

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

 UNITED STATES OF AMERICA,)
) Plaintiff,)
) v.)
 UNITED FRUIT COMPANY,)
) Defendant.)

Civil Action No. 456

FILED
 DISTRICT COURT
 EASTERN DISTRICT OF LA
 APR 13 12 41 PM '78
 NELSON B. JONES
 CLERK
[Signature]

MODIFIED FINAL JUDGMENT

Plaintiff, United States of America, filed its complaint herein on July 2, 1954, and its amended complaint herein on January 12, 1956, and defendant, United Fruit Company appeared and filed its answer to the amended complaint on February 10, 1956, denying the substantive allegations thereof. On February 4, 1958, plaintiff and said defendant consented to the making and entry of a Final Judgment without trial or adjudication of any issue of fact or law and without admission in respect to any issue. On January 31, 1978, plaintiff and United Brands Company, the successor to defendant United Fruit Company, jointly moved for modification of that Final Judgment in order to reflect changed circumstances and to eliminate provisions no longer applicable.

NOW, THEREFORE, before any testimony has been taken and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby.

ORDERED, ADJUDGED, AND DECREED as follows:

I

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The amended complaint states a claim upon which relief may be granted against the defendant United Fruit Company under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as

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amended, and under Section 74 of the Act of Congress of August 27, 1894, entitled "An act to reduce taxation, provide revenue for the government and for other purposes," commonly known as the Wilson Tariff Act, as amended.

II

As used in this Modified Final Judgment:

(A) "United" shall mean the United Fruit Company, a New Jersey corporation, its parent corporation, United Brands Company, a New Jersey corporation, United's subsidiaries, or any of them.

(B) "United's subsidiaries" shall mean all corporations of which United directly or indirectly owns or controls a majority of the voting stock, and which are now or may hereafter be engaged in the American Tropics or the United States in the production, purchase, transportation, processing, handling, distribution, or sale of bananas.

(C) "United States" shall mean United States of America, its territories and possessions.

(D) "Person" shall mean any individual, firm, association, partnership, corporation, company, or other legal or business entity, whether domestic or foreign.

(E) "Jobber" shall mean any person engaged in the business of buying bananas from an importer, processing the bananas and reselling them to other wholesalers who do not process bananas or to retailers for sale to the public.

(F) "American Tropics" shall mean the area bounded by latitude 25 degrees north, longitude 120 degrees west, latitude 25 degrees south, and longitude 30 degrees west.

III

The provisions of this Modified Final Judgment applicable to United shall apply to United, its officers, directors, agents, servants, employees, subsidiaries, successors and assigns, and to those persons in active concert or participation with it who receive actual notice of this Modified Final Judgment by personal service or otherwise. United is ordered and directed to take such steps as are necessary to secure compliance by its officials, subsidiaries and such other persons, described above, with the terms of this Modified Final Judgment. United and United's subsidiaries shall be deemed for the purposes of this Modified Final Judgment to be one person.

IV

United is enjoined and restrained from directly or indirectly:

- (A) (1) Entering into, adhering to, or enforcing any contract, agreement or understanding for the sale of bananas which provides that the purchaser must buy from United all or any specified percentage or part of his future requirements of bananas for the United States market;
- (2) Entering into, adhering to or enforcing any contract, agreement or understanding for the sale of bananas outside the United States which provides that the purchaser must buy all or any specified percentage or part of his future requirements of bananas from United when a significant portion of said purchases are destined for resale in the United States;
- (B) Entering into, adhering to or enforcing any contract, agreement or understanding with any other person:
 - (1) to refrain from producing or purchasing bananas for sale in the United States, or
 - (2) to refrain from selling or distributing bananas in the United States, or
 - (3) to restrict or limit production of bananas for the United States market, or
 - (4) to restrict or limit the transportation of bananas from the American Tropics to the United States, or
 - (5) to restrict, limit or prevent the importation of bananas into the United States, provided, however, (i) that the injunctions contained in this section shall not apply to any contract, agreement or understanding with a grower with respect to production by that grower on land owned by United, (ii) that United may specify the area of land the production of which it agrees to purchase from a grower or may limit the volume of bananas which it agrees to purchase from any grower, and (iii) that United may include in any contract for the purchase of bananas provisions that require the grower to follow good agricultural practices such as the maintenance of regular treatment against

diseases in areas where United maintains such regular treatment on its own banana cultivations, abandonment or destruction of banana plantings that have become infested with disease, and the thinning out of banana plantings that are too dense for satisfactory growth.

V

United is enjoined and restrained from directly or indirectly:

- (1) (a) Concealing the fact or failing to comply with any legal requirement to report to any agency of the United States a proprietary interest in or control over any person importing into or selling bananas in the United States;
- (b) Concealing the fact that it owns, holds or maintains a proprietary interest in or control over a person who is producing or purchasing bananas for export to the United States or who is transporting bananas to the United States;
- (2) Participating in any agreement, arrangement, plan or program with any competitor of United in the importation of bananas into the United States or the sale of bananas in the United States to receive from, exchange with or disseminate to such competitor information with respect to prices to be charged in the United States, or the current supply of bananas in the United States, or the amount of expected imports of bananas into the United States, or the supply of bananas currently available in the American Tropics for importation into the United States; or entering into, adhering to or following any course of conduct, practice or policy of disclosing to any such competitor any such information prior to its availability to the segment of the banana business concerned;
- (3) Entering into or participating in any contract, agreement, understanding, plan or program with any jobber, dealer or customer of United in the United States to refuse to buy bananas from or sell bananas to any person in the United States;
- (4) Coercing or requiring any person in the United States to accept bananas either greater in quantity or lower in quality or at a higher price than such person would otherwise accept, by threatening to refuse to sell him any bananas in the future;

- (5) Selling, or offering to sell, bananas in the United States on the condition or understanding that the purchaser comply with United's directions or suggestions as to resale price, terms of resale or place of resale of bananas, or refusing to sell bananas because of the purchaser's failure to comply with such directions or suggestions;
- (6)
 - (a) Denying any banana jobber or other customer in the United States the right to select any responsible truckman or truckmen for the purpose of transporting bananas from United's dock at any port of import to such jobber's or customer's place of business; provided, however, that this provision shall not apply to bananas to be transported from United's dock in any container owned or leased by United;
 - (b) Penalizing any banana jobber or other customer in the United States for refusing to pay charges fixed, determined or exacted by any truckman or truckmen;
- (7) Entering into, adhering to or maintaining any agreement, contract or arrangement with any common carrier by rail or water in the Western Hemisphere which provides that the common carrier will not accord to competitors of United terms, privileges and treatment in the transportation of bananas for sale in the United States or destined for sale in the United States proportionately equal to those accorded by the carrier to United;
- (8) Tortiously interfering with the performance of, or intentionally inducing the breach of, any contract related to any phase of the banana business between any of United's actual or potential competitors in the banana business and any grower, transporter, seller or purchaser of bananas, where such interference or breach affects the foreign or domestic commerce of the United States;
- (9) Making or guaranteeing loans to, or extending credit to, any banana jobber or customer in the United States; provided, however, that nothing in this subsection shall be deemed to prevent United from extending credit to its customers in the normal course of business or from extending credit in connection with the sale by United of property other than bananas;
- (10) Entering into, adhering to or enforcing any contract, agreement or understanding with any person to fix, establish, maintain or adhere to the prices, terms or conditions for the sale of bananas to third persons in the commerce of the United States, or to allocate

territories, markets or customers for the sale of bananas in said commerce.

VI

(A) No member of the board of directors of United, or any officer or employee thereof, shall hold any office or have any employment or contractual relation with Del Monte Corporation, directly or indirectly.

(B) No person while an officer or member of the board of directors of United shall acquire from anyone other than United, except by inheritance, stock dividend, stock split, or exercise of preemptive rights, stock in Del Monte Corporation.

VII

United shall not be in contempt of this Modified Final Judgment for doing anything in a country other than the United States that would otherwise be forbidden by this Modified Final Judgment if such action is required by the Government of the country in which the act takes place. United shall not be in contempt of this Modified Final Judgment for not doing anything in a country other than the United States that would otherwise be required by this Modified Final Judgment if such action would be unlawful in that country. In any such case, United shall advise the plaintiff of the circumstances as promptly as practical and thereupon the plaintiff may apply to the Court, with full opportunity for United to be heard, for such relief consistent with the provisions of this Modified Final Judgment as the Court may deem proper.

VIII

This Modified Final Judgment shall be in full force and effect until ten years after the divestiture by United of its Bananera Guatemala plantations to Del Monte Corporation, which was consummated on December 14, 1972. This Modified Final Judgment shall thereafter be of no force or effect.

IX

For the purpose of securing compliance with this Modified Final Judgment and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to United made to its principal office, be permitted (a) access during the office hours of United to all books,

ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of United relating to any of the matters contained in this Modified Final Judgment, and (b) subject to the reasonable convenience of United and without restraint or interference from it to interview officers or employees of defendant United who may have counsel present, regarding any such matters; and upon such request United shall submit such reports in writing to the Department of Justice with respect to matters contained in this Modified Final Judgment as may from time to time be necessary to the enforcement of this Modified Final Judgment. No information obtained by the means provided in this Article IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department except in the course of legal proceedings to which the United States of America is a party for the purpose of securing compliance with this Modified Final Judgment or as otherwise required by law.

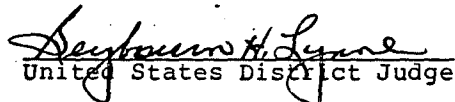
X

The terms of this Modified Final Judgment shall not be construed to create in anyone other than the plaintiff any rights or claims against United that do not otherwise exist.

XI

Jurisdiction is retained for the purpose of enabling any of the parties to this Modified Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Modified Final Judgment or for the modification or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

Dated: *April 7*, 1978


United States District Judge