

# ***Cartelization and Decartelization in Europe, 1870-1995: Rise and Decline of an Economic Institution***

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## **1. Introduction<sup>1</sup>**

Today, most people, governments and economists included, view cartelization as detrimental to economic development. However, this was not always the case. For a certain period not only industrialists but governments, too, thought cartelization to be a tool to generate more income, not only for cartel members, but also for their national economy as a whole. Though after the second world war such views were no longer openly maintained, cartels still play a role within the European Community and beyond. Furthermore, there are signs within the EC that cartelization is considered to be a positive relief for problem branches of industry, such as steel or artificial fibres. The stout anti-cartel views of the EEC have eased at the same time as various European states have tightened their former soft views on economic cooperation. Thus, since the 1980s, a considerable convergence is to be seen. During this century we have experienced a swing concerning the importance of cartelization, a complete change in the views about this important institution.

The first scholarly assessment on the cartel question was made by the Austrian professor Friedrich Kleinwächter in 1883.<sup>2</sup> He stressed the point that cartels have a positive function in the organization of markets. A cartel is defined as an agreement between firms or organization of firms of the same branch of

<sup>1</sup> I am greatly indebted to Alice Teichova for her comments on this contribution, which were extremely helpful.

<sup>2</sup> Kleinwächter, Friedrich, *Die Kartelle. Eine Frage der Organisation der Volkswirtschaft*, Innsbruck 1883.

industry, which is designed to influence production or distribution of goods or services by the limitation of competition. Cartels can have written contracts; however, any kind of understanding, such as gentlemen's agreements, are to be included.<sup>3</sup>

Advocates praised the organisational and rationalising effects of cartelization; they usually viewed the market from the supply side. Opponents mainly argued from the standpoint of demand, maintaining that the effects on the market are detrimental. Such basic lines of argument had been put forward already as early as in the 1890s.<sup>4</sup>

## 2. An Explanatory Model on Cartelization

There is a considerable amount of literature on cartelization and related questions, which have focused on problems such as economic concentration, the political role of cartelization, crisis management, etc.<sup>5</sup> However, relatively little attention has been paid to explaining the different influence of this institution over time.<sup>6</sup> Legislation on cooperation and concentration, which codified cartelization as well as decartelization, has changed significantly in Europe during this century. Though this has been acknowledged as such, there is little interpretation. In the following an attempt will

<sup>3</sup> Hexner, Ervin, *International Cartels*, (Chapel Hill, 1946), pp. 19ff.

<sup>4</sup> Fezer, Karl-Heinz, "Die Haltung der Rechtswissenschaften zu den Kartellen bis 1914, in: Pohl, Hans (ed.), *Kartelle und Kartellgesetzgebung in Praxis und Rechtsprechung vom 19. Jahrhundert bis zur Gegenwart*", (Stuttgart 1985), pp. 51 - 64.

<sup>5</sup> Among the most quoted and most recent publications are: Barjot, *International Cartels*; Hexner; Jones, Geoffrey, *Coalitions and Collaboration in International Business*, (Aldershot 1993); Kudo, Akira and Terushi Hara (eds.), *International Cartels in Business History*, (Tokyo 1992); Pohl, Hans (ed.), *The Concentration Process in the Entrepreneurial Economy since the late 19th Century*, (Stuttgart 1988); Stocking G. W. and M. S. Watkins, *Cartels in Action: Case Studies in International Business Diplomacy*, (New York 1947); Teichova, Alice, "A Legacy of Fin-de-Siècle Capitalism: The Giant Company", in: Porter, Roy and Mikuláš Teich (eds.), *Fin-de-Siècle and its Legacy*, (Cambridge 1990), pp. 10-27; Wurm, Clemens, "International Industrial Cartels, the State and Politics", in: Teichova, Alice and Maurice Lévy-Leboyer and Helga Nussbaum (eds.): *Historical Studies in International Corporate Business*, (Cambridge/Paris 1989), pp. 111-122.

<sup>6</sup> The latest approach was made by Dominique Barjot (Introduction, in: *idem*, *International Cartels*, pp. 39-70).

be made to present a model suitable to explain reasons for cartelization and decartelization in Europe.

In his volume *Scale and Scope*, Alfred Chandler has presented three different systems of running a capitalistic economy.<sup>7</sup> These are represented by the competitive, the personal, and the cooperative type. The latter includes cartelization, though not as its only characteristic. Chandler's approach has stimulated investigation into the fate of cartels in a certain group of states in the light of cooperative capitalism.<sup>8</sup> As a consequence, the *manière de voir*, the way of conducting business, the social consensus about how to proceed in economic matters, the paradigm of how the question of cartelization should be dealt with, has not only to be taken into account but represents the central issue of our investigation.<sup>9</sup> The change in the *manière de voir* was part of an "Americanisation", which gradually took place in Europe after the second world war.<sup>10</sup> Americanisation, favouring competition, contrasted with cooperative behaviour in the economy. Therefore the following is based on the combination of Peter Burke's and Alfred Chandler's theoretical views. Alfred Chandler has explained different ways of running an economy, from which the "German" cooperative and the "US-American" competitive models are used here. Burke's model, which has been approved in social history,

<sup>7</sup> Chandler, Alfred D., Jr., *Scale and Scope, The Dynamics of Industrial Capitalism*. (Cambridge/Mass., London 1990).

<sup>8</sup> Schröter, Harm, "Small European States and Cooperative Capitalism", in: Chandler, Alfred D. jr. and Franco Amatori and Takeshi Hikino (eds.), *Big Business and the Wealth of Nations, 1880s - 1980s*, (Cambridge/Mass., London (forthcoming) 1996).

<sup>9</sup> According to Peter Burke, mentality, which shapes the "manière de voir", is structured by collective convictions - in contrast to individual ones, and by the non-written and non-reflected every-day approach in doing one's business (Burke, Peter, "Stärken und Schwächen der Mentalitätsgeschichte", in: Raulff, Ulrich (ed.), *Mentalitätsgeschichte*, (Berlin 1987), pp 127 - 145, p. 127).

<sup>10</sup> Because this process initially focused on Germany, this case has been explored more than others (Berghahn, Volker, *The Americanization of West German Industry, 1945-1973*, (New York 1986); Schröter, Harm, Die Reichweite von Amerikanisierung und Sowjetisierung als Interpretationsmuster ökonomischer Veränderungen in beiden deutschen Staaten, in: Jarausch, K. and J. Kocka and H. Siegrist (eds.), *Amerikanisierung und Sowjetisierung*, (Potsdam (forthcoming) 1996).

explains changes in theories and values over time. Both approaches are here combined in order to explain European cartelization and decartelization, which reflect the raise and decline of the cartel as an institution.

### 3. The Cartel Movement up to 1914

Forerunners of industrial cartelization are to be found among other contexts in France and in Belgium. The oldest French industrial agreement we know of is the Marseille cartel on soda, concluded in 1838.<sup>11</sup> The Belgian Vieille Montagne embarked on its policy of cartelization from the 1850s onwards. The most important French iron and steel cartel, the Comptoir de Longwy, was founded in the midst of the French-German war on 1 January, 1871. Since then cartelization proceeded further in France.<sup>12</sup> In Belgium a cartel movement became more and more successful by experience cumulative especially since the 1880s. Based on national cartels, Belgian industry evolved various international cartels in e.g. zinc, bottles, glass, bricks, and other commodities before 1914. All other nations took part in the movement as well. Of course, Russia was no exception. Up to the revolution in 1917 it participated fully in the cartelization movement. All European industrialized states developed experience in dealing with cartels. However the dynamics of this movement, the approach to the institution of the cartel, differed from country to country.

Germany became the centre of this development. In 1910 about 700 industrial cartels were counted in that state, the number of which grew to 3,000 in 1930.<sup>13</sup> Two crucial reasons for this fact are: (i) Germany became the second largest industrial nation in Europe

<sup>11</sup> Tschierschky, Siegfried, *Kartelle und Trusts*, (Berlin 1932), p. 47.

<sup>12</sup> Caron, François, "Cartels et fusions en France: 1914 - 1945", in: Pohl, Hans (ed.): *Wettbewerbsbeschränkungen auf internationalen Märkten*. (Wiesbaden 1988), pp. 185 - 192; Chadeau, Emmanuel, "International Cartels in the Interwar Period: Some Aspects of the French Case", in: Kudo and Hara, pp. 98 - 113; Ballande, Laurence, *Essai d'entente monographique et statistique sur les ententes internationales*, (Paris 1936).

<sup>13</sup> König, H., "Kartelle und Konzentration", in: Arndt, H. (ed.), *Die Konzentration in der Wirtschaft*, vol. 1, (Berlin 1960), p. 304.

after Great Britain and (ii) from the 1890s onwards, private cartel contracts could be enforced in Germany by law. Therefore, such private understandings became a very powerful tool in business policy. In the other large states, cartels could not be enforced to the same extent as in Germany.

Cartelization gathered momentum in the 1880s during the so called Great Depression. Within this difficult period banks, together with the state administration, often initiated industrial cartels in order to safeguard credit or local employment.<sup>14</sup> That is, initially, cartelization was not promoted by industry, but by other sectors. Usually cartels acted only for a short while; in nearly all cases they were very fragile organisations. However, from the 1890s onwards, industrialists became more and more aware of cartelization being a tool of business policy which they could use without the direction of banks or government administration. After a decade of learning - the 1880s - a decade of trial and error emerged, the 1890s. During these two decades many cartel agreements were concluded but collapsed after a short while. However, at the end of the 1890s, German businessmen and their lawyers had learned how to construct reliable and long-lasting cartels. It was this experience which gave German companies an advantage over international competitors in the field of cooperation.

#### **4. The Interwar Period**

The interwar period showed the peak of the cartel movement. Cartels became generally accepted; not only in Europe, but also throughout the world, except in the United States.<sup>15</sup> Many enterprises in all nations had gained experiences with cartel institutions before the first world war and had found them useful.

<sup>14</sup> Wengenroth, Ulrich, "Die Entwicklung der Kartellbewegung bis 1914", in: Pohl, Hans (ed.), *Kartelle und Kartellgesetzgebung in Praxis und Rechtsprechung vom 19. Jahrhundert bis zur Gegenwart*, (Stuttgart 1985), pp. 15 - 27; idem, *Unternehmensstrategien und technischer Fortschritt, Die deutsche und die britische Stahlindustrie 1865 - 1895*, (Göttingen/Zurich), 1986.

<sup>15</sup> Schröter, Harm, "Kartellierung und Dekartellierung 1890 - 1990", in: *Vierteljahrschrift für Sozial- und Wirtschaftsgeschichte*, Vol. 81, 1994, pp.457-493.

During 1914 to 1918 nearly all markets became organized for the war effort. Economic actors became accustomed to cooperative behaviour. Facing the slump in the world market after the first world war, in the press, published opinions on competition and cooperation, which before 1914 viewed the issue from various sides, soon became strongly in favour of cartelization.<sup>16</sup> Businessmen and governments alike stressed the positive results of rationalization and private regulation. In such discussions the interests of the national economy, in contrast to and in competition with other national economies, were underlined. In this light national cartelization was understood as a means of strengthening the specific country's economy in the world market. In most of the debates the positive views on cartelization were not challenged, but the right of governments to intervene in such private contracts was questioned.<sup>17</sup> The world economic crisis of 1929-1933 further deepened the common belief that cooperation and organization would act as a remedy for the slump. Trade unions and social democrats, too, had nothing against concentration and cartelization. It was their idea to match the economic threat of private enterprise by the construction of large cooperative firms of their own.<sup>18</sup>

The case of Norway provides a good example for the general attitudes in most of the developed European states. Norway was one of the few states which had passed special legislation on

<sup>16</sup> Gömmel, Rainer, "Kartelle in der öffentlichen Meinung bis 1914", in: Pohl, Hans (ed.), *Kartelle und Kartellgesetzgebung*, pp. 69-79.

<sup>17</sup> E.g. Den förslagna lagstiftning angående kontroll över truster och karteller, protocol of the society for national economy of its meeting on march 16, 1922, in: *Nationalekonomiska Föreningens Förhandlingar*, 1922, pp. 23-44 (for Sweden); Alfthan, Ferdinand, *Finländska karteller. Ekonomiska Samfundets Tidskrift 1920-1921*, (Helsinki 1921), pp. 278-331 (for Finland); in Switzerland the central government did not react to suggestions to consider this question (Motion Grimm of 6 June 1924), but it formed a commission to monitor retail prices (Preisbildungskommission des Eidgenössischen Volkswirtschaftsdepartements (PbK)) in 1926.

<sup>18</sup> Odhe, Torsten, *Det moderna trust- och kartellväsendet*. (Stockholm 1929); Bechtold, Hartmut, *Die Kartellierung der deutschen Volkswirtschaft und die sozialdemokratische Theorie-Diskussion vor 1933*, (Frankfurt/M., 1986).

economic concentration during the 1920s. By the laws of 1922 and 1926 an institution was founded to control and formally approve all such movements. Wilhelm Thagaard, who became president of this control council after he had succeeded in setting it up, was strongly in favour of economic cooperation, because in his view it represented a positive force, aiding the accumulation of national wealth.<sup>19</sup>

His standpoint had important repercussions, as the following example shows. It was laid down by law that cartels should be limited to one year, after which they had to be approved anew by Thagaard's council. In 1929 the Norwegian canned food industry applied for an exception to this, as it felt more comfortable with a long-term cartel. The council did not only approve this, but in its justification explained, that "its investigations had revealed the advantages which mergers and cooperation had brought, by way of strict planning and economic security, to the production and exports of canned food."<sup>20</sup> A general approval of cartelization cannot be expressed better than by Thagaard, being the Norwegian "watchdog" on economic cooperation during that period.

As in Norway, state intervention was massive in France. Not only the steel cartel but all national cartels maintained close links with the administration in Paris. Moreover, a whole set of cartels was founded by the state administration, e.g. the *Centrale des Matières Colorantes*, which acted as the cartel for dyestuffs, or the *Société Générale de Potasse*, or the *Comptoir Français de l'Azote*. The French state established such cartels for economic as well as for political reasons. The administration was convinced that, by enhancing the economic power of French business, the political power of France would rise in parallel. And though France and

<sup>19</sup> Hodne, Fritz, *The Norwegian Economy 1920 - 1980*, (Beckenham/New York 1983), pp. 80f; Nordvik, Helge W., *From Wilhelm Thagaard to Egil Bakke: Price Control, Cartels and Norwegian Competition Policy after World War II*, ms.; Schröter, *Wirtschaftlicher Wettbewerb*.

<sup>20</sup> Andersen, Kristen, "Die Aufsicht über Trusts und Kartelle in Norwegen", in: *Kartell-Rundschau*, 1933, pp. 77 - 83, p. 81.

Germany viewed each other as arch-enemies, especially during the 1930s, they cooperated closely in the field of international cartelization. They cooperated in defending their common cartels' interests against the USA, and they cooperated in forcing Great Britain into the steel cartels'. After 1937 French state administration even handed over to the German nitrogen cartel the supervision of nitrogen imports into France.<sup>21</sup> In a period of mounting political tension between France and Germany, such cooperation looked quite strange!

Except for the German potash syndicate, participation in cartels was nowhere enforced by state authorities. However, this changed in the interwar period, especially after the world economic crisis. In several countries all producers of a certain commodity were made to join the respective cartel. This represented the highest and final recognition of the institution of the cartel.

State-enforced cartelization took place first in Spain when, in 1926, the trade in wines and mining of lead ore was concentrated. In Italy, too, several branches of industry, such as the steel and the silk industries were cartelized by the Fascist administration. However, when in 1935 Rome passed a law, by which such steps could be taken explicitly, the legislation was hardly used. In 1934 the Dutch parliament, too, passed a law, which enabled the government to force outsiders into the respective cartels.<sup>22</sup> Though that power was not applied until 1939, it acted as a curb on competition as it had a massive impact on the behaviour of cartel members as well as on outsiders. Similar legislation was passed in Belgium one year later, in 1935.

The fact that during the 1930s legislation on cartels and state

<sup>21</sup> Archive of the German Foreign Ministry (PA AA, Botschaft Paris W 15 b, vol. 4; various letters, December 1937 to November 1938); Schröter, Harm, *Privatwirtschaftliche Marktregulierung und staatliche Interessenpolitik. Das internationale Stickstoffkartell 1929 - 1939*, in: Schröter, Harm and Clemens Wurm (eds.), *Politik, Wirtschaft und internationale Beziehungen. Studien zu ihrem Verhältnis in der Zeit zwischen den beiden Weltkriegen*, (Mainz 1991), pp. 117-137.

<sup>22</sup> Stuart, Verrijn G.M., *Die Industriepolitik der niederländischen Regierung*, (Jena 1936), p. 20f.

intervention became widespread was by no means accidental. The world economic crisis had rocked not only employment, output, trade links etc. but the moral integrity of liberal capitalism. The remedy was sought in the organisation of markets. Socialists suggested state ownership and state planning, while for those who believed in private control and initiative, the cartel was the most obvious institution and the respective industrialist the most obvious specialist for its application. Professors such as Alfred Plummer of Oxford University pointed even out that, since cartels used to break down every now and then, international concerns because of their greater reliability would be a better solution for the organisation of markets.<sup>23</sup> The economic hopes and expectations that it was a positive paradigm, rested with the organisational capabilities of the cartel. The institution was generally highly estimated during the 1930s.

Even American industry took part in international cartelization. Since it was legally not entitled to do so directly, it found means and ways of indirect participation.<sup>24</sup> Moreover, in 1933 the Roosevelt administration created an authority under the National Industrial Recovery Act (NIRA), which was to organise the internal market of the US. In 1935, when the Supreme Court dissolved NIRA, it had more than 5000 employees. They were busy in shaping state-enforced rules on competition, which prohibited the foundation of new firms as well as the enlargement of established ones. In the NIRA, where the approach to the economic problem was very similar to the European ones, the European attitude toward the organisation of markets was shared.<sup>25</sup>

In Switzerland a commission called PbK (*Preisbildungskommission*) started a long-term investigation into the extent of cooperation (cartels and cartel-like understandings) from 1936

<sup>23</sup> Plummer, Alfred, *International Combines in Modern Industry*, (London 1934), p. 165.

<sup>24</sup> US-industry took part via its foreign direct investments or friendly firms of other nations (Enquete-Ausschuß, Ausschuß zu Untersuchung der Erzeugungs- und Absatzbedingungen der deutschen Wirtschaft, Kartellpolitik, (Berlin 1930), p. 101.

<sup>25</sup> Burns, Arthur R., *The Decline of Competition*, (New York 1936).

onwards. The PbK relied entirely on voluntary cooperation with enterprises; it had no right to question anybody. However, in a cooperative society the PbK experienced no difficulties in finding cooperative firms.<sup>26</sup> Several branches of industry were scrutinized until the second world war interrupted its proceedings.<sup>27</sup> The overview revealed an intensively cartelized economy covering a variety of issues from butchers' prices (purchases and sales) and a syndicate for prams to cartels for cement, bricks and glass. However, similar cartels were to be found in the famous Belgian brick and glass industry, in the Danish and the Swedish cement industry etc. Cartels in construction materials were by no means a Swiss specialty.

In any case, Switzerland was one of the most cartelized states in Europe. In 1939 about 500 cartels were active in Switzerland.<sup>28</sup> However, this cartelization was not perceived as a threat, but on the contrary as a gain to the national economy. In 1936 the government in its reply to a question on the floor of parliament explained its policy: any possible aims in this context were not focused on "prohibition or a fight against cartelization, but merely on the control of cartels, especially the introduction of a legal obligation to publish details and on the fight against abuses and excesses."<sup>29</sup> It is with this line of thought that the Swiss PbK embarked on a policy to withhold all value judgements. It pointed out that any theoretical steps in this context should be taken scientifically, while the practical ones were up to policy.<sup>30</sup> In spite of these words, the PbK indicated in the introduction of its first publication that Swiss monopoly prices were not too high but

<sup>26</sup> Veröffentlichung Nr. 16 der Preisbildungskommission des Eidgenössischen Volkswirtschaftsdepartementes, Kartelle und kartellartige Abmachungen in der schweizerischen Wirtschaft, H. 1, (Bern 1937), p. 5.

<sup>27</sup> The overviews were on building material, timber, glass, paper (*ibid.*), food, clothings and apparel, leather, coverings of the floor (*ibid.* H. 2, Bern 1938), ferrous and non-ferrous metals (*ibid.*, H. 3, Bern 1939).

<sup>28</sup> Preisbildungskommission des Eidgenössischen Volkswirtschaftsdepartementes, *Kartell und Wettbewerb in der Schweiz*, (Bern 1957), p. 52; Marbach, *Über das Kartell und die Kartellierung in der Schweiz*, 1937.

<sup>29</sup> Quotation after Lüthi, Paul, *Der Staat und die Kartelle in der Schweiz*, (Biel 1947), p. 66.

<sup>30</sup> *Preisbildungskommission*, H. 2, (Bern 1938), p. 2.

enabled the weaker cartel members to exist.<sup>31</sup> However, legislation by which government was to be authorized to fight abuses of cooperation was in preparation when it was interrupted by the beginning of the Second World War.

In Central-East Europe, too, cartelization became widespread. Because some of these states kept a compulsory registration for cartels, some figures can be presented. In Czechoslovakia 1,152 cartels had been registered, of which 212 were international ones.<sup>32</sup> In Poland 162 international cartels had been counted in 1935, while the corresponding figure for Hungary was 160 one year later.<sup>33</sup> These Central and South East European states were particularly subjected to economic and political pressure through international cartelization by the German Nazi government during the last years before the second world war.<sup>34</sup>

Danish legislation on cartels came into force in 1931. Since then the government in Copenhagen had the right to "reconsider" such agreements in which prices were included. In Finland cooperation in general was valued highly.<sup>35</sup> In Sweden, too, cooperation was seen in a positive light. The right of government intervention was limited, as in Switzerland, except that the Swedish firm was obliged to answer questions in case of direct interrogation. But the government had no right to keep a register of cartels as was the case in Norway, in Poland, and in Czechoslovakia.<sup>36</sup>

<sup>31</sup> *Ibid.*, p. 7. For the problem of forced cartelization see Brunner, Hanspeter, *Zwangskartelle. Rechtsverhältnisse von Zwangskartellen in der Schweiz und in Deutschland*, (Zurich/ Berlin 1937).

<sup>32</sup> Teichova, Alice, *Kleinstaaten im Spannungsfeld der Großmächte, Wirtschaft und Politik in Mittel- und Südosteuropa in der Zwischenkriegszeit*, (Vienna 1988), p. 167.

<sup>33</sup> *Ibid.*

<sup>34</sup> Hexner; Teichova, Alice, *An Economic Background to Munich*, (Cambridge 1974); *Idem*, *Internationale Großunternehmen. Kartelle und das Versailler Staatensystem in Mitteleuropa*, (Stuttgart 1988).

<sup>35</sup> Kuisma, Markku, "Government Action, Cartels and National Corporations - The Development Strategy of a Small Peripheral Nation During the Period of Crisis and Economic Disintegration in Europe", in: *Scandinavian Economic History Review*, Vol XLI, No 3, 1993, pp. 242 - 268.

<sup>36</sup> The law was passed in 1925, see Odhe; Neumeyer, Friedrich, "Kartellverhältnisse in Schweden", in: *Kartell-Rundschau 1936*, pp. 225-229.

Bulgarian legislation of 1931, like the Danish, was more ambivalent towards cartelization, since the possibilities of monopoly prices were contemplated. Yugoslavia represented the only European case where cartels were generally prohibited. Even the Soviet Union took part in the capitalist organisation of markets by participating in international cartels such as those on potash or nitrogen.

The world economic crisis of the 1930s caused the Dutch government to embark on an increasingly interventionist policy. Economic cooperation became a central issue. In 1932 the Economic Council was founded, which acted as if it were an official body.<sup>37</sup> Designed after the British P.E.P. group (Political and Economic Planning), served as an advisory body for the government. In 1935 a law was passed, by which outsiders could be forced into the respective Dutch cartel, and in 1937 another was passed, by which newly-founded firms had to be approved. The aim was to protect existing enterprises against what was thought to be too much competition.<sup>38</sup> A similar legislation was introduced in Spain, France, Czechoslovakia, Italy, Germany and other states.

In contrast there was no special legislation in the United Kingdom. But the government followed the advice the P.E.P.-group and tried to stimulate organization within the economy. British firms were encouraged to join forces and on this basis participate in international cartelization. London was successful in various branches of industry such as chemicals, coal and steel, except in one of its trouble-sectors, the cotton industry.<sup>39</sup>

<sup>37</sup> Estor, Marita, *Der Sozial-ökonomische Rat der niederländischen Wirtschaft. Institution und Funktion eines zentralen Wirtschaftsrates als Problem der Organisation der Wirtschaftspolitik*, (Berlin 1965).

<sup>38</sup> Zimmermann, Erwin, *Neokorporatistische Politikformen in den Niederlanden. Industriepolitik, kollektive Arbeitsbeziehungen und hegemoniale Strukturen seit 1918*, (Frankfurt am Main/New York 1986).

<sup>39</sup> Wurm, *International Industrial Cartels*; idem, *Industrielle Interessenpolitik und Staat, Internationale Kartelle in der britischen Außen- und Wirtschaftspolitik während der Zwischenkriegszeit*, (Berlin, New York 1988); idem, "Politik und Wirtschaft in den internationalen Beziehungen. Internationale Kartelle, Außenpolitik und weltwirtschaftliche Beziehungen 1919-1939", in: idem, (ed.), *Internationale Kartelle und Außenpolitik*, (Stuttgart 1989), pp. 1- 31.

The interwar period represented the most cartelized period in history.<sup>40</sup> However, not all states took part in this movement to the same extent. Therefore it is worth while attempting a classification. It is ultimately based on the different perceptions or paradigm about the cartel question maintained in various states. These different views shaped the amount of cartelization in a given state as well as the stringency of the respective legislation: they represented the national approach to the institution of cartels.

For the interwar period we suggest 4 groups in cartelization: Our first group of most cartelized states, consists of Austria, Belgium, Czechoslovakia, Finland, France, Germany, the Netherlands, Norway, Sweden, and Switzerland. It is to be taken from this that the cartel movement had achieved special strength mainly in the developed states, though industrialising countries were also in this group. The second set is characterised by a positive but at the same time more reluctant view on cartels. This is expressed by a closer state monitoring with the power and readiness to intervene in cartels. A greater degree of control, such as registration, and greater intervention against cartels than within the first group was at hand. A closer look at the members of this group (Hungary, Italy, Japan, Poland and Spain) reveals, that it was made up of industrialising states, though not all industrialising states were included. A third group consisted of states, where cartelization was perceived even more ambivalently (the U.K., Denmark, Canada, Bulgaria, South Africa); while the members of the fourth group (USA, Argentina, Australia, New Zealand and Yugoslavia) acted against cartelization.

### **Cartelization Groups, 1920-1939**

I. Positive on cartels: Austria, Belgium, Czechoslovakia, Finland, France, Germany, the Netherlands, Norway, Sweden, Switzerland
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<sup>40</sup> Exemplified in the steel cartel by Barbezat, Daniel, "A Price for Every Product, Every Place: The International Steel Export Cartel, 1933 - 1939", in: *Business History*, Vol. 33, No. 4, 1991, pp. 68 - 86.

II. Ambivalent state intervention: Hungary, Italy, Japan, Poland, Spain

III. Generally ambivalent perception of cartelization: Bulgaria, Canada, Denmark, South Africa, United Kingdom

IV. General prohibition of cartels: Argentina, Australia, New Zealand, United States of America, Yugoslavia

### **5. Decartelization**

After the second world war, not only in defeated Germany but in all states of Western Europe, the question was, should cartelization as an institution be generally prohibited - as in the victorious US-model of competition? Total abolition of all cartelization was never intended. Opposers of cartelization suggested a ban - with exceptions - while cartel advocates pleaded that only the abuse of power should be prohibited. Already during the 1940s, the positive results of cartelization were questioned in some states, whilst at the same time the traditional views were upheld in others. However, gradually perceptions changed in all European states in favour of decartelization.

During the 1940s the discussion on cartelization focused very much in the question of the political power of cartels and its abuse by Nazi-Germany.<sup>41</sup> As Germany had played the leading role in various cartels, decartelization meant also reducing Germany's economic and political influence in the world market. Furthermore, after Germany had lost the second world war, the Chandlerian type of cooperative capitalism it stood for was in question, too. Alfred Chandler pointed out that: "the Allied victory in 1945 brought a strong commitment to competition in Europe, German managers

<sup>41</sup> See the books of Hexner, Stocking and Watkins and of Teichova, who, after this issue stood back in the economists' discussions during the 1950s and 1960s, raised it again in her 1974 book (*An Economic Background to Munich*).

accepted the American ways of competition but continued to cooperate more than their American counterparts."<sup>42</sup> A general shift to more competition took place gradually in Western Europe.

For the case of Germany this topic was taken up by Volker Berghahn.<sup>43</sup> According to him, an "americanization" of managers took place in Germany. It meant a fundamental change in the paradigm of how to pursue economic aims on both the microeconomic and the macroeconomic level. Indeed, the boom economy during the 1950s and 1960s provided an exceptionally good precondition for americanization, as sustained economic growth made direction by cartels more and more obsolete. Liberal economic policy was on its way to triumphing during this period.<sup>44</sup>

In Germany cartelization was prohibited by the Allies from 1947 onwards. This verdict stayed in force until German legislation took over in 1957. This movement was heavily challenged but the industrialists, organized in the pressure group BDI (*Bundesverband der deutschen Industrie*), failed in their desire to legalize cartelization. The new German law was constructed the other way round: cartelization was forbidden, any exceptions had to be decided upon by the Federal Cartel Agency (*Bundeskartellamt*). Any cartel not registered there, and not explicitly approved, was invalid; this legislation remains valid today (1996). During the first years many applications for cartels were handed in, but only a small number were approved. Within German society attitudes towards economic cooperation had begun to shift in the direction of American policy since the 1950s, and during the 1960s also industrialists began to share such views.

<sup>42</sup> Chandler, *Scale and Scope*, p. 592.

<sup>43</sup> Berghahn, *Americanization*; idem., *Unternehmer und Politik in der Bundesrepublik*, (Frankfurt am Main 1985); idem., "Technology and the Export of Industrial Culture: Problems of the German-American Relationship 1900-1960", in: Mathias, Peter and John A. Davis (eds.), *Innovation and Technology in Europe: From the Eighteenth Century to the Present Day*, (Cambridge/Mass 1991), pp. 142 - 161.

<sup>44</sup> Ambrosius, Gerold and Kaelble, Hartmut, "Einleitung: Gesellschaftliche und Wirtschaftliche Folgen des Booms der 1950er und 1960er Jahre", in: Kaelble, Hartmut (ed.), *Der Boom 1948 - 1973, Gesellschaftliche und wirtschaftliche Folgen in der Bundesrepublik Deutschland und in Europa*, (Opladen 1992), pp. 7 - 32, p. 17.

In the above inter-war classification the U.K. was placed in the third group. Though taking part in cartelization Great Britain showed a certain reluctance towards the trend until 1939. Some leaders of industry as well as distinguished economists, such as J.M. Keynes, openly opposed cartels. It was therefore no surprise that the British anti-cartel movement became strong relatively early. In 1956 Parliament passed the Restrictive Trade Practices Act. By this legislation agreements detrimental to the "public interest" were prohibited, but not cartelization and monopolies as such. What looked to be a lukewarm anti-cooperative move turned out to be a strong weapon against cartels when the law was applied in British courts. Furthermore, the Monopoly Commission was set up which, though without direct power, was to monitor all questions regarding restriction of trade and of economic concentration.

In the treaties of the European Economic Community (EEC) and its forerunner the European Coal and Steel Community (ECSC) cartels are prohibited. However did not these organisations themselves represent super cartels? According to John Gillingham, the ECSC undoubtedly did so.<sup>45</sup> In contrast the EEC acted quite strictly against cartelization. National cartels applied to home markets. But this was contradictory to the ideas of European integration. With the exception of the agrarian sector and coal and steel the authorities of the EEC acted against cartels which operated across the borders of their members (see below). However, cartels in national or in third markets were beyond its legislation.

Sweden or the Netherlands can be taken as examples of a second group of states concerning decartelization. In both states the winds had changed after the second world war. Arthur Montgomery, one of Sweden's leading economists, underlined vehemently the role of open competition for the welfare of the

<sup>45</sup> Gillingham, John, *Coal, Steel and the Rebirth of Europe, 1945-1955, The Germans and French from the Ruhr Conflict to Economic Community*, (Cambridge 1991), pp. 336-340.

country.<sup>46</sup> From 1946 all cartels had to be registered. A government committee was set up to investigate the extent of cartelization in the country, which published several reports at the beginning of the 1950s.<sup>47</sup> In 1953 an act was passed prohibiting any abuse connected with cartelization. Three years later it was renewed by imposing stricter definitions to come into force from 1 January 1957. Next to Germany and the U.K., these activities put Sweden in the forefront of European states concerning decartelization. During the years following the war, a general slump was expected worldwide like the one which followed the first world war. In such circumstances the Swedish government was prepared for heavy state intervention, a situation which was by no means detrimental to cooperation. But since the economy boomed, it became soon evident that a different policy was needed, which was much more receptive to the positive view of competition.<sup>48</sup> However, even the renewed legislation of 1983 made room for the political approval of cartels.

In the Netherlands compulsory registration of cartels was introduced during the German occupation in 1941. While up to the second world war the Dutch government had strongly favoured cooperation, the tide turned afterwards. In 1951 an "act on the suspension of economic regulation" was passed, which was applied more strictly in the course of time. The bill was submitted to parliament in 1953 and passed in 1956. Henceforth political administration was able to decide on the merits of each case, and this was not even changed by the new law of 1989.

In Denmark prices in such branches of industry where concentration had taken place have been monitored since 1949.

<sup>46</sup> Montgomery, Arthur, "Der schwedische Export in der Zwischenkriegszeit", in: *Außenwirtschaft*, 1947, Vol. 1, pp. 1-11, p. 11.

<sup>47</sup> See Levin, Leif, *Planbushållningsdebatten*, Uppsala 1962; Carling, Alf, "Industrins struktur och konkurrensförhållanden", in: SOU (Statens Offentliga Utredningar) (ed.), *Koncentrationsutredningen III*, (Stockholm 1968).

<sup>48</sup> Stråth, Bo, *Der Nachkriegsboom in Schweden: "Zur Frage von Kontinuität und Bruch im Gesellschaftswandel"*, in: Kaelble, *Der Boom*, pp. 169-189, p. 181.

Furthermore a committee on monopolization (*Trustkommissionen*) was founded to evaluate the extent of cooperation. It published several volumes from 1952 onwards.<sup>49</sup> On this basis legislation was passed in 1955, which focused on the economic abuse of cooperation. In contrast to Sweden and Norway, firms had the right to challenge the verdicts of the monitoring institutions in court. Even by the new law of 1989 cartels were not forbidden.

France was among the first European nations after the second world war to pass legislation on economic cooperation. In 1953 all price-fixing was prohibited - but not cartels as such, while the Departments had to control prices. By this means France developed a pattern of decartelization which became most widespread in Europe after the second world war: not the existence of cartels but any abuse in practice was forbidden, while at the same time prices were monitored by the state bureaucracy. Generally the administration was not against cooperation as long as national competitive advantages could be obtained. A law by which cartels generally were prohibited was passed as late as 1986. Then cartels became illegal, price controls were abolished, and a centralized authority formed which was to supervise not only cartels but cooperation in general. This law made French legislation compatible with that of the EC.

Italy acted according to French precedents. It passed a very strict law as late as 1990. However, it is not only compatible with the EC but rules that interpretation should be on EC-lines.<sup>50</sup>

Belgium, too, was extremely slow in its decartelization. The first bill, presented to parliament in 1954, was not dealt with before 1957. However, the European Coal and Steel Community, in force since 1952, regulated the heavy-industry sector, which was most important for Belgium. As in the cases of the Netherlands, France, Italy, and Germany, supernational legislation came into power

<sup>49</sup> *Betænkningen af Trustkommissionen*, Copenhagen 1952.

<sup>50</sup> Laid down in paragraph 1, 4 (Kaufmann, Theo, *Das italienische Kartellgesetz von 1990 und sein Verhältnis zum europäischen Recht der Wettbewerbsbeschränkungen*, Frankfurt 1993).

together with the EEC in 1958. In contrast, Belgian national legislation of 1960 was still based on the clauses concerning just abuse. A revision of legislation towards general prohibition was passed as late as 1993.<sup>51</sup>

Spain, where the law of 1963 had made little impact, passed new legislation in 1989. This latter law was organized according to EC-standards; a step the Portuguese government had already taken in 1984.

In Finland cartelization came under pressure immediately after the second world war. The Economic Planning Commission, (*Talousneuvosto*) comprising representatives from employers' organizations, trade unions, and senior government officials, drew up a survey on national cartels in 1945 - without any political result. However, public discussion continued and in 1948 the government felt the need to form a new committee (*Kartellikomitea*) whose task was to make proposals for legislation on cartels. After four years, in 1952, the committee saw no reason for any change, as it was still convinced that cartelization was of economic advantage for the country.<sup>52</sup> In spite of this legislation was worked out on the basis of the British cartel act prohibiting excesses of cartelization. The draft was submitted to parliament in 1954, where it rested for several years, before being finally passed. As in the other small states the content and the speed of legal proceedings reflect the dispute between partisans of the competitive and the cooperative type of capitalism.

Norway was not passed over by the anti-cartel movement. But as shown above, it already had an official register and the government in Oslo disposed of the right to dissolve cartels. Additionally, in 1953 an act was passed by which government

<sup>51</sup> Dreher, Meinrad, "Kartellrechtsvielfalt oder Kartellrechtseinheit in Europa? Harmonisierungsbedarf und Harmonisierungsgrenzen für nationale Kartellrechte", in: *Die Aktiengesellschaft*, Nr. 10, Oktober 1993, pp. 437-448, p. 441.

<sup>52</sup> For the evidence in the part of Finnish decartelization, I am indebted to information provided by Markku Kuisma; (see: *Kartellikomitean mietintö 1953:33*. Eduskunnan Kirjasto, Helsinki 1952).

powers were extended. Penalties, including the liquidation of enterprises, could be imposed. However, Wilhelm Thagaard had not only survived but strengthened his influence. He managed to stay in power well into the 1960s. He saw to it that possible sanctions were not applied; in fact there was little change until Thagaard retired. Norway provides an example where the influence of a single person slowed down the process of decartelization and americanisation to a considerable extent.<sup>53</sup>

Switzerland remains as the last bulwark of cartelization in Europe. Cooperation and cartisation is said to be rooted in the constitution. Legislation on the abuses of cooperation withheld by the second world war (see above) was passed in 1947. But the debate on cartelization continued on a broad scale on a political as well as on a scientific level.<sup>54</sup> Several authors stated that it was mainly the impact of the American policy of anti-cartelization and the change of policy in Germany concerning this question, which fostered a similar movement in Switzerland.<sup>55</sup> The prewar instrument for investigation, PbK, was instructed to present its findings in a comprehensive volume in 1951. However, the PbK needed six years (!) to do this. Though the outcome of 30 years of monitoring had to be condensed into a few hundred pages, the amount of time needed revealed the reluctance of the PbK in presenting its report.<sup>56</sup> It was not published before a plebiscite against cartelization, called for in 1955, had put pressure on the Swiss government, a development which recalls very much the Finnish case. The volume was presented with the purpose of providing "the needed impartial platform"<sup>57</sup> for a broader discussion. However, the report showed a considerable bias in

<sup>53</sup> Nordvik; Espeli, Harald, "Fra Thagaard til Egil Bakke. Hovedlinjer i norsk konkurransepolitikk 1954-1990", *SNF-Report Nr. 39/1993*, (Bergen 1993).

<sup>54</sup> E.g. Paul Lüthi published his thesis in 1947; Sieber, Hugo, "Über das Ziel der staatlichen Monopol-, Kartell- und Trustpolitik", in: *Schweizerische Zeitschrift für Volkswirtschaft und Statistik*, Vol. 88, 1952, pp. 132ff.

<sup>55</sup> Sieber, p. 132; *Preisbildungskommission*, 1957, p. 12.

<sup>56</sup> *Preisbildungskommission*, 1957.

<sup>57</sup> *Ibid.*, p. 12.

favour of cooperation.<sup>58</sup> It reported, that in the United States annually about a quarter of all industrial output was wasted, because of an exaggerated variety of products, which was seen as an unwanted result of competition.<sup>59</sup> The uniqueness of the Swiss case was stressed, where, in contrast to e.g. Germany, cartels acted "...as a school for consideration of the big for the small."<sup>60</sup> Partisans of Cooperative Capitalism succeeded in considerably delaying all procedures. Legislation was not passed until 1962 and renewed in 1986. In both cases only abuse by cartels was prohibited, but not economic cooperation in general. Because of that, the Swiss economy remained thoroughly cartelized. In this respect americanization showed little impact on Switzerland. A shift of policy took place as late as the early 1980s. However, even by the new law of 1986, competition continued to be moderated by cooperation. Therefore the Swiss were called "the unmatched world champions of cartels".<sup>61</sup> Switzerland proved to be the country least touched by the change of economic theory.<sup>62</sup> In this sense, after the Second World War, Germany handed over its function of acting as a prototype of Cooperative Capitalism to Switzerland.

After the second world war, the EEC, Great Britain, and Germany, formed one group in which decartelization was carried out intensively in Europe. In spite of differing legislation, the U.K., Germany and the EEC acted relatively strictly against cooperative attempts. A second group was formed by those countries which passed anti-abuse legislation on cartels and applied it increasingly strictly. The third group, too, passed anti-abuse rules on cartels, but dealt with them in a politically influenced case-to case manner. The following table for the

<sup>58</sup> "So it could be no wonder, that the by wild competition exhausted ones first in this then in that branch of industry started to talk to each other..." (*ibid.* p. 29).

<sup>59</sup> *Ibid.* p. 30.

<sup>60</sup> *Ibid.* p. 34.

<sup>61</sup> Hämmerli, Fredy, "Absprachen am Alpenrand. Ein teures Vergnügen", Die Schweizer sind der unangefochtene Kartellweltmeister, in: *Die Zeit*, 1992, No. 25, p. 44.

<sup>62</sup> Sicher, Hugo, *Schweizerische Wettbewerbspolitik*, (Bern and Stuttgart), 1981.

period after the second world war shows a substantial change in the classification compared to the interwar period:

### **Cartelization Groups, 1950-1990**

I. Decartelization : EEC, Great Britain, Germany

II. Anti-abuse, strictly applied: Denmark, Ireland, the Netherlands, Sweden

III. Anti-abuse, cooperative tendencies: Austria, Belgium, Finland, France, Greece, Italy, Luxemburg, Norway, Portugal, Spain, Switzerland

The EEC affected the legislation of European states in two ways. In 1952 the ECSC and the EEC in 1957 excluded all national cartels, but, according to John Gillingham, the experience of the cooperative economic movement of the interwar period and its way of thinking was an indispensable instrument in the construction of West European communities.<sup>63</sup> This attitude, of course, acted against decartelization in Europe. It took decades until the anti-cooperative principles of the Treaty of Rome significantly affected the national legislation of member states.<sup>64</sup>

By the end of the 1980s national legislation in Europe followed EC lines more closely. However, it seems that this took place after the strict anti-cartel policy of the EC was eased. During the previous two decades the EC has softened its policy towards cartelization by allowing exceptions. In 1976 the European steel industry set up a cartel for market regulation with

<sup>63</sup> Gillingham, *Coal, Steel*.

<sup>64</sup> While the positive effects of US-foreign policy in the emergence of the EEC have been underlined, the problem why, in the cooperative inspired European atmosphere of the 1950s the anti-cartel paragraphs 85 and 86 were included, has not been dealt with.

the approval of the EC. The EUROFER cartel was intended to last only a couple of years; however, it turned out to enjoy substantial longevity. In 1982 a European cartel for artificial fibres was permitted, which actually succeeded in reducing production capacity. Eurocrats in Brussels have experienced that, in rare cases, cartels may not be as detrimental as a certain group of economists suggests and that, mainly for political reasons, cooperative initiatives sometimes cannot be avoided. In certain branches the EC even initiated and financed cooperative programmes in order to help European industry to catch up technologically with their American and Japanese competitors. Thus through practical experience, Eurocrats have brought their views more into line with those of the national administrations in European states.

In future the EC will become increasingly important regarding the question of economic cooperation in Europe, particularly for the institution of the cartel. Though the EC has not to say in the national cartelization of its members, all agreements which affect any cross-border movements come under Brussels' competence. And since interconnection within Europe is growing, so does the influence of the EC in questions of cartelization and decartelization.

Around the year 1990 a major shift in European national legislation took place. Within a short time ten nations have recast their respective cartel legislation.<sup>65</sup> This emphasises the growing importance of Europe. It appears that the softened approach in Brussels, from strict anti-cartelization to new possibilities of cooperation, has eased the decisions for convergence. By this wave of legislation the balance between Northern and Southern European nations has shifted strikingly. Until now Northern Europe has acted as the centre of decartelization. However, while the Northerners have kept their anti-abuse approach, European

<sup>65</sup> The following nations have recast their legislation on concentration: France in 1986, Norway in 1988, Denmark, the Netherlands and Spain in 1989, Italy in 1990, Greece and Ireland in 1991, Finland in 1992, and Belgium in 1993.

Southern nations have now shaped EC-compatible, anti-cartel legislation which places them ahead of the North in the efforts at decartelization.

## **7. Conclusion**

Compared to France or Belgium, Germany was late but vigorous in the cartel issue. Before the first world war it became the first state in Europe to pass special legislation on economic cooperation; and its growing economy became in this particular field more experienced than the other nations. In the interwar period attitudes throughout Europe favoured cartel institutions. Relatively little variation was to be seen. Even in Great Britain, where some industrialists and some economists opposed cartelization, cooperation within industry became the official policy of the government. Above all Germany, but France and Belgium too, acted as the leading group in various international cartels. The Nazi government tried to utilise the economic power of cartels for its political aims. This, of course, gave the death-blow to political legitimation of this institution, at least in the German case.

Until the second world war European cartelization had followed the pattern of Germany. Decartelization after 1945 was mostly carried out in parallel to the French development, but without France acting as a model as Germany had done previously. In the various European states the speed of the decartelization process was very different, reflecting the political and economic power of partisans of cooperative and competitive capitalism. During the period up to the 1960s, except for American-influenced Germany, none of the European nations approached the problem in a radical way. All passed - if any - legislation which enabled cooperation to continue, while only the element of abuse in cartels was curbed. Abuse was monitored by price supervision. The reasons for the differing pace in decartelization lay in the attitudes of decisive political, economical and scientific groups in the respective countries. Even in Germany, where the war had ended both the legal possibility and the unchallenged trust in economic

cooperation, the change of policy in favour of competition needed considerable time to get mentally rooted. In fact, it did not occur before a new generation of managers had emerged. In contrast to Germany, in other European states managers and politicians had no such reason for feeling defeated about the way they used to run their economy. Furthermore economic and financial difficulties during the late 1940s and early 1950s called for economic regulation and cooperation. Therefore experienced managers had reasons for continuing with their accustomed way of decision-making . It took time to realize that the attitudes of the interwar period and the 1940s were changing profoundly. Usually this was not before the next generation of managers took over, who acted on the basis of a different business approach. The last stage in this development, the institutionalized belief in decartelization, mirrored by new legislation in a number of European states on the lines of EC-policy, was taken as late in the 1980s. This movement, in which the South European states have taken the lead, represents the victory of decartelization. It took 60 years and two generations, to thoroughly cartelize Europe up to the 1930s, and another 60 years for a complete change of policy in favour of intense decartelization. Thus the rise and decline of the institution of the cartel can be explained by the change in theories about economic cooperation and competition. However, collusion, like that discovered recently in the European cement industry, and open demand for cartelization, as in the steel sector, show that the questions of cartelization and decartelization will not vanish from the agenda.

