

# The Conservation of a Cartel Paradise

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*American Antitrust in the Netherlands, 1948-1958*

*Master Thesis Global History and International Relations*

Erasmus School of History, Culture and Communication

Supervisor: Prof. Dr. Ben Wubs

Co-Reader: Dr. Ferry de Goey

Arjen Groenheijde

314199

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## Preface

When I had to choose my study after my high school I deliberately chose to study history at the Erasmus University in Rotterdam. History always had my interest and the reason why I wanted to do it in Rotterdam and not another city was because the study at the Erasmus kept history the most in touch with the present: taking the present as a starting point and understanding the way it is influenced by the past. I always tried to fill in my electives in the same way. It is no wonder that the subject of this thesis also has a strong connection to the present. During recent years, many big companies (such as Google, Philips, Samsung, Intel, IBM, T-Mobile and others) were prosecuted by the EU or the US Antitrust Departments because they restricted competition by forming cartels or abusing market power. So, when the opportunity came along to write a thesis about this subject in the Netherlands in relation to the Marshall Plan I seized this opportunity with both hands. In retrospect, this might not have been such a good idea because it took me a couple of years to finally finish it. Although the subject is definitely very interesting, it demanded a great effort and I probably could have made it easier for myself to write a thesis about a different subject and finish a bit earlier. Despite the time I spent on it, I am proud of the way this thesis turned out and that it is finally finished.

The road to finishing my thesis was sometimes frustrating, not only for me but also for my direct surroundings: my family and my friends. I want to take the opportunity to thank those who put up with me in these times and supported me along the entire way: thanks to my mother, Andy and my sisters, JC PRINS and all the guys from the Argonauten. I also want to thank those who helped me along the way to get back on track and to never give up on it. In the first place my student advisors Evelien Hazewinkel and Barbara Thiels. Secondly Meike and Luuk whom, without knowing it, were also a huge support to keep going. My special thanks are to Edwin and everybody else at the company Enersea, they provided me with a more than pleasant place to finish my thesis.

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## 1. Introduction

In the period after World War II the United States emerged as one of the two new world powers with the Soviet Union being the other one. Europe was devastated by World War II and had to rebuild their countries and their economies. In that process the US gained influence in Europe by formally occupying Germany (together with France, Great-Britain and the Soviet Union) and with the European Recovery Program. The idea of the European Recovery Program (ERP) was to help Europe built up their economies and thereby creating political stability. The second reason was to push Western Europe away from communism, by the Americans considered as a great threat, not only for European stability but also for the capitalism and democracy as a whole.

The ERP was created in 1947 and after the approval of the US Congress the aid started in April 1948.<sup>1</sup> One way the United States used its influence was by trying to change the European economic system. In the beginning of the 20<sup>th</sup> century the US system developed a corporate form of capitalism, the European system was also a capitalist system but was very different compared to the US, which will be explained later in this thesis. Besides the different form of capitalism, European economies were largely ruled by domestic, and sometimes also international, cartels. These cartels restricted the competition and were able to dominate the European markets. The European governments not only accepted these cartels but most of the time also actively promoted them, in some countries cartels were even compulsory in certain sectors.<sup>2</sup> Unlike most European countries the US had developed a strong legislation against restrictive business practices such as cartels, monopolies and market power through concentration. This legislation was implemented with the Sherman Act in 1890, more commonly known as antitrust legislation.

After World War II it was one of the goals of US foreign policy to shape the European economic system after their example especially regarding its policy towards cartels. The US made taking measures against restrictive business practices one of the conditions to receive ERP aid.<sup>3</sup> Antitrust legislation in the US and the efforts of the US to implement the same kind of legislation in several European countries is researched many times before. Lacking is research to the implementation of American antitrust in the Netherlands. The research of American antitrust in the Netherlands is the main topic of this thesis. Thereby this thesis will fill this gap in research with regards to the implantation of US antitrust in Europe.

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<sup>1</sup> F. Inklaar, *Van Amerika geleerd: Marshall-hulp en kennisimport in Nederland* (Den Haag 1997), 18-20.

<sup>2</sup> W. Wells, *Antitrust and the formation of the postwar world* (New York 2002), 10-11

<sup>3</sup> Handelingen der Staten Generaal 1947-1948, kamerstuknummer 890 onder nummer 1, overeenkomst tot economische samenwerking tussen de Regeringen van het Koninkrijk der Nederlanden en van Verenigde Staten van Amerika.

## 1.1. Research Framework

### 1.1.1. Time Period

The time period that is chosen for this research are the years between the start of the European Recovery Program in 1948 and the implementation of the Economic Competition Act (Wet Economische Mededinging) in the Netherlands, which was created in 1956 and became operative in 1958.<sup>4</sup> The research starts in 1948 because American influence in Europe (and in the Netherlands) increased enormously with the ERP compared to the period before the war. In the ERP agreement the US made taking measures against restrictive business practices one of the conditions to receive aid.<sup>5</sup> The reason why the period of this research ends in 1958 is because of the implementation of the new Economic Competition Act in the Netherlands in the same year. This law replaced the old competition legislation created in 1941 during the German occupation of the Netherlands.<sup>6</sup> The Economic Competition Act of 1958 meant a change in antitrust legislation in the Netherlands but cartels were still not forbidden as long as they were registered in the Dutch cartel register. The act made it possible for the Dutch government to take actions against cartel agreements if they were considered to be against national interest. In practice little changed because the minister of the economic department seldom took any action.<sup>7</sup> This act remained in use for forty years and was only fully replaced by new antitrust legislation in 1998, after a few minor adjustments earlier in the 1990s. Because the Economic Competition Act remained in use until 1998 and policy was hardly changed almost during this time period, the implementation of the act forms a good demarcation for the time frame. By ending the research in 1958 it is possible to include the consequences the Economic Competition Act had on the Dutch economy in the research.

### 1.1.2. Space

The research focuses specifically on the Netherlands and the implementation of antitrust policy in the country. The Netherlands were regarded as a cartel paradise till the 1990s and this was also acknowledged by scholars in the Netherlands at that time.<sup>8</sup> The Dutch government did implement

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<sup>4</sup> W. Asbeek Brusse, R. Griffiths, 'Paradise Lost or Paradise Regained? Cartel Policy and Cartel Legislation in the Netherlands,' in S. Martin (Eds), *Competition Policies in Europe* (Amsterdam, 1998), 19; B. Bouwens, J. Dankers, 'The Invisible Handshake: Cartelization in the Netherlands, 1930–2000,' in *Business History Review* 84:4 (2010), 758.

<sup>5</sup> Handelingen der Staten Generaal 1947-1948, kamerstuknummer 890 onder nummer 1, overeenkomst tot economische samenwerking tussen de Regeringen van het Koninkrijk der Nederlanden en van Verenigde Staten van Amerika.

<sup>6</sup> Asbeek Brusse, Griffiths, 'Paradise Lost or Paradise Regained,' 17; Bouwens, Dankers, The Invisible Handshake, 756.

<sup>7</sup> Ibid., 20-22; Ibid., 759-760.

<sup>8</sup> H. de Jong, 'Nederland: het kartelparadijs van Europa?,' quoted in Asbeek Brusse, Griffiths, 'Paradise Lost or Paradise Regained,' 1

some antitrust policy after the war (1958) but the fact that the Netherlands adopted an effective and a strong antitrust legislation in 1998 with the creation of the ‘Nederlandse Mededingings Autoriteit,’ the Dutch equivalent of the American Antitrust Division of the Justice Department, is somewhat strange. After all the United States made the implementation of antitrust legislation a condition for receiving aid from the ERP and the Netherlands received over a billion dollars of aid.<sup>9</sup>

## **1.2. Research Questions**

The central topic of this thesis is the implementation of American antitrust legislation in the Netherlands and whether this implementation succeeded or not. The topic resulted in the following research question: To what extent did the US influence antitrust policy in the Netherlands? To answer the main question this thesis is divided into four sub questions. These are used to give a substantiated answer to the research question. Each sub question is answered in a separate chapter of this thesis, after which the main research question will be answered in the conclusion. The sub questions in this thesis are: What exactly is antitrust and how did it develop in the United States? How did the US influence antitrust legislation in Europe? How did the US influence antitrust legislation in the Netherlands? What was the Dutch reaction to the American antitrust policy?

### **1.2.1. Sources and methods**

To answer the research question a qualitative study is done to different secondary and primary sources. The thesis is divided in two parts: a study of secondary sources to answer the first two sub questions and a study of primary sources to answer the last two sub questions. In the first part this thesis provides a short overview of the American antitrust policy, the attempt to implement this policy in Europe after World War II and the success of this implementation, which is the subject of debate between several scholars. Starting with tracing the history of the American antitrust tradition and the European policy towards cartels before World War II. Thereafter, and most important, it will discuss the implementation of the American antitrust tradition in the Netherlands and the Dutch reaction on this policy in the second part of this thesis.

The main sources used in this thesis are documents related to American-Dutch relations and official Dutch government documents. The sources regarding the foreign relation between the United States (US) are available in the Roosevelt Study Centre (RSC) in Middelburg. The RSC has a large collection of microfilms relating to two centuries of Dutch-American diplomatic relations. This thesis will mainly focus on microfilms with documents regarding the European Recovery Program of which the RSC has a special collection. For official documents from the Dutch government this thesis depends on the collection of the National Archive of the Netherlands. Two archives were consulted

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<sup>9</sup> Inklaar, *Van Amerika geleerd*, 23.

for this research namely, the central archive of the Dutch Economic Department and the archives of the Dutch Department of Foreign Affairs between the period 1945-1954. Also, some other primary sources were used relating to the origins of the Marshall Plan and the Havana Charter.

### 1.3. Theoretical Concepts

#### 1.3.1. Antitrust Legislation

According to the American Antitrust Division of the Justice Department, antitrust legislation is designed to protect economic freedom and opportunity by promoting free and fair competition in the marketplace.<sup>10</sup> Antitrust legislation is roughly dividable in two parts: anti-cartel legislation and deconcentration of big businesses. Anti-cartel legislation is directed against agreements among independent enterprises that restrict competition. Deconcentration is directed against monopolistic features of big businesses that restrict competition. This is the case if there is an actual monopoly position or if the enterprise has such a big market share that its power, for example to set prices, restricts competition. In the US all legislation directed against restrictive business practices is called antitrust legislation. In Europe its often called (anti)cartel legislation, which is roughly the same. In this thesis both antitrust and cartel legislation are used when referring to legislation concerning restrictive business practices.

#### 1.3.2. Cartels

Cooperation between businesses is probably of all times, for example the guilds in the Middle Ages, but in the second half of the nineteenth century modern cartels emerged for the first time.<sup>11</sup> Many different definitions of cartels have been used over time. Wyatt Wells defines cartels as ‘formal agreements among independent firms to restrict competition; cartels operate on national as well as international scale.’<sup>12</sup> Thurman Arnold, head of the Antitrust Division of the American Justice Department between 1938-1943, defined cartels as ‘rings of producers or distributors who have acquired control over domestic or foreign markets by agreements to maintain prices or control production and distribution.’<sup>13</sup> The American Temporary National Economic Committee defined them as ‘an association of independent enterprises in the same or similar branches of industry, formed for the purpose of increasing the profits of its members by subjecting their competitive activities to some method of common control’<sup>14</sup> The Dutch researchers Bouwens and Dankers defined cartels ‘as

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<sup>10</sup> <http://www.justice.gov/atr/about/mission.html> (accessed 10-2-2016)

<sup>11</sup> W. Wells, *Antitrust*, 10; Drahos, *Convergence of Competition Laws and Policies in the European Community* (Den Haag, 2001), 3; Djelic, ‘From Local Legislation to global structuring frame, the story of antitrust,’ in *Global Social Policy* 5:1 (2005) 58.

<sup>12</sup> Wells, *Antitrust*, 4.

<sup>13</sup> Quoted in: R.F. Maddox, *The war within World War II: The United States and international cartels* (2001), 2.

<sup>14</sup> Quoted in: Maddox, *The war within World War II*, 4-5.



an agreement, either written or oral, among private, entrepreneurial sellers or buyers who are both financially and personally independent and who cooperate in fixing or influencing the prices or allocating territories, products, or quotas for a defined period.<sup>15</sup> Examining these definitions it can be concluded that most definitions are at the core the same but differ in formulation and what is included: only formal or also informal agreements, national or international and for what time period. Because all of the definitions above leave out certain aspects, this research uses the following definition to prevent any ambiguity: Cartels are domestic or international agreements, formal or informal, among independent private enterprises in a similar type of industry to limit competition or control prices, production and distribution.

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<sup>15</sup> Bouwens, Dankers, The Invisible Handshake, 752-753.

## 2. Cartels and Trust Policy in the United States, 1890-1945

The United States is probably the country with the oldest modern antitrust tradition. The first antitrust law dated back to 1890 when the Sherman Act was implemented. According to Wyatt Wells the technological advancement from 1870 onwards, especially the introduction of the railroads, created the opportunity to form big business entities that monopolized markets.<sup>16</sup> Marie-Laure Djelic notes that those big businesses also created large cartels with a number of gentlemen agreements about prices, market allocation and production to bridle competition.<sup>17</sup> The term antitrust derives from these mutual agreements between firms that created a sort of holding companies, called trusts, wherein the individual companies remained independent. These individual firm, or trustees, received certificates of these holdings which also institutionalised the cooperation by setting up a legal apparatus. The trusts controlled prices, investments, market allocation and quotas.<sup>18</sup> This chapter will discuss the origins of the American antitrust tradition thereby answering the following research question: What exactly is antitrust and how did it develop in the United States?

### 2.1. The Sherman Act and Clayton Act

The Sherman Act was created to protect small and medium enterprises in the US against the way those trusts aggressively used their power to curb competition. The small and medium enterprises were unable to compete against these trusts and the 'American way of life' was threatened. Small and medium enterprises, together with farmers, were struck by poverty because they could not compete.<sup>19</sup> They started the antitrust movement which revolved around the question to what extent were private businesses allowed to structure and control markets and at what point should the state intervene.<sup>20</sup> Another reason why certain Americans, including president Theodore Roosevelt, were afraid of big businesses and cartels was because they feared their economic and political power might destabilize existing political and social structures and corrupt the government and ultimately also democracy.<sup>21</sup>

The Sherman Act has several sections of which the first two are the most important:

§ 1: Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be

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<sup>16</sup> Wells, *Antitrust*, 28.

<sup>17</sup> M. Djelic, *Exporting the American model: the post-war transformation of European business* (Oxford, 1998), 24.

<sup>18</sup> A Wigger, *Competition for Competitiveness, the Politics of the Transformation of the EU Competition Regime* (Proefschrift VU Amsterdam, 2008), 104.

<sup>19</sup> *Ibid.*, 105.

<sup>20</sup> *Ibid.*

<sup>21</sup> Djelic, *exporting the American model*, 25; Wells, *Antitrust*, 30.

illegal. § 2 Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony.<sup>22</sup>

The act only declared trusts formed between businesses in different states illegal but had no restrictions on trusts inside individual states because of the two levels of jurisdiction in the political institutions of US. The act furthermore only focussed on agreements and trusts between businesses that were in the trade and commerce sector. Manufacturing companies fell out of its scope as did large individual firms with a lot of market power. During the first decade of the 20<sup>th</sup> century this changed because courts reinterpreted the Sherman Act, bringing individual companies in the scope of the Act. The case the supreme court filed against Standard Oil in 1911 set the precedent.<sup>23</sup> The supreme court distinguished between reasonable and unreasonable restraint of trade: reasonable restraint was when a company was due to its size much more efficient than others and therefore could steer the market to an extent; unreasonable restraint was when a company had the intent or purpose to exclude others from the market. In the case against Standard Oil, the supreme court ruled that the company was guilty of unreasonable restraint and had to be split up in a number of smaller companies.<sup>24</sup>

The prosecution of trusts resulted in a large merger wave between independent businesses to circumvent the Sherman Act and thereby creating a large oligopolistic market in the US.<sup>25</sup> The 1914 Clayton Act amended the Sherman Act to broaden its scope and also include mergers and acquisitions. The Clayton Act applied the rule of reason on mergers and acquisitions, meaning that the courts again should distinguish reasonable restraint from trade and unreasonable.<sup>26</sup> A merger was blocked when it 'substantially lessened competition.' This was not clearly defined and thus left room for interpretation in courts. As such the Clayton Act did not form a prohibition against economical concentration if competition remained intact and even created more merger waves.<sup>27</sup> According to Djelic:

In an irony of history, the fight for competition in the USA led to the emergence of large, integrated firms and contributed to the oligopolistic reorganization of American industries.<sup>28</sup>

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<sup>22</sup> The Sherman Act, [http://www.law.cornell.edu/wex/sherman\\_antitrust\\_act](http://www.law.cornell.edu/wex/sherman_antitrust_act) accessed 20-02-2017

<sup>23</sup> Wells, *Antitrust*, 31.

<sup>24</sup> Ibid.

<sup>25</sup> Djelic, *Exporting the American model*, 28; Wells, *Antitrust*, 31; Wigger, *Competition for Competitiveness*, 106.

<sup>26</sup> Djelic, *Exporting the American model*, 28-30; Wells, *Antitrust*, 32.

<sup>27</sup> Wigger, *Competition for Competitiveness*, 107.

<sup>28</sup> Djelic, 'From Local Legislation to global structuring frame,' 57.

Compared to cartels and trusts in the United States Europe was far more cartelized. Many of the big European businesses were also participating in large and powerful international cartels. In the interwar period, Europe had by far the largest share in world trade, around 70%, and of all the international trade 40-50% was under control of those international cartels.<sup>29</sup> Segreto and Wubs (between one third and 100%) and Wells (42%) use slightly different numbers but most agree of a number above 40%.<sup>30</sup> Because of this large percentage, US businesses were not able to compete with international cartels and the antitrust legislation prevented them to participate in these agreements. With the Webb-Pomerence Act of 1918 this changed for the American firms. The act made it possible to set up export associations and with these American businesses could compete with European cartels, in practice this meant they became participants in the international cartels.<sup>31</sup>

Besides the development of antitrust legislation Djelic also notes big and important changes in the structure of US businesses, which was partly caused by the antitrust legislation. She called this structural change the 'corporate revolution.'<sup>32</sup> This revolution lead to a new form of Capitalism that Djelic calls 'corporate capitalism' (see table 1). Property right law was changed in such way that stock ownership was made possible and certain states, beginning with New Jersey, also made it possible for businesses to hold stocks of other businesses. Ownership of businesses was transferred to newly created holding companies. With this new construction it was possible to partly circumvent the Sherman Act because these holdings were not regarded as trusts.

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<sup>29</sup> Djelic, M., 'From Local Legislation to global structuring frame, 58.

<sup>30</sup> Segreto, L., Wubs, B., 'Resistance of the Defeated: German and Italian Big Business and the American Antitrust Policy, 1945–1957,' in *Enterprise & Society* vol. 15, no. 2 (2014), 314; Wells, *Antitrust*, 25.

<sup>31</sup> Segreto, Wubs, 'Resistance of the Defeated,' 311; Wells, *Antitrust*, 17; Djelic, 'From Local Legislation to global structuring frame,' 59.

<sup>32</sup> Djelic, *Exporting the American model*, 30.

Table 1: National types of industrial production, a typology:<sup>33</sup>

	<i>Laissez faire</i> capitalism	Family capitalism	Organised capitalism	Corporate capitalism
Physical Structures	Small firms	Small/medium firms	Small/medium firms	Large firms
Ownership structures	Personal ownership	Personal ownership or partnership	Partnership or mixed forms*	Joint stock, public ownership
Organizational structures	Not formalised	Not formalised	Not formalised or functional	Functional or multidivisional
Governance Structures	Free markets	Loosely organised markets	Formally organised markets	Markets superseded, hierarchies

\* By 'mixed forms,' we understand here all those legal structures which are essentially crossbreeds of 'partnerships' and 'joint stock companies,' such as for example the German GmbH, the French SARL, or the *société en commandite*. Those forms are located somewhere in between personal and public ownership

The holding companies strived for increased productivity and efficiency, therefore they embraced technological innovations. With ownership changing from private hands to holding companies the management of businesses changed as well. The managerial function was introduced; instead of the owner having the daily responsibility, this responsibility was given to a manager who was an employee of the holding. The incorporation of businesses contributed to a merger wave and thereby also to the creation of the oligopoly of large businesses.

## 2.2. Franklin Delano Roosevelt and antitrust

As shown above the American antitrust legislation remained part of a debate because in the American political system court orders set precedents for future cases. Significant changes to the legislation were made with amending the Sherman Act with the Clayton and the Webb-Pomerence Act. But the American antitrust tradition went through significant changes and came to fruition during the terms (1933-1945) of the 32<sup>nd</sup> president of the United States, Franklin Delano Roosevelt.

### 2.2.1. Antitrust and the New Deal

To conquer the Great Depression of the 1930s he introduced the New Deal and with it the National Industrial Recovery Act (NIRA). Roosevelt thought that big businesses curbed the freedom of US citizens and that the ruinous competition between them partly caused and contributed to the depression.<sup>34</sup> During the NIRA antitrust legislation was put on hold and the economy and financial system were restructured. The NIRA regulated businesses, production, prices and labor according to

<sup>33</sup> Djelic, *Exporting the American model*, 19.

<sup>34</sup> Segreto, Wubs, 'Resistance of the Defeated,' 311; Wells, *Antitrust*, 35-36.

codes of conducts for each industry. According to Wells business men cleverly used the NIRA to create agreements and industry-wide organization that were quite similar to cartels and those were tolerated by the American government.<sup>35</sup> In 1935 the NIRA was ultimately banned because the Supreme Court proved it to be unconstitutional.

### **2.2.2. TNEC and the Antitrust Department**

During his second term Franklin Delano Roosevelt made a great turnaround regarding antitrust legislation. Roosevelt already said in his inaugural speech in 1933 that he wanted to fight business misconduct but was forced to put antitrust on hold during the depression. The fact that companies used the NIRA to create business agreements and cartels was something which Roosevelt strongly disapproved. In his second term his policy shifted towards the fierce fight against cartels he already promised during his inauguration, especially famous became his speech 'Curbing Monopolies' delivered to congress in 1938.<sup>36</sup> In that same year Thurman Arnold became head of the Antitrust Division of the Justice Department (created in 1933) and congress even created a new bureau for the fight against cartels and concentration: the Temporary National Economic Committee (TNEC). Arnold's and the TNEC's conquest against antitrust in the United States itself and also international cartels had several successes during last years of the 1930s and first years of the 1940s. Wells states that Arnold expanded his staff of lawyers from 58 in 1938 to 200 in 1940 and that the annually filed cases grew from 11 to 92.<sup>37</sup> Segreto and Wubs, using data from Neil Fligstein, also see an increase in the filed suits against US businesses involved in international agreements that violated the antitrust laws: in the period 1933-1937, thus predating Arnold's appointment and the TNEC, 30 cases were filed compared to 312 cases in the period 1938-1942.<sup>38</sup>

During the first years of war in Europe, 1939-1941, Arnold started various cases against enterprises in America that had ties with German and Japanese firms and allegedly impeded war preparations because of their involvement in international cartels.<sup>39</sup> Not only did international cartels impede the American war effort but the TNEC even concluded that the rise of Nazism and Hitler in Germany was made possible by (international) cartels and the support of commercial and industrial organizations.<sup>40</sup> Arnold believed that the war provided 'an opportunity to sweep our economy clear of restrictions on independent enterprise.'<sup>41</sup> He had some successes but was halted by the US

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<sup>35</sup> Wells, *Antitrust*, 35-36.

<sup>36</sup> Segreto, Wubs, 'Resistance of the Defeated,' 312.

<sup>37</sup> Wells, *Antitrust*, 40.

<sup>38</sup> Segreto, Wubs, 'Resistance of the Defeated,' 312.

<sup>39</sup> Maddox, *The war within World War II*, 11-33; Wells, *Antitrust*, 44-45.

<sup>40</sup> *Ibid.*, 3; *Ibid.*, 138-139.

<sup>41</sup> Quoted in: Maddox, *War within World War II*, 6.

government because the military departments and the War Production Board believed that his trials interfered with the production and mobilization for the war. From 1941 onwards the War Production Board suspended all antitrust laws till the end of the war. Arnold was transferred to a new position as a judge of the United States Court of Appeals for the District of Columbia Circuit in 1943, never to return to the Antitrust Department.<sup>42</sup> The apparatus that Arnold created remained in use with the same employees whom fostered the same ideas as Arnold. This apparatus helped to get antitrust on the agenda of American foreign policy in the last war years.

### **2.3. Cartels as impediment to the war effort**

Maddox and Wells also point out other effects of the involvement of US companies in international agreements. During the investigations of international cartels the antitrust department discovered all kinds of business agreements between American, British, French and German firms. These agreements sometimes troubled the war effort by patent dependence on foreign firms, production agreements and other agreements. Especially the patents were a problem because US firms were dependent on German patents and had to pay royalties on some products used in the war preparation and thus financing the enemy. The other way around German companies could use US patents because of the agreements. Another issue was the shortage of (raw) materials that were essential for building up the American war machine such as aluminum and (artificial) rubber. The consequence of these international agreements was that also a lot of business information was known by the enemy, even about US military production.<sup>43</sup> Fighting the international cartels was therefore added to American foreign policy.

### **2.4. Conclusion**

American antitrust legislation is regarded as the oldest in the world, developed in the late 19<sup>th</sup> century to protect small and medium enterprises against large trusts and cartels. This chapter aimed to explain what antitrust is and how it developed in the US. Antitrust legislation is legislation to protect companies and consumers against all forms of restrictive business practices. The development of the American antitrust tradition started with the implantation of the Sherman Act in 1890 but it remained subject of discussion until the late 1930s. It was first amended with the Clayton Act in 1914 to broaden the scope to include concentration and distinguish between reasonable and unreasonable restraint from trade. Then, in 1918, the Webb-Pomerence Act was enacted to allow American businesses to participate in international cartels. With the New Deal antitrust legislation was temporarily put on hold to conquer the depression. Antitrust legislation only gained real

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<sup>42</sup> Maddox, *War within World War II*, 32; Wells, *Antitrust*, 82.

<sup>43</sup> *Ibid.*, 17-21; *Ibid.*, 48-52.

momentum in the second term of Franklin D. Roosevelt during which the Antitrust Division of the Justice Department was created in 1933 and the TNEC in 1938. Especially Thurman Arnold, head of the Antitrust Division, became a strong component in the fight against cartels and trust. He expanded the Antitrust Division greatly and increased the prosecution of American businesses that participated in trusts. With the start of World War II the US suspended their antitrust legislation because it hindered the war production. The US also discovered that their war effort was hindered by international cartels. The US believed that the cartels in Germany made the rise of Nazism and Hitler possible. Fighting the German cartels and creating antitrust legislation abroad therefore became part of US foreign policy. Thus while national antitrust policy was put on ice, the US simultaneously started with the design of antitrust policies overseas.



### 3. American Antitrust Policy in Europe and Germany

In the period between the implementation of the Sherman Act and World War II the US developed a strong antitrust tradition as shown in the previous chapter. After World War II ended, the US wanted to liberalise world trade and to spread their antitrust tradition to Europe. An European antitrust tradition was almost non-existent at that time: their view on this topic was very different from the US and cartels proliferated throughout most European countries. This chapter will describe how the US tried to implement their antitrust vision and how Europe reacted. Thereby answering the following research question: How did the US influence antitrust legislation in Europe? To answer this question the first paragraph digs in the cartel tradition of several European countries. In the second paragraph the ideas the US had for Europe after the war are explained. The last paragraph describes the debate on how the US tried to influence antitrust legislation in mainly Germany and to what extent the US succeeded.

#### 3.1. Cartels and Trust policy in Europe, 1890-1945

Since the appearance of the modern cartel in the end of the nineteenth century they became part of the economic system of the countries in Europe. Cartels proliferated in Europe in the first half of the twentieth century, with a large increase during the interwar period. According to Wells this is mainly caused by the fact that cartels are usually formed in hard economic times and recessions; when the future is unpredictable cartels were an efficient and easy way to regulate markets and guarantee sales.<sup>44</sup> Although Bouwens and Dankers state that this idea is contested, more recent research showed that in economic good times cartels appear as well.<sup>45</sup> The interwar period, apart from the few successful years during the 1920s, was a period of depression: there was overproduction because companies expanded their capacity during the war efforts, but could not sell their products in peacetime. Most currencies were unstable because they were not attached to the gold standard anymore and therefore fluctuated heavily, and to make things even worse the big depression broke out in the end of the decade. At that time it was sometimes believed by scholars and government officials that cartels could stimulate the growth and stability of an economy and that this cooperation would lead to a faster spread of technology and eventually better prices for the consumers.<sup>46</sup> Therefore most European governments tried to stimulate cartels and also protect national economic interests with tariffs on import and subsidies on export.<sup>47</sup> The formation of cartels was so generally

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<sup>44</sup> Wells, *Antitrust*, 10.

<sup>45</sup> Bouwens, Dankers, *Tussen concurrentie en concentratie: belangenorganisaties, kartels, fusies en overnames* (Amsterdam 2012), 190.

<sup>46</sup> Djelic, 'Does Europe Mean Americanization? The Case of Competition', in *Competition and Change* 6(3), 237; Wells, *Antitrust*, 10-11.

<sup>47</sup> Wells, *Antitrust*, 11; Djelic, 'From Local Legislation to global structuring frame,' 58.

accepted by most European governments that cartels grew so strong that they controlled over 40% of international trade during the 1920s and 1930s, as shown in paragraph 2.1.

### *Germany*

All the research that has been done to cartels in Europe shows that Germany was probably the country that was most cartelized. Cartels were set up as 'Kinder der Not' (Children of Need) during the economic crisis of 1870 and were an effective way to control and stabilise the economy but already during the 1890s they lost their 'raison d'être' because Germany entered the Second Industrial Revolution which stimulated the economy. This resulted in growth and therefore companies did not need cartels anymore to survive.<sup>48</sup> Although losing their 'raison d'être' the high court in Germany declared cartels legally binding constructions in 1897 making it a powerful tool in business policy.<sup>49</sup> Schröter argues that in Germany the Second Industrial Revolution and the fact that cartels were ruled legally binding constructions contributed greatly to the cartelisation, because businesses used cartels as a tool to gain economic power.<sup>50</sup> According to Berghahn the German economy became the most cartelized economy in the world in the following years. He calculated that at the start of World War I Germany had around 700 cartels, in the 1920s that number grew to an estimate of 1500-2000 cartel agreements and peaked around 3000 agreements in the first years of Hitler's reign.<sup>51</sup> Although Djelic and Wiggers use slightly different numbers in their studies, they also show that Germany was a very cartelised economy.<sup>52</sup> In addition to the large number of national agreements the German businesses were also involved in international cartels. Because of their technological advancement, Germany's largest businesses also held a lot of patents that they used to create international cartel agreements. These businesses, including among others IG Farben, Carl Zeiss, Bosch, Vereinigte Stahlwerke, were so powerful that they were able to set prices allocate markets and set quota's in the international cartels.<sup>53</sup>

The power these businesses had over international agreements and American companies was in a way somewhat strange. Djelic notes that at the beginning of the twentieth century the German companies were mostly smaller firms especially when compared to their American counterparts. A measurement in two years, 1914 and 1930, showed that in both years 90% of the 200 largest businesses in Germany were significantly smaller than the 200 largest businesses in the

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<sup>48</sup> V. Berghahn, *The Americanisation of West-German industry, 1945-1973* (London, 1986), 20.

<sup>49</sup> H. Schröter, 'Cartelization and Decartelization in Europe,' *Journal of European Economic History* 25, no. 1 (1996), 133.

<sup>50</sup> Ibid.

<sup>51</sup> Berghahn, *The Americanisation of West-German industry*, 21.

<sup>52</sup> Djelic, 'Does Europe Mean Americanization,' 236; Wiggers, *Competition for Competitiveness*, 112-113.

<sup>53</sup> Maddox, *The war within World War II*, 59-80.

US.<sup>54</sup> According to Djelic the German economy could thus be characterized as a form of family capitalism. Djelic distinguishes four different capitalist systems of industrial production as shown in table 1 (paragraph 2.1). The corporate revolution that occurred in the US did also partly reach Germany but never had such a big influence as in the US. German businessmen tried to integrate parts of the American capitalistic style within their companies and also a variant of the holding company emerged in Germany. The German Gesellschaft mit beschränkter Haftung (GmbH) differed from the American holdings in the way that stocks were not freely transferrable and the main part of the property stayed with the owner or within families whom thus kept control over their businesses. The benefit of the GmbH was that because of the shares issued the companies got more capital to invest and grow. Besides the growth and development of German firms the German economy rapidly changed between the beginning of the 20<sup>th</sup> century until World War II due to the large influence of cartels. The cartels expanded enormously in numbers and making Germany the world's most cartelized economy.

Soon after the Nazi government came to power cartels and similar agreements were even made compulsory (*Zwang Kartell*), not only to protect smaller firms but also to regulate the entire economy.<sup>55</sup> Both developments contributed to power the larger German businesses could exert on international agreements. The Nazi government used cartels for their preparations of the war. Because of the existing ties between German businesses and their large production capacity the Nazi's not only could efficiently build up their war machine but was also able to distort the efforts of their enemies, in particular the US. This happened because German firms, like Carl Zeiss for example, had patents on instruments used on weapon systems and navy vessels that were used by American companies involved in building the US army. With paying royalties and supplying information about US systems these American companies provided their German counterparts with secret information about the US military that was passed on by the German companies to the Nazi government.<sup>56</sup> The Nazi's also were able to put political and economic pressure on Central and South-East European countries through the influence German companies had on international cartels.<sup>57</sup>

### *France*

Djelic typified the French economy as a form of family capitalism. The French companies were mostly small family businesses transferred by father to son and so on. Stability was the most important credo in these small businesses. Most of them provided the economic independence for the family

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<sup>54</sup> Djelic, *Exporting the American model*, 52.

<sup>55</sup> Djelic, *Exporting the American model*, 57.

<sup>56</sup> Maddox, *The war within World War II*, 59-80.

<sup>57</sup> Schröter, 'Cartelization and Decartelization in Europe,' 139.

but owning a business was also important for the social status, bankruptcy thus not only destroyed the financial means of a family but also its social status.<sup>58</sup> France also knew a few forms of partnership like the American holding companies.<sup>59</sup> The oldest form, *société en commandite*, dated back to 1808 and made it possible for sleeping investors to participate with limited liability. This legal act made the injection of capital, almost always by family and friends, a possibility and with it companies could grow. In 1925 the French version of the German GmbH was introduced, the *société à responsabilité limitée* (SARL). The SARL was directly modelled after the GmbH which thus meant that stocks were not freely transferrable and the main of the property stayed with the owner or within families whom thus kept control over their businesses.

Often these small businesses cooperated with other businesses through all kinds of informal agreements, which resulted in an informal form of cartelisation. These informal cartels were called *ententes*. There also existed more formal cartels, which were called *holdings*. The holdings were created to enlarge the financial opportunities of the companies, but businesses collaborating in holdings remained formally and financially independent. The French holdings were very formal and mostly had a central office and administration.<sup>60</sup> Nonetheless French business remained very small scaled throughout the first half of the twentieth century. Djelic notes that in 1950 85% of the industrial businesses in France had 5 employees or less, also the legal opportunity to form partnerships was only used in 22% of the businesses in industry.<sup>61</sup>

### *Italy*

In Italy the concentration of businesses and the abuse of market power was more common than cartels. According to Segreto and Wubs and Djelic Italy had a lot of cartels but the economy was not as cartelized as in Germany. Segreto and Wubs are mentioning pre-World War II data that stated that there were 144 national cartels and another 111 more local agreements. Djelic characterized the Italian economy as a typical form of family capitalism but both the study of Segreto and Wubs and Djelic point out that the Italian case was more complicated than in other countries. Although most businesses were family owned and also did have all kinds of agreements among each other the Italian government played a far more important role compared to other countries. After Mussolini came to power the state became via all kinds of holdings owner of roughly 15% of the industrial companies. The numbers and sectors in both studies are somewhat different but they still show that the state owned over 50% of the businesses in important sectors such as coal and steel, shipbuilding

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<sup>58</sup> Djelic, *Exporting the American model*, 46-48.

<sup>59</sup> *Ibid.*, 44-45.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*, 43-45.

and armament industry.<sup>62</sup> Besides state ownership concentration of Italian businesses played a larger role in the economy than the cartels, Segreto and Wubs state:

Looking at the concentration of Italian industry, the census of 1940 showed that more than 22 percent of all Italian employees and 38 percent of all horse power installed in Italy were concentrated in 816 plants with more than 500 employees, that is, 0,37 percent of the total. Between 60 and 70 percent of industrial assets belonged to stock companies, and less than hundred among them, 0,21 percent of the total, owned two-third of the total. Ownership concentration was even more impressive: 462.123 persons were owners of shares; out of them 851, that is, 0,18 percent, owned 54 percent of the total amount of those shares.<sup>63</sup>

### *The Netherlands*

The cartel and trust policy of the Netherlands will be discussed more extensively in chapter 5 of this thesis. What follows here is a short explanation to place the Dutch case in the European tradition. The Dutch economy was traditionally a small and very open economy in the beginning of the twentieth century. Most Dutch firms were small and medium sized (family) enterprises with the exception of a few large multinationals.<sup>64</sup> When using Djelic's typology of economic systems this combination of an open economy and mostly small and medium firms could best be characterized as a combination of *Laissez faire* capitalism and family capitalism. Free trade was important and the Dutch government did not interfere with business strategies as the above mentioned countries did. Because the Dutch economy was so open businesses had to compete not only within their own country but also with foreign businesses. According to Bouwens and Dankers this had the consequence that the Dutch businesses formed cartels and agreements to protect their markets and interests and that the government viewed this as a natural and legal way to organize businesses. By 1930 almost a third of the hundred leading Dutch companies were involved in a cartel agreement, international or domestic.<sup>65</sup> Segreto and Wubs state after analysing data from the American State Department that Dutch companies were participating in twenty international agreements.<sup>66</sup>

During the depression of the 1930s cartelization was at an all-time high and not only businessmen but also politicians and intellectuals thought that cartels could prove as an effective instrument to stabilize the market and prevent unemployment.<sup>67</sup> The Dutch government, eager to

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<sup>62</sup> Djelic, *Exporting the American mode.*, 60-61; Segreto, Wubs, 'Resistance of the Defeated,' 324.

<sup>63</sup> Segreto, Wubs, 'Resistance of the Defeated,' 324.

<sup>64</sup> Bouwens, B.; Dankers, J., 'The Invisible Handshake: Cartelization in the Netherlands, 1930–2000,' *Business History Review* 84:4 (2010) 753.

<sup>65</sup> Bouwens, Dankers, 'The invisible handshake,' 753-754

<sup>66</sup> Segreto, Wubs, 'Resistance of the Defeated,' 313

<sup>67</sup> Bouwens, Dankers, *Tussen concurrentie en concentratie*, 106.

counter the depression, created new laws that imposed trade barriers in the hope that they would stimulate the economy. Besides creating trade barriers, the government urged companies to work together, thereby stimulating cartelization. To regulate competition the first Dutch cartel legislation was implemented in 1935 which was called the Business Agreements Act (*Ondernemersovereenkomsten Wet*). The act was designed to limit the 'detrimental impact of fierce competition in the national market on profitability and employment.'<sup>68</sup> Under the act it was possible for the government to make existing business agreements compulsory for a whole sector or dissolve agreements. With Europe on the brink of war in the late 1930s, the government regulated the whole economy as preparation. Hoping to protect it during the coming war years, in which the Netherlands wanted to stay neutral. State bureaus were created to govern the different sectors of the economy.

The Netherlands eventually was conquered by Nazi Germany in 1940 and the occupier made clever use of the existing Dutch state bureaus and cartel agreements. In 1941 they changed the Business Agreements Act after German example, thus with the possibility of the government creating a *Zwang Kartell* and also cartels had to sign up in a confidential register.<sup>69</sup> Although this register is still confidential Bouwens and Dankers report that in 1942 there were 389 agreements in the Dutch industry and 195 in the commerce sector.<sup>70</sup> After World War II the Dutch government kept the German Cartel Act in use (until 1958) and also used the state offices to introduce a distribution system for most products. The government stimulated most agreements because it had positive effect on the productivity and stability of the economy. In the first postwar years the Dutch government strictly regulated prices and wages so consumers were not really disadvantaged by the cartel agreements. With the start of the European Recovery Program in 1948 the Dutch government was able to liberalise their markets again.

### 3.2. Planning the future of Europe

During World War II policy makers in the United States began to think about the way they wanted to reform Europe after the War. Highest on the agenda was probably the future of Germany. The first international meeting to discuss the future of Germany after the war was held in Teheran in 1943 but the three participating countries, the US, Great-Britain and the Soviet Union, could not agree on a unified policy. In the US the Secretary of the Treasury, Henry Morgenthau, developed the Morgenthau plan. He wanted to reform Germany rigorously: the plan was to dismantle the German army and the German industry to prevent building up a new war machine in the future, transform

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<sup>68</sup> Bouwens, Dankers, 'Cartelization in the Netherlands,' 755

<sup>69</sup> Asbeek-Brusse, Griffiths, 'Paradise Lost or Paradise Regained,' 17; Bouwens, Dankers, 'The Invisible Handshake,' 756-757.

<sup>70</sup> Bouwens, Dankers, *Tussen concurrentie en concentratie*, 119-120.

Germany into an agricultural country, divide Germany into two independent parts and also give some territories to Poland, France and Belgium as reparations.<sup>71</sup> The Secretary of War Henry Stimson and the Secretary of the State Department Cordell Hull, among others, thought that the Morgenthau plan, however, was too fierce and eventually the plan was changed to a lighter version in March 1945.<sup>72</sup> Germany would still be split up into two parts and pay war reparations in territory but making Germany a fully agrarian society was removed from the plan. They thought that Germany was too important for the European economy to make it an agrarian society, and saw German industry as the engine for the recovery of the European economy.

An important part of the plans for Germany's future was decartelization and deconcentration of the German economy. Many believed that German cartels and big businesses had played a big role in the rise and financing of Nazism and Fascism.<sup>73</sup> To prepare American economic policy in Europe after the war the State Department created twelve interdepartmental committees to coordinate this, and one of them was the Special Committee on Private Monopolies and Cartels headed by Dean Acheson. This subcommittee was formed in 1942 and both Segreto and Wubs as Wells agree on the goal of the subcommittee: to forbid restrictive business practices and find a way to implement antitrust legislation in Europe. Wells states that the ideal for the committee was that each European nation should prohibit restrictive business practices and that an international office would administer this effort and that international agreements should be governmental in character.<sup>74</sup> Segreto and Wubs, quoting a confidential paper of the State Department from 1943, even state that probably the only way that Europe could free itself from economic barriers that prevented free trade was through the formation of a European authority.

[...] an European authority whose power in the economic field which were superior in certain matters of international concern to those of individual nations, but which were exercised only to secure the general framework of European economic life. In this case the authority might establish uniform customs duties, labour standards, monetary and credit facilities, and commercial laws. Subject to the conditions thereby created, individual firms would operate in a free market.<sup>75</sup>

At the end of World War II, antitrust policy became one of the main pillars of American foreign liberal economic policy. The United States wanted Europe to adopt this policy and their economic ideology

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<sup>71</sup> Maddox, *The war within World War II*, 98-102.

<sup>72</sup> *Ibid.*, 111; Wells, *Antitrust*, 145.

<sup>73</sup> Maddox, *The war within World War II*, 3-4; Wells, *Antitrust*, 2.

<sup>74</sup> Wells, *Antitrust*, 115.

<sup>75</sup> Segreto, Wubs, 'Resistance of the Defeated,' 314.

of free trade and open markets. The US made taking measures against restrictive business practices therefor one of the conditions to receive aid from the European Recovery Program as will be further explained in the next chapter.<sup>76</sup> Antitrust legislation was important because the United States believed that free trade was stimulated by competition. The US wanted to achieve free trade because it was believed that it soothed conflict and also promoted peace.<sup>77</sup> Free trade thus would help to prevent disasters like the First and Second World War from happening.

### **3.3. Debate on the antitrust policy in Germany, 1945-1955**

After the war most European countries were under heavy influence of the US, the US provided them with help from the ERP and provided security against communism. The US wanted to use this influence to change the European economic system to a system like theirs and implement antitrust legislation moulded after American tradition. The implementation of the American antitrust tradition in Europe after World War II is subject of debate between several scholars as are the effects and success of this implementation. The American influence on this process is the most important point of debate and although most research focuses on Germany, other European countries (France and Italy) are also included by some scholars. The debate can roughly be divided in three sides which all have their own view on the American influence on the process, ranking it from essential to hardly significant. Because most literature is about Germany, this will be used as example. Furthermore, this debate is of importance because in the next chapters this thesis will try to give the case study of American antitrust in the Netherlands a place in this debate.

#### **3.3.1. American Success**

In his study of antitrust in the post war world Wyatt Wells concludes that although the antitrust drive had a small bureaucratic base in the US it succeeded to spread it over Europe in the first decades after World War II.<sup>78</sup> Wells argues that in the eyes of many Americans the enormous growth of Germany's industry created a drive to create monopolies, seize other markets and contributed to the formation of the absolutist political structure. The industry also partly financed the Nazi's, had control over large international cartels and helped to build the war machine. To prevent a new possibility of a powerful and imperialistic Germany not only decartelization was necessary but also deconcentration of the big businesses. Although these ideas were controversial, US policy toward an occupied Germany did reflect these ideas.<sup>79</sup>

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<sup>76</sup> Handelingen der Staten Generaal 1947-1948, kamerstuknummer 890 onder nummer 1

<sup>77</sup> Wells, *Antitrust*, 108.

<sup>78</sup> *Ibid.*, 211-213.

<sup>79</sup> *Ibid.*, 138-140.



Especially members of the Decartelisation and Deconcentration branch of the American Military government carried these ideas and wanted to reorganise the German economy and eradicate the existing cartels and large business concentrations. The execution proved very difficult; not only was this view contested inside the American Military Government (OMGUS: the government that administrated the US part of occupied Germany), Germany was also spilt up in four occupation zones controlled by the US, Great-Britain, France and the Soviet Union. The occupational powers could make their own policy in their zones and were divided on the deconcentration and decartelization issue. The Soviet Union was in favor for a hard action and wanted to deconcentrate 100 large companies (3000 employees, 25% market share and a turnover of 25 million mark). The US was less radical and wanted to deconcentrate 61 very large companies (10000 employees, 30% market share and 50 million turnover). The British were most beneficial for the Germans and proposed only 19 firms for deconcentration and a ban for German firms to participate in international cartels.<sup>80</sup> The only firm that the Allies immediately agreed on deconcentrating was the chemical giant IG Farben. But also this deconcentration process sparked a lot of discussion.

According to Wells a major breakthrough occurred in early 1947 with the merger of the British and American zone and the creation of the Bipartite Decartelization Commission (BIDEC). This commission issued a statute which prohibited excessive concentration, cartels, monopolization and other forms of restricting business practices. The law made businesses with more than 10.000 employees a *prima facie* case for deconcentration, except IG Farben, the big coal and steel companies and banking sector which were not under the control of the BIDEC.<sup>81</sup> The decartelization had almost immediate effects, terminating over 1100 (cartel) agreements by the end of 1948, but deconcentration proved a far more difficult case.<sup>82</sup> Not only because the British were still reluctant to deconcentrate and felt that the Cartel agreement represented a minimum requirement for the US and a maximum for them.<sup>83</sup> But more because the Soviet union cut their zone loose and this zone became increasingly communistic. The US was afraid that communism might spread to their zones and the rest of Europe. The US became aware that Germany was needed as an ally and a barrier against communism. This made the economic policy difficult: Germany needed a strong economy and too much deconcentration might cripple it.

Deconcentration started with 5 companies: Bosch, Siemens, Vereinigte Kugellager Fabriken, Henschel & Sohn and Metalgesellschaft. Deconcentration of these firms were only partly concluded.

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<sup>80</sup> Wells, *Antitrust*, 150.

<sup>81</sup> Djelic, *Exporting the American model*, 105; Maddox, *War within World War II*, 130-132; Segreto, Wubs, 'Resistance of the Defeated,' 11-12; Wells, *Antitrust*, 154.

<sup>82</sup> Wells, *Antitrust*, 154.

<sup>83</sup> *Ibid.*, 157.

Bosch was deconcentrated, Siemens got away by delay and the fact that their headquarters were in Russian territory, VKF which produced ball bearings sold half of their production capacity to a competitor, Henschel&Sohn was excepted because it was one of the few firms that made much needed trains and Metalgesellschaft had to end their alliance with two other firms (DEGUSSA and Henkel).<sup>84</sup> After these five companies the head of OMGUS, general Lucius Clay, thought that further deconcentration was unadvised and personally ended deconcentration and made a severe cut in the staff of the BIDEC. This caused upheaval between the antitrust department and Clay and an external commission under leadership of Garland Ferguson investigated the case. The report of the Ferguson commission had a positive outcome for the cartel commission and the personnel was reinstated. Soon after the report Clay retired and John McCloy took his office.

McCloy made no radical changes to the deconcentration program, he wanted to establish a competitive economy after US example and not to dismantle the economy by the deconcentration of every large concern. Deconcentration went on in the banking sector and the cases of IG Farben and the large coal and steel companies. IG Farben was split in three large companies (Bayer, BASF and Hoechst) and a few smaller firms.<sup>85</sup> In the coal and steel sector deconcentration went on and the Schumann plan eventually resolved the cartel issue with the formation of the European Coal and Steel Community.<sup>86</sup> McCloy soon realized that Germany had to be involved in policy making in order for it to be successful. This became more important with the creation of the Federal Republic of Germany in 1949. The first economics minister of the German Republic was Ludwig Erhard whom was in favor of free markets and supported American antitrust policy, he even sent some of his officials to the US to meet Thurman Arnold and others of the antitrust division.<sup>87</sup> Erhard was able to draft antitrust legislation that was accepted by the German parliament in 1957. This legislation did not totally ban cartels and large business concentration but it roughly followed American antitrust.<sup>88</sup> Wells believes that the US was responsible for the transformation of the worlds cartelised economy into an oligopoly with an antitrust legislation styled after American example.<sup>89</sup>

### 3.3.2. National Success

Volker Berghahn argues that the change of the German economic system and the implementation of antitrust legislation was mainly endogenous development that took many years to complete.

According to Berghahn the US had an influence as formal occupier but that influence is not to be

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<sup>84</sup> Wells, *Antitrust*, 158-159.

<sup>85</sup> *Ibid.*, 168-170.

<sup>86</sup> Segreto, Wubs 15; Wells, *Antitrust*, 163.

<sup>87</sup> Wells, *Antitrust*, 166.

<sup>88</sup> *Ibid.*, 166, 174.

<sup>89</sup> *Ibid.*, 174.

overestimated. Berghahn emphasises on the (business)elites that were in power in Germany after World War II. He sees that many pre-war elites returned to their posts after the war and the denazification. Denazification after the war removed large quantities of managers, bankers and other important people which played a role during the Nazi era from their positions. Some of them were trialled but large groups were released after a period of imprisonment and investigation. During the denazification these persons were replaced by persons which have shown neither a strong commitment to nor a rejection of the Hitler regime.<sup>90</sup> So called door-keepers made it possible for the old elites to find their way back to positions of power after most trials were over.<sup>91</sup> Old friends, family and acquaintances were soon back at their posts, although sometimes in different companies. Important to note is that some people that were qualified as Nazi sympathiser by the allies were not seen as such by the German elites and the other way around. The level of one's misconduct thus determined whether one could return to the elites. One could be accepted, discarded and the third option was that one lost a spot for a permanent position but could still be active as consultant.

The importance of the returning of the old elites to their former power positions was that these elites also fell back on their old economic habits. They started up new branch organisations and business interest associations, similar to those existing before the war. These organisations had a large influence in the industrial and Ruhr sector and thereby also on the economy and politics. This influence was the reason that the Allied authorities were at first reluctant to allow such organisations, the German elites circumvented this by starting small regional organisations which met each other regularly and eventually were allowed to expand to larger regions or sectors after the merger of the occupation zones.<sup>92</sup>

As mentioned before the Allied forces wanted to reform the German economy to get rid of excessive concentration and cartels. In their effort they met a lot of resistance from the German elites whom felt that the allies wanted to destroy Germany's future. Instead the opposite was often true: Allied administrators, businessmen and other personnel saw the devastation of the war and mostly sympathised with the Germans. Kick starting the Germany economy was important to them to keep communism from spreading to western zones and to lower the costs of the occupation. At the same time the economy was kick started, the Allies imposed a ban on all cartel agreements and started the deconcentration of IG Farben and the Coal and Steel trusts. German politicians wanted a say in the matter but this was denied by the allies. Despite that a group of German economists, chaired by Paul Josten, started to work on a first draft of German antitrust legislation which was

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<sup>90</sup> Berghahn, *The Americanisation of West-German industry*, 50.

<sup>91</sup> *Ibid.*, 60.

<sup>92</sup> *Ibid.*, 65.

already completed in 1947 and Ludwig Erhard completed his own draft in 1948.<sup>93</sup> Because of the resistance the allies soon realised that in order for the economic reforms to stick, the Germans had to develop economic policy on their own and the same goes for anti-trust legislation. The advice from the Bipartite Control Office to Erhard was to shape the anti-trust laws after the Havana Charter that was adopted in 1948. A charter created by the US in an attempt to liberalise the world trade.<sup>94</sup> Erhard appointed Roland Risse as head of the German Cartel Office, Risse had a background in the industry and knew many of the elites. The resistance from the industrialists was fierce and they continually commented on Erhard's and Risse's work. At the same time the Allies were also divided over the anti-trust legislation; the US was strictly against cartels but the French thought that cartels also had positive aspects, the British were more reserved and passive.<sup>95</sup> The German industry felt that if they could stall the legislation the Americans would lose their leverage because they had to leave Germany at some point. Erhard knew this and sent some of his officials to the US under the flag of the ECA (Economic Cooperation Administration) to get accustomed with the US antitrust tradition. At the same time, many German industrialists went on study missions to the US with ECA funding.

In 1949 the Federal Republic of Germany was established, which meant that the US lost most of its influence. Therefore Erhard tried so hard to get antitrust legislation on the agenda of the Federal Republic as soon as possible. In 1952 the (11<sup>th</sup>) draft on antitrust legislation was accepted by parliament and passed on to the Bundestag. Here a committee was formed but they were not ready with their preparations on the legislation before the elections of 1953. Eventually a watered down version was finally accepted in 1957.<sup>96</sup> But this was only after considerable fights between Erhard and the president of the Bundesverband der Deutschen Industrie (BDI) Fritz Berg. German industry wanted *Missbrauchgesetzgebung* (abuse legislation) where Erhard's drafts were a direct *Kartellverbot* (prohibition).<sup>97</sup> This was only possible after Erhard convinced a smaller fraction of BDI members of his case and several concessions from both sides. Berghahn thus says that although the Allied forces pressed for anti-trust legislation they were divided on the issue and never pressed through. The creation of anti-trust legislation in Germany was because of Germany's own commitment to the issue.

Segreto and Wubs agree with Berghahn that the US not succeeded to implement their antitrust legislation in Europe but that the success of antitrust depended mostly on the willingness of European countries. In their article they use Germany and Italy as examples because here '*economic*

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<sup>93</sup> Berghahn, *The Americanisation of West-German industry*, 156.

<sup>94</sup> *Ibid.*, 157.

<sup>95</sup> *Ibid.*, 165-166.

<sup>96</sup> *Ibid.*, 174.

<sup>97</sup> *Ibid.*, 177.

*and political conditions seemed to appear to the US administration most favourable to their initiative.*<sup>98</sup> The US made liberalising world trade one of their main pillars in foreign policy and they used antitrust as an instrument. Although the US was harsher on Germany it met the most resistance to antitrust legislation in Italy. Segreto and Wubs mention the decartelisation and deconcentration of the German economy, the work of the BIDEC, Clay and also his collision with the decartelisation branch. But contrary to Wells they see a clear fade out of the Allied decartelisation program after the deconcentration of IG Farben and the start of the European Coal and Steel Community.<sup>99</sup> Hereafter the Ludwig Erhard and the Ordo-Liberals took over and started drafting antitrust legislation for the Federal Republic of Germany. The final draft was eventually accepted in 1957, after a lot of opposition of the German industrialists whom were opposed to the antitrust program. The new law banned cartels but left room for concentration, which was also an important part of American antitrust drive. The American antitrust plans were thus never realised because of German resistance.<sup>100</sup>

In their article Segreto and Wubs argue that in Italy the US encountered even more resistance to their efforts to implement antitrust legislation than in Germany. Italy was not as cartelised as Germany but according to the US a substantial part of the Italian economy was controlled by cartels and big businesses. The Italian government wanted to cooperate with the US in 'freeing international trade from artificial restrictions.' The US and Italy eventually reached an agreement in 1948 which stated that the Italian government should take measures against restrictive business practices: international cartels and monopolies that had effect on European recovery.<sup>101</sup> The US could not impose their antitrust system or threaten to cancel ERP funds if legislation was not implemented because then Italy might resort to communism.<sup>102</sup> Despite several drafts, legislation never reached parliament. The Italians even resorted to more state ownership, especially in sectors that needed high investments. Italian entrepreneurs never fought for antitrust legislation because they wanted to keep high margins and a steady income over efficiency and productivity. Also the large political parties blocked competition and as such the Italian economy stayed a mixed economy with a large state owned part and a private part.<sup>103</sup> An attempt to create antitrust legislation was made in the 1950s which resulted in the creation of a parliamentary commission. This commission investigated the role of restrictive business practices between 1961 and 1965. The conclusion was

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<sup>98</sup> Segreto, Wubs, 'Resistance of the Defeated,' 308.

<sup>99</sup> Ibid., 321.

<sup>100</sup> Ibid., 322.

<sup>101</sup> Ibid., 324-325.

<sup>102</sup> Ibid., 327.

<sup>103</sup> Ibid., 328-329.

that the data was difficult to evaluate and it was not possible to conclude that the Italian economy was under control of trust, cartels and monopolies.<sup>104</sup> The fact that Italy now has antitrust laws since the 1990s is a result of the creation of the EU, the Italian antitrust agency was set up in 1990. Segreto and Wubs call the Italian resistance to (American) antitrust a prolonged rejection, because they eventually gave in during the 1990s.<sup>105</sup>

### 3.3.3. Cross-National Transfer

Djelic argues that the change of economic system and implementation of antitrust legislation was only possible because of the combination of American influence and pressure and the will of certain institutions and persons in these countries that wanted to change their system. Djelic works with a model to determine if cross-national transfer of an economic system from one country to another has a chance of succeeding. She believes that there are certain conditions, mechanisms and obstacles that determine the success of adopting another economic system. The conditions to be met in order for a country to be able and willing to change their economic model are a sense of national crisis caused by a traumatic disruption (in this case World War II), a geopolitical dependence on another country and the availability of a (superior) foreign model and the existence of a cross-national network.<sup>106</sup> Mechanisms for cross-national transfer can be divided in three types: mimetic, coercive and normative. Djelic uses this classification based on the terminology in the study of DiMaggio and Powell.<sup>107</sup> Djelic also describes certain obstacles for cross-national transfer. The first obstacle is that there has to be a group of persons that is willing to and has the capacity to mobilise the country. The second is that state institutions have to be porous enough to adopt a foreign model. Lastly the infrastructural power of the state might be an obstacle: strong institutions that can be controlled by the opposition can stop or slow down the transfer, on the other hand weak institutions might not be able to crush the opposition.<sup>108</sup>

Djelic thus says that not solely the pressure and influence of the US in Europe caused an Americanisation of the economic system but that several factors within a country have a large influence on the process. This is contrary to Wells who's study of Germany after World War II argues that the American Military Government was responsible for the change of the German economic system. Djelic argues that besides the US the German ordo-liberals also had a large influence in shaping the new economic system, whereas Berghahn saw the ordo-liberals as almost the sole reason antitrust legislation was implemented in Germany. Segreto and Wubs are more on

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<sup>104</sup> Segreto, Wubs, 'Resistance of the Defeated,' 330.

<sup>105</sup> Ibid., 331.

<sup>106</sup> Djelic, *Exporting the American model*, 65-69.

<sup>107</sup> Ibid., 131.

<sup>108</sup> Ibid., 223-226.

Berghahn's side, arguing you need a fertile soil for these kind of big changes, and there was a lot of resistance in Germany to US plans.

### 3.4. Conclusion

The antitrust traditions in the US and Europe differ greatly. Whereas the US developed an antitrust legislation since the enactment of the Sherman Act, most countries in Europe accepted restrictive business practices as normal parts of their economy. Cartels were stimulated in Germany and the Netherlands, concentration of big businesses was also common in Germany and in Italy the state itself was the greatest contributor to restrictive business practices via ownership of companies through all kind of holdings. This chapter aimed to explain how the US tried to implement antitrust legislation in Europe. When the US started planning for the future of Europe after World War II they made the implementation of antitrust legislation in Europe one of the pillars of their foreign policy. Deconcentration and decartelisation of the German cartels had priority according to the US because of the power the German cartels and big businesses had on the world market, as well as the role they played during and in preparation of the war. In the process of deconcentration and decartelisation the US soon realised that by taking measures too far they might cripple Europe, because the German industry was the engine of the European economy. The US influence on the deconcentration and decartelisation of certain German companies is, in itself, not a contested idea. There is, however, a debate about the creation of German antitrust legislation, namely: was the implementation of antitrust legislation solely an American achievement, was it a German achievement or was it implemented through a system of cross-national transfer? What this chapter showed is that the US tried to implement their antitrust tradition in Germany through their formal occupation. Issuing the decartelisation and deconcentration immediately after the war was relatively simple but the implementation of legislation proved a bigger hurdle that took more time. West-Germany was already independent when the antitrust legislation was implemented and the debate shows that this was not per se an American success. In other European countries, the US had even less influence than in Germany, so they tried to implement their antitrust tradition by making it a condition for receiving aid from the European Recovery Program. But as the Italian example showed this proved to be difficult because of the resistance a country could put up against American antitrust. Cancelling ERP aid was not always an option in such cases. The examples of Germany, Italy, and later in this thesis the Netherlands, show that the resistance of these countries to the American influence on antitrust legislation was severe, and that the creation of a form of antitrust legislation was foremost a national achievement rather than an American achievement or an achievement through cross-national transfer.

## 4. American antitrust in the Netherlands

After World War II, Europe was devastated and dearly needed help for the reconstruction of their economies and infrastructure. In the Netherlands the devastation was in retrospect not as bad as the damage that was estimated in the months directly following the war. Even at that time the situation in the Netherlands better than officials expected. According to Klemann the official numbers from the Dutch Central Agency for Statistics (CBS) are unreliable and provide an image of heavy destructions and a severely damaged economy.<sup>109</sup> Most older studies about the Netherlands during the wartime use these statistics and thus are outdated. In his study about the Dutch wartime economy Klemann used other sources and new information to calculate the real damage. He argues that the Dutch economy even grew the first years of the war and profited from investments and German orders resulting in a boom. Only in the last war years the Netherlands severely impoverished. Most damage was done in the transportation sector: harbours and infrastructure were destroyed also rolling stock and cars were transported to Germany. Other sectors such as the industry, small and medium enterprises and the service sector remained relatively unaffected. The damage that the war had done to the Dutch economy was thus better than expected and not nearly so severe as for example in Eastern Europe or Russia.<sup>110</sup> Inklaar explains in his dissertation that one reason why the estimates of the destructions shortly after the war were so much higher than the reality was because the Dutch government wanted to receive as much aid from the European Recovery Program as possible.<sup>111</sup> Although the damages were not as high as expected, shortages became the real problem. Shortages of raw materials, food and dollars. To get production of all kinds of goods running again raw materials were needed. Raw materials could only be imported from the US because the European infrastructure was still damaged. The Dutch dollar reserve was depleted which hindered the import raw materials. There was also nothing to export to earn the much-needed dollars. Food shortages developed due to the fact that farmers could not get anything satisfactory in exchange for their goods and produced only what they needed. The ERP provided a solution for this problem.

With the ERP the US also gained direct influence in the Netherlands as will be described in this chapter. This influence was a consequence of the terms and conditions on which the aid was provided. In this chapter one of these conditions is discussed in particular: measures the government of the Netherlands had to take against restrictive business practices. Focussed on the American point

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<sup>109</sup> H.A.M. Klemann, *Nederland 1938-1948, Economie en samenleving in jaren van oorlog en bezetting* (Haarlem 2002), 24

<sup>110</sup> H.A.M. Klemann, S. Kudryashov, *Occupied Economies, an economic history of Nazi-occupied Europe, 1939-1945* (London, 2012), 315-324; Inklaar, *Van Amerika geleerd*, 433-438.

<sup>111</sup> Inklaar, *Van Amerika geleerd*, 433-434.



of view on this subject this chapter tries to answer the following sub question of this research: How did the US influence antitrust legislation in the Netherlands? The first paragraph will explain the origin of the European Recovery Program and its construction. Following is a paragraph which will discuss the conditions of the ERP in the Netherlands. The chapter will conclude with a paragraph about the American policy in the Netherlands and how antitrust fitted herein.

#### **4.1. The Marshall Plan**

To get a good understanding on the American point of view and policy a short overview on the origin and construction of the ERP is necessary. The origin lies in a speech that was given by George C. Marshall, at that time Secretary of State of the US, on June the fifth 1947 at Harvard University. His speech would form the start of what many consider as the most successful foreign program of the United States upon today: the European Recovery Program, better known as the Marshall Plan. George Marshall delivered his speech during the afternoon meeting of the Harvard Alumni Association for a crowd of approximately 15.000 people. In his speech George Marshall addressed the problems that Europe faced because of the aftermath of World War II. Although the war was already over for two years, Marshall was aware that the (economic) situation in Europe was critical. He explained that the war disrupted whole economies and societies. 'The visible destruction was probably less serious than the entire dislocation of the entire fabric of the European economy.'<sup>112</sup> The war preparation and later the maintenance of the war effort by the Nazi government damaged economies on multiple levels: not only were companies and institutions destroyed or nationalized, machinery was damaged or shipped off to Germany, the infrastructure was severely disrupted and there was a lack of capital, raw materials and trust in national currencies. Marshall feared that 'the modern system of the division of labour upon which the exchange of products is based is in danger of breaking down.'<sup>113</sup> He urged the US to help with the rehabilitation of Europe:

It is logical that the United States should do whatever it is able to do to assist in the return of normal economic health in the world, without which there can be no political stability and no assured peace. Our policy is directed not against any country or doctrine but against hunger, poverty, desperation and chaos. Its purpose should be the revival of a working economy in the world so as to permit the emergence of political and social conditions in which free institutions can exist.<sup>114</sup>

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<sup>112</sup> George C. Marshall foundation, The remarks by the Honorable George C. Marshall, Secretary of State, at Harvard University on June 5, 1947, 1.

<sup>113</sup> Ibid.

<sup>114</sup> Ibid., 2.

Marshall realized that creating a unilateral solution would not be effective. His argument was that countries in Europe should come up with a plan and requirements:

The initiative, I think, must come from Europe. [...] The program should be a joint one, agreed to by a number, if not all European nations.<sup>115</sup>

After his speech at Harvard his ideas gathered momentum really quick. The next day the British Foreign Minister Ernest Bevin contacted his French colleague Georges Bidault and together set up a meeting in Paris on June 17<sup>th</sup> to discuss the ideas of Marshall.<sup>116</sup> This meeting left bad blood in the Soviet-Union which felt excluded. A second meeting was held on June 27<sup>th</sup> with the inclusion of the Soviet-Union in the person of the foreign minister Molotov. The three states clashed several times on the creation of an all-embracing help program. Talks became more difficult when the US on June 29<sup>th</sup> declared that an 'all-embracing program could not be accepted as a basis of cooperation among European states.'<sup>117</sup> The European nations first had to make a common effort for an aid program themselves. Molotov and his delegation walked out on the conference on 2 July because the plan 'would lead to interference in the internal affairs of European counties.'<sup>118</sup> Russia did not want any American interference in their internal affairs nor any capitalistic influences and therefore decided not to participate. Molotov even labelled the Marshall Plan as American economic imperialism.<sup>119</sup> On 12 July another conference was held at Paris where all other European countries that wanted to participate met. With the Soviet-Union walking out on the Marshall Plan all other Soviet-dominated countries quickly fell into line and did not attend the conference.<sup>120</sup> The US and the conference held the possibility to participate open but none of the Eastern European countries nor the Soviet-Union used this gesture. Europe from that point onward was clearly split into East and West. The conference prepared a report that was submitted to the US on 22 September of the same year. Creating the unified plan that was presented in the report required some pressure from the US and huge effort from the participating countries whom all firstly thought about their own national interests.<sup>121</sup> When the European countries finally reached agreement they estimated that at least 19 billion dollars of aid were needed.

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<sup>115</sup> G. Marshall, speech at Harvard, 3.

<sup>116</sup> <http://marshallfoundation.org/marshall/the-marshall-plan/marshall-plan-speech/> (16-1-2017).

<sup>117</sup> T. Kalijarvi, *Introduction and Chronology of the Marshall Plan, from June 5 1947 to November 5 1947*, (US Library of Congress, legislative reference service 1947) 11.

<sup>118</sup> *Ibid.*, 12.

<sup>119</sup> <http://marshallfoundation.org/marshall/the-marshall-plan/marshall-plan-speech/> (16-1-2017).

<sup>120</sup> Kalijarvi, *Introduction and Chronology of the Marshall Plan*, 14. <http://marshallfoundation.org/marshall/the-marshall-plan/marshall-plan-speech/> (16-1-2017).

<sup>121</sup> Inklaar, *Van Amerika geleerd*, 19.

In the meantime on June 22<sup>nd</sup> the US installed several committees to investigate the effects of aid on the American economy and to what extent the aid could be provided.<sup>122</sup> In the US there was a lot of scepticism about the aid for Europe. Marshall and others made it apparent to Congress that Europe was an important partner economically as well as politically. It was feared that Europe would resort to communism without American aid. This would mean a big loss for American companies, as Europe was an important export market. With more and more Eastern European countries falling to the Soviet Union and communist parties gaining strength in Italy and France the threat became more imminent. US Congress remained critical but the European Recovery Program was finally approved in the first quarter of 1948. The estimate was that Europe needed somewhere between the 16 and 20 billion dollars for the ERP. Congress finally approved the amount of 17 billion dollars over four years, with 6.8 billion for the first year of the aid.<sup>123</sup> Condition was that the ERP was evaluated yearly and the amount of aid was also determined on a yearly basis. Aid would be provided in dollars with which European countries could buy raw materials, food and other supplies from American companies. In this way the ERP also contributed to the American economy. For every dollar received, countries had to put the same amount in local currency on a counterpart account. This account was used to pay for the costs of the Economic Cooperation Administration missions made in each country and the remaining amount could only be used with American approval.<sup>124</sup>

#### **4.2. The Economic Cooperation Agreement and its conditions**

After congress approved the European Recovery program president Truman signed the Economic Cooperation Act on 3 April 1948. The Economic Cooperation Administration (ECA) was created as the temporarily executive agency that reported directly to the American Congress. Head of the ECA was Paul Hoffman of the Studebaker company, a large automobile manufacturer at that time. Because the ECA mission was temporary he recruited temporary personnel from universities, law firms and other business sectors.<sup>125</sup> Each country had its own ECA mission which was part of the existing US embassies. The mission had to report on the development and progress back to the US but also played a crucial role in supporting and controlling national governments.<sup>126</sup> In the Netherlands the ECA mission in the first years was headed by Alan Valentine, a university director. He was succeeded by Clarence E. Hunter, a New York banker.

The US signed separate Economic Cooperation Agreements with each participating country,

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<sup>122</sup> Kalijarvi, *Introduction and Chronology of the Marshall Plan*, 9.

<sup>123</sup> Inklaar, *Van Amerika geleerd*, 19.

<sup>124</sup> *Ibid.*

<sup>125</sup> *Ibid.*, 20.

<sup>126</sup> *Ibid.*, 20.

which laid down the conditions for the ERP. The agreement was based on a basic document that was adjusted for each individual country. The ECA agreement with the Netherlands was signed on 2 July 1948 by the US ambassador in the Netherlands Herman B. Baruch and the Dutch minister of foreign relations Baron W. van Boetzelaer van Oosterhout.<sup>127</sup> A few conditions of the ERP were laid down in the first two articles of the agreement. The Netherlands obliged itself: together with other participating countries to exert a joint effort for a speedy recovery which was essential for lasting peace and prosperity, to take measures to ensure efficient and practical use of available resources, to promote the development of industrial and agricultural production on a sound economic basis, to stabilise its currency and balance its budget to maintain financial stability, to cooperate with other countries in stimulating the exchange of goods and services and reducing public and private trade barriers and to use the largest practical utilization of manpower available.<sup>128</sup> Besides these conditions there was also an article included about restrictive business practices. This article is Article II, sub 3 of the ECA agreement which stated that:

The Government of the Netherlands will take the measures which it deems appropriate, and will cooperate with other participating countries, to prevent, on the part of private or public commercial enterprises, business practices or business arrangements affecting international trade which restrain competition, limit access to markets or foster monopolistic control whenever such practices or arrangements have the effect of interfering with the achievement of the joint program of European recovery.<sup>129</sup>

This particular article is essential for this research because the US urges the Netherlands to take measures against (international) restrictive business practices that interfered with European recovery. This demand fitted in the American antitrust tradition that gained momentum under Thurman Arnold in the late 1930s. As shown in the previous chapter, cartels and other restrictive business practices were common in the Netherlands in the period directly before and during World War II, they were even stimulated. Cartels and other restrictive business practices were not only limited to the national market, Dutch firms also actively participated in international agreements. The American demand in the ECA agreement to take measures against those practices thus meant that the government of the Netherlands had to alter their stance on this matter, as well as their

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<sup>127</sup> Handelingen der Staten Generaal 1947-1948, kamerstuknummer 890 onder nummer 1, overeenkomst tot economische samenwerking tussen de Regeringen van het Koninkrijk der Nederlanden en van Verenigde Staten van Amerika.

<sup>128</sup> Ibid., articles 1 and 2

<sup>129</sup> Ibid., article 2.3

legislation. To clarify the conditions in the ECA agreement, the appendix contained an explanation about what was exactly understood with these business practices and business arrangements:

3. It is understood that the business practices and business arrangements referred to in paragraph 3 of article II mean:

(a) fixing prices, terms or conditions to be observed in dealing with others in the purchase, sale or lease of any product;

(b) excluding enterprises from, or allocating or dividing, any territorial market or field of business activity, or allocating customers, or fixing sales quotas or purchase quotas;

(c) discriminating against particular enterprises;

(d) limiting production or fixing production quotas;

(e) preventing by agreement the development or application of technology or invention whether patented or unpatented;

(f) extending the use of rights under patents, trademarks or copyrights granted by either country to matters which, according to its laws and regulations, are not within the scope of such grants, or to products or conditions of production, use or sale which are likewise not the subjects of such grants; and

(g) such other practices as the two Governments may agree to include.<sup>130</sup>

This appendix makes clear that not only cartels were a problem; every form of restrictive business practices was condoned by the ECA agreement. The agreement obligated the Netherlands to investigate and take measures when these restrictive practices interfered with the ERP:

4. It is understood that the Government of the Netherlands is obligated to take action in particular instances in accordance with paragraph 3 of Article II only after appropriate investigation or examination.<sup>131</sup>

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<sup>130</sup> Handelingen der Staten Generaal 1947-1948, kamerstuknummer 890 onder nummer 1, overeenkomst tot economische samenwerking tussen de Regeringen van het Koninkrijk der Nederlanden en van Verenigde Staten van Amerika, appendix.

<sup>131</sup> Ibid.

### 4.3. American Policy in the Netherlands

In this thesis the American policy in the Netherlands regarding the ECA mission is researched on the basis of documents relating to this mission that are available in the Roosevelt Study Centre (RSC) in Middelburg. Thereby two sets of sources are most important: minutes of the hearings about the ECA mission in the Netherlands before the US Congress and the special collection of microfilms available about the Marshall Plan. This last collection contains documents on all aspects of the ERP, most important are minutes of meetings of the ECA mission and monthly reports about the Netherlands. Every year the ECA mission was reviewed in the US congress during which each country mission had to report on the progress and situation in the concerning country. When examining the hearings of the ECA mission in the Netherlands antitrust was not a subject in any of them. Only documents of the Dutch ECA mission itself sometimes referred to antitrust but this was mainly in a few speeches of ECA personnel and not in documents about policy and in the monthly progress reports.

#### 4.3.1. Hearings about the ECA mission in the Netherlands in US Congress

During the 80<sup>th</sup> Congress the first year of the ECA mission was reviewed. For the ECA mission in the Netherlands Loyd V. Steere (counsellor of the embassy of economic affairs in The Hague), Alan Valentine (head of the Dutch ECA mission) and Paul Hoffman (head of the ECA) were heard. The first general question about the Netherlands was to Paul Hoffman. He was asked about the food supply in the Netherlands: a newspaper article in the New York Times indicated that the Netherlands had a serious overproduction of foodstuffs and it was feared that because the Dutch could not sell these foods, they would be destroyed instead of distributed over Europe where food was in short supply.<sup>132</sup> The situation in the Netherlands was reviewed in two sessions, one with Loyd Steere and one with Alan Valentine. During the first session Loyd Steere first provided a short overview about the situation in the Netherlands. He first pointed out the strategic relevance of the Netherlands, being a hub in European trade. He then explained that the industrial production in the Netherlands was already recovered to 80 percent of the pre-war level.<sup>133</sup> Other topics that were discussed were: the recovery of coal production, progress in agriculture and food consumption, the fiscal and budgetary situation, the Dutch tax system, the recovery of the port of Rotterdam, war damages to the industries, currency valuation, commercial relations with the Dutch East Indies, Copra production in the Indies and Dutch purchases in the United States and South America.<sup>134</sup> When the estimated amount of aid that the Netherlands needed came to discussion Steere explained that the most

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<sup>132</sup> Roosevelt Study Center, Hearings before the Committee on Appropriations, United States Senate, Eightieth Congress, On Economic Cooperation Administration, 10-15.

<sup>133</sup> *Ibid.*, 48.

<sup>134</sup> *Ibid.*, 48-55.

urgent problem was the dollar shortage. Other issues Steere discussed were the shortages and problems in the transport and railroad sector, the military budget, imports that were needed, shipping (including the shipment of ERP supplies), shortages of certain commodities, assets of the Netherlands in the US, income from investments, production of farm machinery and fertilizer and the cost of the war and the current national debt of the Netherlands.<sup>135</sup>

Alan Valentine was heard in the afternoon session of the ECA hearings and he was first asked about the post-war conditions in the Netherlands. He explained somethings about the war damages and that the since the start of the Marshall Plan the 'average Dutchman has begun to regain some real hope and security. He has no luxury, not even comfort by American standards and still have to ration coupons to get commodities.'<sup>136</sup> Showing that the ERP aid really had an impact in the Netherlands. He then made a statement about the progress of the Netherlands under the ERP, the balance of trade, the economic stability, the amount of American aid, trade with the Soviet Union and also the trade deficit. Furthermore he explained to the congress that the Dutch population was growing but that housing was a problem due to war damages and that the new housing program will not catch up with population growth until 1952. Other issues discussed were the labour productivity, the wages, taxation, the reclamation of land flooded during the war, the use of counterpart funds, the Benelux Union and the Dutch attitude toward the political unification of Europe. A larger topic was the situation in the Dutch East Indies, how aid was provided there, the dependence of the Netherlands on Indonesia and the Indonesian war.<sup>137</sup>

Neither the hearing of Loyd Steere or the hearing of Alan Valentine discussed the development of antitrust legislation in the Netherlands. As shown above the topics that were discussed were very broad and covered almost all aspects of the Dutch recovery and the developments in the Dutch economy. Compared to the ECA agreement most of the conditions that the Netherlands had to meet according to this agreement were discussed during the hearing of the Dutch ECA mission in the 80<sup>th</sup> US congress. Such as the efficient and practical use of available resources, the development of industrial and agricultural production, the stability of the Dutch currency and balancing of the budget to maintain financial stability.

The hearings before the 81<sup>st</sup> US Congress are missing in the collection of the RSC. The hearings before the 82<sup>nd</sup> Congress were available in the RSC. Also during these hearings, antitrust legislation was not a topic of discussion. During these hearings Sidney E. O'Donoghue (counsellor of the US embassy in the Netherlands) and Clarence E. Hunter (the successor of Alan Valentine) were

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<sup>135</sup> RSC, Hearings before US Senate, 80<sup>th</sup> congress, 55-67.

<sup>136</sup> *Ibid.*, 312.

<sup>137</sup> *Ibid.*, 312-330.

heard about the progress in the Netherlands. At that time the ECA mission was succeeded by the Mutual Security Act (MSA) that had its own agency: Mutual Security Agency. The MSA was the new US foreign aid program which replaced the European Recovery Program but kept the staff of the ECA missions. More than the ECA, the MSA was developed to keep communism at bay. In practice the US policy remained the same, only shifting more attention from economic aid to military aid for building up a military apparatus.<sup>138</sup> Like the ECA mission, the MSA mission also had hearings in congress. During this hearing Sidney E. O'Donoghue first discussed the stability of the Dutch government, which was regarded as one of the most stable in Europe.<sup>139</sup> What was also discussed were the rise of the Dutch defence budget was discussed as was the Dutch feeling that they could not stay neutral in coming conflicts as they had been during World War I and had tried to be during World War II.<sup>140</sup> Clarence E. Hunter was heard about the ECA objectives in the Netherlands, of which he says that there were two main objectives in the recent months:

Those objectives have been the restoration of the economy and the rearmament. We (the Dutch ECA staff) feel that those two must be consistent with each other and advance together: namely, that we must maintain a strong economy and at the same time get all the rearmament that the country can possibly stand.<sup>141</sup>

He furthermore addressed the Dutch problem on the balance of payments, the trade between the Netherlands and Germany, Dutch investment in Indonesia, the Dutch dollar position and security, the dependence on trade across borders, the financial situation and the Dutch military effort.<sup>142</sup> He was also asked about other topics: the situation in Indonesia and the military progress in the Netherlands. The military topic included questions about the Dutch military effort on shipbuilding, the Dutch air force, army and conscription period. As well as the Dutch attitude and commitment towards the North Atlantic Treaty Organisation (NATO) and the attitude towards the construction of an European army.<sup>143</sup>

In the hearings in the 82<sup>nd</sup> congress there is a noticeable shift in what was regarded as important. The focus with the start of the MSA became more about the military effort and

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<sup>138</sup> Nationaal Archief, Den Haag, Economische Raad, nummer toegang 2.06.063, inventarisnummer, 200, Overzicht van de werking van het Europese Herstel Programma gedurende de maanden december 1951 en januari 1952, 21.

<sup>139</sup> Roosevelt Study Center, Hearings before a Subcommittee of the Committee in Foreign Relations, United States Senate, Eighty-Second Congress, On United States Economic and Military Assistance to Free Europe, 247.

<sup>140</sup> Ibid.

<sup>141</sup> Ibid., 249.

<sup>142</sup> Ibid., 249-253.

<sup>143</sup> Ibid., 255-263.



expenditures than about the recovery. The recovery was already underway since 1948 thus the Dutch economy was already up and running again. When examining the hearings before the 82<sup>nd</sup> congress it is notable that antitrust is again not part of the review. Comparable with the hearings of the 80<sup>th</sup> congress other issues were more important than the implementation of antitrust measures.

#### **4.3.2. Antitrust policy in the documents of the ECA mission in the Netherlands**

The RSC also has special collection of microfilms available about the Marshall Plan, containing documents on all aspects of the ERP. Of these documents the most important are minutes of meetings of the Dutch ECA mission and monthly progress reports. Most of the minutes, monthly reports and other documents related to the Dutch ECA mission have the same subjects as those treated during the hearings before the US Congress: the recovery of Dutch economy, progress in agriculture and the availability of food supplies, building up a military apparatus and the situation in Indonesia. Although these subjects proved most important to the ECA mission, the implementation of antitrust legislation was not forgotten. This is apparent from a few documents of the ECA mission in the Netherlands in which antitrust and the drafting of Dutch antitrust legislation during the 1950s were discussed. A report with objectives from various US government agencies that were particularly applicable to the Netherlands mentions, among other objectives, that the Netherlands should be encouraged to accomplish:

continued integration of the Netherlands into closer association with Western European democracies. To this end to strengthen the Benelux Customs Union and establish Benelux as a full economic union. However, to discourage monopolistic practices which result in restricting production and increasing prices and to encourage competition and productivity.<sup>144</sup>

Examples of other objectives in this report were: participating with other European countries to further economic development and build a mutual defence against totalitarian aggression, for the US to conclude a treaty of Friendship, Commerce and Navigation with the Netherlands, aid the Netherlands with materials and equipment for defence and civilian requirements, to provide technical assistance and economic aid, building up Dutch military defences and to encourage the Netherlands to take effective security trade controls and related economic defence measures against Soviet countries.<sup>145</sup> Clarence E. Hunter did not forget about the antitrust legislation either, as he

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<sup>144</sup> Roosevelt Study Center, Marshall Plan Documents, 1947-1954, Record Group 469, Record of the U.S. Foreign Assistance Agencies, 1948-1961. Office of European Operations. Netherlands-Indonesia Division. Decimal File, 1948-1953, Reel 1, 353.

<sup>145</sup> RSC, Marshall Plan Documents, RG 469, 353.

mentions it in a speech about the cooperation of the US and the Netherlands on industrialisation, delivered to the Utrecht Rotary Club in November 1952. He says that:

obviously cartel arrangements and restricted trade practices which are not in the national interest, and which tend to narrow market opportunities, are factors which prospective investors in industrial enterprises will take into consideration.<sup>146</sup>

Other documents also show that antitrust legislation remained a topic of US policy in the Netherlands. Most striking examples are: a memorandum of the Dutch ECA mission about the Dutch cartel policy, a report that was sent to Clarence E. Hunter about the drafting of the Dutch Economic Competition Act and a document that discusses both the Dutch cartel policy as the drafting of the act.<sup>147</sup> According to these documents the US saw the new Dutch legislation against restrictive business practices as a step forward but still believed that it had some serious shortcomings.<sup>148</sup> The memorandum of the ECA mission describes that in the Dutch opinion, cartels can have favourable as well as unfavourable effects on the national economy. Favourable effects were: preventing the waste of capital, more rational production through specialization and standardization. Unfavourable effects were: maintaining of high prices, insert unnecessary commercial links and the restriction of the right of entry in an industry.<sup>149</sup> The Dutch conception of cartels was wider than in the US. In the Netherlands cartels included all agreements that regulated competition, not only those that restricted or excluded competition.<sup>150</sup> The composer of the memorandum, Herman Kleine, states furthermore that:

The nature and size of the cartel system in the Netherlands was not highly developed, partly due to the fact that the Netherlands is a small country which, until World War II, carried a policy of free trade and open frontiers. Cartels therefore still occur more among small business, in the form of local agreements, than among large concerns.<sup>151</sup>

The memorandum explains the working of the Dutch Business Agreement Act of 1935 and the Cartel Decree of 1941, which will be discussed in the next chapter of this thesis. It also explains that the

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<sup>146</sup> Roosevelt Study Center, Marshall Plan Documents, 1947-1954, Record Group 469, Record of the U.S. Foreign Assistance Agencies, 1948-1961. Office of European Operations. Netherlands-Indonesia Division. Decimal File, 1948-1953, Reel 2, 604-606.

<sup>147</sup> Roosevelt Study Center, Marshall Plan Documents, 1947-1954, Record Group 469, Records of the Agency for International Development and Predecessor Agencies. Mission to the Netherlands, 1949-1953, Reel 4, 12-23.

<sup>148</sup> Ibid.

<sup>149</sup> Ibid., 12.

<sup>150</sup> Ibid.

<sup>151</sup> Ibid., 13.

Dutch government in 1948 curtailed their influence on the economy, letting private competition take over in the interest of better prices and greater efficiency in production and distribution.<sup>152</sup>

In the report that was sent to Clarence E. Hunter, he was urged to stimulate the Dutch officials in making some improvements within the general framework of the draft of the Economic Competition Act. Examples of improvements that were given were: make written submission of undesirable restrictive practices mandatory and install penalties for engaging in such practices without approval, establishment of an organisation that investigates these practices their harmful effects, include a provision for public complaints and creating the possibility to investigate those, include provisions to prohibit businesses from continuing restrictive practices on a gentlemen's agreement if their cartel agreements were declared non-binding and include a statement in the act that it is in the public interest to promote competition and eliminate restraints that impede production and trade.<sup>153</sup> Hunter was also encouraged to discuss the draft of the act with influential people outside the Dutch government to stimulate discussion in and trying to create greater impetus for stronger measures.<sup>154</sup> He was also asked to gather as much useful information about the restrictive practices in the Netherlands and their harmful effects to give a concrete basis for the US on which they could urge the Dutch to take more effective measures.<sup>155</sup> Other options that were advised were to create awareness in the Netherlands about the harmful effects of cartels, were using funds from the productivity program of the MSA to conduct studies and to use the technical assistance program to organise study trips for American Businessmen to the Netherlands and vice versa.<sup>156</sup>

The document that discussed both the Dutch cartel policy as the drafting of the Economic Competition Act shows more of the American ideas on Dutch antitrust legislation. US officials thought that:

Regardless of how many teeth the Dutch might put in their cartel law to make effective action possible when the government desires to take it, half the battle has already been lost by the tacit acceptance of the point of view that restrictions are frequently, if not usually, "in accord with the public interest."<sup>157</sup>

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<sup>152</sup> RSC, Marshall Plan Documents, RG 469, Reel 4, 13.

<sup>153</sup> *Ibid.*, 15.

<sup>154</sup> *Ibid.*, 16.

<sup>155</sup> *Ibid.*

<sup>156</sup> *Ibid.*

<sup>157</sup> *Ibid.*, 18.

When comparing the draft of the Dutch Economic Competition Act with surrounding countries in 1953 the officials concluded that the Dutch draft was kinder on restrictive practices than the legislation of their closest neighbours: France, Germany and Belgium.<sup>158</sup> They also thought that the act did not have a 'practicable framework for a really effective anti-restrictive practices program' and the 'loopholes alone were considerable.'<sup>159</sup> Loopholes in the act were that it did not define which kind of agreements it was applicable to and the act urged businesses to register their agreements to make them legally binding but it had no provisions to pursue restrictive agreements that were not registered. Probably the biggest loophole was that the government only declared restrictive agreements non-binding if they were against the national interest, which was also not defined.<sup>160</sup> In addition the US officials did not believe that the Dutch were willing to spent time and money on pursuing unregistered restrictive practices. The new law did not create any kind of organization to investigate and take action against restrictive business practices. Because there were also no penalties for engaging in restrictive business practices, unless the government took action, companies adopted a policy of wait and see. In these conditions it was regarded impossible to have an effective antitrust program in the Netherlands.<sup>161</sup> The US officials thought that the

most discouraging evidence of the attitude of the Dutch government regarding restrictive business practices was that they did not intend to oppose agreements in certain industries that contemplated to fix prices of Dutch export to Belgium.<sup>162</sup>

This was particularly concerning because the Benelux agreement was an example for a broader economic and political union in Europe. This union was foremost created to gain a larger market in which competitive stimuli could operate to increase efficiency and productivity which would result in lower prices and greater availability of goods.<sup>163</sup>

#### **4.4. Conclusion**

Although the economic situation in the Netherlands after World War II was not as bad expected, the Dutch government was eager to participate in the European Recovery Program. To get as much help as possible, the war damages were even overestimated, as Klemann and Inklaar show with their studies. The ERP was created to help Europe back on their feet again and to stop the spread of communism, thereby also protecting American economic interests. The US Congress remained

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<sup>158</sup> RSC, Marshall Plan Documents, RG 469, Reel 4, 18.

<sup>159</sup> *Ibid.*, 19.

<sup>160</sup> *Ibid.*, 19-20

<sup>161</sup> *Ibid.*, 20.

<sup>162</sup> *Ibid.*, 21.

<sup>163</sup> *Ibid.*

sceptical about the aid, but approved it with some provisions, among which: the ERP had to be evaluated each year and congress ultimately decided whether aid was continued. The ERP agreement also had conditions that each participating country had to fulfil. One of the conditions in the agreement was that every recipient had to take measures against restrictive business practices, which meant that each country had to implement of a form of antitrust legislation. This chapter aimed to explain what the American antitrust policy was in the Netherlands. Because the creation of antitrust legislation was a condition, it should be expected to be a concern of US policy in the Netherlands. However, research in this chapter of the American ECA documents available in the RSC shows the contrary. Although restrictive business practices did stay on the agenda of policy makers, other aspects had priority: the recovery of Dutch economy after the war, increasing the economic efficiency and productivity, building up a military apparatus, the situation in Indonesia and the availability of food supplies. When the ECA mission in the Netherlands was reviewed in the US Congress, the above-mentioned aspects of the aid were discussed. During the hearings, the condition to take measure against restrictive business practices was never even mentioned. Meaning that the implementation of American antitrust in the Netherlands never had any real priority for the US.

## 5. The Dutch reaction on American Antitrust

This chapter will describe the Dutch cartel tradition, starting in the 1930s leading up to World War II and ending in 1958 with the implementation of the Dutch Economic Competition Act. It will also discuss the reaction of the Dutch government on the American demands in the European Recovery Program concerning antitrust. Thereby answering the following sub question of this research: What was the Dutch reaction to the American antitrust policy? The first paragraph of this chapter will describe the Dutch tradition on restrictive business practices. Following is a paragraph that describes the reaction of the Dutch government to the American demand to implement a form of antitrust legislation in the Netherlands. This chapter will conclude with a paragraph on the creation of a new antitrust legislation in the Netherlands in the early 1950s leading to Economic Competition Act of 1958.

### 5.1. The Dutch Opinion on antitrust before, during and after World War II

#### 5.1.1. Dutch Cartels and Concentration before World War II

The first Dutch cartel legislation dates back to 1935 when the Business Agreement Act (*Ondernemersovereenkomsten Wet*) was created. Earlier, the Dutch government did not find it necessary to interfere with restrictive business practices and cartels. Over the period before World War I there is a lot of uncertainty on cartels in the Netherlands; their existence was mostly ignored and they were deemed unproductive in the small Dutch market which was open for competition from abroad.<sup>164</sup> In fact, cartels did exist and proved successful in several sectors such as salt, bottles, glue and beet sugar. Also Dutch businesses participated in several international cartels divided over different business sectors.<sup>165</sup> According to Bouwens and Dankers the importance of the cartels was underestimated in the Netherlands. Besides that, there was a lot of discussion about the effects of cartels. Supporters argued that cartels stimulated standardisation and rationalisation which resulted in more efficiency and thus lower prices. Whereas opponents argued that cartels were created to protect markets, consolidate prices and maximize profits.<sup>166</sup> Because the effects that cartels had were unclear the government did not make a clear stance and did not interfere, which suited the *laissez faire* tradition of the Netherlands.<sup>167</sup>

This changed in the early 1930s when the depression hit the Netherlands. The government tried to conquer the crisis with several measures such as the creation of import barriers and quota in

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<sup>164</sup> Bouwens, Dankers, 'Sharing success: cartels as an answer to the dynamics of business capitalism,' 1900-1940, 13.

<sup>165</sup> *Ibid.*, 14.

<sup>166</sup> *Ibid.*, 16.

<sup>167</sup> *Ibid.*, 16.

certain sectors to protect Dutch companies (especially those that participated in international cartels) against competition from outsiders on the home market. These and other measures were necessary during the crisis, from which the Netherlands recovered slower than surrounding countries. Partly because the government held on to the Golden Standard until 1936. Holding on to the Golden standard put the economy under severe pressure as the Netherlands priced itself out of the international market. Being a country that heavily depended on trade and exports the effects were even worse. Another logical measure to conquer the crisis followed in 1935 with the Business Agreement Act. This act was designed by the government to regulate competition there were it dislocated the market. It was not primarily seen as a crisis measure but as a reaction to the growing cooperation and collusion among business associates.<sup>168</sup> The act regulated competition, in order to prevent that 'murderous foreign competition turned in to murderous domestic competition.'<sup>169</sup> Already before the Business Agreement Act the government tried to stimulate cooperation between businesses and entrepreneurs. Starting in 1929 contact commissioners were installed whom were tasked with keeping the Economic department in contact with business sectors in which cooperation led to difficulties. Their job was to consult these sectors and solve the problems that blocked effective cooperation.<sup>170</sup> The function of contact commissioner became superfluous because of the creation of the Business Agreement Act, in 1938 only one general commissioner remained in function.<sup>171</sup> As mentioned earlier in this thesis the Business Agreement Act made it possible for the government to declare existing business agreements generally binding for a whole business sector or declare them nonbinding and dissolve the agreement. The limitation of the act was that the government could not instigate an agreement; they had to be created by the businesses themselves.<sup>172</sup> In this process business interest associations played an important role.<sup>173</sup>

Business interest associations were not a new phenomenon but, due to the intensive contact between the government and companies during the 1930s there was a significant rise in the amount of associations in the Netherlands.<sup>174</sup> These associations were an easy platform for consultation between government and whole business sectors and were often consulted by the government for

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<sup>168</sup> Nationaal Archief, Den Haag, Ministerie van Economische Zaken: Centraal Archief, nummer toegang 2.06.087, inventarisnummer, 2396, Documentatie kartelbesluit, Rapportage Kartels in Nederland voor de Tweede Wereldoorlog, 2.

<sup>169</sup> Asbeek Brusse, Griffiths, 'Paradise Lost or Paradise Regained,' 16.

<sup>170</sup> NA, EZ / Centraal Archief, 2.06.087, inv.nr. 2396, Rapportage Kartels in Nederland voor de Tweede Wereldoorlog, 1.

<sup>171</sup> Ibid.

<sup>172</sup> Asbeek Brusse, Griffiths, 'Paradise Lost or Paradise Regained,' 16; Bouwens, Dankers, *Tussen concurrentie en concentratie*, 107-115.

<sup>173</sup> Bouwens, Dankers, 'Sharing success,' 17.

<sup>174</sup> Bouwens, Dankers, 'Business interest associations,' 5-6.

the creation of new laws or economic decisions.<sup>175</sup> The associations created a great lobby opportunity for companies to pursue their goals on governmental level. Another effect is the increasing cooperation between companies although in principle associations did not interfere with the policies of its individual members which makes them significantly different from a cartel. There also were associations that did restrict competition with their practices such as setting prices or allocating markets.<sup>176</sup> According to Chandler and others the line between the different purposes of a business interest association can be blurred.<sup>177</sup> Bouwens and Dankers distinguish several functions of the associations and divided these in three categories: associations that focus on enhancing political influence regarding employment regulation, those that were founded by branches of industry to participate in the regulatory process, and those specifically for internal and economic coordination and cooperation.<sup>178</sup>

The two main functions of the Business Agreement Act, the generally binding declaration and the nonbinding declaration, were designed with different reasons. For the generally binding declaration the Dutch Economics Department thought it was necessary to have the means to interfere in order to make uncooperative businesses comply with the (cartel)agreements. Hoping to prevent or solve crisis situations in a business sector with these measures and limiting the harmful competition among businesses.<sup>179</sup> The government could not declare agreements generally binding that were against the interest of the business sector. In the period from the implementation of the act until January 1940, 38 business agreements requested a generally binding declaration. Of these: 7 agreements were declared generally binding, 15 were turned down and for the remaining part the request was withdrawn.<sup>180</sup> The possibility to declare business agreements nonbinding was installed to counter agreements and monopolies that controlled markets to the detriment of the consumers. Especially because consumers already had to deal with the loss of purchasing power due to the crisis. Market control was deemed more likely at that time because of the protection of domestic producers against foreign competition with import restrictions.<sup>181</sup> Although the possibility existed and a few requests were made for a nonbinding declaration, not a single agreement was declared nonbinding before World War II. Only one agreement was modified under pressure of the Dutch

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<sup>175</sup> Bouwens, Dankers, *Tussen concurrentie en concentratie*, 96-100.

<sup>176</sup> Bouwens, Dankers, 'Business interest associations,' 2.

<sup>177</sup> A.D. Chandler, *The visible hand; the managerial revolution in American business* (Cambridge, Mass.: The Belknap Press 1977) 315-317, Quoted in Bouwens, Dankers, 'Business interest associations,' 2.

<sup>178</sup> Bouwens, Dankers, 'Business interest associations,' 12-13.

<sup>179</sup> NA, EZ / Centraal Archief, 2.06.087, inv.nr. 2396, Rapportage Kartels in Nederland voor de Tweede Wereldoorlog, 2.

<sup>180</sup> *Ibid.*, 3.

<sup>181</sup> NA, EZ / Centraal Archief, 2.06.087, inv.nr. 2396, Rapportage Kartels in Nederland voor de Tweede Wereldoorlog, 1-2.



Economics department.<sup>182</sup> The Economics Department had other ways to take action against cartels: expanding import quotas or even threatening to remove import quotas or restrictions altogether.<sup>183</sup>

Altogether the Business Agreement Act was not used that often since its implementation in 1935. The Economics Department tried to explain why it was not frequently used with a study they had done in 1938.<sup>184</sup> That study found several causes: the lack in cartel experience, the fact that coerced organisation could not be sanctioned due to the scope of the act, and disagreement between the government and businesses on the remedying effect of business agreements.<sup>185</sup> Also Bouwens and Dankers emphasise the limited impact the Business Agreement Act had on the Dutch cartelisation and argue that businesses mistrusted the law and relied on their old methods of cooperation and collusion. The cartelisation thus went on but outside the visibility of the public and the government.<sup>186</sup>

### 5.1.2. Dutch Cartels and Concentration during World War II

In the late 1930s Europe was on the edge of a new war wherein the Dutch government hoped to stay neutral, as they had been in World War I. In preparation the government decided to regulate the entire economy trying to protect it from shortages and unemployment during the expected war years. Together with the existing business interest associations the government created State Bureaus which regulated entire sectors of the economy.<sup>187</sup> These bureaus were left in charge of the businessmen, the government only supervised, because the Dutch government lacked the manpower and experience to organize and regulate the entire economy.<sup>188</sup> According to Bouwens and Dankers this fostered restrictive practices:

the Dutch businesses were supposed to work for the general interest, but, under these circumstances, any kind of agreement on production, pricing, and distribution was permissible and easily concluded.<sup>189</sup>

After the Netherlands was conquered in 1940 the Business Agreement Act was replaced by the new Cartel Decree in 1941 which was moulded after German example. After examining the documents from that period the Dutch Economics Department concluded in 1949 that Germany did not insist on

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<sup>182</sup> NA, EZ / Centraal Archief, 2.06.087, inv.nr. 2396, Rapportage Kartels in Nederland voor de Tweede Wereldoorlog, 2.

<sup>183</sup> *Ibid.*, 3.

<sup>184</sup> *Ibid.*

<sup>185</sup> *Ibid.*, 3-4.

<sup>186</sup> Bouwens, Dankers, 'The invisible handshake,' 755.

<sup>187</sup> Bouwens, Dankers, *Tussen concurrentie en concentratie*, 101; Bouwens, Dankers, 'The invisible handshake,' 756.

<sup>188</sup> Bouwens, Dankers, 'The invisible handshake,' 756.

<sup>189</sup> *Ibid.*

changing the Business Agreement Act but that it was initiated by the Dutch Department of Trade and Industry (the predecessor of the Economic Department).<sup>190</sup> The motives for changing the Act were twofold. Firstly to gain a complete insight in national and international cartels wherein Dutch businesses were involved. Insight in international cartels to get an understanding of the consequences of cartel agreements on prices, import and export and foreign exchange position. And in national cartels to be informed about distribution- and price agreements.<sup>191</sup> Secondly the new Act had to remove obstructions to declare agreements generally binding. The government wanted to have the possibility to instigate agreements themselves and to force agreements to all businesses in a sector, thereby circumventing the businesses which often could not reach agreement due to differences. This paved the way for the government to use cartel agreements to achieve specific purposes.<sup>192</sup> Article 4 of the Cartel Decree provided this possibility and gave the Government *carte blanche* to instigate any regulation or agreement on price, distribution or other restrictive practices. In literature this form of limiting competition under pressure of the government is called a *Zwang Kartell* but according to the Economics Department this terminology is in fact wrong because this arrangement differs greatly from a cartel agreement. During the war this possibility to instigate such agreements was never used.<sup>193</sup> Furthermore, the Act also demanded that existing and newly formed cartels had to sign up in a register for effective supervision. Bouwens and Dankers point out that the Act was actually redundant 'because the German-controlled government directly regulated the economy.'<sup>194</sup> With an entirely regulated economy competition was obsolete and cartels and other restrictive agreements lost their function. After changing the Dutch legislation they regulated the economy even further with use of the existing state bureaus and Business Interest Associations which were also redesigned after German example. In this way the occupier could oversee all Dutch production and employ it to contribute to their war efforts.

### 5.1.3. Dutch Cartels and Concentration after World War II

World War II and its aftermath severely shook up most international cartels and agreements, which were dissolved or suspended during this period. The Dutch economic department assessed the situation just after the war:

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<sup>190</sup> NA, EZ / Centraal Archief, 2.06.087, inv.nr. 2396, Rapportage kartels in Nederland gedurende de Tweede Wereldoorlog, 1.

<sup>191</sup> Ibid.

<sup>192</sup> Ibid.

<sup>193</sup> Ibid., 4.

<sup>194</sup> Bouwens, Dankers, 'The invisible handshake,' 757.

Because of the current shortages, the enhanced governmental interference in the international distribution of raw materials, the dissolving of the “German” cartels, the antitrust attitude of the United States and the uncertain international political situation compared to the period before the war, the position of the international cartels is severely weakened and the existence and functioning of most is uncertain.<sup>195</sup>

On the other hand, the Economic Department also realised that they could not adequately assess the influence and magnitude of the international cartels due to the lack of information.<sup>196</sup> More information was available for the domestic cartels, mainly knowledge that derived from the Cartel Agreement from 1941. This information only covered the legal agreements; information on existing gentlemen’s or other cartel agreements remained hidden from the government.

After World War II the Dutch economy had to recover from war damages. Priorities in the reconstruction were protection of the Dutch market and maximizing output for political and economic ends. If restrictive agreements were necessary to reach these goals, then it was a small price to pay.<sup>197</sup> For the reconstruction the Dutch government used the State Bureaus and Business Interest Associations in the same way they had used them during the war preparation. The whole economy remained regulated and also the distribution system set up during the war was continued as well. The government strictly controlled prices and wages in consultation with Business Interest Associations and employee organisations, with whom the Economic Department also virtually discussed all other aspects of the economic regulation and policies.<sup>198</sup> It was easier to negotiate with these Business Associations than with many independent entrepreneurs and businesses. The economic cooperation and the fact that the Dutch market was almost completely cut off from international competition by trade restrictions, fostered domestic cartels and the creation of new ones.<sup>199</sup> The Economics Department even discovered a convergence between Business Associations and cartels: personnel of associations fulfilled positions in the cartels and the forced cooperation within the associations led to cartelisation after the war.<sup>200</sup> Another factor that contributed to the domestic cartelisation was the erosion of competitive technical advantages due to standardisation

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<sup>195</sup> NA, EZ / Centraal Archief, 2.06.087, inv.nr. 2396, Rapportage kartels in Nederland na de Tweede Wereldoorlog, 3.

<sup>196</sup> *Idem.*

<sup>197</sup> Asbeek Brusse, Griffiths, ‘Paradise Lost or Paradise Regained,’ 17.

<sup>198</sup> *Ibid.*, 18.

<sup>199</sup> NA, EZ / Centraal Archief, 2.06.087, inv.nr. 2396, Rapportage kartels in Nederland na de Tweede Wereldoorlog, 3, Bouwens, Dankers, ‘Cartelization in the Netherlands,’ 757.

<sup>200</sup> NA, EZ / Centraal Archief, 2.06.087, inv.nr. 2396, Rapportage kartels in Nederland na de Tweede Wereldoorlog, 3-4.

and the sharing of German patents during and just after the war.<sup>201</sup> The Dutch government did not find it necessary to act against the cartelisation and even thought that it was beneficial for the recovering economy as arguments will show in the next paragraph.

## **5.2. American antitrust in the Netherlands**

The previous paragraph clearly shows that the Dutch opinion and legislation on cartelisation and concentration was very different from the American opinion and legislation on antitrust. With the start of the European Recovery Program the US introduced their vision on antitrust in the Europe and thus also in the Netherlands. Antitrust was, as described in earlier in this thesis, one of the pillars of American foreign policy and legislation on restrictive business practices became one of the conditions to receive aid from the ERP. In the same time period the US pushed for the creation of an International Trade Organisation under the flag of the United Nations. The proposal was discussed at the United Nations Conference on Trade and Employment, held at Havana from November 1947 to March 1948. This conference was concluded with the Havana Charter, which also included proposals on restrictive business practices. Just as in the ERP the proposal on restrictive business practices in the Havana Charter reflected the American opinion on antitrust. In preparation for the Havana Conference the Dutch government created a study group to evaluate the conference and the implications the agreement had on the Dutch economy. This Study Group had a subcommittee that focussed solely on the cartel problem and thereby also other restrictive practices. The Havana Charter eventually failed due to the fact that it was not approved by the US congress and the proposed International Trade Organisation (ITO) was replaced by the General Agreement on Tariffs and Trade. Although the Havana charter failed and thus had little international significance it is included in this research. The archive documents of *Subcommittee for the Cartel Problem* of the *Studygroup for the American conference* (meaning the Havana Conference) remain important because they clearly describe the Dutch opinion on American Antitrust and the implications the Netherlands thought it would have. Together with archival materials on the ERP they form the basis of this paragraph. The implications of the ERP condition to implement a form of antitrust legislation were also studied by the Dutch Economic and Foreign Departments but archive materials show that the government found this of less importance. The argument was that the conditions on antitrust in the ERP were almost superfluous because antitrust was already part of the Havana Charter.

### **5.2.1. The European Recovery Program and the Dutch reaction**

The Netherlands participated in Paris convention that reached agreement on the ERP and was thus involved in drafting the agreement. During the drafting process the delegation of the Netherlands

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<sup>201</sup> Asbeek Brusse, Griffiths, 'Paradise Lost or Paradise Regained,' 17.

noted that the ERP agreement was based on a Master Draft that was the same for each participating country.<sup>202</sup> They noted that the Foreign Assistance Act was used as example for the drafting of the ERP agreement and thought that altering the content of the agreement would be difficult at least.<sup>203</sup> As the US did not want to change much of the content it was expected that if the Netherlands would not agree they would not receive any help from the ERP.<sup>204</sup> The Dutch delegation also criticized the way the report was drawn up. The treaty was very one-sided: the creditor (US) had all the rights and means to change and cancel the agreement whereas the receiver had none. According to the Dutch delegation the agreement was thus not based on equality and reciprocity. By adjusting some sharp formulations, the delegation hoped to water down certain excessive control measures. Also the terminology in some articles deserved attention to prevent disagreement in the future, terms like “appropriate” and “efficient” left room for discussion according to the delegation.<sup>205</sup> The delegation furthermore emphasized that time was in short supply, the negotiations ended on 3 July 1948. This meant that all comments that the Netherlands had on the agreement must be processed as quickly as possible to prevent loss of time.<sup>206</sup> Not only time pressure made the negotiations difficult, they also reached deadlock on several occasions. To break this deadlock the negotiations between the US and Europe continued with a “working party” instead of all countries. This working party consisted of Great-Britain, France, Sweden and Denmark. It was agreed that all the benefits and changes to the agreement negotiated by the working party would apply for all other countries as well.<sup>207</sup> Reaching agreement on the ERP and changing the content of articles proved to be very difficult. The Netherlands did want to change some articles in the agreement and the condition to take measures against restrictive business practices was one of them. This article was already toned down thanks to the influence of the working party but the Netherlands still thought different on it than the US.<sup>208</sup>

The Dutch delegation prepared a preliminary advice on the agreement which they sent to an interdepartmental commission in the Netherlands. This commission was composed of government

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<sup>202</sup> Nationaal Archief, Den Haag, Ministerie van Buitenlandse Zaken: Code-archief 1945-1954, nummer toegang 2.05.117, inventarisnummer 23957, correspondentie inzake het bilaterale verdrag tussen Nederland en de Verenigde Staten over de Economic Cooperation Administration, aantekeningen 15-05-1948.

<sup>203</sup> NA, Buitenlandse Zaken / Code-Archief 45-54, 2.05.117, inv.nr. 23957, correspondentie inzake ECA verdrag, aantekeningen 31-05-1948.

<sup>204</sup> NA, Buitenlandse Zaken / Code-Archief 45-54, 2.05.117, inv.nr. 23957, correspondentie inzake ECA verdrag, Pre advies 10-6-48

<sup>205</sup> Ibid.

<sup>206</sup> NA, Buitenlandse Zaken / Code-Archief 45-54, 2.05.117, inv.nr. 23957, correspondentie inzake ECA verdrag, Aantekeningen 15-05-1948

<sup>207</sup> NA, Buitenlandse Zaken / Code-Archief 45-54, 2.05.117, inv.nr. 23957, correspondentie inzake ECA verdrag, Verslag van de onderhandelingen over de bilaterale overeenkomst, 28-6-48, 1.

<sup>208</sup> NA, Buitenlandse Zaken / Code-Archief 45-54, 2.05.117, inv.nr. 23957, correspondentie inzake ECA verdrag, Verslag van de onderhandelingen over de bilaterale overeenkomst, 28-6-48, 4.

officials from different departments and businessmen. Dr. H.M. Hirschfeld, at that time the Dutch commissioner for the ERP, was also chairman of the commission. In this preliminary advice the ECA agreement was discussed per article. The commentary on the antitrust conditions in the ERP started with the Preamble of the agreement. In the draft of the treaty the preamble states:

to bring about the progressive elimination of public and private trade barriers.<sup>209</sup>

For the Dutch delegation and the interdepartmental commission it is uncertain what was exactly meant with private trade barriers but the presumption was that the US meant cartels and other restrictive business practices. Besides in the preamble, the elimination of public and private trade barriers was also part of article II.1b of the ECA agreement. The interdepartmental commission believed that this issue was already settled in the Havana Charter, which at that time only had to be ratified to become in use. Because the elimination of private trade barriers was already part of the Havana Charter it was superfluous to include it in the ERP as well.<sup>210</sup> In the final agreement the part was erased from the preamble but it remained part of the ECA agreement in article II 1b.

Article II, sub 3 was also a point of discussion. As mentioned in the previous chapter this article obliged the Netherlands to take measures against those business practices which restrained competition and interfered with the aims of the ERP. The Dutch delegation in Paris mentioned that the Americans 'ride their anti-cartel hobby horse' in this article.<sup>211</sup> The Dutch delegation in Paris as the interdepartmental commission believed that this article was also already settled in the Havana Charter and thus superfluous to add to the ERP. According to the interdepartmental commission the minimum on antitrust conditions were just barely accepted in the Havana Charter. With the ERP the US tried even further to implement their antitrust tradition in Europe.<sup>212</sup> The commission wanted to change the content of this article so that it better matched with the Havana Charter. The interdepartmental commission and the Dutch delegation in Paris both referred to the Havana Charter when it came to antitrust legislation. This can be explained by the fact that the negotiations on the Havana Charter took place earlier than those of the ERP. The Havana Charter was also an American proposal and was more focussed on liberating the world economy. Antitrust and other conditions that affected world trade were already part of this Charter. Reaching agreement on the

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<sup>209</sup> NA, Buitenlandse Zaken / Code-Archief 45-54, 2.05.117, inv.nr. 23957, correspondentie inzake ECA verdrag, draft ECA agreement 12-05-1948.

<sup>210</sup> Nationaal Archief, Den Haag, Ministerie van Buitenlandse Zaken: Code-archief 1945-1954, nummer toegang 2.05.117, inventarisnummer 23060, besprekingen interdepartementale commissie ERP 27-5-1948, 4.

<sup>211</sup> NA, Buitenlandse Zaken / Code-Archief 45-54, 2.05.117, inv.nr. 23957, correspondentie inzake ECA verdrag, aantekeningen 31-5-1948, 2.

<sup>212</sup> NA, Buitenlandse Zaken / Code-Archief 45-54, 2.05.117, inv.nr. 23060, besprekingen interdepartementale commissie ERP 27-5-1948, 4.

Havana Charter was hard according to the interdepartmental commission, so why bothering to include these provisions in a different and stricter form in the ERP as well? For the Netherlands the provisions about antitrust in the Havana Charter were as far as they wanted to go. Their stance against the inclusion of antitrust in the ERP eventually resorted no effect. The antitrust condition was included in the final ECA agreement that the Dutch also signed.

### 5.2.2. The Havana charter and the Dutch reaction

The Havana Charter was derived from a proposal developed by experts drawn from several agencies of the US government. Purpose of the charter was to attain a higher standard of living, full employment and conditions of economic and social progress and development in the world.<sup>213</sup> To realise this a few objectives were determined which aimed at a growth in of real income, production and consumption, assistance in industrialisation, open up markets and reduce tariffs and lastly liberalising global trade.<sup>214</sup> In the proposals and analyses of the charter it is argued that:

‘Trade connects employment, production and consumption and facilitates all three. Its increase means more jobs, more wealth produced, more goods to be enjoyed.’<sup>215</sup>

When countries release trade from various restrictions they will make a major contribution to the welfare of their people. One of the things that impose international trade is the restriction from private combines and cartels, the others being restriction of governments, fear of disorder in markets for certain primary commodities and fearing for and irregularity itself in production and employment. For this research the only topic of interest in the Havana Charter are restrictive business practices, covered in the fourth chapter of the proposals and analyses. In the chapter the following is proposed:

‘To curb those restrictive business practices in international trade (such as combinations or agreements to fix prices and terms of sale, divide markets or territories, limit production or exports, suppress technology or invention, exclude enterprises from particular fields, or boycott or discriminate against particular firms) which have the effect of frustrating the objectives of the Organization to promote expansion of production and trade, equal access to markets and raw materials, and the maintenance in all countries of high levels of employment and real income.’<sup>216</sup>

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<sup>213</sup> United Nations Conference on Trade and Employment, Final Act and related documents, Havana Charter for an International trade organization (04-1948), 14.

<sup>214</sup> Havana Charter, 14.

<sup>215</sup> United Nations Conference on Trade and Employment, Proposals for Expansion of World Trade and Employment (11-1945), 2.

<sup>216</sup> Proposals for Expansion of World Trade and Employment, 23.

Also it is suggested that a special agency is established within the ITO to examine and investigate complaints about restrictive business practices of international cartels. This agency advises member governments on remedies but prosecution should be done under the jurisdiction of governments and their own laws and procedures.<sup>217</sup>

For the Dutch Subcommittee for the Cartel Problem the chapter and articles about restrictive practices were the main subject of study. In the final version of the charter these articles were revised to stroke more with the European vision on cartels. Nevertheless, the study of the subcommittee remains relevant because it expresses the Dutch opinion on the matter. The subcommittee was installed to advise the *Raad Economische Aangelegenheden* (Council Economic Affairs), a council for the Dutch cabinet, on implications of the Havana Charter on restrictive business practices in the Netherlands. The Netherlands already worked together on the cartel question with France and Belgium in the *Conseil Tripartite de Coopération Economique*. Their points of view on the cartel question were stipulated in a memorandum: there is a distinction between reasonable and unreasonable cartels; the countries differ in their approach of cartels; international industrial cartels are useful in the present circumstances; cartels need to adapt to present circumstances; there are no objections to the longevity of cartels if they are not in conflict with the public interest; governments should have means to prosecute cartels; and in a depression the American proposals should be more accommodating.<sup>218</sup> When the committee started only a month's time was available to test these ideas and conclusions to prepare an advice for the cabinet. To create a well-funded advice the committee interviewed experts and stakeholders from the business community. Although working together with France and Belgium the results of this study were not shared with them because it might hurt the interests of Dutch businesses.<sup>219</sup>

When examining the Havana charter the committee concluded that it was inconclusive on what precisely were restrictive business practices. The committee assumed that besides cartels restrictive business practices also include: all actions from entrepreneurs whom can achieve certain results through their market power that differs from the results of free competition.<sup>220</sup> The subcommittee considered cartels the most important form of market power in Western Europe and other forms of restrictive practices are so similar to cartels that the analysis of the cartel question is

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<sup>217</sup> Proposals for Expansion of World Trade and Employment, 5.

<sup>218</sup> Nationaal Archief, Den Haag, Ministerie van Economische Zaken: Centraal Archief, nummer toegang 2.06.087, inventarisnummer 4096, Studiecommissie van de Amerikaanse Conferentie, Subcommissie voor het kartelvraagstuk, conclusies vergadering 1, 1.

<sup>219</sup> NA, EZ / Centraal Archief, 2.06.087, inv.nr. 4096, Subcommissie voor het kartelvraagstuk, conclusies vergadering 1, 2.

<sup>220</sup> NA, EZ / Centraal Archief, 2.06.087, inv.nr. 4096, Subcommissie voor het kartelvraagstuk, Rapport 23-07-1946, 2.



applicable to these as well.<sup>221</sup> Therefore the study of the subcommittee focused on this specific question. Another thing that remained inconclusive in the charter was that it does not want to curb all restrictive business practices but only those restrictive business practices in international trade which have the effect of frustrating the objectives of the Organization. According to the subcommittee this meant that there also were acceptable forms of restrictive practices, as such clarification was needed. In their study an international cartel was defined as:

an agreement between producers in different countries to stabilise a certain industry through cooperation. [...] with as purpose to maintain a price level that cannot be achieved in a system of free competition.<sup>222</sup>

The biggest objection to the Havana Charter was that in the present time an economy with completely free competition was not able to attain the optimal level of welfare anymore. The subcommittee argued that this idea was called in to question by recent economic studies and recent history due to the Great Depression. According to them, experience showed that an economic boom leads to over investment. This in turn leads to overproduction, which in practice does not disappear in a downturn contrast to what the theory of free competition suggests. Making prices in that downturn so low that the variable costs are barely covered, often leading to even higher production to cope with the problem and thereby in the long run exhausting companies. With as consequences a prolonged depression, high wage pressure and social disruption.<sup>223</sup> Another argument was that the structure of modern industries was so capital intensive that the sunk cost of production had become so high that it is not viable anymore in a system of free competition. A main reason why most of the international cartel agreements were concluded in the industrial sector.<sup>224</sup> Lastly, a system of free competition wherein no independent firm had an influence on the market price could not be accomplished in any industry.<sup>225</sup> In short: pursuing complete free competition was ignoring the economic reality in the eyes of the subcommittee.

Besides that there was a big difference between the economies of Western Europe and the United States. Whereas in the US there was political and economic unity, Western Europe was

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<sup>221</sup> NA, EZ / Centraal Archief, 2.06.087, inv.nr. 4096, Subcommissie voor het kartelvraagstuk, Rapport 23-07-1946, 2.

<sup>222</sup> NA, EZ / Centraal Archief, 2.06.087, inv.nr. 4096, Subcommissie voor het kartelvraagstuk, beschouwing kartels 15-02-1946, 6.

<sup>223</sup> NA, EZ / Centraal Archief, 2.06.087, inv.nr. 4096, Subcommissie voor het kartelvraagstuk, Rapport 23-07-1946, 4.

<sup>224</sup> NA, EZ / Centraal Archief, 2.06.087, inv.nr. 4096, Subcommissie voor het kartelvraagstuk, beschouwing kartels 15-02-1946, 7.

<sup>225</sup> NA, EZ / Centraal Archief, 2.06.087, inv.nr. 4096, Subcommissie voor het kartelvraagstuk, Rapport 23-07-1946, 5.

splintered by borders and had the countries differed completely in legislation and economies.<sup>226</sup> As such large production units as trusts, combines and large companies, had the possibility to develop in the US. In Europe this was impossible because of the different national markets. To profit from the advantages of large production units and to avoid competition, cartels were created in many European business sectors and industries.<sup>227</sup> Because of the differences it was thus impossible to pursue the same legislation against restrictive business practices in Europe as in the US. The subcommittee even went as far as stating that:

It is a matter of life for Western-Europe to leave the possibility of cartelisation open.<sup>228</sup>

### *The benefits of cartels*

It was logical according to the subcommittee that companies, at least in Western Europe, fell back on, or started, cartel agreements after World War II.<sup>229</sup> The (international) cartels intended to return the profitability to the specific industry and thus strived for two things: adjustment of production to the limited demand by a fair distribution of the unused production capacity across the participating companies and also stabilisation of prices on a reasonable level.<sup>230</sup> A reasonable and stable price was important for most companies and cartels because they could base their long term calculations and tenders on this price, thereby consolidating their profits. The aim cartels had for a solid long term market position also had a stabilising effect on the economy.<sup>231</sup> Cartels levelled off cyclical fluctuations in the economy by firstly limiting excessive growth of income and employment in boom times and the following contraction in a downturn.<sup>232</sup> Secondly, by being able to be more flexible in their prices: the incentive was to keep prices stable thus in a boom prices will not rise as fast and remain lower, in a downturn a cartel had more possibilities for reducing the prices than an individual company for example shut down some factories and save on distribution and advertising.<sup>233</sup> Another positive aspect of international cartels was that participating companies often could use each other's patents and technologies, which gave them more possibilities than individual companies. This resulted in a greater production efficiency and better quality products. A counter argument was that

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<sup>226</sup> NA, EZ / Centraal Archief, 2.06.087, inv.nr. 4096, Subcommissie voor het kartelvraagstuk, Rapport 23-07-1946, 11.

<sup>227</sup> Ibid.

<sup>228</sup> Ibid.

<sup>229</sup> Ibid., 6.

<sup>230</sup> Ibid.

<sup>231</sup> NA, EZ / Centraal Archief, 2.06.087, inv.nr. 4096, Subcommissie voor het kartelvraagstuk, beschouwing kartels 15-02-1946, 6.

<sup>232</sup> Ibid., 7.

<sup>233</sup> NA, EZ / Centraal Archief, 2.06.087, inv.nr. 4096, Subcommissie voor het kartelvraagstuk, Rapport 23-07-1946, 7; NA, EZ / Centraal Archief, 2.06.087, inv.nr. 4096, Subcommissie voor het kartelvraagstuk, conclusies vergadering 5, 30-04-1946, 3.

companies and cartels that more or less had a monopoly position might impede innovation and progress from self-interest. But often the leading firms in a cartel were the most innovative ones and these pressured other participating companies to keep up and innovate as well to stay ahead of possible competition.<sup>234</sup> Another incentive for companies to keep innovating was to increase their own margins, efficiency and quality. As well to strengthen their position, trying to enforce a larger quota within the cartel.<sup>235</sup>

### *Disadvantages of cartels*

In addition to describing the advantages the subcommittee also discussed the arguments that are brought forward by the US against restrictive business practices. The subcommittee explained that adversaries of cartels often forgot a few elements of cartels that limited the amount of market power or the extent to which they could use it: for most cartel products there were substitutes available, most cartels did not include all businesses in a sector meaning outsiders had a significant advantage when cartels set prices to steep and lastly there were always existing conflicts of interest among participating businesses in cartels which could lead to dissolving the agreement when businesses were hindered in their natural development.<sup>236</sup>

The subcommittee continued their argumentation by trying to refute most disadvantages of cartels that were raised by the US. Arguments raised against cartels were: that cartels could raise prices to an unjustified level; limit the supply so far that it did not cover the normal demand; boycott outsider producers and consumers; discriminate certain producers and consumers; deliberately keep inventions and natural resources out of use; had the tendency to lower production efficiency and product quality; were able to circumvent legal provisions; divided the world in exclusive markets so that products could not move from one market to the other; and German cartels in particular had contributed to the Nazi war production and propaganda.<sup>237</sup> All these arguments were countered by the committee. They argued that every entrepreneur could keep inventions and natural resources out of use, that is not something that was exclusively used by cartels. Putting new inventions or unused resources in to use might even lower employment or national income, which was contrary to the goals the Havana Charter wants to achieve. The argument that cartels impeded efficiency and

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234 NA, EZ / Centraal Archief, 2.06.087, inv.nr. 4096, Subcommissie voor het kartelvraagstuk, beschouwing kartels 15-02-1946, 9.

235 NA, EZ / Centraal Archief, 2.06.087, inv.nr. 4096, Subcommissie voor het kartelvraagstuk, rapport 23-07-1946, 9; NA, EZ / Centraal Archief, 2.06.087, inv.nr. 4096, Subcommissie voor het kartelvraagstuk, conclusies vergadering 5, 2-3

236 NA, EZ / Centraal Archief, 2.06.087, inv.nr. 4096, Subcommissie voor het kartelvraagstuk, rapport 23-07-1946, 7.

237 Ibid., 7-10.

quality had already been discussed in the previous section. Cartels often profited from each other's patents and innovations, thereby raising production efficiency and quality. Trying to circumvent legal provisions was also not something only used by cartels, all businesses will try to find loopholes in the law to further themselves. That cartels hindered trade by dividing the world into exclusive markets was partly true but it could not always be qualified as abuse. The aim for every country should be to create a high level of employment and income, this was sometime better to achieve with agreements on pricing and sales than with free trade. The argument that German cartels furthered the Nazi war machine was true but the Nazis used everything they could use to strengthen themselves. Blaming the cartels was incorrect in the eyes of the subcommittee.<sup>238</sup>

Although the subcommittee argued that the disadvantages of cartels were smaller than the US assumed, there always was the possibility of abuse. The subcommittee acknowledges that keeping prices high, limiting supply, boycotting and discriminating producers and consumers were abused by cartels. They argued, however, that the desirability of a cartel could only be determined by a thorough investigation of the facts. The question the subcommittee tried to answer was whether restrictive business practices must be curbed as the proposals for the Havana Charter suggest? The committee believed that the beneficial effects of cartels only arise when they had a certain market power. If restrictive practices were curbed because of possible abuse then the beneficial effects will be lost as well.

Concluding: The objective of the international cartels – stabilisation of certain sectors of the international market for the benefit of the maintenance of almost full employment in the industry – does not contain elements that are objectionable in itself. Given this objective, international cartels fulfil a rather important economical function which is difficult to replace. The possibility to abuse market power by a cartel or other agreements nevertheless requires continuous monitoring by the government and corrective action if needed.<sup>239</sup>

### *Supervision by the International Trade Organisation*

To prevent abuse by international cartels the subcommittee suggested a form of supervision. When the government was fully aware of cartel activity and had the means and authority to cancel unwanted agreements than there was little room for them to abuse their position. Supervision could

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<sup>238</sup> NA, EZ / Centraal Archief, 2.06.087, inv.nr. 4096, Subcommissie voor het kartelvraagstuk, rapport 23-07-1946, 10.

<sup>239</sup> NA, EZ / Centraal Archief, 2.06.087, inv.nr. 4096, Subcommissie voor het kartelvraagstuk, beschouwing kartels 15-03-1946, 10.

be exerted by the ITO, as proposed in the Havana Charter, with some small adjustments.<sup>240</sup> The ITO only should have a supervising task and the possibility to investigate complaints made by consumers and companies about restrictive business practices. To protect business information all investigation by the ITO should run through national governments. Furthermore, the subcommittee argued that prosecution of cartels remained in the jurisdiction of national governments, the ITO should not have a legislative role. It would be easier to take measures against intrinsically bad cartels if the legislation in West-European countries was more unified, something that France, Belgium and the Netherlands were trying to reach with their *Conseil Tripartite de Coopération Economique*.<sup>241</sup>

### 5.3. Creation of the Economic Competition Act

Although the US pushed for the creation of antitrust legislation and the liberalisation of markets throughout Western Europe with the Havana Charter and the ERP the Netherlands never saw that as motivation to change its legislation. The Netherlands did, however, create new legislation against restrictive practices in the 1950s. The *Wet Economische Mededinging* (Economic Competition Act) was passed in 1958, but the process of creating began as early as 1949. The primary motivation to change legislation was to replace the Cartel Decree from 1941.<sup>242</sup> This Decree was seen as wartime legislation installed by the occupier and was not acceptable any longer. Besides that, the main objections to the Cartel Decree were threefold: the carte blanche that the government had to interfere in economic life; the confidentiality of the cartel register and the impossibility for the government to publish anything about cartels; the lack of sufficient guarantees and legal certainty that came with government intervention.<sup>243</sup> Other objections were that the decree was only modelled on cartels and not on other forms of restrictive business practices such as monopolies and concentration. It was not an option to replace the Cartel Decree with the old Business Agreement Act because it was seen as a typical product of its time.<sup>244</sup> The Business Agreement Act was designed to support business agreements and only had limiting options to take measures against abuse of restrictive practices. This Act was also modelled on cartel agreements and disregarded other forms of restrictive practices which deserved attention. The new legislation thus had to include other forms of restrictive practices, options to take measures against abuse and had to fit in the international framework that severely changed since the end of World War II.

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<sup>240</sup> NA, EZ / Centraal Archief, 2.06.087, inv.nr. 4096, Subcommissie voor het kartelvraagstuk, rapport 23-07-1946, 12-13.

<sup>241</sup> NA, EZ / Centraal Archief, 2.06.087, inv.nr. 4096, Subcommissie voor het kartelvraagstuk, rapport 23-07-1946, 12.

<sup>242</sup> Nationaal Archief, Den Haag, Ministerie van Economische Zaken: Centraal Archief, nummer toegang 2.06.087, inventarisnummer 2396, Documentatie kartelbesluit, 3.

<sup>243</sup> Ibid.

<sup>244</sup> Ibid.

What was meant with the new international framework was the creation of the Havana Charter, the creation of the Benelux union and extensive European integration. The new legislation had to adequately fit within these circumstances. These points were all discussed by the drafting committee in their reports, which are used in this research. The opinion of the Dutch government still was that restrictive business practices could be good and bad and should not be forbidden as a whole. The Havana Charter, however, demanded that governments had legislation that made it possible to take measures against restrictive practices and single enterprises. Although the Havana Charter did not have any binding provisions, the Economics Department wanted new legislation to be formulated in such a way that it corresponded with the provisions in the charter.<sup>245</sup> The extensive negotiations about the Benelux also demanded attention in creating the new legislation. At that time the Benelux was a customs union only, but in the preamble of this agreement the possibility and intention for the creation of an Economic Union was already stipulated. If the Netherlands, Belgium and Luxembourg did opt for an economic union, the economic legislation should also be adjusted to one another. For an effective economic union the national sovereignty would be restrained on certain points. Antitrust legislation might have been part of this, mainly because in an economic union cartelisation would probably exceed national borders.<sup>246</sup> The last point that was taken into account was the European cooperation. If the Netherlands and other European countries were willing to work towards an economic union, the same questions would arise as in the creation of Benelux union. Taken all the points above into account the government decided that the new legislation should be a framework law, which could be supplemented during the course of years.<sup>247</sup>

The Economic Competition Act was designed on an abuse system; only those restrictive business practices that were against the general interest were prohibited. Two aspects of earlier cartel legislation were maintained in the new act. The government still could declare agreements generally binding and cartels were still obligated to register themselves in the confidential register. In practice the act not really changed the position of the government vis-à-vis restrictive practices. The biggest issue with the Act was the ambiguity about the general interest, which was not defined. Leading to differences in interpretation between government and businesses. According to Bouwens and Dankers this ambiguity led to an informal policy of the government wherein the government consulted with the businesses about the interpretation on each case.<sup>248</sup> Numbers on the occasions the government did prohibit (parts) of an agreement differ between scholars. Bouwens and Dankers

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<sup>245</sup> NA, EZ / Centraal Archief, 2.06.087, inv.nr. 2396, Documentatie kartelbesluit, 6-7.

<sup>246</sup> Ibid., 7-13.

<sup>247</sup> Bouwens, Dankers, *Tussen concurrentie en concentratie*, 167.

<sup>248</sup> Ibid., 168.

state that in the period between 1950-1980 only one agreement was declared generally nonbinding, that was an agreement on vertical price fixing.<sup>249</sup> Asbeek-Brusse and Griffiths state that in the same time period 8 agreements had some of their provisions dissolved and in 5 cases the agreement was declared generally nonbinding.<sup>250</sup> While their numbers differ, both studies show that the government seldom acted against restrictive business practices in the 1950-1980 period. In countries surrounding the Netherlands most governments opted for a more stringent antitrust legislation in that period. In Germany, France and Belgium cartels were more or less prohibited and in Great-Britain cartels were prohibited if they were against national interest and only allowed if they could prove otherwise (reversed mode of proof compared to the Netherlands).<sup>251</sup> Bouwens and Dankers note that the Netherlands take a somewhat strange position against cartels in the 1950s:

The continuing reliance by the Dutch on cartels in the midst of a shifting market economy can be explained by their inclination toward cooperation and collusion, which appears to contrast with the openness of this small economy.<sup>252</sup>

#### 5.4. Conclusion

Dutch businesses participated in national and international cartels since the end of the 19<sup>th</sup> century, but the existence of these cartels was ignored because in the small and open Dutch economy they were deemed ineffective. Dutch cartel legislation was introduced in 1935 with the Business Agreement Act, which was in contrast to the Sherman Act in the US, in favor of cartels: it was mainly developed to limit domestic competition instead of freeing it from restrictive practices. During World War II the Business Agreement Act was replaced by the Cartel Decree and the entire economy became regulated. After the war the Dutch economy remained regulated, because the priority was the reconstruction of the economy and protection of the Dutch market. In that process cartels were deemed beneficial for the reconstruction. The Dutch government disapproved of the conditions that were set in the ECA agreement about taking measures against restrictive business practices. They also thought that including this condition in the ECA agreement was superfluous, as, in their opinion, antitrust measure were already settled with the Havana Charter. The Dutch government protested against the ECA agreement and the Havana Charter but eventually signed both. This chapter shows that the Dutch reaction to the American antitrust policy was dismissive and that they tried to evade the antitrust condition in every way they could: by trying to change the ERP agreement in their favour during the Paris talks and advising against the antitrust conditions in the Havana Charter. Even

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<sup>249</sup> Bouwens, Dankers, *Tussen concurrentie en concentratie*, 167.

<sup>250</sup> Asbeek Brusse, Griffiths, 'Paradise lost, Paradise regained,' 20-22.

<sup>251</sup> Bouwens, Dankers, *Tussen concurrentie en concentratie*, 169.

<sup>252</sup> Bouwens, Dankers, *the invisible handshake*, 752

with creating new antitrust legislation, the Netherlands did in fact not comply with the American preconditions of the ERP. The new Economic Competition Act of 1958 replaced the Cartel Decree created during the German occupation of the Netherlands. Under the new legislation cartels had to be reported and were only forbidden if they were against the national interest, which was not clearly defined. In practice the act thus not really changed the position of the government against restrictive practices and only a few business agreements were declared generally nonbinding and were dissolved.



## 6. Conclusion

The Sherman Act of 1890 was the starting point of the creation of the American antitrust tradition but this tradition was not created overnight. The Sherman Act made it possible to prosecute businesses and persons that participated in restrictive practices such as the forming of trusts or the monopolisation of markets. These restrictive business practices threatened 'the American Way of Life' because they suffocated small and medium enterprises and pushed them off the market. This is the reason why antitrust legislation was created: to protect economic freedom and opportunity by promoting free and fair competition. The Sherman Act was first amended with the Clayton Act in 1914 to broaden the scope to include mergers and acquisitions, applying the rule of reason on them with distinguishing reasonable and unreasonable restraint. This amendment was needed because companies tried to circumvent the Sherman Act by creating (excessive) market power through mergers and acquisitions, resulting in a large merger wave. While American businesses were not allowed to participate in restrictive practices, European businesses gathered in large international cartels in the first half on the twentieth century. With around 70%, Europe had the largest share of the world trade in the interwar period, and of all the international trade, more than 40% was controlled by international cartels. Besides international cartels most European economies were heavily cartelized on a national level as well, with Germany probably being the most cartelized economy of the world in the interbellum. Antitrust legislation in the US made it impossible for American businesses to participate in these cartels and the power these cartels possessed made it also impossible to compete with them. To stimulate businesses the Sherman Act was amended in 1918 with the Webb-Pomerence Act, which made it possible for American companies to participate in international cartel agreements. During the presidential term (1933-1945) of Franklin Delano Roosevelt the American antitrust tradition went through two more major changes. First Roosevelt put antitrust legislation on hold during the New Deal, with which he hoped to overcome the Great Depression. Roosevelt made a great turnaround on antitrust legislation during his second term, shifting towards disapproval of all restrictive business practices. He appointed Thurman Arnold as head of the Antitrust Division of the Justice Department, who started a crusade against trusts and cartels. Arnold expanded the staff of the antitrust division and greatly increased the number cases filed against businesses that violated the antitrust laws. He started cases against US companies that participated in international cartels because these were believed to impede the American war effort in preparation of World War II. It was also believed that the rise of Nazism and Hitler in Germany was made possible by (international) cartels and the support of commercial and industrial organizations. Thurman Arnold was fired during the war but the crusade he started against international cartels was continued by the antitrust division. Already in 1943, before the war even neared its conclusion, the

US started thinking about the future of Europe and made liberalising world trade and spreading antitrust part of their foreign policy. Believing that competition stimulated free trade and free trade promoted peace. The American antitrust tradition may have started with the implementation of the Sherman Act but it developed over time. This led to the goal of spreading their vision on antitrust to the rest of the world, starting with Europe (and Japan, but this lies outside the scope of this thesis) after World War II.

In Europe, most countries accepted restrictive business practices as normal parts of their economy. Cartels and the concentration of businesses were even stimulated in countries such as Germany, France, Italy and the Netherlands between 1890 and World War II. In all these countries cartels and other restrictive business practices developed, Germany even became the most cartelised economy in the world. During World War II Germany's entire economy became regulated and cartels and similar agreements were made compulsory (*Zwang Kartell*). When Germany lost the war, the US made the deconcentration and decartelisation of the German cartels a priority, because of the power the German cartels and big businesses had on the world market, and the role they had played during, and in preparation, of the war. The US and the other Allies started deconcentration of Germany's largest companies when they formally occupied parts of the country. US officials also pushed for the creation of German antitrust legislation but realised that it would only be successful if they included German officials in the process. Relatively strong antitrust legislation was enacted in Germany during the 1950s, but the contribution the US made to this legislation is subject to debate. Three opinions can be found in this debate. The first poses that it was an American success because the creation of Germany's antitrust legislation was only possible because of US pressure. The second opinion is that it was a German success because it were the *ordo-liberals* in Germany that fought for the creation of the legislation. Lastly, the third stream of thought finds it was a success because of Cross-National Transfer, due to American influence and pressure, and the German willingness to change. Fact is that the US formally occupied Germany till 1949 and had a large influence on German policy during that period. In that period the drafting of German antitrust legislation also began, led by Ludwig Erhard. In other parts of Europe the US did not have that kind of influence and had to try another solution for spreading their ideas about antitrust. Therefore, the US made the implementation of a form of antitrust legislation a condition for receiving aid from the European Recovery Program. This program was set up after the war to help the countries of Europe to repair their war damages and speed up the recovery of their economies. It was also set up to stop the spread of communism, thereby protecting American (economic) interests. The ERP agreement did have some conditions that participating countries had to fulfil, thus all the European countries that participated in the ERP were obliged to take measure against restrictive business practices.

The Netherlands participated in the ERP and received over a billion dollars of aid from the US

between 1948 and 1953. The research in this thesis shows that the enactment of antitrust legislation was part of official US policy. Antitrust and measure against restrictive practices were mentioned in speeches and the creation of the Dutch antitrust legislation in the early 1950s was discussed among officials from the Dutch ECA mission. That was, however, all the attention antitrust legislation got, as other documents about the Dutch ECA mission, available at the Roosevelt Study Center in Middelburg, show that the emphasis of the US officials mostly concentrates on getting the economy running again and increasing its productivity. After the ECA was replaced with the MSA the reconstruction of the Dutch army for the construction of NATO had priority. In the annual hearings in the US congress about the progress and effects of the ERP in the Netherlands, antitrust legislation and the presence of cartels were not mentioned. During the hearings, the emphasis of the evaluation also lied on the recovery of Dutch economy after the war, increasing its economic efficiency and productivity, and building up a military apparatus. Other issues that were discussed in the hearings were the situation in Indonesia and the availability of food supplies. Although the US had made antitrust part of their policy in the Netherlands, the officials did not spent much time on it, as other issues had priority.

Cartels and other restrictive business practices already existed in the Dutch economy since the end of the 19<sup>th</sup> century. Unlike the US, the Dutch government did not find it necessary to interfere with restrictive business practices and cartels. This changed during the depression of the 1930s. With the implementation of the Business Agreement Act the Dutch government hoped to stimulate cooperation between businesses to prevent murderous competition. The Dutch government kept this positive attitude towards cartels and other business agreements in the interbellum and also after World War II. The government thought that the benefits of cartels were significantly greater than the disadvantages. Therefore, they disapproved of the precondition in the ECA agreement to take measure against restrictive business practices. During the talks about the ERP in Paris the Dutch delegation reported that including the creation of a form of antitrust legislation in the ECA agreement was superfluous. The Havana Charter, which was agreed upon earlier in 1948, already settled antitrust conditions. The articles in the Havana Charter about antitrust had been objected by the Dutch government as well. The committee installed to advise the Dutch government on the Havana Charter, thought cartels were vital to the splintered European economy and that competition would be destructive without cartel agreements. Furthermore, the Dutch officials felt that the Americans 'rode their anti-cartel hobby horse' when they added the condition about restrictive business practices in the ECA agreement. Although the Dutch government disagreed with the antitrust articles in the ECA agreement and the Havana Charter, they eventually signed both. Especially for the ERP, the Dutch interests to be included in the aid program outweighed their stance towards the antitrust condition. The Dutch government did, however, start with the creation of new

cartel legislation in the beginning of the 1950s, but the conditions in the ERP and Havana Charter were not the incentive. The Economic Competition Act, implemented in 1958, simply had to replace the Cartel Decree which was seen as wartime legislation. The Dutch government wanted the Economic Competition Act to fit in the new international framework that emerged at that time, which meant the early 1950s draft had to fit in the Benelux union, the ongoing European integration and the Havana Charter. The Economic Competition Act was formulated in such a way that the government could take measure against restrictive business practices, thereby the act met the provisions in the Havana Charter and the ECA agreement. The act forbade restrictive business practices that were against the national interest, a term that was not clearly defined. In practice the Economic Competition Act changed almost nothing: although the existence of cartels was known because of the obligation to sign up their agreements in a register, court cases against cartels were almost never started by the government. Between 1958 and 1980 only a handful of business agreements were declared generally nonbinding. Although the Netherlands did comply to the American precondition of the ERP with the creation of a new antitrust legislation, their vision antitrust remained very different to that of the US

With respect to this thesis' main question to what extent did the US influence antitrust policy in the Netherlands, the following can be concluded. The research of documents about the Dutch ECA mission and the documents from the Dutch Economic and Foreign Department shows that the American attempt to influence antitrust policy in the Netherlands was not a success at all. The reasons for this were twofold: firstly, the US had different priorities in the Netherlands that got all the attention, and secondly, the government of the Netherlands rejected the American vision on antitrust, believing that the benefits of cartels: distribution of unused production capacity among participating companies; stabilisation of prices on a reasonable level; levelling off cyclical fluctuations; distribution of technology and patents among participants; and not hindering innovation and efficiency were significantly greater than the disadvantages. When giving the research in this thesis a place in the debate on the implementation of American antitrust in other countries, it must be placed under what in this thesis is called National Success. With the Economic Competition Act the Dutch government did create antitrust legislation but American policy was not the incentive. The Dutch changed their legislation because they wanted to replace the war time Cartel Decree, imposed during German occupation. The Economic Competition Act is also not similar to the American antitrust legislation; it was designed to leave open the possibility to create business agreements and only take measure when restrictive practices were against the national interest. With the creation of the Economic Competition Act it looked like the Netherlands did fulfill the obligations of the ECA agreement and the Havana Charter, but in fact the Netherlands remained a

*cartel paradise*. This cartel paradise was conserved well into the 1990s, when the formation of the European Union began and antitrust was back on the agenda.

## Further research

Although the Marshall aid in the Netherlands and the Dutch cartel history were already extensively researched the subject of this thesis was missing. With this thesis this gap is now partly covered but there remains room for further research. In this thesis government documents of both the US and the Netherlands were reviewed which were available in the National Archives of the Dutch Economic and Foreign Relations departments and the microfilms available in the Roosevelt Study Centre. All together this is a collection of thousands of pages of information and the subject of this research is only a small topic in this collection. The Dutch archives researched were a selection. It must be noted that the Dutch cartel register and all corresponding documents are still secret and not accessible. There are also other archives than can be investigated. Personal archives of the involved ministers and other officials might provide new insights. Other interesting documents might be found by the Dutch Autoriteit Consument en Markt (ACM), the regulatory body of the Netherlands on restrictive business practices and consumer protection.

The archives researched in the RSC about the Marshall plan are quite extensive but still remains a selection of documents that the researchers of the RSC thought were most important. Important documents about the Marshall Plan and restrictive business practices were for example missing in the selection at the RSC. These documents can be found at the US National Archives.<sup>253</sup> This specific document looks to be a key document in how restrictive business practices and the ERP were coupled. An extensive research through the American National Archives concerning documents related to the creation and execution of the ERP, might also provide new insights on the way the US tried to battle restrictive business practices in the Netherlands and other parts of Europe.

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253 This document is part of the documents put together by the US Committee on the European Recovery program in preparation of the ECA mission. The original archive can be found at the US national archives. National Archive Identifier: [2588371](#), Series: Historical Records Relating to the Formulation of the European Recovery Program, 1948 – 1951, Record Group 59: General Records of the Department of State, 1763 – 2002, Container Identifier: 33 The document is called: D3-15, The Marshall Plan and Restrictive Business Practices (Prepared by Mr. Vernon, IR)

## List of abbreviations

BDI	Bundesverband der Deutschen Industrie
BIDEC	Bipartite Decartelization Commission
ECA	Economic Cooperation Administration
ERP	European Recovery Program
MSA	Mutual Security Administration
NIRA	National Industrial Recovery Act
OMGUS	Office of Military Government United States
TNEC	Temporary National Economic Committee
ITO	International trade organisation
US	United States of America
UN	United Nations

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<sup>254</sup> In 2002, in the Netherlands a national research program has been started: Dutch business in the 20th century ('Bedrijfs geschiedenis in Nederland in de Twintigste Eeuw' or BINT). The program is an initiative of the Business History Research Group of Utrecht University and its Research Institute for History and Culture (OGC). The Netherlands Economic History Archive (NEHA), the Erasmus University Rotterdam and the Foundation for the History of Technology at Eindhoven University are also participating.



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<sup>255</sup> This document and the hearings before the 82<sup>nd</sup> Congress can be found in a folder composed by Hans Krabbendam for his research on Alan Valentine, the head of the ECA mission in the Netherlands.