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## **Behind the ‘tartan curtain’: cartelisation in the Scotch Whisky Industry, 1830-1960**

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In February 1952, 45 men from 34 distillery firms met in Glasgow to form the Independent Scotch Whisky Association (ISWA) electing Joseph W. Hobbs as chair. In a statement issued by the group after the meeting, they accused the existing Scotch Whisky Association (SWA) of being, ‘unduly influenced by a particular cartel or group whose aim was to drive the independent out of business and capture all markets, both at home and abroad’ (*Bulletin*, 11 February 1954 quoted in Craig 1994, p.271). Hobbs, a mysterious Anglo-Canadian adventurer, cattle rancher and impresario, who owned a number of distilleries, and referred to by one historian of Scotch whisky as the ‘Great Gatsby’ of the trade (Russell, 2015), had been a vocal critic of the SWA since the 1930s. Waves of mergers and acquisitions in the Scotch whisky industry in the 19<sup>th</sup> and early 20<sup>th</sup> centuries had concentrated production in the hands of a small number of producers, with Distillers Company Ltd (DCL) dominating the scene (Moss and Hume, 1981; Bower, 2016). This led to frequent suggestions of the whiff of the cartel around them, with *The Economist* commenting in August 1957 on the, ‘tartan curtain shrouding the affairs of Distillers [DCL]’ (p.643). DCL, along with their partners the Canadian firm, Seagram’s, was also one of the most successful and largest first movers in the global market for alcoholic beverages (Lopes, 2002, 2003). As this chapter outlines, their global success with such well-known brands as Dewar’s and Johnnie Walker resulted from the consolidating of capabilities and resources and cooperation as a cartel in domestic and international markets.

One striking environmental factor overshadowed speculations of cartel behaviour in the industry; the UK had no substantive legislative tool for regulating cartels until the introduction of the Restrictive Trade Practices Act (RTPA) of 1956 (Mercer, 1995). In reality, the Act was not the startling watershed often assumed. As one contemporary US legal observer (Rhinelander, 1960) commented: ‘Apart from provisions dealing with resale price maintenance arrangements, the statute is designed to become effective slowly’ (p.2). As Mercer (2014) notes, the impetus for the RTPA was specifically to protect domestic consumers against the rise in the cost of living, with price-maintained goods rising as a proportion of consumer expenditure from 3 percent in 1900 to 55 percent in 1956. A further characteristic of British antitrust legislation, as Mercer observes (2014), was that ‘the impact of market concentration was judged on a case-by-case basis’ (p.134).

This chapter's focus on the Scotch whisky industry explores recurrent questions within cartel history and theory (such as cartel drivers and characteristics). As well as devoting attention to the UK government's perceptions of cartels and the political calculations around domestic and export markets on policy approaches, it examines how this affected their strategies towards the Scotch whisky industry during the period. Early cartelisation in the industry was driven by increasing competition in the domestic market but this also formed the basis for the industry to replicate the approach in its subsequent international activities. This had the tacit support of the UK government, especially after World War II, as they saw the benefits of increasing revenue to the Exchequer in an economically beleaguered country. To examine these issues, we adopt an industry-approach. Through industry-level analysis we are better able to explore firm cooperation and competition, as well as specific capabilities and resources (Stokes and Banken, 2015; Kurosawa, 2018). We do this through analysis of the major firms in the industry, principal amongst which was the behemoth DCL, formed in 1877.

### **The UK in global cartel history**

Our understanding of cartel behaviour owes much to the earlier research of business historians like Dominique Barjot (1994), Harm Schröter (1996, 2013), and Jeff Fear (2006, 2007) who traced the complex historical evolution and characteristics of cartels, the motivations for their formation, and evolving policy responses. This body of work sought to further interrogate economists' modelling of cartel behaviour, such as that by Stigler (1964) and Levenstein and Salant (2007). Schröter (2013) subsequently underlined the varying forms of cartels and their motivations, with a considerable driver being defence. Fear (2006) sought to define a 'spectrum of interfirm cooperation' ranging from markets, 'procedural private self-regulation' (associations), 'illegal hard-core cartels' (embracing customer, price and quotas, specialization, territorialization, gentlemen's agreements, and syndicates) through to hierarchies (import/export, rationalization, emergency structural measures) (p.6). These hint at the contested and complex nature of defining cartels, as well as the shifting rhetoric and political acceptability of cartelization. Meanwhile Storli (2014) cited Debora Spar's identification of five structural factors motivating cartel formation: high concentration of production, high barriers to entry, a small fringe, non-substitutability, and non-differentiation (1994, p.449). These extant characterisations are reflected upon in the motivations and form of the historical evolution of cartelisation in Scotch whisky.

The UK has continued to fascinate historians of business cartels, not least because of the government's shifting approach to cartelisation over time (Freyer, 1992; Schröter, 1996, 2013). Freyer notes that the UK was traditionally characterised as possessing little or no anti-trust legislation before 1914 but being particularly advanced in intellectual property law. This was underpinned by a tradition of strong property law, particularly in England and Wales.<sup>i</sup> Schröter (1996) characterised British policy towards cartels as being selective.

In Britain, the number of domestic cartels grew from 93 in 1906 to 446 in 1921 (Fear, 2006). Indeed, British government policy had, during the depression, actively encouraged cartelisation measures in the coal and steel industries; such measures being a deliberate part of the Treasury's armoury to encourage industrial rationalisation and innovation (Kirby, 1973; Garside and Greaves, 1996). If this was an explicit effort to use cartels as an emergency measure to limit damage to the economy and stem further unemployment in the coal and steel districts, then the government's approach to British headquartered cartels operating internationally in tea and tin was equally pragmatic. Their efforts to address a range of policy ends, might be characterized as a form of benign collusion (Gupta, 2001; Perchard, 2014). As such, the subsequent framing of the RPTA 1956 can be seen as an extension of these pragmatic approaches to cartels; the government seeking to balance political sensibilities with domestic consumers, as well as not inflaming US allies, while also protecting international commercial interests and the currency.

### **Learning how to cartel: association and amalgamation, 1856-1940**

In 1831 Aeneas Coffey, a former Inspector General of Excise in Dublin, invented the patent still which allowed whisky to be produced on a continuous basis instead of the original small-scale pot still, batch basis. Coffey's invention allowed for the continuous production of whisky, which was more consistent in taste and quality through the distillers' ability to control various elements of the process. As a result, grain whisky became the dominant form produced using a patent still, whereas malt whisky remained largely produced by pot stills. A geographical distinction then emerged between the Highlands and Lowlands of Scotland with the latter using Coffey's still to produce cheaper grain whiskies at greater volume, and the former continuing with the more traditional pot still for malt whiskies.

The domestic market for Scotch whisky began to decline in the period up to the 1850s, while increasing competition and cereal prices saw a squeeze on profits. By 1856 six patent-still distillers entered into a 'Trade Arrangement' for one year, allocating their activities as follows:

Menzies, Bernard & Craig (Caledonian Distillery) – 41.5%  
John Bald & Co (Carsebridge Distillery) – 15.0%  
John Haig & Co (Seggie Distillery) – 13.5%  
McNab Bros & Co (Glenochil Distillery) – 11.5%  
Robert Moubray (Cambus Distillery) – 10.5%  
John Crabbie & Co (Westfield Haddington Distillery) – 8.0%  
(taken from Weir, 1995, pg. 32):

There were 17 patent-still distilleries in Scotland so the trade arrangement amounted to 35-45 percent of the total production for patent still output in Scotland at the time (Weir, 1995, pg. 32). In 1850 there were 161 distilleries in operation in Scotland; by 1857 there were 121 (Moss and Hume, 1981, p. 97). Between 1856 and 1865, five of the 17 grain distillers closed and profit margins dropped to their lowest in 1860 (Weir, 1974). The introduction of the Spirits Act in 1860 allowed for spirits to be blended in bonded warehouses meaning the distillers were facing yet more competition in the form of blenders.

Attempts at cartelisation were many and varied in the early stages of the Scotch whisky industry's development. Initially they were domestically focused to stave off foreign competition. The 1856, 'Trade Agreement' lasted only a year. The rise of the phylloxera crisis in European vineyards between 1860-1890, which saw grape production wiped out across the continent and stocks of the most popular spirit brandy with it, saw Scotch become the drink of choice amongst many domestically (Miller, 2019). It also opened the doors to greater penetration of foreign markets for the industry. Between 1852 and 1890, foreign and colonial competition (chiefly brandy and rum) grew from 16 to 23 percent of spirits consumed in the British Isles. The biggest threat to distillers was posed by the imports of 'German spirit' (though believed to originate in Russia), which was added to blending processes (Select Committee on British and Foreign Spirits, 1890-1, iv). Increased international competition in the UK market led to another attempt in 1865 to establish a cartel. The Scottish Distillers Association (SDA) was formed as the brainchild of John Haig (of the famous Haig family of distillers and military men) one of the original members of the 1856 agreement. The new association was more formalised than the previous agreement – it implemented a much more stringent approach to matters affecting profit margins including pricing, 'conditions of sale', discounts, warehouse rents, and credit (Weir, 1995).

Members of the new agreement were largely the same as before, but with a few changes. John Crabbie (Haddington distillery) dropped out due to a lesson in “the dangers of uncontrolled competition” (Weir, 1974, pg. 302) with his distillery closing in 1862, just ten years after he’d acquired it. Crabbie was replaced in the new agreement by McFarlane & Co who owned the much larger Port Dundas distillery in Glasgow. The new agreement’s members agreed to the following percentage shares of the market:

Menzies, Bernard & Craig (Caledonian Distillery) – 28.00%

John Bald & Co (Carsebridge Distillery) – 19.8%

John Haig & Co (Cameronbridge Distillery) – 9.75%

McNab Bros & Co (Glenochil Distillery) – 7.64%

Robert Moubray (Cambus Distillery) – 6.15%

M McFarlane & Co (Port Dundas) – 28.66%

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The new agreement lasted significantly longer than its predecessor, operating until 1877, when further consequential change occurred in the industry with the formation of Distillers Company Ltd. (DCL).

After 12 years of operation, the SDA decided to reform into the DCL. Utilising the 1855 Limited Liabilities Acts as its institutional framework, DCL was formed to meet the ambitions that were mooted, but remained unrealised, in the previous associations. The new single entity now dominated the industry. On its formation the DCL was immediately responsible for 75 percent of grain spirit production in Scotland, and a third of patent still output across the whole of the UK, leaving malt distillers, dealers, and the remaining grain distillers waiting to see what effect it would have (Weir, 1974). DCL’s formation should also be understood against the backdrop of British industry in the mid to late nineteenth century. Unfettered competition between producers across various industries created what Wilson (1970) calls an, ‘...altogether too bracing an air for British (and other) businessmen and by the 1880s they everywhere sought

shelter not only behind protective tariffs but in addition behind agreements to restrict what was called “cut throat competition””(p. 391).

The Scotch whisky industry at the time sought to avoid cut-throat competition, and without the protective tariffs against other spirits. The DCL was created to obtain economies of scale in purchasing and selling, eliminate duplication, effect tighter control of credit, and further strengthen their members’ position by creating a dominant incumbent to reduce the likelihood of new entrants into the industry. Controlling prices, manipulating supply with changes in demand, and fear of new entrants (particularly from abroad) that might lead to subsequent competition underpinned this rationale. The members agreed that, ‘Combination... was absolutely necessary’, in the face of continued competition and growing foreign spirit consumption in the UK market (Weir, 1995, p.41).

Shortly after its formation, the DCL sought to create another industry association which covered the whole of the UK; the UK Distillers Association. ‘The Whisky Parliament’ comprised of Scottish, Irish, and Liverpool distillers aimed at defending against ‘ruinous competition’ between each other (Caldwell, 1997, p.481). The Association lasted for ten years based on controlling grain spirit sales and prices. It dissolved for many of the same reasons that plagued previous cartel arrangements and it was replaced by mergers, acquisitions, and takeovers as the preferred means of exerting control over the industry. It is important to note, however, that the UKDA was the last attempt by the distillers to dampen competition in the industry before amalgamations were pursued (Weir, 1977, p. 343).

In 1885, several whisky companies set up their own grain distillery in Edinburgh called the North British Distillery. This prompted the DCL to make a critically important change – Faced yet again with increased competition at home, it moved into focusing on exporting overseas. The DCL did not sell directly to these markets, or with its own branding. Its (often blended) brands were derived from the original founders (Haig et al) and sold via distribution agents around the world, much to the chagrin of Scottish malt distillers who had been attempting the same strategy on an individual basis. It was mooted at the time that:

The DCL, not manufacturing anything but cheap Scotch whisky, it is presumed that they have become blenders of Highland and other makes, and so entered into competition with those who have used their products as a basis and to

cheapen the more expensive malts. (Anonymous correspondent writing in 1887, quoted in Wilson, 1970, p.397)

In 1899, as part of its growing diversification of activities the DCL founded The United Yeast Co. This was to become an extremely important undertaking during WWI in terms of understanding cartel behaviour in the industry and their relationship with government. The same year, the DCL were in control of 10 different distilleries, including two in England and Ireland. In 1902, it bought three more distilleries, including one in Ireland. Such expansion measures were characteristic of the DCL – the view that size was important in protecting its members' interests was apparent from its sustained attitude to amalgamations, with various companies willingly joining the growing conglomerate when the opportunity came. It also diversified into industrial spirits, starting the UK-wide Industrial Spirit Supply Company as a cartel in 1907. Working with six other industrial spirit producers (plus a seventh who did not join the cartel, but observed its principles of association) they fixed the prices of industrial spirit through regulation of production in line with the percentage share of the association. The fixing of prices (Levy, 1927, p.234), echoed the earlier arrangements used in the Scotch whisky industry. Despite these activities, and its growing presence overseas, the much bigger play for the DCL efforts at concentration and control was yet to come.

The DCL had continued to acquire distilleries, brokers, and stock to exert control on prices. Building its own malt distilleries, further increased its reach and power within an industry where producers would regularly sell stock to each other. As a result, it became known as 'The Combine' and described as 'one of the strongest and most efficient business organisations in the country' (Wilson, 1970, p.422). However, this also drew the attention of the large blenders which were growing increasingly worried about the disappearance of various distillers into the control of the DCL, and with that their access to competitively priced stock. During the boom years, a number of whisky blenders had emerged and developed a global profile. The men leading the whisky blenders Dewar's, Buchanan's, and Walker's had become known as 'The Whisky Barons' due to their burgeoning wealth arising from rapid growth of their business and their development of overseas markets. They remained outside of the DCL's orbit but had experienced huge international growth through the entrepreneurial efforts of their owners and deployment of connections arising from the British Empire (Bower, 2016).

The first two decades of the 20<sup>th</sup> century brought considerable challenges, which shaped the industry's decision to internationalise and expanded the cartel. By 1900, domestic consumption of Scotch Whisky had reached its peak (accounting for 87 percent of demand), and thereafter it started to decline. In direct response the industry sought to expand further in North American markets, particularly the US. It almost doubled export volume between 1900 and the outbreak of the First World War (Weir, 1989). During this period, the British government started to exhibit more interest in the activities of the industry, recognising its potential value to the Exchequer.

The First World War affected the Scotch Whisky industry in a number of significant ways. First, its flourishing export market slowed due to the constraints on merchant shipping. Second, an unprecedented number of controls were exerted on the industry by government as part of directing its war effort (managing resources principally). This saw production fall significantly, including on the supply of grain. Third, were the effects of the temperance movement influencing restrictions on the sale of alcohol directly and under defence regulations (Weir, 1989). The effects were pronounced. Scotland, which contained 133 operational distilleries in 1914 (accounting for 81 percent of the distilling capacity of the British Isles and 54 percent of output), had by 1918, just eight in operation (HM Customs & Excise (HMCE, 1919, 10<sup>th</sup> report, Tables 19 & 21). This led to the establishment of another trade association in 1917 in the form of the Whisky Association, a conversion of the previous Wine and Spirits Brands Association, to protect the industry's interests at home and abroad. This was a subscription model whereby Scotch producers would pool money to direct to importers around the world. This was to enable them to lobby for anti-prohibition measures and protect their brands, providing a service that very few of the individual businesses could afford to do on their own (Weir, 2000). Over time, it evolved into another price fixing mechanism for the industry, but this time with an overseas focus. Between the DCL, the Whisky Association, and the Pot Still Malt Distillers' Association, most firms in the industry were represented. Consequently, with established communications and shared interests, the structure of the industry was well-suited to working collusively, particularly with the DCL's market power (and predilection for cartelisation), in overseas markets (Weir, 1988).

Whisky was briefly banned from exporting in 1918, but restrictions were generally lifted in 1919 (Craig, 1994) and minimum pricing was retained,. This was followed by an increase in duty in the 1920 budget and consumer price controls were applied. By 1920, all Scottish

distilleries were operational again, accounting for nearly 60 percent of the output of the British Isles (HMCE, 1921, 12<sup>th</sup> report, tables 18 & 19). Even if the distilleries' output had not reached 1914 levels, whisky's importance (as the most significant component of the spirits market) to government revenue was becoming apparent. The net receipts to the Exchequer from spirits increased by 26 percent within a year of a return to almost full production (constituting 17 percent of the increase to excise duty returns) (Ibid, Table 5). The industry was soon to be met with further challenges in overseas markets.

### **Prohibition and the maturation of cartelisation 1920-1939**

For the distillers, the imposition in 1920 of Prohibition in the US, a major market, meant overseas demand was restricted as well. This had an effect on the profitability of many companies in the industry. In 1922, the whisky merchant and blender Robertson & Baxter (where Sir Alexander Walker had previously served an apprenticeship) sold a large number of stocks to finance a family split in shareholdings (MacKenzie, Gordon, and Gannon, 2019). The purchasers involved a joint arrangement between the DCL, Dewar's, Buchanan's, and Walker's signifying the first steps towards their eventual amalgamation three years later. They had sought to mitigate the declining fortunes of the industry through a merger between Buchanan and Dewar, as well as the purchase of various distilleries to ensure diversified supply of stocks. Talks had begun before the First World War about the three blenders joining the DCL but had never progressed beyond the planning stage. Amidst a significant depression in the industry in 1925, however (including the effects of Prohibition), an agreement was made enabling them to join the DCL in what became known as 'The Great Amalgamation' (Wilson, 1970). The new organisation enabled the three companies to act in concert under a single umbrella, but retain their individual identities, marketing, and operations (Weir, 1995; Morgan, 2020). In an undated quote, but pertinent to this, Tommy Dewar (one of the principals of Dewar's) is quoted as saying 'Competition is the breath of business, but the death of profits' (Haines, 1998, p. 52). The new DCL would ensure competition was dampened, and profits protected.

The following boom and bust years and DCL's continued skilful expansion and control exerted across different parts of the industry, convinced the big blenders it was better to work with the behemoth than against it. The creation of the 'combine' as it became known was to characterise much of the industry's subsequent development. The DCL regularly flexed its muscles over

prices and marketing to limit competition wherever possible in the industry, both at home and overseas. One notable difference from the past was that within the DCL there was no centralised marketing function – the principal control exercised on its members was in prices (Jones, 2003). This allowed firms to maintain discrete brands and development. The architect of the merger and chairman of the DCL, William Ross, made it known he had no intention of using the DCL's power to hurt the smaller firms by increasing prices but intended to cut capacity in the industry to match the reduced levels of demand lest the depression deepen (Moss and Hume, 1981, p.152). Speaking about this, Ross said 'it has been my proud boast in the past that our smallest customer has received the same measure of justice as our most important buyers, and it will be my constant aim to perpetuate such a policy' (Wilson, 1970, p.438). By flexing its power across supplies, credit, and distribution the DCL was able to maintain both its position and influence on the industry. Nonetheless, Ross' tendency towards cartelisation at home manifested the same tendency towards the DCL's global operations.

In contrast, after 1922 Irish producers were caught in a perfect storm: with a glut of whiskey laid down; deeply unpopular vestiges of the old Anglo-Irish colonial order in the new Irish Free State; and undercut by imports of cheaper Scotch whisky, which was saturating domestic markets. Whilst an Irish Free State reliant on spirits for around 40% of its revenue was careful not to introduce prohibition, it balanced this with support for temperance. A further issue for many Irish whiskey producers after the formation of the Irish Free State was also that it was considered a 'Unionist industry' associated with the deeply unpopular vestiges of the old Anglo-Irish protestant ascendancy and British colonial rule, especially given the prominence in such circles of figures like Andrew Jameson of Jameson's whiskey. Humphreys (1994) identifies these factors and their impact on Irish whiskey distilleries in the first decade of the Free State, together with US stipulations on ageing, as offering an explanation of the comparative advantages and disadvantages of Scotch and Irish whiskey in American markets. Scotch whisky was to enjoy a sustained competitive advantage in the US as a direct result of its cartelisation, with its accompanying economies of scale, capabilities and resource portfolio.

Prohibition in the USA caused no little consternation in the Scotch Whisky industry. After the failure of attempts at controlling supply to bootleggers using both price and quality through the Whisky Association, the deputy chair of the DCL Thomas Herd developed a secret international cartel. Termed the 'scheduled area organisation' in February 1925 it was designed to circumvent strict US import controls. The Whisky Association had proved ineffectual in

meeting the DCL's strict insistence that quality and price be maintained in bootlegging operations to the USA. Bootlegging was a sophisticated and lucrative affair – smugglers would collect stock in Scotland and London from merchants such as Berry Bros & Rudd and ship to areas close to the US including Canada, the Caribbean, the Bahamas, Mexico, and Cuba where it would then be transported into the USA via a series of smugglers (Andrews, 2002). Strict controls and secrecy were exercised in this arrangement with harsh penalties for anyone breaching the agreement, including removal of supplies or credit. The cartel exercised a great deal of control over suppliers to ensure quality was maintained and trust ensured to reduce the risk of detection. As Weir (1995) noted: 'By curtailing competition amongst suppliers it was possible to exert some influence over such individuals [bootleggers]' (p. 274). Crucial to this was the tacit approval of the UK government who turned a blind eye to proceedings, content to harvest the tax take. Indeed, Ross played on this by arguing in 1927, that such cartelisation was necessary for Britain to compete in the global market (quoted in Wilson, 1970, p.438):

Personally, I am not ashamed to be regarded as one of a combine. I go further and say, that if Britain is to retain its prestige in the trade of the world, the more our industries of a similar nature can co-operate or combine together in order effect economies, the more likely will they be to retain if not increase our share of international trade.

The DCL's long history of domestic experience in cartelisation had finally manifested itself in an effective operation on the international stage. The DCL's success in controlling quality and prices had effectively created an externally regulated supply of Scotch to the USA through its Scheduled Area Organisation activities, which was plausibly deniable for the UK government in its discussions with the USA. By 1930, the secretiveness had all but evaporated, as evidenced in the following exchange in the Royal Commission on Licensing where Sir Alexander Walker was pressed by the questioner on bootlegging activities (Quoted in Okrent, 2010, p.173):

Q: 'Could you, if you would, as whisky distillers, stop a large proportion of the export of liquors to the United States?'

A: 'Certainly not.'

Q: 'You could not?'

A: 'We would not if we could.'

Such was the success of bootlegging to the USA through the Prohibition era , that for several years there was no discernible change in the industry's fortunes after it ended in 1933. Between 1920 and 1932, it is estimated that Scotch exports to the USA declined less than 3 percent (Bower, 2016). Such was the success of the DCL in maintaining both quality and prices in the bootleggers' supply, the Scotch industry found its position enhanced after Prohibition finished.

The period after the Great Amalgamation saw the DCL cement its place as the most powerful organisation in the industry. The DCL's chairman William Ross was aware of this, but sought to put the combine's behaviour in a wider context:

[the] taunt that is sometimes applied to us, that this company has become a monopoly, a trust or a combine, all I would say is that we are at least in good company. When I see banks, insurance companies, railways, industrial companies of every description, and even churches amalgamating, there must be something more in the movement than mere greed of gain. In no industry at present is there more need of closer co-operation – nay, even amalgamation, if necessary – than in that of distilling and its allied trades. (Quoted in Wilson, 1970, p.438).

The scale of the DCL's control over the industry is revealed by the fact that the five firms who were members controlled 51 out of 73 malt distilleries in Scotland (Weir, 1989). Within the first decade of the twentieth century, the British government started to exhibit more interest in the activities of the industry. During the First World War, and immediately after, Scotch whisky like other sectors was subject to a considerable range of controls over prices and quotas. In part, this was driven by general concerns over the consumption of spirits and their effect on wartime productivity, as well as on shortages in grain needed to feed the population.

The 'Great Amalgamation' was the most significant step in international cartelisation of the industry. Whilst these developments were expressly intended to protect interests and control prices, they were also intended to produce economies of scale and encourage cooperation across areas such as marketing and supply (much like the Aluminium Association). Such innovations produced efficiencies in the sector and protected employment during the interwar period. It was the consolidation and domestic cartelisation in this period, which developed the capabilities and resources necessary for internationalising Scotch whisky, especially in North

America. The timing was also fortuitous for Scotch. With the collapse of the rye whiskey industry in the US as a result of prohibition, and many US consumers considering bourbon a coarse drink, Scotch presented a sophisticated alternative. By 1938, exports of Scotch outstripped domestic consumption for the first time. By 1940, exports to the USA comprised 61percent of total exports for the industry (Weir, 1988).

### ***Whisky Dollars: 1939 – 1960***

The success of the industry in circumventing Prohibition controls and continuing to develop its US market share again drew it to the attention of the UK government. As during the Great War, the Second World War imposed challenges for the Scotch whisky industry, starting in the run-up to war with growing shortages of grain. The industry's well laid stocks quickly became depleted and rationing was introduced. That this lasted so long reflected in no small part the growing recognition of whisky's importance to the national economy (Glen, 1963). A series of government restrictions introduced between 1940 and 1942 (lasting until January 1954) were intended to reduce the industry's consumption of barley. These eventually limited the amount of whisky that could be distilled to less than one third of its output for 1938-9. The industry sought representation for its key interests through the formation of the SWA in 1942. Created from the old Whisky Association, it became the dominant voice of the industry in policy circles and remains so to this day. By 1944, distilling was allowed to resume to some degree. The reasons (together with resumption in the supply of barley) were made abundantly clear in a memo from Prime Minister Winston Churchill (himself a healthy consumer of the product) in April 1945: 'On no account reduce the barley for Whisky. This takes years to mature and is an invaluable export and dollar producer. Having regard to all other difficulties about exports, it would be most improvident not to preserve this characteristic British element of ascendancy' (quoted in Wilson, 1955, p.351). It became increasingly clear that no single issue affected the UK government's response to the Scotch whisky industry's agglomerations and oligopoly more than the dire economic circumstances that Britain was confronted with after 1945.

By March 1945, John Maynard Keynes warned that Britain stood on the brink of a 'financial Dunkirk' before leading a team to Washington to negotiate a loan from the USA of \$4.3bn. This was followed by a further loan from Canada valued at \$1.9bn. Scotch was a highly valuable strategic asset as an export. Scotch exports grew significantly after 1945. In 1952, Scotch exports were worth £37.8m with over half of that to the US, where it was vital for the

UK balance of payments. By 1954, Scotch accounted for nearly 90 percent of all British spirits exported, with 75 percent of whisky sold overseas (HMCE, 46<sup>th</sup> Report, 1955; The Distilling Sector Working Group (DSWG), 1977). Scotch whisky is also known as *uisge beatha* (the water of life in Scots Gaelic), and it was providing a very real lifeline for a heavily indebted Britain in the post-war years. In 1954 alone, exports of Scotch whisky were valued at around £2m accounting for around 0.1 percent of the value of UK exports, with over half of that to the US alone and a further five percent to Canada (the UK's largest overseas creditors) (Board of Trade, Accounts, Trade & Navigation, 1955)

This directly influenced the UK government's response to the industry from this period. The Restrictive Trade Practices Act 1956 (RPTA) identified seven 'gateways' designed to protect consumer interests. Although the RPTA was primarily intended to protect domestic consumers, with the cost of living soaring after 1945, it is particularly unsurprising that the sixth 'gateway' under the Act was exports, with the legislation stipulating an exemption where:

...the removal of the restriction would be likely to cause a reduction in the volume or earnings of the export business which is substantial either in relation to the whole export business of the United Kingdom or in relation to the whole business (including export business) of the said trade or industry (1956, S21, 1).

The test to qualify for this exemption was a substantial loss in the 'volume or earnings of earnings for the export trade of the UK' (Rhineland, p.35). The whisky industry clearly qualified for this exemption. The growing number of jobs reliant on the export of whisky through its value chain, in bottling, warehousing, and transport (as well as distilling and blending) provided additional dispensation by another gateway. If the government had chosen to apply direct measures in the interwar coal and steel industry, it also chose expressly to overlook industry cartel behaviours (and to provide legislative exemptions), in this case to the whisky industry, because Scotch was far too important to the UK Exchequer, especially in terms of the dollar value of its exports.

## Conclusion

For almost 130 years, the Scotch whisky industry was characterised by a significant degree of cartelisation, starting first with trade agreements to control prices then through the SDA, the DCL, the 'Whisky Parliament', and through the 'Great Amalgamation' of 1925, and the SWA. All of these agreements were driven by a desire to protect members, through high barriers to entry and facilitated by 'non differentiation' of product (Spar, 1994). The effectiveness of these agreements and syndicates was essentially temporary as external conditions, markets or members' attitudes changed. The most effective protectionist measure was realised within the agglomerations that lead to the creation of the DCL and the 1925 amalgamation. Whilst it exhibited elements of what Fear (2006) has defined as 'hard-core' cartels, the DCL's growth brought efficiencies, innovations, and protected employment. The DCL's story was more remarkable given the government paid no attention to its cartelisation. It was not until circumstances changed with the two World Wars that the authorities started to pay closer attention to the industry. The UK government's approach to the Scotch whisky industry was of little consequence initially. As with tin and tea, however, as it grew to recognise the industry's increasing strategic value. The governments' response to any cartel-like activity was determined by pragmatic political considerations given the industry's disproportionate significance to the UK Exchequer through exports

It was also measured by the contribution that it made to employment in Lowland and Highland Scotland (MacKenzie and Perchard, forthcoming), which were otherwise peripheral areas beset by economic development problems.

The Scotch whisky industry illustrates many of the forms which cartelisation can take over time, together with the motivations behind cartels and industry dynamics. It also demonstrates the essentially pragmatic policy approaches adopted by the UK government sensitive to the industry's contribution to the Exchequer. Eschewing direct control measures while the going was good, when faced with war management and post-war reconstruction, the government exercised controls on the industry to ensure it derived maximum benefit from its popularity in the form of export value. In the post-amalgamation years, the DCL further strengthened its grip on the industry through acquisitions and takeovers, utilising the power derived from these to enhance its international operations. These consolidation measures though prompted by domestic production, and the search for efficiency gains, essentially provided the DCL with the capability and resources to ramp up internationalisation after 1925. The success of the Scheduled Area Organisation in the USA was such that when Prohibition ended, the industry found itself in a strong position to take advantage of the thirst for spirits, and nicely prepared

for further export growth. From a policy perspective, the RTPA marked the first time that the UK government acted to quell protectionist behaviours in the industry outside of wartime and post-war challenges. The UK government's response, however, was strongly guided by its recognition of the growing importance of Scotch whisky to UK exports (and especially dollar exchange); 'the characteristic British element of ascendancy' as Winston Churchill put it. By 1964, Scotch whisky accounted for 28 percent of the total value of UK exports (Board of Trade, October 1963; DSWG, 1977). The industry then sought to develop both its nonmarket strategy and strong export position to continue to protect its interests, with the accusations amongst contemporary observers and competitors that it was operating behind a 'tartan curtain'.

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<sup>i</sup> It is important to note that though political union occurred through the Act of Union of 1707, Scotland retained a distinct legal system (as well as church and education) to that of England and Wales.