accounted for about 80 percent of sales, General Electric and GTE being the largest, Westinghouse having 16 per cent and Philips 5 per cent. Westinghouse planned to liquidate its lamp division if the sale did not go through. The Department of Justice concluded that in the long run a liquidation might impair completition more than the acquisition by Philips.

Canadian General Electric and GTE Sylvania were the largest producers in Canada, followed by Westinghouse. Philips began limited production in Canada about 1970 with the acquisition of a small producer.

FOREIGN AND INTERNATIONAL

PRESIDENT REAGAN SIGNS "PFIZER" AMENDMENT

President Reagan signed the so-called Pfizer amendment into law on December 29, 1982. It amends s. 4 of the Clayton Act to limit the right of foreign governments to recovery of actual rather than triple damages in private antitrust suits.

The amendment has the effect of overruling the 1978 court decision in Pfizer Inc. v. Government of India, 434 U.S. 308 (1978). The decision accorded the Government of India status as a "person" under s. 4 of the Clayton Act, thereby enabling it to recover a substantial amount in treble damages. The amendment means that foreign states will only be eligible for recovery of actual damages in future. Foreign state-owned enterprises will still be eligible for recovery of treble damages providing they do not claim sovereign immunity for any other purpose. The Canadian Government has never filed an antitrust suit in the United States.

The Text of the amendment is as follows:

...That section 4 of the Clayton Act (15 U.S.C. 15) is amended -

(1) by striking out "That" and inserting in lieu thereof "(a) Except as provided in subsection (b)," and

(2) by adding at the end thereof the following new subsections:

"(b)(1) Except as provided in paragraph (2), any person who is a foreign state may not recover under subsection (a) an amount in excess of the actual damages sustained by it and the cost of suit, including a reasonable attorney's fee.

"(2) Paragraph (1) shall not apply to a foreign state if -

"(A) such foreign state would be denied, under section

1605(a)(2) of title 28 of the United States Code, immunity in a case in which action is based upon a commercial activity, or an act, that is the subject matter of its claim under this section;

"(B) such foreign state waives all defences based upon or arising out of its status as a foreign state, to any claims brought against it in the same action:

"(C) such foreign state engages primarily in commercial activities; and

"(D) such foreign state does not function, with respect to the commercial activity, or the act, that is the subject matter of its claim under this section as a procurement entity for itself or for another foreign state.

"(c) For the purposes of this section -

"(1) the term 'commercial activity' shall have the meaning given it in section 1603(d) of title 28, United States Code, and

"(2) the term 'foreign state' shall have the meaning given it in section 1603(a) of title 28, United States Code."

U.K. MERGER DECISION STIRS PUBLIC DEBATE ON POLICY

A decision by the British Government to reject for the first time a majority recommendation of the Monopolies and Mergers Commission on a proposed merger has led to the resignation of a member of the Commission and heated public debate. A statement by the Government to clarify its merger policy is now expected within the next few months.

A mining finance company known as Charter Consolidated had proposed to acquire a leading Scottish manufacturer of mining equipment, Anderson Strathclyde. Four of the six Commission members on the panel recommended against the merger. They reported that, although the direct effects upon competition would be negligable, the merger would damage management and labour relations and "detract from the dynamism of business in the region". The Chairman of the Commission was one of the two who disagreed, and he wrote a strongly worded dissent. The Director General of Fair Trade, who has a duty to advise the Government, expressed himself in agreement with the minority, also for the first time. Professor Andrew Bain of Strathclyde University who had signed the majority report resigned from the

Commission in protest after the Government rejected the majority recommendation. Anderson Strathclyde made an unprecedented and unsuccessful attempt to have the government's decision reviewed by a court.

The Strathclyde recommendation is one of a number by the Commission on mergers over the past two years which have been controversial. Many of them have involved conglomerates where evidence of direct adverse effects on competition was weak and where the Commission recommended against the merger. A major source of the difficulty is the definition of "public interest" according to which the Fair Trading Act requires mergers to be assessed. Account is to be taken of competition, consumer interests, costs and innovation, regional effects and "any other matter which it considers in the particular circumstances to be relevant". The final decision rests with the Secretary of State for Trade.

The events which have brought the difficulties to the fore now can be traced back to the 1978 report on merger and monopoly policy by a consultative committee of officials chaired by Hans Liesner. British merger policy, both in terms of government decisions on whether or not to refer proposed mergers to the Commission and in terms of findings by the Commission, had been rather favourable to mergers. The Liesner Committee called for a more critical view of mergers by the government. It also recommended that the law be changed to require the Commission to determine public interest by balancing the detriment of any lessening of competition against any improvement in international competitiveness. In 1980 the then Trade Secretary, Mr. John Nott made a statement rejecting legislative change but heralding a more critical view of mergers by the government, especially ones which eliminate a competitor or link a supplier with a customer.

The period since Mr. Nott's statement has been marked by a sharp increase in the number of merger referrals to the Commission. There were eight in 1981 and ten in 1982 compared with an annual average of three or four previously. One result of the stepped up activity has been to underline the apparent lack of a consistent rationale in the recommendations of the Commission. Factors other than competition have seemed to carry great weight, especially where there has not been clear evidence that a merger would bring excessive concentration. For example, regional considerations seemed to weigh heavily, not only in the Strathclyde recommendation, but also in two earlier ones against the acquistion of the Royal Bank of Scotland by either a foreign or a British Bank. Concern about foreign control appeared to be important in recommendations against the acquisition by Hiram Walker of a Scottish distillery and one by an American company (Enserch) of the large engineering firm, Davey Corporation. The decision against Lonhro's acquisition of House of Fraser (including Harrod's) seemed to be based upon a dislike of Lonhro's style of management.

Business interests have complained that the record of the Commission provides little guidance as to the kinds of mergers which are likely

to be found contrary to the public interest. There have also been criticisms of inconsistency in government decisions as to which proposed mergers to refer to the commission. An article by David Churchill in the Financial Times of January 8, 1983 stated:

> "Many industrialists feel that intensive lobbying by pressure groups may have a greater impact on whether mergers are referred to the Commission that a strict analysis of the public interest issues involved."

CONSENT DECREE ENDS U.S. SUIT AGAINST B.C. FOREST PRODUCTS

The U.S. Department of Justice filed a proposed Consent Decree on December 13, 1982 to terminate its civil suit challenging the 1977 acquisition of Blandin Paper Co. by British Columbia Forest Products Ltd. (BCFP).

At the time of the acquisition Blandin was the third largest U.S. producer of coated groundwood paper with 12.3 per cent of shipments. Mead Corporation of Ohio, which owns 28.5 per cent of BCFP common shares, was the seventh largest producer with 6.38 per cent of shipments. Noranda Mines also had a 28.5 per cent interest in BCFP and has a controlling interest in Fraser Inc., which was the tenth largest producer of coated groundwood paper in the U.S. with 3.89 per cent of shipments. In total there were twelve producers in the U.S., of which the top four had 56.47 per cent of shipments and the top eight had 84.40 per cent.

BCFP, Mead and Noranda were all originally defendants in the suit. However, Noranda was dismissed from the suit following its sale in November, 1981 of all its shares of BCFP.

According to the Competitive Impact Statement filed by the U.S. Department of Justice, the sale by Noranda of its BCFP stock provided a major portion of the relief sought. Had the case gone to trial the only remaining objective would have been the divestiture by Mead of its BCFP stock. Other factors in the decision not to proceed with the suit were the uncertainty of the results, the costs and the fact that there has been some decline in concentration since 1978.

The Consent Decree stipulates that Blandin must be maintained as a separate company and enjoins Mead from acquiring any of its securities or influencing its policies. It also prohibits Mead's board of directors from serving on the BCFP board after April 30, 1983 and from designating more than three nominees to serve on that board.