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S. 4146—INTRODUCTION OF A BILL TO RESTORE COMPETITION TO THE COPPER INDUSTRY

Mr. MONDALE. Mr. President, I am introducing today a bill to restore a semblance of free competition to a basic industry which is vital both to domestic and defense needs.

I began looking at the copper industry last year when it was revealed that domestic copper prices were rising at a 25-percent annual rate.

Such a price rise, of course, does not in itself absolutely prove anticompetitive behavior in the industry—even though copper happens to be one of our most concentrated industries, with four firms controlling some 70 percent of all domestic mining and 80 percent of all domestic refining capacity. In fact, the increase in the price of refined copper is, at least to some degree, a reflection of a worldwide shortage of copper which has driven up prices throughout the world.

But my examination soon made me aware of an anticompetitive situation even more insidious than the typical oligopolistic price management. This situation—I think unique to the copper industry—is the existence of a "two-tiered" pricing system.

Under this system, the giant domestic producers, which mine, smelt, and refine the copper that is then sold to the fabricators, have maintained a price which, since 1964, has generally been at least 30 to 40 percent below the world market price for refined copper as reflected for the London Metal Exchange. At first glance, this would seem to be a strange but fortuitous situation—a domestic price in a heavily concentrated industry which is actually lower than it seemingly could be. And, in a limited sense this is so: In spite of the astronomical increases in the domestic price of refined copper, the current price of about $0.60 a pound is indeed below that price which would probably prevail in a truly open and competitive world market.

However, since there is not enough domestically produced refined copper to meet our needs and supply the demands of our domestic fabricators, the additional demand must be met either through the purchase of scrap copper or through buying foreign copper at the higher world price as quoted on the London Metal Exchange.

In April of this year, the world price was nearly $0.80 a pound compared to a "producer" price of about $0.56 per pound.

Currently this gap is much less due to recent increases in domestic prices and a great sudden drop in the world price. But indicators are that the gap, in existence since 1964, will soon open up again, with world prices considerably outrunning domestic producer prices.

So far, the situation may look simply like a competitive anomaly, where the domestic producing giants persist in selling, at an unnaturally low price, a supply of refined copper that is unable to meet the needs of the more competitive copper fabricators. But the great problem—and the disturbing situation—is in which fabricators get this limited supply of lower priced domestic production.

Since 1963, when this two-tiered system came into being, the domestic producers, dominated by the half dozen giants, have allocated their refined copper to their preferred customers, forcing all those fabricators not so fortunate to produce and attempt to compete by buying from the world market at far higher prices. Many of these preferred fabricators are, in fact, subsidiaries of, or controlled by, the producing giants. All of them enjoy an enormous competitive edge in the crucial fabricating sector of the industry. Any of them can continue to exist and show a substantial profit even though it may be far more inefficient than the struggling fabricator which gets no domestic supply. None of them has a strong motivation to increase efficiency or capacity, in spite of persisting copper shortages and the high prices for fabricated copper goods. And the entire industry is virtually foreclosed from any new entrants which would be unable to compete without a cut of the producer's supply.

Mr. President, all of this has been fully documented in the May 13, 1970, report of the Subcommittee on Copper to the Cabinet Committee on Economic Policy. This task force was chaired by Hendrik Houthakker, of the President's Council on Economic Advisers. Also serving on this Committee were Assistant Secretary of State Philip Trezise, former Assistant Secretary of Commerce Kenneth Davis, Assistant Secretary of the Interior Hollis Dole, Assistant Attorney General Richard McLaren, and Fred Russell and William Truppner of the Office of Emergency Preparedness.

Their report, which has yet to produce any concrete action, reads in part:

> Firms whose allocations of producer copper are disproportionately low are placed at a serious competitive disadvantage. Where the copper content represents a fairly large proportion of the value of a product, even a very efficient fabricator who has to obtain all or the great bulk of his metal on the open market may not be able to absorb this difference in his raw material costs without losses. Over several years this situation has led to the shutting down of some plants and reductions in the net worth of some companies that did not have access to the cheaper metal. It has also restricted the entry of new concerns because of their inability to obtain producer allocations.
>
> On the other side, firms obtaining large allocations enjoy a broader spread between raw materials cost and product price. They can, therefore, make larger profits even at lower levels of efficiency.

Mr. President, this report documents the perversion of competition within the copper industry: enormous concentration with vertical integration, discriminatory selling, reciprocal dealings between producers and fabricators, indisputable and serious damage to many independent fabricators, and the great possibility if not probability of collusion in restraint of trade.

I put great stock on free competition. It is the best way the world has yet found for promoting economic justice, freedom, and efficiency. Wherever possible, the role of the Government in the private sector ought to be to strengthen and preserve free competition.

It is patently clear to me that something must be done to restore free competition to the copper industry. Without trying to make a restraint-of-trade case at this time, I will simply cite another section of the Houthakker report:

> Nevertheless, the potential for anticompetitive behavior and for deviations from free market efficiency are obviously great. Under the two-price system it is simply too easy for a producer to bias his allocations of low-priced copper toward firms that do not compete with its fabricating subsidiary and away from those that do. It is also very unlikely that the pattern of allocations, whatever the design of the producers, would work out to be the same as that obtaining in an open and competitive market.

Dr. Houthakker hit upon the anticompetitive nature of the copper industry even more directly in a speech last March 11 at Duke University:

> The mere coexistence of these two very different prices for essentially the same commodity (refined copper in the form of electrolytic wirebars) is evidence that competition is severely curtailed.
>
> Obviously, this is not an equilibrium situation and could not have occurred in a competitive market . . . a two-price market means a market that is not free.

Mr. President, this is a unique threat to free competition in a key industry. Perpetuation of the current system means that a half dozen vertically integrated giants will continue to supply their own fabricating subsidiaries and a few select customers at a rate which is far below the world price. They hold the economic life of every fabricating company and every employee of those companies in their hands. This situation is contrary to our free enterprise system and antithetical to the principles of efficient production, free entry, and fair pricing.

Mr. President, the Honorable RAY BLANTON of Tennessee has taken up this cause on the other side. He introduced a resolution—H.R. 885—in the House on March 19 to create a select committee to study this problem. He also introduced a bill on May 18—H.R. 17657—along with Congressman Moss which would amend the Federal Trade Commission Act to make the dual pricing system an unfair method of competition. Hearings have been held on H.R. 17657, and a valuable record is finally beginning to emerge on this phenomenon.

The bill I am introducing today is nearly identical to H.R. 17657. It would preclude the selling of refined copper at a price significantly below the world price unless a system were devised to allocate this copper among domestic users in such a way as to insure fair competition among these users.

Mr. President, there may be other solutions—indeed, the Houthakker report lists five—and the Justice Department is allegedly investigating the situation at his time. However, the danger to the fabricators who are not within the anointed few is immediate and catastrophic. Something must be done now to save fabricating industries which are viable, efficient, and potentially profit-able in every way but in their lack of access to the "inner circle." I urge congressional study and prompt action on this bill, and I ask that the text be printed in the RECORD in full.

The PRESIDING OFFICER (Mr. BENNETT). The bill will be received and appropriately referred; and, without objection, the bill will be printed in the RECORD.

The bill (S. 4146) to amend the Federal Trade Commission Act to prohibit certain unfair sales practices in the copper industry, introduced by Mr. MONDALE, was received, read twice by its title, referred to the Committee on Commerce, and ordered to be printed in the RECORD, as follows:

S. 4146

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 (a) of the Federal Trade Commission Act (15 U.S.C. 45 (a)) is amended by adding at the end thereof the following new paragraph:

"(7) It shall be an unfair method of competition within the meaning of paragraph (1) of this subsection for any person to sell refined copper in commerce at a price which the Commission determines is significantly below the world market price for refined copper of a similar grade, unless such person allocates such copper or refined copper of such grade in a manner which the Commission determines is fair and equitable to such users."

SEC. 2. The amendment made by the first section of this Act shall apply with respect to sales occurring more than ninety days after the date of enactment of this Act.

ADDITIONAL COSPONSORS OF BILLS

S. 2005

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from Maine (Mr. MUSKIE), I ask unanimous consent that, at the next printing, the name of the Senator from New Jersey (Mr. WILLIAMS) be added as a cosponsor of S. 2005, the Resource Recovery Act.

The PRESIDING OFFICER (Mr. BENNETT). Without objection, it is so ordered.

S. 3486

Mr. BELLMON. Mr. President, I ask unanimous consent that, at the next printing, the name of the Senator from Alaska (Mr. STEVENS) be added as a cosponsor of S. 3486, to establish a Commission on Oil Imports, as an independent agency of the Government, to authorize the Commission to impose quotas on imports of petroleum and petroleum products, and for other purposes.

The PRESIDING OFFICER (Mr. BELLMON). Without objection, it is so ordered.

S. 3546 AND S. 3687

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from Maine (Mr. MUSKIE), I ask unanimous consent that, at the next printing, the name of Senator HARRIS from Oklahoma be added as a cosponsor of S. 3546, the National Air Quality Standards Act of 1970, which would accelerate the designation of air quality control regions required by the Air Quality Act of 1967, and of S. 3687, the National Water Quality Standards Act of 1970, which would increase the Federal grant authorization for waste treatment facilities to $2.5 billion a year for 5 fiscal years and extend the standards program to all navigable waters.

The PRESIDING OFFICER (Mr. BENNETT). Without objection, it is so ordered.

S. 3650

Mr. GOLDWATER. Mr. President, on behalf of the Senator from Nebraska (Mr. HRUSKA), I ask unanimous consent that, at the next printing, the name of the Senator from Iowa (Mr. MILLER) be added as a cosponsor of S. 3650, to amend section 837, title 18, United States Code, to strengthen the laws relating to explosives and the penalties with respect thereto, and for other purposes.

The PRESIDING OFFICER (Mr. MILLER). Without objection, it is so ordered.

S. 3807

Mr. COOK. Mr. President, on behalf of the Senator from Illinois (Mr. SMITH), I ask unanimous consent that, at the next printing, the name of the Senator from Pennsylvania (Mr. SCOTT) be added as a cosponsor of S. 3807, to provide a program to improve the opportunity of students in elementary and secondary schools to study cultural heritages of the major ethnic groups in the Nation.

The PRESIDING OFFICER (Mr. BENNETT). Without objection, it is so ordered.

S. 3936

Mr. ERVIN. Mr. President, I ask unanimous consent that at the next printing the names of the Senator from Hawaii (Mr. INOUYE), the Senator from Nevada (Mr. BIBLE), the Senator from Hawaii (Mr. FONG), the Senator from Nebraska (Mr. CURTIS), the Senator from Georgia (Mr. TALMADGE), the Senator from Rhode Island (Mr. PELL), the Senator from Texas (Mr. YARBOROUGH), the Senator from Minnesota (Mr. MONDALE), the Senator from Tennessee (Mr. GORE), the Senator from North Dakota (Mr. BURDICK), the Senator from Maine (Mr. MUSKIE), the Senator from Utah (Mr. MOSS), the Senator from Florida (Mr. GURNEY), the Senator from Oregon (Mr. PACKWOOD), the Senator from Illinois (Mr. SMITH), and the Senator from New York (Mr. JAVITS) be added as cosponsors of S. 3936.

This bill, the Speedy Trial Act of 1970, is designed to give effect to the sixth amendment right to a speedy trial for persons charged with offenses against the United States, and to reduce the danger of recidivism by strengthening the supervision over persons released on bail, probation, or parole, and for other purposes.

The PRESIDING OFFICER (Mr. ALLEN). Without objection, it is so ordered.

S. 4032

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from Oklahoma (Mr. HARRIS), I ask unanimous consent that, at the next printing, the names of the Senator from Indiana (Mr. BAYH), the Senator from Nevada (Mr. BIBLE), the Senator from Missouri (Mr. EAGLETON), the Senator from Alaska (Mr. GRAVEL), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Montana (Mr. MANSFIELD), the Senator from Minnesota (Mr. MONDALE), the Senator from Rhode Island (Mr. PELL), the Senator from Alaska (Mr. STEVENS), the Senator from Maryland (Mr. TYDINGS), the Senator from New Jersey (Mr. WILLIAMS), and the Senator from Ohio (Mr. YOUNG), be added as cosponsors of S. 4032, to establish a National Advisory Commission on American Indian Education.

S. 4041

Mr. TOWER. Mr. President, I ask unanimous consent that, at the next printing, the names of the Senator from Indiana (Mr. HARTKE) and the Senator from Illinois (Mr. PERCY) be added as cosponsors of S. 4041, to repeal section 7275 of the Internal Revenue Code of 1954, relating to amounts to be shown on airline tickets and advertising.

The PRESIDING OFFICER (Mr. SPONG). Without objection, it is so ordered.

S. 4056

Mr. BELLMON. Mr. President, I ask unanimous consent that, at the next printing, the name of the distinguished junior Senator of Alaska (Mr. GRAVEL) be added as a cosponsor of S. 4056, to provide an effective and workable system of fiscal stabilization.

The PRESIDING OFFICER (Mr. BENNETT). Without objection, it is so ordered.

S. 4118

Mr. DOLE. Mr. President, I ask unanimous consent that, at the next printing, the name of the Senator from Oklahoma (Mr. BELLMON) be added as a cosponsor of S. 4118, the Agricultural Act of 1970.

The PRESIDING OFFICER (Mr. HARRIS). Without objection, it is so ordered.

ADDITIONAL COSPONSOR OF A JOINT RESOLUTION

SENATE JOINT RESOLUTION 218

Mr. DOLE. Mr. President, I ask unanimous consent that, at the next printing, the name of the Senator from California (Mr. MURPHY) be added as a cosponsor of Senate Joint Resolution 218, providing for the establishment of an annual "Day of Bread" and "Harvest Festival Week."

The PRESIDING OFFICER (Mr. HARRIS). Without objection, it is so ordered.

SENATE RESOLUTION 435—SUBMISSION OF A RESOLUTION RELATING TO THE PROTECTION OF CONSUMER SUPPLY OF NATURAL GAS

Mr. TOWER. Mr. President, on behalf of myself and Senators STEVENS, DOLE, PEARSON, COOK, LONG, YOUNG of North Dakota, BELLMON and HANSEN, I submit, for appropriate reference, a sense of the Senate resolution.