of the four leading types of the technology worldwide.

Development of new competitive technology would require substantial investment with highly uncertain returns. New entry into the laminated tube-making technology market cannot reasonably be expected in the foreseeable future.

B. Illegal Agreements

In 1987, before entering into the agreements discussed below, both ANC and KMK were vertically integrated companies that owned rights to laminated tube-making technology, manufactured laminated tube-making equipment for use in the United States, and manufactured and sold laminated tubes in the United States.

In late 1987, KMK and ANC entered into several agreements, the purpose and effect of which was to eliminate competition between them in the North American laminated tube and tube-making equipment markets.

Pursuant to one of these agreements ANC purchased Swisspack Corporation, KMK's U.S. affiliate, for just under $15 million, although the laminated tube-making equipment covered by the transaction was valued at less than $5 million. As a result of its selling Swisspack to ANC, KMK exited the North American laminated tube market.

On the same day ANC acquired Swisspack, ANC and KMK entered into a License and Technology Assistance Agreement (''LTAA''). Pursuant to that agreement, KMK gave ANC an exclusive license to use KMK's laminated tube-making technology, and an exclusive right to but its tube-making equipment, in North America (''exclusivity provision''). In exchange, ANC agreed to license any laminated tube-making technology and buy all laminated tube-making equipment for use in North America only from KMK, and not to acquire or use any third party's laminated tube-making equipment or technology there. At or about the time of these agreements, ANC discontinued the manufacture of laminated tube-making equipment. By precluding KMK from selling laminated tube-making equipment or licensing laminated tube-making technology to others in North America, these agreements reduced competition in the North American laminated tube, laminated tube-making equipment, and laminated tube-making technology markets.

Several yeas after entering into these agreements, ANC was acquired by Pechiney SA, a French company, one of whose existing subsidiaries, Cotuplas SA, manufactures laminated tube-making equipment. Since being acquired by Pechiney SA, ANC has obtained substantially all its laminated tube-making equipment from the Pechiney SA subsidiary. Until very recently, however, ANC has enforced the exclusivity provisions of the LTAA against KMK, preventing KMK, its equipment, and its technology from competing with ANC in North America. KMK brought these agreements to the attention of the United States and cooperated in its investigation; after learning that the United States had commenced its investigation into these agreements, ANC agreed with KMK not to interfere with KMK's right to sell its laminated tube-making equipment or to license its tube-making technology in North America.

III

Explanation of the Proposed Final Judgment and Its Anticipated Effect on Competition

A. Terms

The proposed Final Judgment provides for injunctive relief that is intended to eliminate any residual anticompetitive effects of the restrictive agreements and other conduct challenged by the Complaint, and to prevent defendants from entering into similar agreements that would have the same effect. Section IV.A of the Final Judgment would terminate the defendants' 1987 LTAA and its exclusivity provisions, thus freeing KMK to sell or license its own laminated tube-making equipment and technology to anyone in North America. Section IV.B would bar defendants from collecting any payment from each other pursuant to the LTAA for the manufacture, sale, license, or use in North America of laminated tube-making equipment or technology.

Section IV.C of the Judgment would enjoin each defendant from entering certain agreements that restrict the right of any party (i) to use, license, or transfer in North America laminated plastic tube-making technology that the party owns or has the right to use at the time of the agreement, or (ii) to manufacture or sell laminated plastic tubes or tube-making equipment in North America, where such agreements likely would lessen competition among the parties. Such agreements would be barred if (i) at the time of the agreement both parties compete directly against each other in any of the three vertically related laminated plastic tube markets—*i.e.*, technology, equipment, or tubes, and (ii) the restraint involved applies to that common market.

For example, Section IV.C would prohibit either defendant from entering into an agreement with a tube-making equipment manufacturer that restricted any party from manufacturing or selling tube-making equipment in North America because both parties to such an agreement would be competitors in the tube-making equipment market. Section IV.C would not bar agreements that are essentially vertical in nature. For example, KMK and a company that does not manufacture tube-making equipment could enter into an agreement with KMK granting that company an exclusive right to use KMK's equipment in North America.

Finally, Section IV.C would require that defendants give the Department of Justice notice of, and provide certain discovery rights concerning, any acquisition of a laminated plastic tube competitor that included an agreement not to compete. This notification will enable the Department to investigate and prevent any anticompetitive acquisition, including any transaction that does not require notification under the Hart-Scott-Rodino Act, before it takes place, and thus would prevent these parties from engaging in anticompetitive non-reportable transfers such as their 1987 transaction.

B. Effect on Competition

The proposed Final Judgment will ensure that KMK will be able to compete in all three North American laminated plastic tube markets. KMK will be able to sell laminated plastic tubes, sell or lease tube-making equipment, and license or transfer laminate tube technology. Existing tube manufacturers will benefit from increased competition in the sale of laminate tube-making equipment and technology. New entrants into the North American laminated tube market now will have access to the requisite equipment and technology, which may lead to greater competition in the manufacture and sale of laminated tubes.

To preserve incentives to enter for those firms who may be reluctant to make the requisite investment without exclusive rights to technology or equipment, the injunction against exclusive licenses or otherwise restrictive agreements would apply only to those with persons already competing in the same level of the laminated tube market (technology, equipment, or tubes) as the defendant.

Similarly, to preserve important incentives to innovate, especially where a defendant is likely to be the primary source of the investment, the injunction would not bar that defendant from acquiring exclusive rights in laminated tube-making technology or equipment that is developed or marketed jointly with customers or suppliers, provided they are not also competitors in the same market level as that defendant.

The injunctive provisions also would exempt restrictions on sale to third parties of equipment made for a particular customer incorporating that customer's own technology.

Finally, prior notice to the Department of any acquisition by a defendant of a laminated tube competitor imposing non-compete obligations would ensure that the Department has an opportunity to get discovery and challenge any such arrangement deemed anticompetitive.

IV

Remedies Available to Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of such actions. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the Judgment has no *prima facie* effect in any subsequent lawsuits that may be brought against the defendants in the matter.

V

Procedures Available for Modification of the Proposed Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to Mary Jean Moltenbrey, Chief, Civil Task Force, U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Suite 300, Washington, DC 20530, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free, pursuant to a stipulation signed by the United States and defendants, to withdraw its consent to the proposed Judgment at any time prior to entry. Section VII of the proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for modification, interpretation, or enforcement of the Final Judgment.

VI

Determinative Materials/Documents

No materials or documents of the type described in section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), were considered by the United States in formulating the proposed Final Judgment. However, a letter, dated June 21, 1996, from plaintiff's counsel to counsel for defendant KMK, acknowledging KMK's right under current law to seek relief from the compliance provisions of Section VI in the event it believes a conflict has arisen between any request for information or documents under those provisions and foreign law, was considered determinative by KMK in agreeing to the proposed Judgment and is attached hereto as Exhibit A.

VII

Alternative to the Proposed Final Judgment

The alternative to the proposed Final Judgment is a full trial on the merits. While the Department is confident it would succeed in such a trial, this case involves difficult issues of law and fact, as well as obvious risks and costs to the United States, and success is not certain. The Final Judgment to which the parties have agreed provides virtually all the relief the Government sought in its complaint, and that relief will fully and effectively open the markets involved to competition.

Dated: June 25, 1996.

Respectfully submitted,

Thomas H. Liddle,

Scott A. Scheele,

DC Bar No. 429061, Attorneys, U.S. Department of Justice, Antitrust Division, 325 7th Street, NW, Washington, DC 20530.

U.S. Department of Justice

Antitrust Division

Liberty Place Building, Washington, DC 20530

June 21, 1996.

MJM:RJZ
60–3083–0001

C. Loring Jetton, Jr., Esq.,
Wilmer, Cutler & Pickering, 2445 M Street, N.W., Washington, D.C. 20037–1420, Fax (202) 663–6463.

Re: *KMK Maschinen AG/Laminated Tubes*

Dear Mr. Jetton: During our negotiations of a consent decree in this case, you suggested the possibility that a conflict could arise between the compliance provisions in Section VI of the proposed decree, which authorize the Assistant Attorney General to inspect documents or conduct interviews and to request written reports, and laws or orders of foreign governments, which appear to prohibit compliance with such provisions. Of course, we would attempt to work with KMK to avoid any such conflict in exercising our rights under Section VI. In the event that we could not reach agreement with you, however, KMK would be free to seek relief from the decree court from its obligations to comply with any Section VI request. Under the principles set forth in *Societe Internationale* v. *Rogers*, 357 U.S. 197 (1958) and its progeny, KMK would have the burden of showing that (1) compliance with the request is prohibited by foreign law, (2) KMK was not in any way responsible for creating the conflict between the judgment and foreign law, and (3) KMK has exercised its best efforts to obtain any waiver or permission from the foreign government and other relevant person(s) that would enable it to comply with the request.

Sincerely yours,

Robert J. Zastrow,

Assistant Chief, Civil Task Force.

[FR Doc. 96–16889 Filed 7–2–96; 8:45 am]

BILLING CODE 4410–01–M

United States v. AnchorShade, Inc., No. 96–08426, S.D. Fla., filed June 20, 1996

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the Southern District of Florida in the above-captioned case.

On June 20, 1996, the United States filed a complaint to prevent and restrain the defendant from violating Section 1 of the Sherman Act. The complaint alleges that the defendant conspired to fix the price of outdoor umbrellas sold by the defendant to dealers throughout the United States by obtaining agreements from dealers to maintain the minimum resale price as a condition of receiving outdoor umbrellas from the defendant, and permitting dealers to discount in order to meet competition, but only if they obtained written approval in advance from AnchorShade, Inc. As a result of the conspiracy, the resale price of outdoor umbrellas was fixed and competition among dealers of outdoor umbrellas was restrained.

The proposed Final Judgment prohibits the defendant from entering into or maintaining any unlawful agreement with any dealer that fixes the price at which the dealer may sell the defendant's outdoor umbrellas to consumers; adopting any resale pricing policy wherein the defendant (1) Will sell only to a dealer that prices the defendant's outdoor umbrellas at or above the defendant's suggested resale price, and/or (2) will terminate any dealer for pricing below such suggested resale price; and threatening any dealer with termination or terminating any dealer from pricing below the defendant's suggested resale price, and discussing with any dealer any decision regarding termination of any other dealer for any reason related to pricing below the defendant's suggested resale price.

Public comment is invited within the statutory 60-day period. Such comments