

ANNUAL REPORT  
OF THE  
FEDERAL  
TRADE COMMISSION  
FOR THE  
FISCAL YEAR ENDED JUNE 30  
1938

UNITED STATES  
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## FEDERAL TRADE COMMISSION

GARLAND S. FERGUSON *Chairman*<sup>1</sup>  
CHARLES H. MARCH  
EWIN L. DAVIS  
WILLIAM A. AYRES  
ROBERT E. FREER,  
OTIS B. JOHNSON, *Secretary*

### FEDERAL TRADE COMMISSIONERS--1915-41

Name	State from which appointed	Period of service
Joseph E. Davies	Wisconsin	Mar.16, 1915-Mar. 18, 1918.
Edward N. Hurley	Illinois	Mar.16, 1915-Jan. 31, 1917.
William J. Harris	Georgia	Mar.16, 1915-May 31, 1918.
Will H. Parry	Washington	Mar.16, 1915-A p r. 21, 1917.
George Rublee	New Hampshire	Mar.16, 1915-May 14, 1916.
William B. Colver	Minnesota	Mar.16, 1917-Sept. 25, 1920.
John Franklin Fort	New Jersey	Mar. 16, 1917-Nov. 30,1919.
Victor Murdock	Kansas	Sept. 4, 1917-Jan. 31, 1924.
Huston Thompson	Colorado	Jan. 17, 1919-Sept. 25, 1926.
Nelson B. Gaskill	New Jersey	Feb. 1. 1921-Feb. 24, 1925.
John Garland Pollard	Virginia	Mar. 6, 1920-Sept. 25, 1921.
John F. Nugent	Idaho	Jan.15, 1921-Sept. 25, 1927.
Vernon W. Van Fleet	Indiana	June 26, 1922-July 31, 1926.
Charles W. Hunt	Iowa	June 16, 1924-Sept. 25,1932.
William E. Humphrey	Washington	Feb.25, 1925-Oct. 7, 1933.
Abram F. Myers	Iowa	Aug. 2, 1925-Jan. 15, 1929.
Edgar A. McCulloch	Arkansas	Feb.11, 1927-Jan. 23, 1933.
Garland S. Ferguson	North Carolina	Nov.14, 1927,
Charles H. March	Minnesota	Feb. 1, 1929.
Ewin L. Davis	Tennessee	May 26,1933.
Raymond B. Stevens	New Hampshire	June 26, 1933-Sept. 25, 1933,
James M. Landis	Massachusetts	Oct.10, 1933-June 30, 1934.
George C. Mathews	Wisconsin	Oct.27, 1933-June 30,1934.
William A. Ayres	Kansas	Aug. 23,1934.
Robert E. Freer	Ohio	Aug.27, 1935.

<sup>1</sup> Chairmanship rotates annually. Commissioner Freer will become chairman in January 1940.

### EXECUTIVE OFFICES OF THE COMMISSION

Constitution Avenue at 6th Street,  
Washington, D. C.

### BRANCH OFFICES

45 Broadway,  
New York  
483 West Van Buren Street,

548 Federal Office Building,  
San Francisco  
801 Federal Building,

Chicago

217 Custom House,  
New Orleans

Seattle

II

### **LETTER OF SUBMITTAL**

*To the Congress of the United States:*

I have the honor to submit herewith the Twenty-fifth Annual Report of the Federal Trade Commission for the fiscal year ended June 30, 1939.

By direction of the Commission.

GARLAND S. FERGUSON *Chairman*

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## **INTRODUCTION**

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ANNUAL REPORT  
OF THE  
FEDERAL TRADE COMMISSION  
FOR THE  
FISCAL YEAR ENDED JUNE 30, 1938

**INTRODUCTION**

**POWERS AND DUTIES OF THE COMMISSION**

The Federal Trade Commission herewith submits its report for the fiscal year, July 1, 1937, to June 30, 1938. Organized March 16, 1915, under the Federal Trade Commission Act, approved September 26, 1914, which was amended March 21, 1938, the Commission is an ad-administrative agency. Its functions are chiefly: (1) to prevent unfair methods of competition and unfair or deceptive acts or practices in interstate and foreign commerce; (2) to make investigations at the direction of Congress, the President, the Attorney General, or upon its own initiative; (3) to report facts in regard to alleged violations of the antitrust laws; (4) to prevent price and other discriminations in violation of Section 2 of the Clayton Act as amended by the Robinson-Patman Act; (5) to prevent exclusive dealing Contracts, capital-stock acquisitions and interlocking directorates in violation of Sections 3, 7, and 8, respectively, of the Clayton Act, and (6) to administer the Webb-Pomerene or Export Trade Act, aimed at promotion of foreign trade by permitting the organization of associations to engage exclusively in export trade, and providing that nothing contained in the Sherman Act shall be construed as declaring to be illegal any combinations or "associations" entered into for the sole purpose of engaging in, and actually solely engaged in, export trade.

In performing these functions, the Commission's duties fall into two categories, namely, (1) legal activities in enforcement of the laws it administers, and (2) general investigations of economic conditions in domestic industry and interstate and foreign commerce.

Legal activities have to do with (1) prevention and correction of unfair methods of competition and unfair or deceptive acts or practices, in accordance with Section 5 of the Federal Trade Commission



Act, in which it is declared that unfair methods of competition and unfair or deceptive acts and practices in commerce are unlawful; (2) administration of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, dealing with price discriminations and other discriminations, and Sections 3, 7, and 8 of the Clayton Act dealing with tying and exclusive dealing contracts, acquisitions of capital stock, and interlocking directorates, respectively, and (3) administration of the Webb-Pomerene or Export Trade Act.

In connection with its foreign-trade work, the Commission has the power under section 6 (h) of the Federal Trade Commission Act,

to investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

The general investigational and economic work of the Commission arises chiefly under section 6 (a), (b), and (d) of the Federal Trade Commission Act, giving the Commission power--

(a) To gather and compile information concerning, and to Investigate, from time to time, the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers \* \* \* and its relation to other corporations and to individuals, associations, and partnerships.

(b) To require, by general or special orders, corporations engaged in commerce excepting banks, and common carriers subject to the act to regulate commerce \* \* \* to file with the Commission in such form as the Commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the Commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. \* \* \*

(d) Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust acts by any corporation.

An investigation under section 6 (d) of the organic act, when re-requested by Congress, is undertaken by the Commission as a result of a concurrent resolution of both Houses. This is in conformity with the United States Code (48 Stat. 291, 15 U. S. C. A., sec. 46a), and the Independent Offices Appropriation Act, 1934 (Public, No.78, 73d Cong.).

### **AMENDMENT OF THE FEDERAL TRADE COMMISSION ACT**

The Federal Trade Commission Act, basis of a major portion of the Commission's activities, which was passed in 1914 as a part of President Wilson's legislative program, was amended on March 21, 1938, in the passage of Public, No.447, Seventy-

fifth Congress,

third session, sometimes known as the Wheeler-Lea Act. This act is purely amendatory, its provisions having been incorporated and integrated entirely in the provisions of the Federal Trade Commission Act.

Sections 1, 4, and 5 of the Federal Trade Commission Act of 1914 were amended and 7 new sections, 12 to 18, inclusive, added.

Principal amendments are:

- (1) Declaring unfair or deceptive acts or practices in commerce unlawful.
- (2) Providing that the Commission's cease and desist orders shall become final within 60 days from date of service unless appealed from by the respondents.
- (3) Fixing the time when the Commission's orders from which appeals have been taken by respondents shall become final.
- (4) Providing civil penalties not to exceed \$5,000 for violations of orders to cease and desist after they shall have become final.
- (5) Specifically making unlawful the dissemination or the causing of the dissemination of false advertisements of food, drugs, devices, or cosmetics, and defining "advertisements," "food," "drugs," "devices," and "cosmetics."

If the use of the commodity advertised may be injurious to health when used under the conditions prescribed in the advertisement or under customary or usual conditions, or if there be intent to defraud or mislead, the dissemination, or the causing of the dissemination, becomes a misdemeanor with a penalty of fine or imprisonment, or both. Further, the Commission is authorized, when it appears to be in the public interest, to proceed in a United States District Court by injunction to halt an existing or to prevent a threatened violation of the provisions above referred to, pending the issuance by it of a complaint and a final determination thereunder.

Other amendments are minor in character, largely procedural or clarifying.

*Unfair or deceptive acts or practices.*--The Commission had previously recommended in its annual report that section 5 of its organic act be so amended as to declare unlawful, not only "unfair methods of competition," as the original act declared, but also "unfair or deceptive acts or practices." The reason for the recommended amendment was that there were some unfair or deceptive commercial practices which primarily injured the public rather than competitors, and in many cases, injury to competitors being difficult to show, the Commission was frequently put to much trouble, delay, and expense in proving competition and injury thereto.

*Finality of cease and desist orders.*--The Commission also recommended the amendments now incorporated in its organic act which

strengthen its powers in cases brought under that act by making its orders to cease and desist final and conclusive if and when respondents do not apply for court review within 60 days. Instead of the provision of the act as amended now providing civil penalties for violations of orders to cease and desist after they have become final, the original act provided no penalty until the United States Circuit Court of Appeals had affirmed the order and commanded obedience to it.

*False advertising.*--Section 15 defines the terms "false advertisement," "food," "drug," "device," and "cosmetic."

Proceedings under the advertising sections of the act will be instituted under the regular legal procedure provided for in those sections and in other sections of the act as amended. Prior to such amendment, and since passage of the original act, the Commission has issued numerous orders involving false and misleading advertising as a violation of section 5 prohibiting unfair methods of competition in commerce. Th 1929 it set up a special procedure for scrutinizing and dealing with certain types of false advertising encountered in periodicals, such procedure later being extended to include advertisements broadcast by radio. (See p. 117.) Many cases of this type are settled by voluntary stipulation to cease and desist although stipulation is not permitted where the circumstances of the violation involve fraud Cr products dangerous to health. (See p.41.)

The Surgeon General of the United States Public Health Service has detailed a commissioned medical officer to the Commission, who will act as advisor and consultant with respect to all matters relating to food, drugs, devices, and cosmetics arising under the advertising provisions of the act as amended.

### GENERAL LEGAL ACTIVITIES

Upon authority of the acts which it administers, the Commission, during the fiscal year ended June 30, 1938, continued to direct its efforts toward the correction and elimination of unlawful practices prohibited by those statutes.

*Cases before the Commission.*--The Commission made approximately 1,800 investigations upon applications for complaint in cases which were in a preliminary stage or had not progressed to the status of formal complaint or stipulation. These cases were disposed of either by progression to the status of formal complaint, by stipulation, or by closing.

The Commission approved a total of 576 stipulations to cease and desist, executed by parties against whom informal proceedings had been instituted. Of these, 376 were cases in which false and mislead-

ing advertising in newspapers, magazines, or by radio broadcast, was involved.

The stipulation procedure is usually employed in cases where the methods of competition or unlawful practices complained of are not fraudulent or so vicious that protection of the public interest requires observance of the procedure of formal complaint and issuance of a cease and desist order. (See also pp.41, 121, 122 and 171.) The stipulation procedure in such cases provides opportunity for a prospective respondent to enter into a written agreement to cease and desist from the unfair methods or acts or practices set forth therein. By its simplicity this procedure saves both the Government and the respondent the expense that would be incident to trial of a complaint.

The Commission issued 305 complaints against companies, associations, and individuals, alleging various forms of unfair competition or other practices, as compared to 296 in the last preceding fiscal year. These included 9 cases of alleged combination or conspiracy in restraint of trade through price fixing and other unlawful agreements, and 20 complaints charging violation of Section 2 of the Clayton Act as amended by the Robinson-Patman Anti-discrimination Act. In 246 cases the Commission served upon respondents its orders to cease and desist from unlawful practices which had been alleged in complaints and which were found to have been engaged in by the respondents. Representative cases are described at pages 42 and 56.

*Cases before the courts.*--The Commission was successful in 18 cases before various Federal courts, and was unsuccessful in 4 cases in the United States Circuit Courts of Appeals, although in one of these 4 cases the Commission was sustained upon appeal to the Supreme Court of the United States. Fourteen of the cases in which the Commission was successful were affirmations of Commission orders to cease and desist by the United States Circuit Court of Appeals; two were cases in the United States District Courts, and two were in the Supreme Court. (See p.75.) Twenty-three petitions for review of cease and desist orders were filed with the Federal Courts by the respondents during the 60 days following enactment of the Wheeler-Lea Act of March 21, 1938, which amended the Federal Trade Commission Act. That act as amended provides that cease and desist orders served by the Commission on or before March 21, 1938, shall become final 60 days thereafter unless appealed to the courts. In one of the cases thus appealed the order to cease and desist had been served more than 10 years previous. (See pp.76 and 90.)

*Foreign trade work.*--Forty-four export trade associations organized under provisions of the Webb-Pomerene or Export Trade Act

had papers on file with the Commission as of June 30, 1938. Shipments by such associations in 1937 increased approximately \$50,000,000 over their exports in 1936. The Rice Export Association, comprising 23 mills located in Louisiana, Texas, and Arkansas, was organized in October 1937. These associations are discussed in part V of this report, which also contains a review of the trends in laws and decrees relating to trusts, cartels, and competitive conditions in 32 countries or dominions of the world. In June 1938 the Commission made public a *Supplemental Report on Antidumping Legislation and Other Import Regulations in the United States and Foreign Countries.*

*Misleading advertising.*--The examination of newspaper, magazine, and radio advertising for false and misleading representations and the disposition of cases resulting from such scrutiny, was continued by the Commission through its Special Board of Investigation, as related in part IV of this report. The Special Board's report contains a summary showing the commodities involved in a review of questionable advertisements over a 4-year period and the percentage of the total is indicated for each commodity.

*Miller-Tydings Act.*--Prior to the passage of the Miller-Tydings Act, August 17, 1937, it was the Commission's general practice to proceed against persons, firms, or corporations entering into cooperative schemes and practices for compelling wholesalers and retailers to maintain resale prices as fixed by a manufacturer or distributor for resale of his product.

The Miller-Tydings Act makes lawful contracts or agreements prescribing minimum prices for resale of commodities sold and shipped in interstate commerce, if the commodities, or their labels or containers bear the trade mark, brand, or name of the producer or distributor, and if such commodities are in free competition with others of the same class, when such contracts or agreements are lawful in the State where resale is to be made as applied to intrastate transactions under State "Fair Trade Laws," and when they do not apply to "horizontal" price-fixing agreements between competing vendors in the same class.

Passage of the act resulted in the closing by the Commission of certain cases in which there was no evidence that resale price maintenance had been practiced in the District of Columbia or in any State not having so-called "Fair Trade Laws." One complaint and five cease and desist orders involving this practice were issued in the fiscal year ended June 30, 1938. Each case had to do with the sale of liquor in the District of Columbia. (See pp.45 and 64.)

## PROGRESS UNDER THE ROBINSON-PATMAN ACT 7

### TRADE PRACTICE CONFERENCES

An important phase of the Commission's activities during the last year has been its trade practice conference work.

Under this procedure, a means is afforded whereby members of an industry may voluntarily cooperate with the Commission in the establishment of fair trade practice rules, the purpose of which is the wholesale elimination of unfair methods of competition and other illegal acts, practices, and trade abuses.

This work is performed under authority of the Federal Trade Commission Act, and other laws administered by the Commission, whereby the Commission is empowered and directed to prevent the use in commerce of unfair methods of competition and other illegal practices.

Since the beginning of this work in 1919, there have been held before the Commission trade practice conference proceedings for a large number of industries of varied character, with memberships up to many thousands and aggregate capital investments running into billions of dollars.

### **PROGRESS UNDER THE ROBINSON-PATMAN ACT**

The Robinson-Patman Act of June 19, 1936, has been in effect approximately two years. In amending Section 2 of the Clayton Act this legislation made substantial changes in the previous law; (1) by restating in broader terms the basic principle of prohibiting price discrimination which injuriously affects competition; (2) by making it unlawful knowingly to induce or receive a discriminatory price otherwise prohibited, and (3) by broadening the scope of the statute to include within its prohibitions discriminations in "brokerage, or other compensation \* \* \* except for services rendered in connection with the sale or purchase of goods \* \* \* either to the other party to such transaction or to an agent, representative, or other intermediary therein \* \* \* acting in fact for or in behalf, or \* \* \* subject to the direct or indirect control" of such other party, and the receipt of such brokerage by such other party or his agent, representative, or intermediary.

The administrative and enforcement processes were facilitated by the provision that upon a showing of a discrimination in price or in services or in payments for services, a prima facie case is made out and the burden of rebutting it and of justifying the discrimination shall be upon the alleged violator.

In cases of price discrimination where quantity differentials, although justifiable under other provisions of the act, are found to be "unjustly discriminatory or promotive of monopoly in any line of commerce" because the "available purchasers in greater quantities

are so few” the Commission may, after investigation and hearing of all interested parties, “fix and establish quantity limits, and revise the same as it finds necessary, as to particular commodities or classes of commodities,” after which differentials based on greater quantities may not be granted.

Section 3 of the Robinson-Patman Act makes it a criminal offense, subject to fine or imprisonment, to be a party to or assist in a sale or contract to sell which discriminates to the knowledge of such party against competitors of the purchaser for the purpose of destroying competition or eliminating a competitor, or to sell or contract to sell goods at unreasonably low prices for the purpose of destroying competition or eliminating a competitor.

*Robinson-Patman Act amended.*--On May 26, 1938, the new statute was amended by the enactment of Public, No.550, Seventy-fifth Congress. This amendment provides that nothing contained in the Robinson-Patman Act shall apply “to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit.”

*Jurisdictions for enforcement.*--Authority to enforce the Robinson-Patman Act is vested concurrently in the Commission and the Department of Justice, except as to common carriers subject to the Interstate Commerce Act, as amended, to common carriers engaged in wire or radio communication or radio transmission of energy, to air carriers subject to the Civil Aeronautics Act of 1938, or to banks, banking associations, and trust companies. The Packers and Stockyards Act excludes packers and stockyards as defined in that act from the power or jurisdiction of the Commission so far as relating to any matter which by said act is made subject to the jurisdiction of the Secretary of Agriculture. As to these exceptions, authority is vested in other agencies of the Government. Jurisdiction to enforce the criminal provisions of the act is vested exclusively in the Department of Justice.

*Number of field investigations.*<sup>1</sup>--Since the passage of the Robinson-Patman Act the Commission has instituted field investigations of alleged violations of the statute in 515 instances, each involving from one to several hundred parties. Of this number, 486 represented that many separate cases, and 29 were reinvestigations or supplemental inquiries. Three hundred forty-five investigations were completed as of June 30, 1938, and 321 of these were separate matters and 24 were supplemental inquiries.

*Wide range of commodities involved.*--It is interesting to note the wide range of commodities covered by these investigations and the

<sup>1</sup> For complaints, orders to cease and desist, and court cases under or involving the Robinson-Patman Act, see, respectively, pp. 49, 67, 77, 83, 84 and 88.

## PROGRESS UNDER THE ROBINSON-PATMAN ACT 9

relative number of investigations in each general commodity classification. These were: Food products, 116; building materials, 58; furniture and household supplies, 35; manufacturers' supplies, 32; toilet preparations, 29; pharmaceuticals, 27; farm supplies, 26; textiles and clothing, 24; automobile accessories and parts, 22; petroleum products, 22; tobacco products, 19; dairy products, 12; stationery and office supplies, 9; recreational and sporting goods, 8; machinery, 7; beverages and sanitary supplies, 6 each; medicinal and surgical supplies, optical goods, and hardware, 5 each; coal 4, and one each of 9 miscellaneous commodities.

These investigations, covering such a variety of producing and distributing industries, have furnished the Commission with a substantial cross-section of the pricing and merchandising practices in current use, and form a valuable background for the future administration of the act.

*Inquiries from the public continue.*--The Commission has continued its policy of discussing with the many business men and their attorneys who call at its offices the application of the Anti-discrimination statute to particular business practices. In many instances, pursuant to such conferences, there have been voluntary revisions of practices which appeared to be in probable conflict with the law. The flow of inquiries by correspondence respecting the new law amid its application in specific circumstances continues to be substantial.

*Cost accounting investigations.*--Investigations of alleged violations of the Robinson-Patman Act are more expensive and time-consuming than those made under the other acts which the Commission administers. This is due to the technical nature of the act and the consequent particularity of detail required to determine its application, as well as to the fact that frequently elaborate cost accounting studies are necessary where justification for price differentials is claimed on the basis of cost differences.

In determining the costs of selling and distributing a commodity to each of several classes of customers, considerable difficulty may be experienced. Particularly is this true when these several classes buy through the same salesmen and receive through the same agencies of delivery two or more commodities, including the one whose prices are in question. Detailed cost and marketing records should be available. Methods of cost allocation which accord with as nearly sound accounting principles as the practicalities of the business will permit are to be discovered and followed. Such cost accounting of distribution and the analysis of markets and market conditions which it requires are in the pioneering stage. Few, even of the large and important companies, have yet worked out and installed cost-accounting systems which, for purposes of defense under the Robinson-Patman Act, are

sound and adequate in their conception and at the same time suitable and practicable for the everyday use of the individual business concern.

In the preliminary investigation of a charge of price discrimination in a case where the respondent bases his defense on differences in cost, the Commission's economists and accountants examine the cost data and analyses thereof furnished by the respondent in justification of his price scale, and the Commission may request further data.

Where the respondent's cost-accounting system is not adequate to disclose the necessary cost data, and cannot be readily made so, it may be necessary for him to make a sample check of his costs by a timing study of each operation involved in the sale and distribution of the commodity, the prices of which are in question, and to make a detailed record of each item of cost for a representative period and a representative part of the field of distribution. Such studies must in turn be checked by the Commission's accountants to determine their accuracy and adequacy.

After a formal complaint has been issued and proof of discrimination in price submitted in a hearing, the burden of showing justification of differences in price through savings in costs rests upon the respondent. Nevertheless, it is incumbent on the Commission's staff of economists and accountants to examine such showing upon its submission, to advise the Commission as to its meeting the requirements of the act, and to appear where necessary as witnesses in the case.

### **ILLEGAL STOCK ACQUISITIONS**

The Commission has concurrent jurisdiction with the Department of Justice in the enforcement of Section 7 of the Clayton Act except where applicable to common carriers subject to the Interstate Commerce Act as amended; where applicable to common carriers engaged in wire or radio communication or radio transmission of energy, under the act creating the Federal Communications Commission; where applicable to air carriers and foreign air carriers subject to the Civil Aeronautics Act of 1938 ; and where applicable to banking associations and trust companies by reason of jurisdiction vested in the Federal Reserve Board. Section 7 declares that no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition, restrain commerce in any section or community, or tend to create a monopoly of any line of commerce.

Section 7 also declares it to be unlawful for a corporation or a holding company to acquire capital stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition also may be as aforementioned.

The Supreme Court of the United States (291 U. 8.587 and 272 U.S. 554) has held that the statute confers no authority upon the Commission to order divestiture of physical assets, even though obtained as a result of an illegal acquisition of stock.

Because of the inadequacy of the statute and the fact that by far the larger number of acquisitions, mergers, and consolidations are effected by purchase or merger of assets, the Commission, in previous annual reports and in reports on certain of its investigations, has recommended that the Clayton Act be so amended as to cover the acquisition of assets of competing organizations when the effect of such acquisition may be to substantially lessen competition, restrain commerce, or tend to create a monopoly of any line of commerce.

The Commission made such recommendation in the last preceding fiscal year in its report on the agricultural income inquiry. It made a similar recommendation in June 1938 in its report on the agricultural implement and machinery investigation and renews the recommendation in the current Annual Report (see pp.19 and 29).

Details as to the Commission's cases brought under Section 7 of the Clayton Act during the fiscal year ended June 30, 1938, may be found on pp.40, 41, and 55.

### **PERIODIC INDUSTRY REPORTS**

In a message sent to Congress on April 29, 1938, the President recommended that some Government bureau should collect and publish current statistical and other information regarding market conditions and be in a position to warn against the dangers of temporary overproduction and excessive inventories, as well as against the shortages and "bottle-neck conditions" which affect the welfare of business men.

The Federal Trade Commission has been identified for many years with the proposal to collect and publish current industry reports. It had this matter under consideration during the first months of operation in 1915 and took certain tentative steps in that direction prior to the World War. The general aim and nature of this project is discussed at some length in the Annual Reports of the Federal Trade Commission for the years ended June 30, 1917, and June 30, 1918, and active work in this direction was undertaken in the years 1919 and 1920, under a special appropriation by Congress. It was discontinued, first, because of litigation, which ran on for several years, eventually establishing the power of the Commission to require such reports ; and, second, because no further appropriation was made for the work.

The Commission desires to emphasize particularly that this project was conceived as a means of improving business conditions by mitigating the severe changes of the business cycle and through such steadying of commerce and industry to aid not only all types of business organizations, but also the wage earners, and the consumers gen-

erally. It was believed that such work, if successful, would benefit industry many fold the cost of such an undertaking even if it ran into a comparatively large amount.

During the year here under report, there has been a wide-spread interest in some plan of this general nature in various quarters, particularly in Washington, and the Federal Trade Commission, as on frequent occasions during the last few years, has recommended undertaking this work, especially to the Director of the Budget and to appropriation committees of Congress.

The Commission pointed out in its annual report in 1917 that trade association activity in this general direction had frequently failed, or proved ineffective, because there was no obligation on the individual member of a particular industry to make the necessary reports. The Commission also was of the opinion that the safest way to avoid the temptations of illegal cooperation, to protect the individual interests of all the members of an industry, and to have the published reports command the confidence of the general public, was to have the work done by some public authority clothed with adequate powers. The Federal Trade Commission is fully implemented with such expressly granted powers, but has not been able to use them effectively for lack of appropriations.

#### **NATIONAL ECONOMIC COMMITTEE (MONOPOLY INVESTIGATION, 1938)**

On the recommendation of the President, the Congress provided (Public Res. No.113, 75th Cong.) for the establishment of a temporary "National Economic Committee" consisting of three members of the Senate, three members of the House of Representatives, and one representative each from the Departments of Justice, Treasury, Labor, and Commerce, and also from the Federal Trade Commission and Securities and Exchange Commission.

The work of this committee is directed especially to questions regarding the "concentration of economic power in and financial control over production and distribution of goods and services" with a view to determining the causes thereof, the effects on prices, employment, profits, and consumption, etc., and the effecting of existing Government policies in these respects. The committee is also directed to make recommendations for legislation respecting these matters.

Various other provisions of an administrative character are included, which, among other things, authorize this committee to exercise broad powers of inquiry, and appropriate funds for the services of personnel to aid in the collection and preparation of the essential information, and other necessary expenses.

Pursuant to the provisions of this resolution, the Federal Trade Commission designated Commissioner Garland S. Ferguson, Chair-

man of the Commission, as its representative on this committee, and Commissioner Ewin L. Davis was designated as the alternate representative.

The first formal meeting of this committee took place on June 21, 1938.

### GENERAL INVESTIGATIONS

More than 100 general inquiries or studies have been conducted during the Commission's existence, most of them in pursuance of Congressional resolutions, although many have been conducted pursuant to Presidential orders and others on the Commission's initiative. Many of these inquiries have supplied valuable information bearing on competitive conditions and trends in interstate trade and industrial development and have shown the need for and wisdom of legislation or other corrective action. The public need for such fact-finding studies in this increasingly complex economic era grows greater, irrespective of different economic and political philosophies.

The status of each investigation in progress during or at the close of the fiscal year is described as follows:

*Agricultural implement and machinery industry.*--Undertaken in response to a joint Congressional resolution, this investigation was completed and the report, entitled *Agricultural Implement and Machinery Industry*, was transmitted to Congress as of June 6, 1938. This report showed that the bulk of production of farm implements and machines has become concentrated in a few large manufacturers. The Commission recommended amendment of the Clayton Act to make illegal the acquisition by large corporations of the stock or assets of competing corporations. (See p.23.)

*Agricultural income.*--The inquiry proper was completed and the principal reports submitted to Congress in the last preceding fiscal year. On November 8, 1937, the Commission issued a supplementary report concerning legal proceedings necessary to require a few manufacturers to submit certain information requested for use in the general inquiry. The main reports, *Agricultural Income Inquiry, Part I, Principal Farm Products; Part II, Fruits, Vegetables, and Grapes; and Part III, Supplementary Report*, were printed and became available for distribution in October 1938. (See p.29.)

*Motor vehicles.*--This inquiry, pending at the close of the fiscal year, is being conducted pursuant to a joint Congressional resolution of April 13, 1938, directing the Commission "to investigate the policies employed by manufacturers in distributing motor vehicles, accessories, and parts, and the policies of dealers in selling motor vehicles at retail, as these policies affect the public interest." The resolution also calls for information concerning the extent of concentration of control and monopoly and the extent to which any of the antitrust laws are being violated. (See p.30.)

*Cost of living.*--The Commission undertook this inquiry in November 1937 pursuant to a request of the President of the United States that an immediate investigation be conducted concerning alleged monopolistic practices and other unwholesome methods of competition and their relation to a marked increase in the cost of living in 1937. Upon completion of the inquiry, a confidential report was made to the President as of April 29, 1938. (See p.31.)

*Newsprint paper.*--This inquiry, pending at the close of the fiscal year, is in response to a request made January 24, 1938, by the Attorney General of the United States. The Commission was asked to investigate the manner in which certain newsprint manufacturers have complied with a consent decree entered against them on November 26, 1917, by the United States District Court for the Southern District of New York, and further to determine whether there were any violations of the antitrust laws by the newsprint industry that were not prohibited by the decree. (See p.31.)

A list and brief descriptions of the more than 100 inquiries conducted by the Commission since 1915 begins at p.173.

### THE COMMISSIONERS AND THEIR DUTIES

*The Federal Trade Commission* is composed of five Commissioners appointed by the President and confirmed by the Senate. Not more than three of the Commissioners may belong to the same political party.

The term of office of a Commissioner is 7 years, as provided in the Federal Trade Commission Act. The term of a Commissioner dates from the 26th of September last preceding his appointment (September 26 marking the anniversary of the approval of the act in 1914), except when he succeeds a Commissioner who relinquishes office prior to expiration of his term, in which case, under the act, the new member "shall be appointed only for the unexpired term of the Commissioner whom he shall succeed." Upon the expiration of his term of office, a Commissioner continues to serve until his successor has been appointed and has qualified.

As of June 30, 1938, the Commission was composed of the following members: Garland S. Ferguson, Democrat, of North Carolina, chairman; Robert E. Freer, Republican, of Ohio, vice-chairman; Charles H. March, Republican, of Minnesota; Ewin L. Davis, Democrat, of Tennessee, and William A. Ayres, Democrat, of Kansas.

Each January the Commission designates one of its members to serve as chairman during the ensuing calendar year. Commissioner Ferguson was chosen chairman for the calendar year 1938, succeeding Commissioner Ayres. The chairmanship rotates, so that each Commissioner serves as chairman at least once during his term of office.

The chairman presides at meetings of the Commission, supervises its activities, and signs the more important official papers and reports at the direction of the Commission.

In addition to the general duties of the Commissioners, in administering the statutes, the enforcement of which is committed to the Commission, each Commissioner has supervisory charge of a division of the Commission's work. Chairman Ferguson has supervisory charge of the chief trial examiner's division and the trade practice conference division; Commissioner Freer of the economic division and special board of investigation; Commissioner March of the chief examiner's division; Commissioner Davis of the chief counsel's division, and Commissioner Ayres of the administrative division. The Commission has a Secretary, who is its executive officer.

Every case that is to come before the Commission is first examined by a Commissioner and then reported on to the Commission, but all matters under its jurisdiction are acted upon by the Commission as a whole. The Commissioners meet for the consideration and disposal of such matters every business day, 52 weeks in the year. They have administrative charge of the work of a staff which, as of June 30, 1938, numbered 585 officials and employees including attorneys, economists, accountants, and administrative personnel engaged in Washington and in 5 branch offices. The Commissioners hear final arguments in the cases before the Commission, and usually preside individually at trade practice conferences held for industries in various parts of the country, and also have numerous administrative duties incident to their position.

### **HOW THE COMMISSION'S WORK IS HANDLED**

The work of the Federal Trade Commission may be divided broadly into the following general groups: Legal, economic, and administrative.

The legal work of the Commission is under the direction of the Chief Counsel, the Chief Examiner, the Chief Trial Examiner, the Special Board of Investigation, and the Trade Practice Board.

The Chief Counsel acts as legal adviser. to the Commission, supervises legal proceedings against respondents charged with violations of the acts administered by the Commission, has charge of the trial of cases before the Commission and in the courts, and supervises the export trade work of the Commission as conducted pursuant to the Export Trade Act.

The Chief Examiner's Division and the Special Board of Investigation have charge of investigations preliminary to issuance of complaint alleging violations of the laws over which the Commission has jurisdiction. When the Commission undertakes investigations in

response to Congressional resolutions, or under Section 6 of the Federal Trade Commission Act, the Chief Examiner supervises such investigations primarily of a legal nature as may be assigned to his division by the Commission.

Members of the Chief Trial Examiner's Division are appointed to preside at the trial of formal complaints and at the taking of testimony in investigations conducted by Executive direction, pursuant to Congressional resolutions, upon the Commission's own initiative, or at the request of the Attorney General. They also arrange settlements by stipulation of applications for complaint, subject to the approval of the Commission.

The Division of Trade Practice Conferences conducts activities relative to the formulation and approval of trade practice rules, the holding of industry conferences in respect thereto, the administration and enforcement of such rules which have received Commission approval and are in effect, and other staff duties incident to the trade practice conference procedure.

The Economic Division, under the Chief Economist, conducts such general inquiries of the Commission as are primarily of an economic nature, such as those covering agricultural implements and machinery, agricultural income and motor vehicles. The Economic Division and the Chief Examiner's Division jointly, conducted the agricultural income inquiry. Examiners of the Economic Division make cost accounting examinations in connection with cases instituted under the Robinson-Patman Antidiscrimination Act. The Chief Examiner's Division has charge of the newsprint investigation and examiners from both the Chief Examiner's and Economic Divisions were engaged in the inquiry into general living costs.

The Commission has added to its staff an economic advisor to the Commission with special reference to administration of the Robinson-Patman Act and in connection with certain general investigations.

Responsible directly to the Assistant Secretary of the Commission, the Administrative Division conducts the business affairs of the Commission and is made up of units such as are usually found in Government establishments, the functions of such units being covered largely by general statutes. These units are: Accounts and Personnel, Disbursing Office, Docket Section, Publications, Library, Mails and Files, Legal Editing, Supplies, and Stenographic.

The Commission has a Public Relations and Editorial Service. Its duties include the distribution of information, the preparation and editing of reports, and the answering of inquiries relative to the Commission's work. This division is under the supervision of the Assistant to the Chairman.

The Commission has access to the laboratories, libraries, and other facilities of Federal Government agencies, to any of which it may

refer matters for scientific opinions or information. The Commission also obtains, when necessary, certain medical and other scientific information and opinions from nongovernment hospitals, clinics, and laboratories. As previously noted, the United States Public Health Service has detailed a commissioned medical officer, who will act as advisor and consultant to the Commission in certain matters arising under the advertising provisions of the Federal Trade Commission Act as amended.

### **PUBLICATIONS OF THE COMMISSION**

Publications of the Commission, reflecting the character and scope of its work, vary in content and treatment from year to year. Important among such documents are those presenting fact-finding studies, reports, and recommendations relating to general business and industrial inquiries. Illustrated by appropriate charts, tables, and statistics, these books and pamphlets deal with current developments, possible abuses, and trends in an industry, and contain scientific and historical background. Considered as a whole, they have supplied economists and students of business and government, the Congress, and the public with information not only of general interest but of great value as respects the need or wisdom of new and important legislation, to which they have frequently led, as well as corrective action by the Department of Justice and private interests affected. The Supreme Court has at times had recourse to them, and many of them have been designated for reading in connection with university and college courses in economics and law.

Findings and orders of the Commission, as published, contain interesting and important material regarding business and industry. They tell, case by case, the story of unfair competition, unfair or deceptive acts or practices, exclusive-dealing contracts, price discriminations, and capital-stock acquisitions in violation of the statutes which the Commission administers, and of the measures taken by the Commission to prevent such violations of law. These documents, known as *Federal Trade Commission Decisions*, are printed first in the form of advance sheets with permanent volume number and pagination, and later as bound volumes.

The Commission publishes a monthly summary of its work showing the number of cases in the various stages of its legal procedure and the status of each current legal case, general investigation, and trade practice conference.

Regarding the Commission's publications, the Federal Trade Commission Act, section 6 (f), says the Commission shall have power--

to make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest ; and to make annual and special reports to the

Congress and to submit therewith recommendations for additional legislation ; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

Publications of the Commission for the fiscal year ended June 30, 1938, were:

*Agricultural Income Inquiry, Part I, Principal Farm Products*, March 2, 1937; *Part II, Fruits, Vegetables, and Grapes*, June 10, 1937; and *Part III, Supplementary Report*, November 8, 1937.<sup>2</sup>

*Agricultural Implement and Machinery Industry*. House Document No, 702, Seventy-fifth Congress, third session, June 6, 1938.<sup>2</sup>

*Annual Report of the Federal Trade Commission for the Fiscal Year Ended June 30, 1937*. House Document No.379, Seventy-fifth Congress, second session, November 1, 1937.

*A Brief Summary of 64 Robinson-Patman Cases*, October 1937.

*Decisions, Volume 21*, June 25, 1935, to January 13, 1936. <sup>2</sup>

*Robinson-Patman Act, data compiled from public sources of information, excerpts from findings and orders of the Commission and decisions of the Courts*, June 1 1938

*Cases in Restraint of Trade*, March 1938.

*Elimination of Price Competition*, 1938.

*Procedure before the Federal Trade Commission in the Handling of Certain Types of False and Misleading Advertising Cases*, May 21, 1938.

*Supplemental Report on Antidumping Legislation and Other Import Regulations in the United States and Foreign Countries*, June 27, 1938.<sup>3</sup> Report supplements Senate Document No.112, Seventy-third Congress, second session.

*Utility Corporations, No. 84-D, General Index to Parts 21 to 84-C, inclusive*. Senate Document No.92, Seventieth Congress, first session, August 12, 1937.

### COMMISSION OCCUPIES NEW QUARTERS

In April 1938 the Commission moved into its newly completed headquarters, Constitution Avenue at Sixth Street, Washington, D. C. President Roosevelt laid the cornerstone of the new building and delivered the dedicatory address on July 12, 1937.

Situated at the apex of the "Triangle" group of Government buildings, the Federal Trade Commission Building is the newest of that group and one of the finest in Washington. It is equipped with modern conference rooms, offices, and other facilities and is air-conditioned.

<sup>2</sup> Available only from the Superintendent of Documents. Government Printing Office, Washington, D.C.

<sup>3</sup> Full report not ordered printed. Summary available from the Federal Trade Commission.

Occupancy of the building marks the first time since its organization in 1915 that the Commission and its staff have been housed in a permanent home. Its last preceding headquarters were a rented building at 815 Connecticut Avenue, and annex buildings at 1624 Eye St. and 718 Eighteenth St., while prior to that it had been assigned other rented quarters and several temporary structures built for emergency purposes during the World War, one of which was destroyed by fire during the Commission's occupancy.

*Branch office in New Orleans opened.*--On April 1, 1938, the Commission reopened on a permanent basis a formerly temporary branch office in New Orleans to expedite the handling of its cases in the South and Southwest. Other branch offices are maintained in New York, Chicago, San Francisco, and Seattle.

### RECOMMENDATIONS

AMENDMENTS TO SECTION 7 OF THE CLAYTON ACT. In previous annual reports and in reports on particular investigations, the Commission has called attention to the fact that this section now declares unlawful the acquisition by one corporation of the capital stock of a competing corporation and, in the case of holding companies, of the capital stock of two or more corporations competing with one another, where substantial lessening of competition in interstate commerce may result ; but does not prevent the acquisition of physical assets with similar results. This latter method of eliminating competition to the public injury has been increasingly employed by corporations engaged in interstate commerce.

As a result of its investigation, pursuant to Joint Resolution No. 277, 74th Congress, 2d Session (for the investigation of the agricultural implement and machinery industry) the Commission became convinced that this Section 7 should be amended so as to make it unlawful for any corporation, directly or indirectly, through a holding company, subsidiary, or otherwise, to acquire any of the stock or assets of a competing corporation, when either is engaged in interstate commerce ; but that this prohibition should not apply where the corporations involved control, in the aggregate, less than 10 percent of the total output of any industry or branch thereof in the United States, or of the sale of a commodity as to which the corporations are in competition, unless the effect of such acquisition may be to restrain competition or tend to create a monopoly in any line of commerce ; and so recommended to the Congress in its report on this investigation, and now renews that recommendation. This amendment would have the advantage of creating a positive legislative standard, defining the limit at which corporate accretions in size and power through such acquisitions shall be halted in order to prevent monopoly.

## **PART I. GENERAL INVESTIGATIONS**

AGRICULTURAL IMPLEMENTS

AGRICULTURAL INCOME

MOTOR VEHICLES

COST OF LIVING

NEWSPRINT PAPER

## **PART I. GENERAL INVESTIGATIONS**

### **AGRICULTURAL IMPLEMENT AND MACHINERY INDUSTRY**

#### **COMPLETED REPORT ON INQUIRY SUBMITTED TO CONGRESS**

The inquiry into the agricultural implement and machinery industry was made pursuant to a joint Congressional resolution (Public Res. No.130), otherwise known as Senate Joint Resolution No. 277, Seventy-fourth Congress, second session, approved by the President June 24, 1936. Adoption of the resolution was the result of widespread complaints in 1936 and prior years on the part of organized farmers throughout the country. These complaints had to do largely with the disparity between prices of farm products, which, in 1932, reached record lows, and the prices of many farm implements and machines and their repair parts, which were maintained at a high level.

The resolution, comprehensive in scope, directed the Federal Trade Commission to make a complete investigation of these conditions and other related factors and to report thereon. Such report, including the Commission's recommendations, was submitted to the Congress as of June 6, 1938, and was ordered to be printed as House Document No.702, Seventy-fifth Congress, third session. The report is entitled *Agricultural Implement and Machinery Industry*.

*Scope of the report.*--The report deals with farm income and other economic factors upon which the production and distribution of farm implements and machines are based, and the history of developments by which the bulk of production and wholesale distribution, both in domestic and foreign trade, has become concentrated in the hands of a few large manufacturing companies. Other subjects discussed are the nature of distribution organizations and agencies, the factory equipment and operating programs of typical manufacturing plants, and business methods and practices pursued by both manufacturers and dealers. The report also deals with investments and profits of farm implement and machinery manufacturers, their varying costs of production for a number of typical implements and machines, the prices received by manufacturers and dealers, the prices at which machines are sold in foreign markets, a comparison of the movement of the prices of farm machinery with the movement of prices of other comparable commodities, and investments and profits of retailers of farm implements and machines.

Although a specific appropriation was not available for the agricultural implement and machinery inquiry until July 1, 1937, the Commission, realizing the importance of this investigation and the great public interest therein, assigned a limited personnel to this activity as soon as practicable after adoption of the resolution. Pressure of the Commission's work on the fresh fruits and vegetables and grapes inquiry (conducted pursuant to Public Res. No.61, 74th Cong.) at one time necessitated the transfer of practically the entire assigned personnel from the agricultural implement and machinery inquiry.

The comprehensive scope of the inquiry necessitated the collection of a mass of data concerning all branches of the industry. The Commission prepared and sent out 4 report forms covering (1) manufacturers' costs of specific implements, investments, and profits, (2) wholesalers' investments, costs, profits, prices, and distribution methods, (3) retail dealers' investments, costs, prices, profits, and distribution methods and practices, and (4) an organization report calling for the names of officers, directors, and principal stockholders, the types of stocks issued and other information respecting the organization of manufacturing companies engaged in the production of farm implements and machines.

Representative farmers also were asked to report: (1) their experiences in the purchase of farm implements; (2) prices paid for specific farm implements and machines; (3) in case a farmer had not purchased as many new farm implements as needed, the reason therefor; (4) the farmers' opinion of the relative durability and efficiency of present implements and machines as compared with earlier models; (5) interest charges for implements purchased on time, and other facts pertinent to the inquiry.

In addition to the mass of data obtained by such reports, a comprehensive examination was made of the accounting records of 11 large manufacturers of farm implements and machines.

In order to get the facts with respect to competitive conditions in all branches of the industry, examinations were made of the minutes and correspondence files of the larger manufacturing companies, and of certain local associations and "dealer's clubs." Specific complaints by farmers, dealers, or smaller manufacturers concerning unfair practices or alleged unfair methods were also investigated to the extent that available funds and personnel would permit.

*Concentration and monopolistic tendencies.*--The report shows that there is a high degree of concentration, accompanied by price leadership, in the manufacture and wholesale distribution of farm implements and machines in both the domestic and export business. The bulk of the business is in the hands of a few companies, whose domi-

nance is evidenced by the large proportions they control of the total investment, profit, production, and sale of the most important implements; by their price leadership in the industry and by their control of wholesale and retail outlets.

From the standpoint of size, in terms of capital invested and volume of sales, International Harvester Company dominates the farm machinery industry. In 1936, this company's investment in the United States exceeded 55 percent of the combined investments of all companies from whom financial information was obtained by the Commission. During 1936, International Harvester Company's farm machinery sales of domestic manufacture, including motor trucks (a considerable portion of which were for industrial use primarily) and binder twine, were equivalent to approximately 53 per cent of the farm machinery sales of all reporting companies combined. Excluding its sales of motor trucks and binder twine, this company's sales for 1936 would still be equivalent to more than 41 percent of the farm machinery sales of all reporting companies combined. Companies reporting to the Commission manufacture and sell upwards of 95 percent of all the farm implements made and sold in this country.

The next company in size is Deere & Co., whose investment for 1936 was about 19 percent of the combined investments of all reporting companies. Its sales were equivalent to about 21 ½ percent of the combined farm machinery sales of all reporting companies in that year.

Also, from the standpoint of production and sale of the most important farm implements and machines, International Harvester Company and Deere & Co. rank first and second for most implements.

The dominance and price leadership by these large companies is the result almost solely of their size and great financial strength; and this in turn, was achieved very largely through merger, purchase of control of formerly competing manufacturers and purchase of the plants and other assets of either competing, or other, farm implement companies.

*Exclusive dealing--"Full-line forcing."*--The dominant position of the leading manufacturers in the production and sale of farm implements in the United States is fortified by their control of retail outlets under a policy of having their dealers handle their respective lines to the exclusion of the competing lines of other manufacturers. The Commission's inquiry indicates that under this policy of exclusive dealing, sometimes referred to in the industry as "full-line forcing" or "100 percent dealership," distinct pressure is often brought to bear upon dealers by a manufacturer to prevent them from han-

dling other manufacturers' competing products. The threat, implied or expressed, that the dealer's contract with a large, long-line manufacturer will not be renewed, is a powerful lever to force such a dealer to handle only long-line manufacturer's products.

As a result of such control of dealer outlets, the ability of the small, short-line manufacturers to compete with the large manufacturers is impaired, and prices to farmers tend to be enhanced. To the extent that the ability of short-line companies to compete on a price basis is reduced, the dominant position of the leading companies in the industry is strengthened and it becomes easier for them to effectively control prices at levels most profitable to themselves.

*Effect of concentration on prices.*--The effect on prices of this concentration of production is such that with respect to the most important farm implements, the prices established by the leading manufacturers, especially International Harvester Company and, for particular implements, Deere & Co. and a few other companies, constitute the price levels which other manufacturers generally observe for machines of similar character.

The small companies generally cannot sell their products for more than the established prices of widely accepted similar products of the large companies; nor do they feel free to sell for less than these price leaders for fear of starting a price war in which their large and financially stronger rivals would have all the advantage.

During the depression years, when the consumers' purchasing power was greatly reduced, the industry sharply reduced production and employment and made only slight reductions in prices. Such price reductions as were made in 1932 and 1933 were in the form of temporary special discounts. The Commission does not believe that such conditions are characteristic of a truly competitive industry.

*Disparity in relative price movements.*--The report shows that domination of the farm implement and machinery industry by a few heading manufacturers has resulted in the maintenance of the prices of their products at levels far higher than those of farm products and of the prices of other manufactured products of some what comparable material and labor.

*Profits and losses of manufacturers.*--Profits were earned by all manufacturing companies as a group in all years except 3 of the depression years. The trend in earnings was upward between 1927 and 1929, downward (including losses) between 1930 and 1932, and upward thereafter. Generally high rates of return were earned by the larger manufacturing companies during the years 1927 to 1930, inclusive, and during the years 1935 and 1936. This was also true for 1937, based on information contained in their annual reports for that year.

For all companies combined, the average, or combined, return for the 10 years, 1927-36, inclusive, was 7.98 percent. Rates of return during the profitable years were somewhat higher for the smaller number of long-line companies as a group than for all companies combined and very much smaller for the greater number of short-line companies. The average rate of profit of the large, long-line companies for the 10 years was 8.5 percent, but of the small, or short-line, companies was only 0.91 percent.

During the 10 years 1927 to 1936, inclusive, the average rates of profit on the investment in the farm machinery business were highest for Deere & Co. with 11.91 percent, followed by International Harvester Company with 10.61 percent, J. I. Case Company with 5.43 percent, and B. F. Avery & Sons Co. with 1.11 percent. Losses exceeded profits for 3 other long-line companies, namely, The Massey-Harris Company, Minneapolis-Moline Power Implement Company, and Oliver Farm Equipment Company. The average rates of losses for these companies were, respectively, 5.58 percent, 1.66 percent, and 1.39 percent for the years of the period in which they were in operation.

*Gross margins of profit on replacement parts.*--The farmers complained particularly about the high prices they had to pay for replacement parts for farm machines. It is a fact that leading manufacturers of farm implements and machines and the retail farm machinery dealers realized a larger percentage of gross margins (out of which to meet operating expenses and to obtain profit) on sales of replacement parts than on new implements and machines.

The gross margins of profit on sales realized by all retail farm machinery dealers reporting in this inquiry ranged from 21.3 to 22.9 percent on new farm implements and machines and from 26.1 to 29.2 percent on replacement parts during the 8-year period from 1929 to 1936, inclusive. The percentages of margin given here represent the gross margins before deducting selling, collection, administrative, and general office expenses.

*Distribution of the farmer's farm machinery dollar.*--Freight on the finished product consumed relatively small portions of the farmer's dollar paid for farm machinery, and, due to the fact that the manufacturers of farm machinery perform the great bulk of the wholesaling function, relatively small portions went for distributors' gross margins; and relatively large portions were represented in manufacturers' realizations for the machinery at the factory door. Freight rarely consumed as much as 7 cents, often only 1 ½ to 3 cents, and sometimes less than 1 cent of the farmer's dollar. Retail distributors' gross margins, out of which to meet their operating expenses and obtain profit, were usually less than 25 cents and often less than 20 cents. Manufacturers' realizations at the factory or

branch house door were usually between 75 cents and 78 cents out of the farmer's dollar and sometimes as much as 80 cents. There are, in the opinion of the Commission, few, if any, commodities in the production of which the manufacturer receives such a large proportion of the farmer's dollar as he does in the production of farm implements and machinery.

*Complaints of retail dealers.*--The principal complaints of dealers against the distribution practices of manufacturers are: (1) That manufacturers set up too many dealers; (2) that certain manufacturers have set up their own retail outlets in some parts of the country in competition with independent dealers who constitute the principal outlets of the same manufacturers; (3) that dealers are compelled to take many more machines than they are able to sell profitably; (4) that as a result there is an excessive amount of selling below manufacturers' suggested retail prices; and (5) that the dealer, whose yearly contract may be suddenly canceled, even when he is overloaded with machines and spare parts, is often left with a stock which he has no reasonable chance to sell except at a loss.

*General conclusions.*--The unsatisfactory situation with respect to the farm machinery and implement industry, from the public and consumer standpoint, is due primarily to the inadequate results achieved by the International Harvester dissolution suit under the Sherman Act, and to the inadequacy of Section 7 of the Clayton Act.

The facts in the International Harvester suit disclosed that this combination of formerly competing companies owned more than 85 percent of the harvesting machine industry; that because of such dominant position, the International Harvester combination, from and after its organization in 1902, was able to establish the prices for the harvester machinery industry; and that after subsequent acquisitions by International Harvester Company and Deere & Co. of manufacturers of other implements necessary to complete their full lines of machinery and implements, International Harvester Company, and, in a much less important degree, Deere & Co., were able to establish, and actually have established, the price levels for the great majority of agricultural implements and machinery.

Among factors indicating serious monopolistic conditions in the industry are: (1) the dominant position of the International Harvester Company; (2) a large advance in the great majority of farm machinery prices, as compared with the prices of other manufactured products since the origin of International Harvester Company; (3) profits of International Harvester Company; (4) a high degree of rigidity in farm machinery prices during the depression; (5) a swift rebound of farm machinery prices after the 3 severest years of the depression, 1931, 1932, and 1933, to levels exceeding those of 1929, one of the years of highest prices in the history of this industry, and

in industry generally; (6) International Harvester's ability to make more net profits in 1937 (a year of business recovery) than it did in 1929 (the peak year for national income and general business prosperity) despite the fact that cash income of the farmer in 1937 was approximately 18 percent less than in 1929, and the raising of this company's farm machinery prices in 1938 over those of 1937 in the face of the company's remarkable earnings in the latter year; (7) the character of the International Harvester Company's business operations during the depression when there was only a relatively slight decline in its farm machinery prices but a sharp decline in its volume of production and employment as contrasted with the conduct of industries known to be competitive where the decline of prices was greater and the declines in production and employment were less; (8) exchange of price lists among farm machinery manufacturers, and (9) evidence of dealer coercion.

The only instances in which the prices of farm machinery have been materially reduced are those in which competition has been operative, for example, in the sale of tractors during the time that automobile manufacturers engaged in their production.

Most of the high degree of concentration which is found in the farm machinery industry has been the result of the acquisition of the capital stock or the assets of competitors prior to enactment of the Clayton Act and thereafter in the purchase of assets of competitors rather than in the purchase of their capital stock.

*Recommendations.*--In view of conditions found to exist in this and other industries, the Commission, in its report, recommended to the Congress that Section 7 of the Clayton Act be amended so as to make it unlawful for any corporation, directly or indirectly, through a holding company, subsidiary, or otherwise, to acquire any of the stock or assets of a competing corporation when either of said corporations is engaged in interstate commerce; provided, this prohibition shall not apply where the corporations involved control, in the aggregate, less than 10 percent of the total output of any industry or branch thereof in the United States, or of the sale of the commodity as to which the corporations are in competition, unless the effect of such acquisition may be to restrain competition or tend to create a monopoly in any line of commerce.

## AGRICULTURAL INCOME

### SUPPLEMENTARY REPORT COVERING LEGAL PROCEEDINGS

The results of the inquiry into agricultural income, which the Commission was directed to make under Public Resolutions Nos. 61 and 112, Seventy-fourth Congress, were contained in three principal reports, the final report having been submitted to Congress in No-

vember 1937. The titles of these principal reports are: *Agricultural Income Inquiry, Part I, Principal Farm Products*, March 2, 1937; *Part II, Fruits, Vegetables, and Grapes*, June 10, 1937 ; and *Part III, Supplementary Report*, November 8, 1937.

Until the Congress provided in the Independent Offices Bill for the fiscal year 1938-39 a special appropriation to be immediately available for printing the entire report, the only portion printed was the summary and conclusions and recommendations of the part dealing with principal farm products, which was ready for distribution on May 13, 1937.

The entire printed report (except the appendixes which are public records available at the office of the Commission) was not available for distribution until October 1938.

The contents of the two principal parts of the report, namely, (1) Principal Farm Products and (2) Fruits, Vegetables, and Grapes, were previously described and the recommendations. were briefly summarized in the Commission's Annual Report for 1937.

The Supplementary Report was necessary with respect to certain matters covered in the report on Principal Farm Products, and particularly respecting legal proceedings to require the return of report forms called for by the Commission from a few of the many manufacturers requested to make such returns. In this supplementary report, a court decision favorable to the Commission, with respect to the mandamus proceedings against the National Biscuit Company, was noted, as also in the annual report of the Commission for the year ended June 30, 1937 (pp.5, 69, and 75). No appeal was taken by the respondent.

Since that case was concluded, there have been further developments. First, certain other companies which had failed to report, up to the time of that decision, submitted the information required. Second, a suit was brought by the Department of Justice against the National Biscuit Company for penalty in delaying the filing of its report. This case is still pending in the courts. Third, another company which had been recalcitrant, or negligent, in making its return, not only made the return but also settled for the penalty, and without contesting either demand of the Department of Justice.

## **MOTOR VEHICLES**

### **INQUIRY IN PROGRESS AT CLOSE OF FISCAL YEAR**

Public Resolution No. 87, Seventy-fifth Congress, third session, approved by the President April 13, 1938, directed the Federal Trade Commission "to investigate the policies employed by manufacturers in distributing motor vehicles, accessories, and parts, and the policies of dealers in selling motor vehicles at retail, as these policies affect the public interest."

The resolution further stated the purpose of this inquiry to be to determine:

1. The extent of concentration of control and of monopoly in the manufacturing, warehousing, distribution, and sale of automobiles, accessories, and parts, including methods and devices used by manufacturers for obtaining and maintaining their control or monopoly of such manufacturing, warehousing, distribution, and sale of such commodities, and the extent, if any, to which fraudulent, dishonest, unfair, and injurious methods are employed, including combinations, monopolies, price fixing, or unfair trade practices;
2. The extent to which any of the antitrust laws of the United States are being violated.

The resolution authorized the appropriation of \$50,000 for this inquiry, and directed that the Commission report its findings to tire Congress within 1 year of the date of the resolution.

In accordance with this direction, the Commission initiated the work and, prior to July 1, 1938, inquiries covering the broad scope indicated by the resolution were in progress. Such inquiries were being directed to retailers, manufacturers, and finance companies.

## **COST OF LIVING**

### **INQUIRY MADE AT REQUEST OF THE PRESIDENT**

The President of the United States, on November 16, 1937, addressed to the Commission a published letter, as follows:

My attention has been directed to reports of a marked increase in the cost of living during the present year, as compared with recent years past, attributable in part to monopolistic practices and other unwholesome methods of competition.

I believe it to be important to know the facts touching this situation, and, therefore, request the Federal Trade Commission to make an immediate investigation into such alleged practices and methods and report to me as early as practicable.

I understand such inquiry can be made without any increase in your current appropriation.

The Commission immediately undertook an investigation of this subject pursuant to the provisions of section 6 of its organic act, particularly paragraph (d) thereof, and with the aid of all powers conferred upon it by law. Upon completion of the inquiry, a confidential report was made to the President as of April 29, 1938.

## **NEWSPRINT PAPER**

### **MANUFACTURERS' COMPLIANCE WITH CONSENT DECREE INVESTIGATED**

The Attorney General of the United States, on January 24, 1938, pursuant to Section 6 (c) of the Federal Trade Commission Act, requested the Commission to investigate

the manner in which certain newsprint manufacturers have complied with a consent decree

entered against them on November 26, 1917, by the United States District Court for the Southern District of New York, and further to determine whether there were any violations of the antitrust laws by the newsprint industry that were not prohibited by the decree.

The defendants to the suit in connection with which the decree was entered were 7 individuals active in the management of the Newsprint Manufacturers' Association and 45 corporate defendants, including 31 American and 14 Canadian companies. The decree ordered the dissolution of the association and enjoined the defendants from violation of the antitrust laws through such practices as the fixing of prices, division of territory, and limitation of production.

The Attorney General's request came as a result of complaints from newspaper publishers alleging that increases in the price of newsprint paper late in 1937 were the result of price-fixing activities of newspaper manufacturers.

The investigation was pending at the close of the fiscal year

## **PART II. GENERAL LEGAL WORK**

DESCRIPTION OF PROCEDURE

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DISPOSITION OF CASES BY STIPULATION

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TABULAR SUMMARY OF LEGAL WORK

## **PART II. GENERAL LEGAL WORK**

### **DESCRIPTION OF PROCEDURE**

(SEE CHART OPPOSITE THIS PAGE)

A case before the Federal Trade Commission may originate in any one of several ways. The most common origin is through complaint by a consumer, a competitor, or from public sources other than the Commission itself. However, the Commission may initiate an investigation to determine whether the laws administered by it are being violated.

No formality is required in making application for complaint. A letter setting forth the facts in detail is sufficient, but it should be accompanied by all evidence in possession of the complaining party in support of the charges made.

### **INFORMAL PROCEDURE**

When an application for complaint is received, the essential jurisdictional elements are first considered. If a proposed proceeding is to be instituted under Section 5 of the Federal Trade Commission Act as amended by the Wheeler-Lea Act of March 21, 1938,<sup>1</sup> it must be shown that it concerns the use of an unfair method of Competition or an unfair or deceptive act or practice in commerce and that such proceeding “would be to the interest of the public.” The prohibition against unfair methods of competition and the remedies for enforcing same are made applicable by the Export Trade Act to foreign trade of American exporters. Proceedings instituted under Section 2 of the Clayton Act, as amended (see Robinson-Patman Antidiscrimination Act), under the circumstances therein set forth, have to do with price discrimination and certain other forms of discrimination, and proceedings brought under Sections 3, 7, and 8 of the Clayton Act, involve, respectively, tying and exclusive-dealing contracts, agreements, or understandings, corporate acquisitions of stock in competing companies, and interlocking directorates.<sup>1</sup> If the infor-

<sup>1</sup> The Federal Trade Commission has no jurisdiction under Section 5 of the Federal Trade Commission Act over banks, common carriers subject to the acts to regulate commerce, air carriers or foreign air carriers subject to the Civil Aeronautics Act of 1938, or persons, partnerships, or corporations subject to the Packers and Stockyards Act, 1921, except as provided in section 406 (b) of the last mentioned act. The Federal Trade Commission, the Interstate Commerce Commission, the Federal Communications Commission, the Federal Reserve Board, and the Civil Aeronautics Authority are empowered to enforce compliance with sections 2,3, 7, and 8 of the Clayton Act.

mation furnished by the applicant is insufficient, it is necessary to obtain additional data by further correspondence or by a preliminary field investigation before deciding whether an application for complaint should be docketed and an investigation made.

When an application for complaint has been docketed, it is assigned by the Chief Examiner to an attorney for investigation, in which the facts regarding the matter are developed.<sup>2</sup> The attorney to whom the application is assigned in the course of the investigation interviews the party complained against, advising of the nature of the charges and requesting the submission of such evidence as may be desired in defense or in justification. In making such investigation, it is not the policy of the Commission to disclose the identity of the complainant. If necessary, competitors of the respondent are interviewed to determine the effect of the practice from a competitive standpoint. It is often desirable to interview consumers to assist in determining whether the practice alleged constitutes a violation of the statute and also to establish the requisite public interest.

After developing the facts from all available sources, the examining attorney summarizes the evidence in a report, reviews the law applicable thereto, and makes recommendations as to what action the Commission should take.

The record is then reviewed by the Chief Examiner or the Special Board of Investigation, as the case may be, and, if found to be complete, is submitted, with a brief statement of facts, with conclusions and recommendations to the Commission for its consideration. The Chief Examiner or the Special Board of Investigation may recommend: (1) that the case be closed without further action because of lack of evidence in support of the charge or for the reason that the practice does not violate any law which the Commission is charged with administering, (2) closing of the application upon the signing by the respondent of a stipulation of the facts and an agreement to cease and desist from the unlawful practice as charged, or (3) issuance of formal complaint.

If, after consideration of the entire file, including the Chief Examiner's or the Special Board of Investigation's recommendation, the Commission decides that formal complaint should issue, the case is referred to the chief counsel for preparation of the complaint and trial of the case. Or, if the Commission should permit stipulation, the case is referred to the Chief Trial Examiner or the Special Board of Investigation for its negotiation.

<sup>2</sup> The Special Board of Investigation conducts inquiries both by mail, and by conference with the parties concerned. See p.122.

All proceedings prior to issuance of formal complaint or publication of a stipulation are confidential.

### **FORMAL PROCEDURE**

Only after careful consideration of the facts developed by the investigation does the Commission issue a complaint. The complaint and the answer of respondent thereto and subsequent proceedings are a public record.

A complaint is issued in the name of the Commission acting in the public interest. It names a respondent and charges a violation of law, with a statement of the charges. The party complaining to the Commission is not a party to the formal complaint issued by the Commission, nor does the complaint seek to adjust matters between parties; rather, the prime purpose of the proceedings is to prevent, for the protection of the public, those unfair methods of competition and unfair or deceptive acts or practices forbidden by the Federal Trade Commission Act and those practices prohibited by the Clayton Act, as amended by the Robinson-Patman Act, and those prohibited by the Export Trade Act.

The Commission's rules of practice and procedure provide that in case the respondent desires to contest the proceedings he shall, within 20 days from service of the complaint, file answer thereto with the Commission. The rules of practice also specify a form of answer for use should the respondent decide to admit the facts alleged and not contest the proceeding.

Under the rules of practice, "failure of the respondent to file answer within the time \* \* \* provided or failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission, without further hearing or notice to respondent, to proceed in regular course on the charges set forth in the complaint, and to make, enter, issue, and serve upon respondent findings of fact and an order to cease and desist."

In a contested case the matter is set down for hearing before a trial examiner. This may occupy varying lengths of time, according to the nature of the charge or the availability and number of witnesses to be examined. Hearings are held before a member of the Commission's staff of trial examiners, who may sit anywhere in the country, the Commission and the respondents being represented by their respective attorneys.

After the submission of evidence in support of the complaint, and the on behalf of the respondent, the trial examiner prepares a report of the evidence for the information of the Commission, counsel for the Commission, and counsel for the respondent. Exceptions to the trial examiner's report may be taken by counsel for either side.

Within a stated time after the trial examiner's report is made, briefs are filed, and the case is set for final argument before the Commission. Thereafter the Commission reaches a decision either sustaining the charges made in the complaint, or dismissing the complaint, or closing the case.

If the complaint is sustained, the Commission makes its findings as to the facts and states its conclusion that the law has been violated, and thereupon an order is issued requiring the respondent to cease and desist from such violation.

If the complaint is dismissed or closed, an appropriate order is entered ; sometimes such order of dismissal or closing is accompanied by a written opinion, although more often reasons for the action appear only in the order.

#### **PROCEDURE SUBSEQUENT TO ISSUANCE OF A CEASE AND DESIST ORDER**

Up to and including the issuance of an order to cease and desist, there is no difference in procedure Whether the case is under the Federal Trade Commission Act, as amended, or under the Clayton Act. Both acts embody procedure for their enforcement by the Commission and their provisions in this regard were substantially the same until the passage of the act of March 21, 1938 (the Wheeler-Lea Act). However, the provisions of this act worked substantial changes in the provisions of the Federal Trade Commission Act, applicable after the Commission has issued its order to cease and desist, but did not amend the applicable provisions of the Clayton Act.

Under the Federal Trade Commission Act, as amended, an order to cease and desist becomes final 60 days after its issuance, unless within that period the respondent petitions the United States Circuit Court of Appeals to review the order. In case of such a review, the Commission's order becomes final after affirmance by the Circuit Court of Appeals or by the Supreme Court of the United States, if taken to that court. Violation of an order to cease and desist after the same shall have become final and while it is in effect subjects the offender to a civil penalty of not more than \$5,000 for each violation, recoverable by the United States.

Under the Clayton Act an order to cease and desist does not become final, in the sense that its violation subjects the violator to a penalty, until the United States Circuit Court of Appeals shall have issued its order commanding obedience, on the application of the Commission for enforcement.

Under both acts the respondent may apply to the Circuit Court of Appeals for a review of an order, and either upon the application of the Commission for enforcement or of the respondent for review, the court has power to affirm, or affirm as modified, and to

enforce to the extent affirmed, or to set aside, the order. Also, under both acts, either party may apply to the Supreme Court for review, *tinder certiorari*, of the action of the Circuit Court of Appeals.

### **SPECIAL PROVISIONS FOR PREVENTING DISSEMINATION OF FALSE ADVERTISEMENTS**

The Wheeler-Lea Act of March 21, 1938, further amended the Federal Trade Commission Act by adding special provisions for the prevention of the dissemination of false advertisements concerning food, drugs, devices (meaning devices for use in the diagnosis, prevention, or treatment of disease), and cosmetics. In addition to the regular proceeding by way of complaint and order to cease and desist, the Commission may, in a proper case, bring suit in a United States District Court to enjoin the publication of such false advertisements pending final disposition of the matter under the complaint.

Further, the publication of such a false advertisement where the use of a commodity advertised may be injurious to health or where it is published with intent to defraud or mislead, constitutes a misdemeanor and conviction subjects the offender to a fine of not more than \$5,000, or imprisonment of not more than 6 months, or both. Succeeding convictions may, with certain exceptions, result in a fine of not more than \$10,000, or imprisonment of not more than one year, or both.

## **LEGAL INVESTIGATION**

### **INQUIRIES PRIOR TO FORMAL COMPLAINT OR STIPULATION**

The legal investigational work of the Commission includes the investigation of applications for complaint preliminary to formal action for the correction of unfair methods of competition or other practices violative of the laws administered by the Commission. This work is directed and supervised by the Chief Examiner and the Special Board of Investigation.

Preliminary investigations are conducted by the Special Board of Investigation in cases which involve allegations of false and misleading advertising, and are handled through a special procedure more fully described beginning at p.122. All other cases are investigated by the Chief Examiner.

At the beginning of the fiscal year, July 1, 1937, there were pending for investigation by the Chief Examiner's staff, 320 applications for complaint in preliminary or undocketed cases. During the fiscal year, 718 additional applications of this character were received, making a total of 1,038, of which 727 were investigated during the year. As a result, 212 of such investigated cases were docketed and

transmitted to the Commission for action and 515 transmitted without docketing were closed because of lack of jurisdiction or other deficiencies. This left 311 preliminary cases of this type pending for investigation at the end of the fiscal year, June 30, 1938.

Four hundred forty-seven applications for complaint which had been docketed without preliminary investigation were pending for regular investigation at the beginning of the fiscal year. During the year, 813 additional cases of this type were received for investigation, making a total of 1,260 such cases docketed for investigation. Of these cases, 843 were investigated and transmitted to the Commission for action, leaving 417 cases of this character still pending for investigation at the end of the fiscal year.<sup>3</sup>

Thus the Chief Examiner's Division, during the fiscal year, completed 1,570 investigations of preliminary and docketed applications for complaint.

The Chief Examiner conducts supplemental investigations (1) in matters originating with the Special Board of Investigation (relating to false and misleading advertising) ; (2) where additional evidence is necessary in connection With formal complaint ; (3) where it appears or is charged that cease and desist orders of the Commission are being violated, and (4) where it appears or is charged that a stipulation entered into between a respondent and the Commission, wherein the respondent agreed to cease and desist from certain unfair competitive practices, is not being observed in good faith.

The legal investigational work of the Commission is directed from its central office in Washington and conducted through that office and five branch offices, located at 45 Broadway, New York, 433 West Van Buren Street, Chicago ; 548 Federal Office Building, San Francisco ; 801 Federal Building, Seattle, and 217 Customhouse, New Orleans.

#### **ILLEGAL STOCK ACQUISITIONS, SECTION 7, CLAYTON ACT**

Part of the legal investigational work of the Commission includes inquiries into illegal stock acquisitions, consolidations and mergers. under Section 7 of the Clayton Act, which prohibits the acquisition by one corporation of the share capital of another corporation engaged in commerce, or acquisition by one corporation of the share capital of two or more corporations engaged in commerce, where the effect, in either case, may be to substantially lessen competition between the acquiring and acquired companies, or between two or more of the acquired companies, or to restrain commerce or tend to create a monopoly.

<sup>3</sup> For statistics on special Board of Investigation cases, see p. 121.

One preliminary matter involving acquisition of capital stock was pending July 1, 1937. Twenty-six additional preliminary inquiries were instituted during the fiscal year. Of the 27 matters, 22 were closed, one was docketed as an application for complaint, and, on June 30, 1938, 4 were pending. One formal complaint alleging violation of Section 7 of the Clayton Act was issued. (See pp. 10 and 55.)

## **DISPOSITION OF CASES BY STIPULATION**

### **PROCEDURE AFFORDS OPPORTUNITY TO AVOID FORMAL COMPLAINT IN CERTAIN INSTANCES**

Under certain circumstances the Commission, instead of disposing of cases by formal complaint and trial, affords a respondent the privilege of disposing of a case by signing a statement of fact and agreement to discontinue the alleged unfair method of competition.

The Commission determines the form and subject matter of all stipulations which are prepared in accordance with the facts as disclosed by an investigation. If a respondent alleges the facts to be other than the investigation discloses, then the matter is not subject to stipulation and the proper and only procedure is to try the issue in order to develop the true facts.

In those classes of cases in which the Commission affords the respondent an opportunity to dispose of a matter by stipulation, that procedure accomplishes economically and expeditiously the same result as a complaint and order to cease and desist. It also simplifies the Commission's legal procedure and saves both the Government and the respondent the expense incident to trial of the complaint.

Often it appears that a violation occurs through ignorance or misunderstanding, and that the attention of the offender has only to be called to such violation to induce discontinuance of the practice. In such an instance the Commission, instead of issuing a formal complaint, grants the respondent an opportunity to sign a statement of facts disclosed by the investigation and agreement to cease and desist from the practices charged. If such stipulation is signed, further action is suspended ; if it is not signed, the case goes to trial.

Stipulations are entered into where the public interest does not require formal action. They are not permitted in cases where a fraudulent business is concerned, where a legitimate business is conducted in a fraudulent manner, where the circumstances are such that there is reason to believe that an agreement entered into with lie concern involved will not be kept, or where a violation of Section 14 of the Federal Trade Commission Act, of certain sections of the Clayton Act, or the criminal sections of the Sherman Act or any other statute, is believed to have occurred. The Commission reserves

the right in all cases, for any reasons which it regards as sufficient, to refuse to extend the privilege of stipulation.

All stipulations are for the public record.

### **CASES AFFECT WIDE VARIETY OF BUSINESSES**

Unfair trade practices discontinued as a result of stipulations comprise a wide variety of misleading misrepresentations affecting a large number of businesses. These practices are usually of a type that can be readily corrected through this procedure.

The range of commodities involved in the disposition of cases by Stipulation embraces practically all types of products sold in interstate commerce.

### **TOTAL NUMBER OF STIPULATIONS**

Stipulations in which various individuals, firms, and corporation s agreed to cease and desist from the unlawful practices as set forth therein and which were approved by the Commission during the fiscal year ended June 30, 1938, included 200 cases in addition to 376 cases of a special class which were limited largely to false and misleading advertisements and were disposed of through a special procedure for this purpose.<sup>4</sup> A total of 576 stipulations were thus approved and accepted during the year.

### **REPRESENTATIVE COMPLAINTS**

#### **ALLEGED VIOLATIONS OF FEDERAL TRADE COMMISSION, CLAYTON, AND ROBINSON-PATMAN ACTS**

During the fiscal year ended June 30, 1938, the Commission issued 305 complaints, as compared with 296 issued during the last preceding fiscal year.

Two hundred and eighty-eight of these complaints charged violation of Section 5 of the Federal Trade Commission Act prohibiting unfair methods of competition in commerce. Three of this number also charged violation of Section 2 of the Clayton Act as amended by the Robinson-Patman Anti-discrimination Act, and three charged violation of the Federal Trade Commission Act under Section 3 of the Clayton Act, the exclusive dealing section. One complaint charged violation of Section 5 of the Federal Trade Commission Act, Section 2 of the Clayton Act as amended by the Robinson-Patman Act, and Section 3 of the Clayton Act.

Seventeen of the 305 complaints did not allege practices in violation of the Federal Trade Commission Act. Of these, 16 charged vio-

<sup>4</sup> See p.122.

## I. COMPLAINTS UNDER FEDERAL TRADE COMMISSION ACT 43

lation of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, and one alleged violation of Section 7 of the Clayton Act, prohibiting unlawful stock acquisitions.

The total number of complaints issued charging violation of the Clayton Act was 24, of which 20 alleged violation of Section 2 of that act as amended by the Robinson-Patman Act.

### I. COMPLAINTS UNDER FEDERAL TRADE COMMISSION ACT

(Complaints which also involve the Robinson-Patman Act, or Section 3 of the Clayton Act, are discussed under those headings)

#### A. SUPPRESSION OF PRICE COMPETITION AND OTHER ALLIED RESTRAINTS

##### ON TRADE

(Complaints referred to below are identified by docket numbers. Full text of any complaint may be obtained upon application to the Federal Trade Commission, Washington)

#### 1. COMBINATIONS TO FIX AND MAINTAIN PRICES

Nine complaints were issued charging combination and conspiracy in restraint of trade through price fixing and other similar agreements. The agreements were entered into mostly among members of, and within, certain industries, who were alleged to have combined to fix minimum prices at which their products were to be sold, or to fix uniform prices and discounts among the members, all in violation of Section 5 of the Federal Trade Commission Act. In a number of these complaints, the agents for establishing and making the combinations effective were allegedly trade associations. A brief description of the complaints follows:

*Association of steel office furniture manufacturers.*--An association of steel office furniture manufacturers, 14 manufacturers of steel office equipment, 5 dealers, and an association of dealers in office equipment were charged with conspiring unduly and unlawfully to restrict and restrain the sale of, and trade in, steel office furniture and equipment in interstate commerce, to enhance prices substantially to the consuming public, to maintain prices at artificial levels, and to eliminate competition for the purpose of creating a monopoly in the sale of such products. (3319.)

*Association of covered button and buckle creators* --An association of covered button and buckle creators and its officers and members were charged with an unlawful conspiracy to fix and maintain uniform prices and uniform maximum discounts. The complaint alleged that the respondents, by advertisement and other means, falsely represented and implied that the Federal Trade Commission had approved fair trade practice rules for the industry which regulated the prices to be asked for its products, or authorized the fixing of such prices. The members of the association are said to manufacture and sell upwards of 90 percent of all the covered

buttons, buckles, and novelties produced in the United States. (3186.)

*Association of manufacturers of containers for fruit and vegetables.*--A complaint issued against an association of manufacturers of fruit and vegetable containers alleged the fixing and maintaining of uniform prices, minimum prices, and uniform terms and conditions in the sale of such products and the parts thereof. The uniform terms and conditions allegedly were fixed and maintained to include, without limitation, maximum discounts, brokerage fees, freight, and other allowances, and time limitations of contracts. The use of coercion and intimidation in carrying out the agreements was alleged. (3289.)

*Association of manufacturers of food dishes.*--A complaint was issued against a voluntary unincorporated association of food-dish manufacturers, its secretary, treasurer, and manager, 17 manufacturers and several sales agents, alleging the unlawful fixing of uniform prices and discounts. The complaint charged that the respondents entered into agreements and understandings among themselves under which they fixed uniform minimum sales prices and uniform discounts for their products, as well as the prices at which wholesalers, jobbers, and other dealers were required to sell such products. It also alleged that in carrying out the unlawful agreement the respondents created zones, and exchanged, through the medium of the trade association and its successors, price lists at which their respective products would be sold, to which they were to adhere until further notice, and various other information of assistance in carrying out the agreement. (3397.)

*Association of manufacturers of hardwood lumber.*--A complaint was issued against an unincorporated association, composed of manufacturers of hardwood lumber operating mills in northern Michigan and northern Wisconsin, its manager and secretary and 24 members, alleging a conspiracy to fix and maintain uniform minimum prices for hardwood lumber produced in that section of the country. Approximately 60 percent of the hardwood lumber output in northern Michigan and northern Wisconsin is said to be produced by the members of the association, who allegedly constitute a group so large and influential as to be able to control the flow of trade and price competition in lumber and building materials within, to, and from the States named. (3418.)

*Manufacturers of medical supplies.*--Three companies alleged to manufacture approximately 85 percent of the national production of gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products, were charged with entering into an agreement to fix and maintain uniform prices for the products

## I. COMPLAINTS UNDER FEDERAL TRADE COMMISSION 45

named. The prevention of price competition and the creation of a monopoly were alleged in the complaint. (3393.)

*Association of fireworks manufacturers.*--A complaint, followed later by an order to cease and desist, was issued against 8 manufacturers of fireworks and their trade association. Details of the case are presented under Orders to Cease and Desist. (See Pyrotechnic Industries, Inc., p. 63.) (3309.)

*Chlorine producers.*--A complaint directed against 9 manufacturers of liquid chlorine for commercial purposes, who were said to manufacture substantially all of this product produced and sold for commercial purposes in the United States, alleged that the respondents, for the purpose of eliminating price competition among themselves, entered into and carried out an agreement, combination, and conspiracy to fix and maintain enhanced uniform prices charged for liquid chlorine throughout the United States. In effecting the agreement the respondents were alleged to have divided the United States into zones and to have fixed uniform prices to be charged in said zones. (3317.)

*Tobacco and confectionery dealers.*--Five dealers in tobacco and confectionery in the Wilkes-Barre, Pa., area, were charged with unfair competition through an agreement and combination to fix and establish uniform prices for their products, and to prevent others from selling at a less price. To effectuate this agreement, the respondents were alleged to have exacted pledges from each respondent and from manufacturers and producers to the effect that they would all support the respondents' program. Respondents were also alleged to have used coercive measures such as threats of boycott. The tendency and effect of these acts and practices, according to the complaint, were to close various Pennsylvania trade channels to manufacturers located in other States, to suppress competition, and to deprive the purchasing and consuming public of price and service advantages which they would otherwise enjoy. (3412.)

### 2. RESALE PRICE MAINTENANCE

The Miller-Tydings Act (Title VIII, Act of August 17, 1937, 50 Stat. 693) amended Section 1 of the Sherman Act<sup>5</sup> so that nothing therein contained would render illegal contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade-mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions,

<sup>5</sup> For texts, see pp. 162 and 164.

under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale. The act also provided that such contracts or agreements should not be an unfair method of competition under Section 5 of the Federal Trade Commission Act. The Miller-Tydings Act does not apply to what has been termed "horizontal" price fixing agreements between competing vendors in the same class.

Of 7 complaints mentioned in the Commission's annual report for 1937 as alleging unlawful resale price maintenance, 2 were closed because the Commission had no evidence that the respondents had engaged in such practices in the District of Columbia or in any State not having so-called Fair Trade laws to which the Miller-Tydings Act is applicable. (As of June 30, 1938, such laws had been enacted in every State except Texas, Missouri, Vermont, Delaware, and Alabama, and had not been enacted in the District of Columbia.) The other 5 proceedings were concluded, the result having been issuance of orders to cease and desist against certain liquor distillers and distributors insofar as such system of merchandising involved liquors sold in, or shipped for sale in, the District of Columbia. (See pp. 6 and 64.) (2988-2992, inc.)

In the fiscal year ended June 30, 1938, a complaint was issued charging 6 District of Columbia wholesalers and a wholesale and retail association of liquor dealers with unlawful resale price maintenance agreements in restraint of commerce, such agreements allegedly having the effect of suppressing competition among wholesalers and retail liquor dealers in the distribution of liquors in the District of Columbia. (3400.)

### 3. MISCELLANEOUS

A dealer in waste materials alleged to have dominant control of the waste paper business in Southern States was charged with the use of threats, intimidation, and attempts to boycott, for the purpose of creating a monopoly in that business in the region named. (3434.)

An individual and a corporation were alleged to have entered into a conspiracy to monopolize the manufacture and sale of paper fasteners. To effectuate this purpose, one of the respondents was alleged to have circularized paper fastener manufacturers and dealers in these products generally with letters threatening suit for infringement of patents owned by said respondent, when that respondent had no intention of bringing such suits and did not, in fact, bring them. (3196.)

A corporation engaged in the purchase of milk from dairy farms in New York and Vermont, and in the resale thereof in the New York metropolitan milk market, was alleged through coercion, intimidation,

## I. COMPLAINTS UNDER FEDERAL TRADE COMMISSION ACT 47

and false representations, to have prevented effectively the formation of a producer-controlled cooperative association among dairy farmers from whom it purchased milk in a certain area, and to have succeeded in lieu thereof in the formation of a purported dealer-controlled cooperative. (3380.)

### B. FALSE ADVERTISING AND MISREPRESENTATION

A total of 188 complaints issued during the fiscal year ended June 30, 1938, charged false and misleading representations in advertisements, on labels, and otherwise. These may be classified as follows:

Thirty-eight complaints involved alleged false and misleading advertising and misrepresentation as to the therapeutic value of various medicinal and food preparations and devices. In some complaints the allegation also was made of falsely representing companies or individuals to be manufacturers.

Twenty-six complaints alleged misrepresentations as to the quality, capacity, or price of various products. Some of these complaints included disparagement of the products of competitors, false representation of companies or individuals as manufacturers, false representation of methods of manufacture, offer of so-called premiums or "free" goods, and false representation of products as complying with well-recognized, standard requirements.

Twenty-three complaints alleged false representations as to the price, quality, properties or origin of various cosmetic preparations and perfumes. Of this number, 6 complaints alleged, among other things, that perfumes purportedly imported were in reality of domestic manufacture.

Seventeen complaints charged false advertising or branding so as to confuse and mislead the public to believe that the article advertised was of different character and higher quality than it actually was. Among the products involved were motion pictures, mattresses, pottery, furs, hats and caps, rugs, spark plugs, and books.

Sixteen complaints alleged that material other than silk or wool was represented falsely to be silk or wool.

Sixteen complaints charged false representations in the sale of home study courses, books, and encyclopedias. Eleven of these complaints involved alleged false representations by correspondence schools as to the nature and character of the schools and their courses of study, the availability of positions, and the earning capacity of students.

Fifteen complaints charged misrepresentation as to the qualities, properties, and effectiveness of various products. Included with these charges in some complaints were others such as misrepresentation of business status and of the amount that could be earned by agents.

Fourteen complaints alleged misrepresentation as to the character

of the organization and its methods of doing business. Some of these complaints also contained allegations of misrepresentation as to the quality of merchandise, the manner in which it might be obtained, possible earnings of agents or producers, and the use of a purported puzzle contest to contact prospective agents.

Eleven complaints alleged false representation as to being a manufacturer, producer, or manufacturer's agent of such commodities as hair tonic, wines, liquors, fireworks, men's clothing, and women's hosiery. In some cases lottery or gaming devices were alleged to be used to market the product.

Six complaints alleged misrepresentation of the place of origin, representing imported articles to be of domestic manufacture or domestic articles to be imported, depending upon the preference of the public for the particular article involved. The products were bicycles, microscope glass covers, weather instruments, and women's clothing, and gloves.

Three automobile manufacturers were charged with misrepresenting prices of their cars to the public by advertising a picture of a fully equipped automobile, and placing opposite it a purported f. o. b. price which did not include the equipment shown in the illustration, or the equipment generally considered necessary to fit the car for operation. The complaints also charged that these prices were placed opposite illustrations of higher-priced cars than those to which the purported f. o. b. prices applied. (3368, 3173, 3174.)

Two complaints alleged false representations concerning the therapeutic value of certain medicines for dogs, and one complaint alleged misrepresentation concerning a food preparation for chickens and its purported power as an egg producer. (3220, 3217, 3408.)

### C. MISCELLANEOUS CASES

*Lotteries or gift enterprises.*--Seventy-four complaints charged manufacturers and dealers in candy, chewing gum, pen knives, hunting knives, automatic razors, safety razors, watches, clocks, cigarette lighters, wearing apparel of various descriptions for both men and women, flour, coffee-making sets, bedspreads, bed sheets, and many other kinds and varieties of articles, with using schemes involving an element of chance or lottery in the sale of such products to the ultimate consumer or of furnishing to dealers the means with which to conduct such enterprises. The majority of complaints involved either the sale of novelties or the sale of candy and chewing gum.

*False disparagement of competitors, and other practices.*--Two complaints charged false disparagement of the products of competitors. Three complaints charged, respectively, imitation of a recognized quality product of competitors, misrepresentation as to the earning capacity of agents and that goods were given free, and the use of a

corporate business name which was the same as that of a recognized quality product of a competitor. One complaint alleged false and misleading representations to induce persons to purchase, as purported distributors, quantities of equipment for farm accounting, to be resold to farmers.

## II. COMPLAINTS UNDER THE CLAYTON ACT

### A. COMPLAINTS CHARGING VIOLATION OF SECTION 2 OF CLAYTON ACT AS

#### AMENDED BY ROBINSON-PATMAN ACT <sup>6</sup>

##### 1. ALLEGED PRICE DISCRIMINATIONS

For the purpose of brevity, the following summaries do not mention that each complaint contains allegations concerning a necessary element in all price discrimination cases, namely, the effects of the practices charged which “may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them.”

Complaints referred to below are identified by docket numbers. Full text of any complaint may be obtained upon application to the Federal Trade Commission, Washington)

*Cement manufacturers.*--Charging a combination to eliminate price competition, resulting in increased prices for cement, the Commission issued a complaint against an unincorporated association, its officers, and 75 cement manufacturing member corporations alleged to produce 95 percent or more of all of the cement made in the United States.

Alleging violation of the Federal Trade Commission Act, the complaint charged that the chief means employed for effecting the cement combination was concerted use of the multiple basing point system. of quoting prices. Under this system, it was alleged, identical delivered prices were made by every quoting producer entering into the combination, to any given destination in the United States. Instances of identical bids made by many producers to various Federal and State agencies were set forth in the complaint.

The complaint alleges, in effect, that each producing company knows that when it refrains from offering competitive prices in the consuming areas where it has a natural advantage and receives its highest actual price, it will receive the same freedom from price competition when the situation is reversed. In this way there is everywhere a reciprocal waiver of natural advantages with no competition in price anywhere, according to the complaint.

<sup>6</sup> Further references to Robinson-Patman Act cases may be found on pp. 8 67, 77 83, 84, and 88.

Transactions under the system also were alleged to be price discriminations in violation of the Robinson-Patman Act, since under such system the true or net prices received by each producer, from various customers, were substantially different. Customers nearest the mills were obliged to pay higher net prices than were made by a local mill to distant customers, according to the complaint. (This system may be compared to that in Snow Fence Manufacturers below.)

The direct and immediate result of the respondents' combination was alleged to have been restraint upon interstate commerce with respect to cement manufactured by any of the producing respondents to be transported beyond the State in which the cement was made. Such confederated action allegedly exercised a power which individual action could not exercise or possess, and the necessary tendency and the direct and substantial effect of the combination were injury to the public. (3167.)

*Snow fence manufacturers.*<sup>7</sup>--The Commission issued a complaint charging a group of producers of snow fence, and their trade organization, with engaging in a conspiracy to suppress competition in prices among themselves and to maintain higher initial and resale prices than otherwise would prevail in 14 States wherein they sold 90 to 95 percent of the snow fence products purchased.

In violation of the Federal Trade Commission Act, the respondents, it was alleged, combined to follow and mutually to maintain a system of identical delivered prices to purchasers residing in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and Ohio.

Under their pricing system the respondent producers allegedly quoted and charged the same delivered prices at the location of every customer, defraying, without additional cost to any such customer, whatever carriage charges were necessary for delivery of carload lots or less to the respective destinations.

Violation of the Robinson-Patman Act was alleged, in that under the respondents' pricing policy the net or true prices received by a producer are the delivered prices less the actual carriage charges, and that as distances from his plant and corresponding freight charges increase, the net or true prices received by the producer diminish.

The complaint charged that the respondents' uniform delivered price system is not a system of true uniform prices, but is one under which each producer makes as many different true prices to his customers as there are destinations, with differing freight rates, at which

<sup>7</sup> An order to cease and desist *was* issued in this case shortly after the close of the fiscal year.

he delivers his products, and that, when so operated, the system is one wherein regular, constant, and substantial discrimination in prices is inherent and inescapable.

According to the complaint, the producers discriminated in price to the greatest extent against buyers located in their respective home territories with the purpose of destroying competition in price on the part of each producer with all other producers.

The complaint charged that this system of price discrimination was a vehicle through which the respondents obtained the elimination of price competition and effectuated a monopoly or near-monopoly in their industry. (3305.)

*Chicory producers.*--With the intent and purpose of destroying competition, two companies said to dominate the raw and granulated chicory markets in the United States, were alleged to have sold granulated chicory in interstate commerce at prices below the cost of manufacturing, selling, and distributing the product, in violation of Section 5 of the Federal Trade Commission Act.

In violation of the Robinson-Patman Act, it was charged that the respondent companies sold their product to certain purchasers at prices below those at which they sold granulated chicory of like grade and quality to other purchasers.

An amended and supplemental complaint added new charges to the effect that one respondent engaged in the following unfair methods of competition: (1) Defamed and disparaged the granulated chicory manufactured and sold by a competitor; (2) artificially colored granulated chicory manufactured and sold by it, without advising customers, and falsely represented that the color or shade was achieved by the respondent company's superior roasting process, and that the uniformity of color or shade was attributable to its careful method of assorting the chicory after roasting; and (3) combined and shipped in single railroad cars coffee substitutes, known in the trade as cereals, and granulated chicory, and fraudulently billed, described, and represented to railroad companies that such cars contained only granulated chicory, by means of which deceptions the respondent company shipped coffee substitutes and granulated chicory across State lines at freight rates substantially lower than the rates lawfully applicable to, and which should have been paid on, such combination shipments of cereal and chicory. (3224.)

*Two complaints against large optical goods manufacturers.*--Two complaints alleged that certain large corporations manufacturing and selling optical goods and ophthalmic products to various retailers, independent wholesalers, and chain business enterprises engaged as lessee-operators of optical departments of large department stores, were unlawfully discriminating in price between different purchasers of such commodities of like grade and quality. (3232 and 3233.)

*Manufacturer of pressing machines.*--The Commission charged a manufacturer and distributor of clothes pressing machines with unlawfully discriminating in price among different purchasers by allowing certain purchasers different prices from those allowed other purchasers. (3380.)

*Medicinal and chemical goods.*--A corporation manufacturing and distributing laboratory, medicinal, and other chemicals, was charged with unlawfully discriminating in price between different purchasers through a practice and policy of designating certain wholesalers. reselling its products as "depots" and allowing such depots a special price, which usually was from 5 percent to 15 percent lower than its regular quoted price to wholesalers generally. (3373.)

*Packer of fruits and vegetables.*--A corporation packer and distributor of fruits, vegetables, and vegetable products was charged with unlawfully discriminating in price between different purchasers by classifying them according to the size of their individual orders, and, likewise, the Size of individual shipments. It was alleged that the differentials in price due to such classification were as great as 16.6 percent. The complaint charged that in some instances purchasers were sold under the most favorable classification although they did not take the required shipments designated for such classification, and that the packer did not make known to all its customers that it sold its products at prices set forth in the various classifications. As a result, it is alleged, many customers purchased under a less favorable classification, whereas if they had known of other, or more favorable, prices, they would have purchased sufficient quantities to entitle them to the more favorable prices. (3381.)

*Receptacle-closure parts for metal container.*--Violation of the Robinson-Patman and Federal Trade Commission Acts and Section 3 of the Clayton Act, the so-called exclusive dealing section, was alleged in one complaint issued against a corporation engaged in manufacturing and distributing closure-structures designed to close the holes through which metal containers are filled and emptied.

The respondent corporation licenses the use of patented dies and tools for the application to metal containers of closure-structures sold by the respondent, and allegedly attempted to induce and require purchasers of such closure-structures to sign certain agreements, among which was one requiring a purchaser, during any six-month period, to buy closures amounting to 80 percent or more of his total requirements, whereupon the respondent would allow a quantity discount equal to 10 percent of the billed price.

It was alleged that the effect of such contracts, sales, discounts, and rebates had been, or might have been substantially to lessen competition between the respondent and its competitors, and to tend to create a monopoly in the respondent in the manufacture and sale of recep-

tacle-closure parts and in the issuance of licenses for applying dies and tools for such parts.

It was further alleged that unlawful discriminations in price re-suited from the practice and policy of granting the 10 percent dis-count referred to above. (3391.)

*Purchaser proceeded against.*--A wholesale drug corporation was charged with following a practice designed and intended to induce unlawful discriminatory prices favorable to the respondent corporation in its purchases of goods, through the publication of a magazine. Manufacturers and sellers allegedly were persuaded and induced to enter into contracts to advertise in the magazine, the charges made for the advertisements to be credited on the purchase price of the goods bought by the respondent.

The complaint further alleged that the publication of the magazine was not an independent business operated in good faith on a profit basis, but was a subterfuge operated solely as an incident to the whole-sale drug business for the purpose of obtaining discriminations in price. It was alleged that the magazine had no substantial value as an advertising medium, and that t the discriminations in price thus obtained were substantial, amounting to differentials in favor of the respondent of from 33 1/3 percent to 50 percent under the prices paid by competing wholesalers. (3377.)

*Padlock manufacturer.*--A padlock manufacturer was charged with unlawfully discriminating in price in favor of certain jobbers whose purchases during a year amounted to in excess of \$10,000. It was alleged that this was accomplished by granting an additional 5 percent discount to such jobbers, which discount was not received by smaller competing jobbers. The complaint also alleged that certain of these large jobbers received freight allowances which were not granted to competitors. (3386.)

*Legume inoculant manufacturers.*--Complaints alleging price discrimination, followed later by orders to cease and desist, were issued against 4 companies manufacturing and distributing nitrogen-fixing bacteria. Details of the cases may be found under Orders to Cease and Desist, p.69. (3263, 3264, 3265, and 3266.)

*Sale of confectionery supplies to chain stores.*--A complaint alleging price discrimination, followed later by an order to cease and desist, was issued against a manufacturer of a preparation used for making home-made ice cream, which product was sold to large chain store organizations. Details of the case may be found under Orders to Cease and Desist. (See H. C. Brill Co., Inc., p.69.) (3299.)

## 2. ALLEGED VIOLATION OF BROKERAGE SECTION

Under subsection 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act, relating particularly to brokerage and so-called

“dummy” brokerage houses, the Commission issued 4 complaints which are discussed hereunder. (For Commission cases in the Federal courts involving the brokerage section, see pp.77, 84, and 88.)

*A wholesale grocer, a brokerage company, and sellers.*--A corporation generally referred to as a wholesale grocery house, a brokerage company affiliated with, and purchasing chiefly for, the wholesale house, and several manufacturers and sellers of food products, were charged with illegal receipt and payment of brokerage. It was alleged that the so-called broker was acting in fact for, in behalf of, and subject to the control of, the wholesale corporation, and that in connection with sales to the wholesale corporation, no services were rendered the seller for which the brokerage company could lawfully be reimbursed. It was alleged that the partners in the brokerage company hold 694 of the 732 shares of stock of the grocery corporation (3214.)

*A wholesale baking association.*--An association and approximately 70 member wholesale baking concerns, and certain sellers, were charged in a complaint with receiving and granting certain commissions, brokerage fees, and other compensations and allowances, or discounts in lieu thereof, in violation of the brokerage section. (3218.)

*A buying corporation, wholesale grocers, and sellers.*--One complaint charged a corporation engaged in the business of providing market information and purchasing services for approximately 46 wholesale grocery concerns, each of which owned 5 shares of stock in the corporation, with receiving brokerage and commissions; likewise, the grantors of such commissions, brokerage fees, and other compensation were charged with violating the brokerage section (3221.)

*Buyer-broker proceeded against.*-- The respondent in one complaint was alleged to have made purchases of fresh fruits and vegetables, and other commodities on, and for, its own account, and in connection therewith to have received and accepted allowances and discounts in lieu of brokerage. (3344.)

## **B. COMPLAINTS CHARGING VIOLATION OF SECTION 3 OF THE CLAYTON ACT**

(And also Sec. 5 of the Federal Trade commission Act)

*Automobile carburetors.*--A manufacturer of automobile carburetors was alleged to have entered into carburetor sales contracts with a large number of automobile service stations throughout the United States and to have made the continuation of such contracts and the special prices and discounts allowed thereunder, as well as special prices and discounts allowed to other service stations not

holding such contracts, conditional upon the service stations ceasing and refusing to deal in the products of a competitor. The complaint further alleged that, by threatening to cancel such contracts and to discontinue special dis counts and service information, the respondent had coerced and compelled many service stations to cancel carburetor sales contracts with a competitor of the respondent and to cease and refrain from dealing in the products of such competitor. (3279.)

*Frozen confections.*--A manufacturer of frozen confections was alleged to have entered into contracts or agreements with its customers containing unlawful tying provisions, and license agreements for the use of machines in the manufacture of frozen ice-cream confections requiring the purchasers and lessees to use its paper bags, sticks, and other materials exclusively. (3250.)

*Liquefied hydrocarbon gas.*--A manufacturer of liquefied hydrocarbon gas was alleged to have made sales of such gas and regulating equipment employed in connection therewith at prices fixed by the respondent, on the condition, agreement, or understanding that the lessees or purchasers thereof should not use liquefied hydrocarbon gas sold by a competitor. (3302.)

### **C. COMPLAINT CHARGING VIOLATION OF SECTION 7 OF THE CLAYTON ACT**

*Hydraulic products company.*--Section 7 of the Clayton Act prohibits, among other things, the acquisition by a holding company of the capital stock of two or more corporations engaged in commerce, where the effect may be to substantially lessen competition or tend to create a monopoly. Violation of this section was alleged in a complaint issued against a holding company owning the capital stock of three companies, one of which manufactured and sold hydraulic transmissions, pumps, and allied products, and was said to be the principal source of supply of such products for use by a Government department. In April 1937, it is alleged, the holding corporation acquired the capital stock of another company engaged in the manufacture and sale of hydraulic transmissions, pumps, and other allied products, and also an approved source of supply of such products for use by the same Government department. (3259.)

As of June 30, 1938, there was pending a complaint which had been issued a distilling corporation, in June 1937, charging a violation of Section 7 of the Clayton Act in the acquisition of the capital stock of another distilling company. (3150.) (See also pp. 10, 19, 29, and 40.)

**ORDERS TO CEASE AND DESIST****UNFAIR TRADE PRACTICES PROHIBITED IN 246 CASES**

The Commission issued 246 orders to cease and desist from the use of unfair methods of competition and other violations of law during the fiscal year ended June 30, 1938, as compared with 296 issued during the last preceding fiscal year. One of the 246 orders was subsequently rescinded, leaving a net total of 245.

**LIST OF RESPONDENTS**

<i>Respondent</i>	<i>Location</i>
A. & O. Co	New Bern, N. C.
Abraham & Straus, Inc	Brooklyn
Acme Products Co	New Haven, Conn.
Agricultural Laboratories, Inc	Columbus, Ohio
Alberty's Food Products, and others	Hollywood Calif.
Alpha Laboratory, Inc	Chicago
American Character Doll Co., Inc	New York
American Crayon Co., and others	Sandusky, Ohio
American Dirigold Corporation	Kokomo, Ind.
American Health Society, Inc., and others	New York
American Mushroom Industries, Ltd	Toronto, Canada
American Novelty Co	New York
American Radio Co., and others	Chicago
American Television Institute, Inc., and others	Do.
American Toy Works	New York
Arabian Toilet Goods Co	Chicago
Arpaul Co., Inc	New York
Arrow Distilleries, Inc	Detroit
Automotive Test Laboratories of America	Chicago
Avocado Soap Products Co	Pasadena, Calif.
Babiglo Co., Inc	New York
Ball Co., Inc	Chicago
Banner Manufacturing Co	Brooklyn
Beggs Sons & Co., C. W	Chicago
Belmont Laboratories, Inc	Philadelphia
Belvedere Silks, Inc	New York
Bergo. Laboratories	Los Angeles
Biddle Purchasing Co., and others	New York
Birconjel Corporation, Inc	Do.
Bleeker-Foster, Inc	St. Paul
Bloomington Brothers, Inc	New York
Bolon Cigar Co., John F	Bethesda, Ohio
Bourjois, Inc., and others	New York
Bradas & Gheens, Inc., and others	Louisville, Ky.
Brill Co., Inc., H. O	Newark, N. J.
Building Material Dealers Alliance, and others	Pittsburgh
Bunte Brothers, Inc	Chicago
Byrd Distilling Co	Louisville, Ky.
California Rice Industry, and others	San Francisco
Canterbury Candy Makers, Inc	Seattle
Capon Water Co., and others	Philadelphia
Carlton, Inc., and others	Chicago

<i>Respondent</i>	<i>Location</i>
Carpentier, Emile, Dr	Hillsdale, N. J.
Carter Candy Co	Chattanooga, Tenn.
Central Pattern and Foundry Co	Chicago
Chemical Products Mnfrs., and others	Do.
Chicopee Medicine Co	Warren, Ind.
Christmas Club	New York
Cline Music Co., Inc	Staunton, Va.
Close & Co.	Chicago
Colonial Dames Co., Ltd., and others	Hollywood, Calif.
Colonial Mills, Inc	New York
Colonial Ribbon Mills	Do.
Confectioners Trading Corporation	Brooklyn
Consolidated Candy Co	Dallas, Tex.
Coolerator Co	Duluth, Minn.
Covered Button and Buckle Creators, Inc., and others	New York
Croxonol Sales Corporation, and others	Do.
D. P. Pen Co	Bordentown, N. J.
Davis Paint Co., Inc., and others	Kansas City, Mo.
De Luxe Manufacturing Co	Chicago
DePew Chemical Co	Kansas City, Mo.
Deran Confectionery Co	Cambridge, Mass.
Dermay Perfumers, Inc	New York
Dermolav Laboratories Inc	Do.
Diamond Brokerage Co	Minneapolis
Dietz Gum Company of Chicago, and others	Chicago
Dilling & Co	Indianapolis
Dirigold Distributors, Inc	Chicago
Dirigold Metals Corporation	Barrington, Ill.
Distillers Brands, Inc	Jacksonville, Fla.
Dixie Hatcheries, and others	Birmingham
Donahue Advertising Co	Chicago
Eastern Pharmacal Co., Inc	Yonkers, N. Y.
Electric Appliance Co	Burlington, Kans.
Elite Glove Co., Inc	Gloversville, N. Y.
Englander Spring Bed Co., Inc	Brooklyn
Eta Co., Inc., and others	Chicago
Everlast Suit Case and Bag Co	New York
Excel Products, and others	Chicago
Excello Fabrics, Inc	New York
Fairfield Distilling Co., Inc	Bardstown, Ky.
Federal Civil Service Training Bureau	Chicago
Federal Enameling and Stamping Co	McKees Rocks, Pa.
Fioret Sales Co., Inc., and others	New York
Form Maid Coat Co., Inc., and others	Do.
Foster, Inc., George, and others	St. Paul.
Fox-Weis Co	Philadelphia
Frank, Ltd., Wally	New York
Gabriel's Laboratories	Tell City, Ind.
Gellman Brothers	Minneapolis
Gibson Co., J. W	Indianapolis
Golden Peacock, Inc	Paris, Tenn.
Goldenberg, Inc., D., and others	Philadelphia
Golf Ball Manufacturers' Association, and others	New York

<i>Respondent</i>	<i>Location</i>
Gooderham & Worts, Ltd., and others	Detroit
Goodman and Sons, Inc., Julius	Memphis
Great Atlantic and Pacific Tea Co	New York
Grove Laboratories, Inc	St. Louis
Hall and Co., Walter T	Ottumwa, Iowa
Hansen Inoculator Co., Inc	Urbana, Ill.
Hardie Co., Wm. M	Cleveland
Hartman, Inc., Al	New York
Hartz Mountain Products, Inc	Do.
Haynes and Co., Inc., Justin	Do.
Health Guard, Inc	Buffalo.
Heidelberger Confectionery Co	Philadelphia
Helzberg's Diamond Shop	Kansas City, Kans.
Herbal Medicine Co., and others	Baltimore
Hickson and Co., J. C	Miami, Fla.
Hiram Walker, Inc., and others	Walkerville, Mich.
Hoffman Beverage Co	Newark, N. J.
Hollywood Hat Co., Inc	New York
Illinois Baking Corporation	Chicago
Imperial Candy Co	Seattle
Institute of Applied Science	Chicago
Jackson Distilling Co., E O	Do.
Johnson & Johnson	New Brunswick, N.J.
Joy Package Co., Inc	New York
K & S Sales Co., and others	Chicago
Keeley's, Inc	Salt Lake City
Kelpe'Koe, Inc., and others	Seattle
Kimball Co., H. B., and others	Milwaukee
Kluger, Inc., H	New York
Koch, Carl E., and others	Chicago
Kodicon Products Co	Boston
Korjena Medicine Co., and others	Elmira. N. Y.
Lavoptik Co., Inc	St. Paul
Lechler Laboratories, Inc	New York
Lee Co., George H	Omaha
Les Parfums d'Isabey, Inc	New York
Levore Co., and others	Chicago
Lewyn Drug, Inc	Hollywood, Calif.
Leibowitz, Joe	Linden, N. J.
Lionel Distilled Products, Inc	Chicago
Longwear Hosiery Co., and others	Newark, N. J.
Loose-Wiles Biscuit Co	Kansas City, Mo.
Lord & Taylor, and others	New York
Lynx Knitting Co	Do.
Magic Chemical Co	San Francisco
Mahler Co., D. J	East Providence, R.I.
Main Co., W. F., and others	Cedar Rapids, Iowa
Marcelle Candies, Inc	Atlanta
March of Time Candies, Inc	Chicago
Marsh Wall Tile Co	Dover, Ohio
Marvo Beauty Laboratories, Inc	New York
Maryland Baking Go	Baltimore
Masonite Corporation	Chicago

<i>Respondent</i>	<i>Location</i>
May Hosiery Mills, Inc	Burlington, N. C.
May Seed Co., Earl E., and others	Shenandoah, Iowa
Mells Manufacturing Co	Brooklyn
Meister Candy Co	Cambridge, Wis.
Metal Window Institute, and others	Washington, D. C.
Mid-West Soap Co., and others	Indianapolis
Midland Distilleries, Inc	St Louis
Midwest Publishing Co., and others	Chicago
Milko Cone & Baking Co., Inc	Do.
Minter Brothers, and others	Philadelphia
Monarch Fashion Co	Chicago
Mutual Brief Case Co., Inc	Newark
Mutual Rosenbloom Corporation	New York
Nacional Destilerias Corporation	Indianapolis
National Advertisers Co., and others	Chicago
National Candy Co., Inc., and others	St. Louis
National Distillers Products Corporation, and others	New York
National Laboratory	Chicago
National Manufacturers Distributing Co	Do.
National Sales, and others	Do.
National Survey Co., and others	Chester, Vt.
New York State Sheet Metal, Roofing, and Air-Conditioning Contractors' Association, and others	Utica
Nitragin Co., Inc	Milwaukee
NoDoz Laboratories, Inc	Sacramento
Nu-Art Tailoring Co	New York
Nutex Co	Philadelphia
Okeena Novelty Co., and others	Dyersburg, Tenn.
Oliver Brothers, Inc., and others	New York
Oppenheim, Collins and Co., Inc	Do.
Page Co., Inc., E R	Marshall, Mich.
Paramount Distilling Corporation	Chicago
Parco Products, Inc., and others	New York
Pascal Co., Inc	Seattle
Pearson Candy Co	Minneapolis
Pennsylvania Whiskey Distributing Corporation	Brooklyn
Phelps Caramel Co., Phoebe	Boston
Pigro Chamois Co	Gloversville, N. Y.
Pittsburgh Plate Glass Co., and others	Pittsburgh
Power Seal Co	Los Angeles
Prendergast-Davies Co., Ltd	New York
Public Service Institute, Inc	St. Louis
Pyrotechnic Industries, Inc., and others	Washington, D.C.
Raleigh Candy Co	St. Louis
Reliable Typewriter and Adding Machine Co	Chicago
Rocky Mountain Laboratories, Inc., and others	Salt Lake City
Rogers Candy Co	Seattle
Royal Lotus Corporation	Ramsey, N. J.
Russeks Fifth Avenue, Inc., and others	New York
Sanisoap Co., and others	Indianapolis
Sanitas Fundoshi Co	Cleveland
Schenley Distillers Corporation, and others	New York
Seagram-Distillers Corporation, and others	Do.
Selected Kentucky Distillers, Inc	Louisville, Ky.



<i>Respondent</i>	<i>Location</i>
Serval-System	Kansas City, Mo.
Shade's Laboratories, H., and others	Chicago
Sheffield Silver Co., Inc	Jersey City, N. J.
Shelton Tubular Rivet Co. and others	Shelton, Conn.
Silver. Rod Stores Supply Co., Inc., and others	Brooklyn
Sobel, Inc., M H	Chicago
Social Security Counselors	Portland, Oreg.
Soft-Lite Lens Co., Inc	New York
Sohn Brothers	Chicago
Solvotone Co., and others	Do.
Standard Wall Covering Co., Inc	Philadelphia
Style Silk Co	Chicago
Sunnyland Distilling Co., Inc	Louisville, Ky.
Superwear Hosiery Co	St. Paul
Tarex Co	Santa Monica, Calif.
Tarpon Springs Sponge Exchange, Inc., and others	Tarpon Springs, Fla.
Taylor Washing Machine Co	Chicago
Tested Specialties Co	Do.
Times Sales Co., Inc., and others	Philadelphia
Tolpin Studios, Inc	Chicago
Tosto Foods. Inc., and others	Cincinnati
Trade Laboratories, Inc., and others	Newark, N. J.
U. S. Specialty & Mfg. Co	Cleveland
United Distillers (of America) Ltd	Chicago
United States Caramel Co	East Boston, Mass.
United Woolen Mills	Birmingham
Universal Handkerchief Mfg. Co., Inc	New York
University Forum, Inc., and others	Chicago
Urbana Laboratories	Urbana, Ill.
Van Ogden, Inc., and others	Chicago
Viscose Co., and others	New York
Wain's Laboratory, Inc	Hollywood, Calif.
Warner's Renowned Remedies Co	Minneapolis
Warren Co., J. Arthur	Chicago
Washburn Candy Corporation, F. W	Brockton, Mass.
Waverly Tailors, and others	New York
Weidenhoff, Inc., Joseph	Chicago
Wesleyan Diesel Service, Inc	Omaha
West Penn Distilling Co., Inc	New Kensington, Pa.
Wolf Drug Co., and others	Newark, N. J.
Worthall, Ltd	New York
Worthmore Sales Promotion Service, Inc	Chicago
Wright Manufacturers Distributing Co	Do.
York Bar Bell Co., and others	York, Pa.

### DESCRIPTION OF OUTSTANDING CASES DECIDED

Illustrative of the orders to cease and desist issued during the fiscal year ended June 30, 1938, are the cases described briefly as follows:

**COMBINATIONS TO FIX PRICES AND RESTRAIN TRADE**

*Viscose Co., New York, and others.*--An order to cease and desist was issued against 10 corporations manufacturing substantially all of

## DESCRIPTION OF OUTSTANDING CASES DECIDED 61

the viscose rayon yarn made in the United States, directing them to cease and desist from entering into and carrying out a price-fixing; combination held to be in violation of Section 5 of the Federal Trade Commission Act.

*Building Material Dealers Alliance, Youngstown, Ohio, and Pittsburgh, and others.* - Respondents in this case were several associations, organizations, and individuals charged with combining and conspiring to restrain interstate commerce in the sale and distribution of building materials and builders' supplies. Respondent National Federation of Builders Supply Associations had 41 affiliated units in about 32 States of the United States. A cease and desist order issued by the Commission was served on approximately 1,700 respondents, enjoining them from using threats of boycott or other coercive methods to induce manufacturers to refrain from selling to competitors; from preparing and publishing white lists; from engaging in espionage upon interstate shipments of competitors in order to interfere with competitors' sources of supplies; from engaging in any concerted activity for the prevention of direct sales by manufacturers to the United States Government, State Governments, or political subdivisions thereof, and from fixing or maintaining uniform prices in particular trade communities.

*Shelton Tubular Rivet Co., Shelton, Conn., and others.* - This case involved the trade association of the tubular-split and outside pronged rivet manufacturers and its members. An order to cease and desist was entered against the following respondents: Shelton Tubular Rivet Co., Shelton, Conn. ; Shelton Tack Co., Shelton, Conn.; Tubular Rivet & Stud Co., Boston; Judson L. Thomson Mfg. Co., Waltham, Mass.; Milford Rivet & Machine Co., Milford, Conn.; Chicago Rivet & Machine Co., Chicago; Manufacturers' Belt Hook CO., Chicago; National Rivet & Mfg. Co., Waupun, Wis.; Townsend Co., New Brighton, Pa.; John Hassall, Inc., Brooklyn ; J. W. Coombs Mfg. Co., Inc., Fort Washington, Pa.; The Institute of Tubular-Split and Outside Pronged Rivet Manufacturers, Waupun, Wis., and William Fleming, Jr., Waupun, Wis., individually, and as president of the institute. They were said to manufacture practically all of the industrial rivets produced in the United States except solid rivets.

The respondents were found, through the medium of combination and agreement, to have (1) fixed and established prices which all members of the institute were induced to maintain; (2) conspired among themselves for elimination of price competition by fixing uniform delivered prices, including discounts; (3) induced certain of the respondents by intimidation and persuasion to raise their prices, including discounts, to the uniform delivered price theretofore fixed by agreement, combination, and conspiracy; and (4) held meetings to devise methods of accomplishing the purposes of the combination

and agreement through the medium of coercion, influence, or pressure. All of these practices were ordered discontinued and free and open Competition restored in the industry.

*California Rice Industry, San Francisco*, an association, and the miller members thereof, said to constitute all the rice millers in California, were served with an order to cease and desist from certain unfair methods of competition. The respondents petitioned the United States Circuit Court of Appeals to review and set aside the Commission's order. Details of the order and of the court proceeding may be found under Cases in the Federal Courts, p.79.

*New York State Sheet Metal Roofing and Air-Conditioning Contractors' Association, Utica, N. Y., and others* were ordered to cease and desist from holding meetings for the purpose of inducing members of the association and other trade organizations not to deal with manufacturers of hot-air furnaces selling to mail-order houses ; printing and publishing "white lists" of manufacturers not selling to mail-order houses ; using coercive and concerted action, threats of boycott, and other united action against manufacturers blacklisted by them, and printing and distributing pamphlets to various trade associations and their members urging said members to discontinue trading with manufacturers listed in such pamphlets.

*Covered Button and Buckle Creators, Inc., New York, and others.*--An order was issued against Covered Button and Buckle Creators, Inc., its officers and directors and all of its member manufacturers, approximately 150 in number, ordering them to cease and desist from engaging in and effectuating any unlawful conspiracy to fix and maintain uniform minimum prices or uniform maximum discounts in the sale of covered buttons, buckles, and novelties. The respondents were also directed to cease representing that any policy of price fixing had been initiated and maintained through the means of the industry's trade practice rules or with the sanction, authorization, or knowledge of the Federal Trade Commission. Respondents produce and sell approximately 90 percent of all the covered buttons, buckles, and novelties made in the United States, according to findings.

*Metal Window Institute, Washington, D.C., and others.*--Nineteen corporations manufacturing metal window products and their trade association, Metal Window Institute, were ordered to cease and desist from certain unlawful practices, the effect of which was to establish and maintain fixed minimum prices for the products of the industry. The practices prohibited include establishing and maintaining minimum prices and uniform terms and conditions of sales, such as mandatory erection by the seller, time for delivery, and allowances for freight charges ; declining to sell to purchasers for less than the prices established through stated discounts from gross prices

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without first having notified competitors of the proposed price cut ; attempting by any form of concerted action, including underbidding and underselling, to induce or require a competitor to adopt or maintain any schedule of discounts, net prices, or terms of sale adopted or favored by the respondent making such attempt; obtaining the withdrawal and cancellation of bids where prices stated in such bids were less than those established and maintained by the respondents ; and other unlawful practices.

*Pyrotechnic Industries, Inc., Washington, D. C., and others.*--Pyrotechnic Industries, Inc., an association composed of 8 manufacturers producing approximately 85 percent of the commercial fireworks in the United States, and the 8 constituent members, were ordered to stop agreeing to fix and maintain uniform prices and discounts in the sale of fireworks to jobbers, from designating what concerns should and should not be sold as jobbers, from organizing and holding meetings of jobbers to devise means of asserting influence and pressure to require the jobbers to abide by and adhere to the agreements of the members of the association, from maintaining unlawfully understandings and combinations to suppress and eliminate competition in the manufacture, jobbing, and retail sale of fire-works, from agreeing to fix and maintain retail prices of fireworks, and from agreeing to refuse to sell fireworks to certain concerns.

*American Crayon Co., Sandusky, Ohio, and others.*--An order directed 14 manufacturers of chalk and wax crayons, water colors, tempera colors, and other items of school supplies, and their trade association, representing practically the entire source of supply of such articles in the United States, to cease and desist from acting in cooperation with each other and through their trade association by entering into agreements to fix and maintain uniform prices, terms, and discounts, and to cease from enforcing and maintaining said prices, terms, and discounts by concerted action, by means of the exchange of information with each other directly or through the association, or otherwise.

*Joseph Weidenhoff, Inc., Chicago,* said to be the largest manufacturer and distributor of automobile testing devices in the United States, was directed to cease and desist from entering into and executing any agreement, combination, or understanding between itself and any other manufacturer or distributor of electrical and automobile testing devices, through the use of license agreements, or otherwise, to fix and maintain prices, whether enhanced or otherwise, to be exacted by them from the purchasers of such products; and also to cease and desist from coercing, intimidating, and inducing any of its competitors to raise or change the prices quoted by them for such products to uniform prices fixed by an understanding and agreement between the respondent and any of them.

### RESALE PRICE MAINTENANCE

*Seagram-Distillers Corporation, New York, and others* were ordered to cease and desist from maintaining resale pricing agreements in connection with the sale of its products in the District of Columbia and with products sold and shipped for resale therein. The orders directed the respondents to cease and desist from entering into or enforcing the provisions of any contract, agreement, or understanding, verbal or written, with any retailer, jobber, wholesaler, or other distributor, the purpose and effect of which was to maintain a specified standard or uniform minimum resale price, discount, or mark-up at which its products should be resold by such dealer. (See pp 6 and 45.)

### FALSE DISPARAGEMENT OF COMPETITORS' PRODUCTS

*Johnson & Johnson, New Brunswick, N. J.*, was ordered to cease and desist from certain unfair methods of competition in connection with the sale of absorbent cotton, gauze, bandages, and other first aid and surgical dressing products.

The order directed the respondent to discontinue unfairly disparaging competitors or their products through the use of representations which, directly or indirectly, inferred that because such competitors did not extensively advertise their respective products and were not widely known, such competitive products subjected the users thereof to the dangers of infection and were not safe and in a sanitary condition when opened for use.

### FALSELY REPRESENTING OTHER MATERIAL TO BE SILK

*Lord & Taylor, New York, and others.*--A group of cases involving orders to cease and desist issued against Lord & Taylor, Biberman Bros., Inc., Galey & Lord, Inc., H. Kluger, Inc., Colonial Mills, Inc., Belvedere Silks, Inc., and Excello Fabrics, Inc., all of New York, and Joe Liebowitz, of Linden, N. J., dealt with terminology in connection with the silk and rayon industries, and construed such words and phrases as "Silky Seal Crepe," "Pure Dye," "Satin," "100 Per Gent Pure Dye Crepe," "Celanese," "Silk Jersey," "Crepe," "Bemberg," and "Belvedere Silks," when used in connection with fabrics or fibers composed in whole or in part of rayon. These words and phrases were construed in the light of the law as contained in the rayon rules promulgated October 26, 1937, and the silk rules of 1932.

### FALSELY REPRESENTING WOMEN'S WEARING APPAREL TO BE OF FOREIGN MANUFACTURE

*Russeks Fifth Avenue, Inc., and Fashion Firsts, Inc., New York*, designers and manufacturers of women's suits, coats, dresses, hats,

## DESCRIPTION OF OUTSTANDING CASES DECIDED 65

and furs, and their officers, agents, and employees, were served With an order restraining them from using the British Royal Coat of Arms in connection with the featuring of their merchandise, and from employing the names of well-known and long-established English manufacturers and designers of women's wearing apparel as marks or brands for the wearing apparel designed, manufactured, and sold by them.

### **MISREPRESENTATION AS TO COSMETICS AND TRADE NAME CONFUSION**

*Bourjois, Inc., and its selling agent and subsidiary, Barbara Gould Sales Corporation, New York,* were served with an order to cease and desist and later the case was taken to court. For details see page 78.

*Colonial Dames, Inc., and Colonial Dames Co., Hollywood, Calif.,* sold various cosmetic products, including a massage cream, a beauty wash, and a beautifier. The words "Colonial Dames" were used in the respondents' corporate names, on letterheads, and in advertising and labeling or branding their various products.

The order required the respondents to cease and desist from representing that their massage cream is a skin food, the principal benefits from its use being due to the action of its ingredients rather than to massage, or that it re-establishes normal circulation and rebuilds and beautifies from within, or that a beauty wash is a bleach and banishes blackheads, or that their beautifier builds beauty into the skin and acts on a different principle from most cosmetics.

The order further required the respondents to add the explanatory words "not connected with any society" after the words "Colonial Dames."

### **LOTTERY SCHEMES, GIFT ENTERPRISES, OR GAME OF CHANCE**

*K & S Sales Co., Chicago,* in its own name and right, and trading under the names and Styles of Garden City Novelty Manufacturing Co., Garden City Novelty Co., and Montrose Silk Co., was ordered to cease and desist from offering for sale, selling, or distributing various articles of merchandise, by means of a lottery scheme, gaming device or gift enterprise, in interstate commerce or in the District of Columbia. The devices used included push cards and punchboards. The evidence disclosed that the respondent during the period from March until October 1936, both months inclusive, distributed approximately 1,500,000 push cards.

### **"BAIT ADVERTISING", DECEPTION IN PROCUREMENT OF CONTRACTS AND**

### **WAGE ASSIGNMENTS IN VIOLATION OF STATE LAWS**

*Taylor Washing Machine Co., Chicago,* was found to have been engaged in an extensive advertising and sales promotion program, in the course of Which it falsely offered a home trial and free home

demonstration of its washing machines. Findings are that parties responding to this advertising were not given any trial or demonstration but were induced to sign a printed form of contract unaware that the instrument purported to be a binding contract. This was accomplished by way of representing the instrument to be a receipt, or a form of insurance protection, covering the machine to be delivered, and, according to findings, the respondent thereafter treated such instruments as binding and enforceable. It was found to be the further practice of the respondent to procure contracts containing wage assignment provisions in violation of the law and policy of the State of Indiana and then proceed to represent such provisions as binding and enforceable as a means of securing performance of the contracts by persons employed and residing in Indiana. It was also found that the respondent at times delivered a washing machine materially different from the machine represented and purchased. The respondent and its officers and agents were ordered to cease and desist from these practices.

**MISREPRESENTATION OF EARNING CAPACITY, REPURCHASE  
AGREEMENT,  
EXCLUSIVE TERRITORY, AND FLEXIBLE CREDIT EXPANSION PLAN**

*Willard F. Main, Cedar Rapids, Iowa*, trading as W. F. Main Co. and under other trade names, a manufacturer and distributor of coin operated vending machines said to handle a substantial portion of such business in the United States, was ordered to cease and desist from representing that, if a guaranteed cash return of 120 percent was not realized on an investment by the purchaser of his machines from the operation thereof, he would repurchase the same at the full purchase price plus 6 percent interest less certain specified deductions. The Commission found that the 120 percent profit guarantee was a subterfuge, and this representation was prohibited by the order.

It was found that the respondent attached so many conditions precedent on the part of the purchasers or "operators" in their contracts as to make it impossible for them fully and substantially to comply therewith and obtain the benefit of the repurchase agreements.

The order further prohibited the representation that additional machines could be purchased upon a flexible credit expansion plan or that the initial purchase of a number of his machines would simultaneously grant a purchaser the privilege of buying additional machines on credit, unless and until such credit was granted. The order also barred the representation that purchaser-operators might obtain an exclusive territory, unless the territory described in the contracts should be in fact exclusive.

The respondent was directed to discontinue representing that he had positions open, when in reality such representations were merely

in the form of contact advertisements used in connection with the sale of his machines and confections.

#### **MISREPRESENTATION AS TO POULTRY REMEDY**

*George H. Lee Co., Omaha, Nebr.*, was directed to cease and desist. from representing that its product "Lee's Gizzard Capsules" will remove pinworms and tapeworms from poultry, unless, in regard to the tapeworms, it be represented with equal conspicuousness that this product merely shears off the strobolae or chain of segments, leaving the head of the worm capable of growing new segments attached to the intestines of the fowl.

#### **MISLEADING USE OF THE WORD "DIRIGOLD" TO DESCRIBE TABLEWARE**

*The American Dirigold Corporation, Kokomo, Ind.; Dirigold Metals Corporation, Barrington, Ill.; and Dirigold Distributors, Inc., Chicago.*--Orders to cease and desist were issued in these three cases involving the use of the word "Dirigold" to designate and describe flatware and hollow ware made from an alloy of base metals and containing no gold. The ware involved had the appearance of gold, and it was found that use of the word "Dirigold" to describe it was misleading in that it implied and served as a representation that the ware so designated contained gold. Two of the respondents were manufacturers of ware so described, while the third was a retail dealer handling such ware.

### **ORDERS UNDER THE CLAYTON ACT**

(As amended by the Robinson-Patman Act)<sup>8</sup>

*Great Atlantic & Pacific Tea Co.  
Biddle Purchasing Co., New York.*

*Oliver Brothers, Inc., New York.*--These three organizations were served separately and at different times with orders to cease and desist from certain practices held to be in violation of the brokerage section of the Robinson-Patman Act. In each instance the respondents petitioned the United States Circuit Court of Appeals to review and set aside the Commission's order. Details of the orders and of the court proceedings may be found under Cases in the Federal Courts at pp.84, 77, and 88, respectively.

*Christmas Club, New York*, in the sale of "systems" consisting of pass-books, account books, advertising literature and other paraphernalia for use by banks in their conduct of Christmas Clubs, was ordered to cease and desist from discriminating in price. The Commission found that the respondent company entered into con-

<sup>8</sup> Further references to Robinson-Patman cases may be found on pp.8, 49, 77, 83, 84, and 88.

tracts to furnish banks with savings systems and to accept in payment a percentage of the deposits made in a bank's club. It was further found that all of the contracts did not provide for payment on the same percentage basis, the result being that the respondent company discriminated in price between different purchasers of systems of like grade and quality.

*Pittsburgh Plate Glass Co., Pittsburgh, and others.*--Respondents in this case were: Pittsburgh Plate Glass Co., Pittsburgh; Libbey-Owens-Ford Glass Co., Toledo, Ohio; Amen can Window Glass Co., Pittsburgh; Fourco Glass Co., Clarksburg, W. Va.; Harding Glass Co., Fort Smith, Ark. Adamston Flat Glass Co., Clarksburg, W. Va.; Rolland Glass Co., Clarksburg, W. Va.; Scohy Sheet Glass Co., Sistersville, W. Va.; Blackford Window Glass Co., Vincennes, Ind.; The Window Glass Manufacturers Association, New York; The National Glass Distributors Association, Chicago, and others. An order to cease and desist restrained them from combining or conspiring among themselves or with other respondents to engage in, or pursuant to any such combination or conspiracy, directly or indirectly, from engaging in any of a number of acts set forth in the order which were found to hinder, obstruct or prevent jobbers, wholesalers, or distributors, from freely purchasing or obtaining window glass.

The order further required the respondent manufacturers to cease and desist from discriminating in price between carload lot purchasers of window glass, to whom shipment was made direct from the factory, by charging some of the purchasers any amount more than the price charged other of such purchasers for window glass of the same grade and quality and of comparable strength, size, and kinds. The foregoing was not intended to prevent the jobbing warehouses of a manufacturer, whose functions parallel those of an independent jobber, from selling carload lots on a brokerage basis at prices commonly obtained by such independent jobbers.

The order further directed the members of the National Glass Distributors Association to cease and desist from: (1) Receiving or accepting any discriminatory price or the benefit of such discrimination as prohibited by the aforementioned part of the order; and (2) inducing or attempting to induce any manufacturer of window glass to discriminate in price in the manner so prohibited.

The respondents were held to have violated both the Federal Trade Commission and Robinson-Patman Anti-discrimination Acts.

*Golf Ball Manufacturers' Association and others.*--An order to cease and desist was issued against the Golf Ball Manufacturers' Association, members thereof, and the Professional Golfers Association of America and members thereof restraining them from unlawfully

entering into and effectuating any agreement or combination among themselves to fix and maintain prices for golf balls.

The order further directed the Professional Golfers Association and its members to cease and desist from requiring, coercing, or persuading the respondent, Golf Ball Manufacturers' Association and its members, or any other manufacturer, corporation, firm, or individual, to enter into any agreement or contract providing for or resulting in a difference in price in favor of members of the "PGA," through the payment of ally monies, or anything of value for the privilege of causing the letters "PGA" or any other insignia or mark of like character to be imprinted on golf balls manufactured and sold by any of the respondent manufacturers or any other manufacturer, corporation, partnership, firm, or individual, directly or indirectly to the respondent "PGA" or any of its respondent members.

The order further provided, among other things, that the respondent, Golf Ball Manufacturers' Association and members, cease and desist from:

(1) Granting or giving the following unlawful discriminations in price, namely, the payment of anything of value to respondent, Professional Golfers Association, either as a royalty for the privilege of causing the letters "PGA" or any other insignia, brand, or mark to be imprinted on golf balls sold to members of the respondent, Professional Golfers Association or otherwise, which payment, directly or indirectly, in whole or in part, is to be passed along or used for the benefit of the members of said Professional Golfers Association; or the making of any payment directly to such members in lieu of any such payment to the Professional Golfers Association.

The order further restrained the Professional Golfers Association and its members from:

(1) Inducing or receiving any discrimination in price or allowance in connection with the purchase of golf balls in interstate commerce which the manufacturers of golf balls were prohibited from giving.

The respondents were held to have violated the Federal Trade Commission and Robinson-Patman Acts.

*Legume inoculant manufacturers.*--Four corporations, Agricultural Laboratories, Inc., Columbus, Ohio; Hansen Inoculator Company, Inc., Urbana, Ill.; The Urbana Laboratories, and others, Urbana, Ill., and The Nitragin Company, Inc., Milwaukee, were individually directed to cease and desist from discriminating in price between purchasers competitively engaged one with the other in the resale of legume inoculant, which is bacteria grown for the inoculation of seeds of leguminous plants, principally alfalfa, sweet clover seeds, soy beans, and peas.

*H. C. Brill Co., Inc., Newark, N.J.*, a manufacturer and distributor of a preparation for the making of home made ice cream, was

directed to cease and desist from granting or paying or agreeing to grant or pay sums amounting to discriminations in price in the form of cumulative discounts except where such discount makes only due allowance for differences in cost which have been achieved with respect to individual sales made to a particular buyer over a period of time and which differences in cost were not reflected in the price at which the buyer purchased.

## **TYPES OF UNFAIR COMPETITION**

### **PRACTICES CONDEMNED IN ORDERS TO CEASE AND DESIST**

The following list illustrates unfair methods of competition condemned by the Commission from time to time in its orders to cease and desist. This list is not limited to orders issued during the last fiscal year. It does not include specific practices outlawed by the Clayton Act and committed to the Commission's jurisdiction, namely, various forms of price discrimination, exclusive and tying dealing arrangements, competitive stock acquisition, and certain kinds of competitive interlocking directorates.

1. The use of false or misleading advertising, calculated to mislead and deceive the purchasing public to their damage and to the injury of competitors.

2. Misbranding of fabrics and other commodities respecting the materials or ingredients of which they are composed, their quality, purity, origin, source, attributes or properties, history, or nature of manufacture, and selling them under such names and circumstances that the purchaser would be misled in these respects.

3. Bribing buyers or other employees of customers and prospective customers, without the latter's knowledge or consent, to secure or hold patronage.

4. Procuring the business or trade secrets of competitors by espionage, or bribing the employees, or by similar means.

5. Inducing employees of competitors to violate their contracts and enticing away employees of competitors in such numbers or under such circumstances as to hamper or embarrass the competitors in the conduct of their business.

6. Making false and disparaging statements respecting competitors' products, their value, safety, etc., and competitors' business, financial credit, etc., in some cases under the guise of ostensibly disinterested and specially informed sources or through purported scientific but in fact misleading demonstrations or tests.

7. Widespread threats to the trade of suits for patent infringement arising from the sale of alleged infringing products of competitors, such threats not being made in good faith but for the purpose of intimidating the trade and hindering or stifling competition, and

claiming and asserting, without justification, exclusive rights in public names of unpatented products.

8. Trade boycotts or combinations of traders to prevent certain wholesale or retail dealers or certain classes of such dealers from procuring goods at the same terms accorded to the boycotters or conspirators, or to coerce the trade policy of their competitors or of manufacturers from whom they buy.

9. Passing off goods or articles for well and favorably known products of competitors through appropriation or simulation of such competitors' trade names, labels, dress of goods, etc., with the capacity and tendency unfairly to divert trade from the competitors, and/or with the effect of so doing to their prejudice and injury and that of the public.

10. Selling rebuilt, second-hand, renovated, or old products or articles made from used or second-hand materials as and for new.

11. Paying excessive prices for supplies for the purpose of buying up same and hampering or eliminating competition.

12. Using concealed subsidiaries, ostensibly independent, to obtain competitive business otherwise unavailable, and making use of false and misleading representations, schemes, and practices to secure representatives and make contacts.

13. Using merchandising schemes based on a lot or chance.

14. Cooperative schemes and practices for compelling wholesalers and retailers to maintain resale prices fixed by a manufacturer or distributor for resale of his product.<sup>9</sup>

15. Combinations or agreements of competitors to enhance prices, maintain prices, bring about substantial uniformity in prices or to divide territory or business, to cut off competitors' sources of supply, or to close markets to competitors, or otherwise restrain or hinder free and fair competition.

16. Various schemes to create the impression in the mind of the prospective customer that he or she is being offered an opportunity to make a purchase under unusually favorable conditions when such is not the case, with capacity and tendency to mislead and deceive many of the purchasing public into buying products involved in such erroneous belief, and/or with the effect so to do, to the injury and prejudice of the public and of competitors, such schemes including-

(a) Sales plans in which tire seller's usual price is falsely represented as a special reduced price made available on some pretext for a limited time or to a limited class only, or involving false claim of special terms; equipment, or other privileges or advantages.

<sup>9</sup> The Miller-Tydings Act and "Fair-Trade" laws are referred to at pp.6 and 46. For text of that act, see p.184.

(b) The use of the “free goods” or service device to create the false impression that something is actually being thrown in without charge, when, as a matter of fact, it is fully covered by the amount exacted in the transaction as a whole.

(c) Use of misleading trade names calculated to create the impression that a dealer is a manufacturer or grower, importer, etc., selling directly to the consumer with resultant savings.

(d) Use of pretended, exaggerated retail prices in connection with or upon the containers of commodities intended to be sold as bargains at lower figures.

(e) Use of false or misleading representation that article offered has been rejected as non-standard or is, for some other special and unusual reason, offered at an exceptionally favorable, or other than its normal, price.

17. Imitating or using standard containers customarily associated in the mind of the general purchasing public with standard weights or quantities of the product therein contained, to sell the public such commodity in weights or quantities less than the aforementioned standards, with capacity and tendency to deceive the purchasing public into believing that they are purchasing the quantities generally associated with the standard containers involved, and/or with the effect of so doing, and with tendency to divert trade from and otherwise injure the business of competitors who do not indulge in such practices and/or with the effect of so doing, to the injury of such competitors and to the prejudice of the public.

18. Concealing business identity in connection with the marketing of one’s product, or misrepresenting the seller’s relation to others; for example, claiming falsely to be the agent or employee of some other concern or failing to disclose the termination of such a relationship in soliciting customers of such concerns, etc.

19. Misrepresenting in various ways the necessity or desirability or the advantages to the prospective customer of dealing with the seller, with the capacity and tendency to mislead and deceive many among the consuming public into dealing with the person or concern so misrepresenting, in reliance upon such supposed advantages, and to induce their purchases thereby, and/or with the effect of so doing, to the injury and prejudice of the public and of competitors, such as-

(a) Misrepresenting seller’s alleged advantages of location or size, branches, domestic or foreign, dealers, etc.

(b) Making false claim of being the authorized distributor of some concern, or of being successor thereto or connected there-with.

(c) Alleged endorsement of a concern or product by the Government or by nationally known business organizations.

(d) False claim by a dealer in domestic products of being an importer, or by a dealer of being a manufacturer, grower or nursery, or by a manufacturer of some product of being also the manufacturer of the raw material entering into the product.

(e) Claiming to be a manufacturer's representative and outlet for surplus stock sold at a sacrifice, etc., When such is not the fact.

(f) Representing that the seller is a wholesale dealer, grower, producer, or manufacturer, when in fact such representation is false.

(g) Claiming falsely or misleadingly patent, trade-mark or other special and exclusive rights.

20. Use by business concerns associated as trade organizations or otherwise of methods which result, or are calculated to result, in the observance of uniform prices or practices for the products dealt in by them, with consequent restraint or elimination of competition, such as use of various kinds of so-called standard- cost systems, price lists, or guides, exchange of trade information, etc.

21. Obtaining business through undertakings not carried out and through deceptive, dishonest, and oppressive devices calculated to entrap and coerce the customer or prospective customer, with the result of deceiving the purchasing public and inducing purchases by many thereof, and of diverting and tending to divert trade from competitors who do not engage in such false, misleading, and fraudulent representations, all to the prejudice and injury of the public and competitors, such practices including--

(a) Obtaining by deceit prospective customer's signature to a contract and promissory note represented as simply an order on approval;

(b) Obtaining agents to distribute the seller's products through promising to refund the money paid by them should the product prove unsatisfactory, and through other undertakings not performed; or

(c) Enforcing payments from purchasers in excess of contract terms, and enforcing the printed terms of purchase contracts, notwithstanding agents' alterations therein.

22. Giving products misleading names so as to give them a value to the purchasing public or to a part thereof which they would not otherwise possess, with the capacity and tendency to mislead the public into purchasing the products concerned in the erroneous belief thereby induced, and with the tendency to divert and/or with the effect of diverting business from and otherwise injuring and prejudicing competitors who do not engage in such practices, all to the prejudice of the public and of competitors, such as names implying falsely that--

(a) The particular products so named were made for the Government or in accordance with its specifications and of corresponding quality, or are connected with it in some way, or in some way have been passed upon, inspected, underwritten, or endorsed by it; or

(b) They are composed in whole or in part of ingredients or materials, respectively, contained only to a limited extent or not at all; or

(c) They were made in or came from some locality famous for the quality of such products; or

(d) They were made by some well and favorably known process, when as a matter of fact they were only made in imitation of and by a substitute for such process; or

(e) They have been inspected, passed, or approved after meeting the tests of some official organization charged with the duty of making such tests expertly, disinterestedly, or giving such approval; or

(f) They were made under conditions or circumstances considered of importance by a substantial part of the general purchasing public; or

(g) They were made in a country, place, or city considered of importance in connection with the public taste, preference or prejudice.

23. Selling below cost, with the intent and effect of hindering, stifling, and suppressing competition.

24. Dealing unfairly and dishonestly with foreign purchasers and thereby discrediting American exporters generally, with the effect of bringing discredit and loss of business to all manufacturers and business concerns engaged in and/or seeking to engage in export trade, and with the capacity and tendency to do so, to the injury and prejudice of the public and of the offending concerns' export-trade competitors.

25. Coercing and enforcing uneconomic and monopolistic reciprocal dealing.

26. Entering into contracts in restraint of trade whereby foreign corporations agree not to export certain products into the United States in consideration of a domestic company's refusal to export the same commodity or sell to anyone other than those who agree not to so export the same; and

27. Employing various false and misleading representations and practices to give products a standing, merit, and value to the purchasing public, or a part thereof, which they would not otherwise possess, with the capacity and tendency to mislead the public into purchasing the products concerned in the erroneous beliefs thereby

engendered, to the prejudice and injury of competitors and the public, such practices including--

(a) Misrepresenting, through salesmen or otherwise, products' composition, nature, qualities, results accomplished, etc.;

(b) Claiming unique or special merit therefor, on the basis of pretended, but in fact misleading and ill-founded, demonstrations or scientific tests;

(c) Misrepresenting the history or circumstances involved in the making and offer of the products, or the opportunities brought to the buyer through purchase of the offering, or otherwise misrepresenting scientific or other extraneous but relevant facts bearing on the value thereof to the purchaser; and

(d) Claiming acceptance, use, and success of product through false and misleading use of endorsements or testimonials or false and misleading claim thereto.

## **CASES IN THE FEDERAL COURTS**

### **COMMISSION ACTIONS IN THE UNITED STATES SUPREME, CIRCUIT AND DISTRICT COURTS.**

Federal Trade Commission cases pending in the United States courts for final determination during or at the close of the fiscal year ended June 30, 1938, are reviewed in alphabetical order in the pages immediately following.<sup>10</sup>

During the year, the Commission was successful in 18 cases before the Federal courts; in 14 cases before the United States Circuit Courts of Appeals, in 2 cases before United States District Courts, and twice before the Supreme Court of the United States. It was unsuccessful in 4 cases in the Circuit Courts of Appeals, in one of which cases, however, the Commission was sustained on appeal to the Supreme Court of the United States.

The Supreme Court sustained the Commission in two cases, the only Commission cases reaching it during the year. In one, the Standard Education Society case, the Second Circuit was reversed to the extent it had set aside the Commission's order to cease and desist. In the other, the Goodyear Tire & Rubber Co. case, the Sixth Circuit's decision that the controversy was moot, was reversed and the case remanded for determination on its merits. In each case the Supreme Court's Opinion was unanimous. The Court denied petitions for certiorari by the respondents in cases against the Chicago Silk Co., Chicago, and Electro-Thermal Co., Steubenville, Ohio.

Cases in the circuit courts of appeals in which the Commission's orders were affirmed were: American Candy Co., Milwaukee; Bara-

<sup>10</sup> United States Circuit Courts of Appeals are designated First Circuit, Second Circuit, etc.

ger-Webster Co., Eau Claire, Wis.; Biddle Purchasing Co. and others, New York; Brecht Candy Co., Denver; Chase Candy Co., St. Joseph, Mo.; Cosner Candy Co., Denver; Electro-Thermal Co., Steubenville, Ohio; Famous Pure Silk Hosiery Co., Newark, N.J.; Leader Novelty Candy Co., Brooklyn; L. & C. Mayers Co., Inc., New York; Charles N. Miller Co., Boston; Rittenhouse Candy Co., Philadelphia, and Savage Candy Co., Denver.

In a proceeding involving the National Kream Co., Inc., and National Foods, Inc., both of Brooklyn, the court sustained the Commission's motion to dismiss the petition for review because of failure of the petitioners to prosecute the case. The petition for review of the Illinois Lumber & Material Dealers Association, Springfield, Ill., was dismissed by the court on motion of the petitioner and before a hearing on the merits.

In the United States District Courts, the Commission was successful in its suit for penalties against the Hamilton-Brown Shoe Co., St. Louis, for failure to supply certain information requested for use in connection with the Commission's report on agricultural income. The Commission also successfully resisted the attempt of the National Optical Stores Co. and others, Chicago, to enjoin the taking of testimony before its trial examiner.

The Wheeler-Lea Act, amending the Federal Trade Commission Act, provided that cease and desist orders of the Commission served on or before the date of the enactment of the act should become final 60 days thereafter. This 60-day period expired May 20, 1938. During that period, 23 petitions for review of cease and desist orders were filed by respondents with the Federal courts, as follows: Belmont Laboratories, Inc., Philadelphia; Bourjois, Inc., and Barbara Gould Sales Corporation, both of New York; Brown & Haley, Tacoma, Wash.; Bunte Bros., Inc., Chicago; California Rice Industry and its officers and members, San Francisco and points in California; Canterbury Candy Makers, Inc., Seattle; Capon Water Co. and Capon Springs Mineral Water, Inc., Philadelphia, and Capon Springs, W. Va.; Dietz Gum Co., Chicago; Fioret Sales Co., Inc., New York; Helen Ardelle, Inc., Seattle; H. N. Heusner & Son, Hanover, Pa.; Illinois Lumber & Material Dealers Association, Springfield, Ill.; Imperial Candy Co., Seattle; March of Time Candies, Chicago; Min ter Brothers and Douglass Candy Co., Philadelphia; National Candy Co., St. Louis; National Silver Co., New York; Oliver Brothers, Inc., New York, and others; Raladam Co., Detroit; Rogers Candy Co., Seattle; Sweet Candy Co., Salt Lake City; Tennessee Coal, Iron and Railroad Co., Birmingham, and United States Steel Corporation and certain subsidiaries, New York.

Unless otherwise indicated, the following cases involve violations of Section 5 of the Federal Trade Commission Act:

*Bear Mill Manufacturing Co., New York*, on November 3, 1937, petitioned the Second Circuit (New York) to review and set aside the Commission's cease and desist order prohibiting its use of the word "Mill" or "Manufacturing," as part of its corporate name, or in any other way, so as to represent that it manufactured the cotton and rayon fabrics it sold, unless and until it actually owned or controlled a mill in which they were made. The Commission's findings were to the effect that the company was engaged solely in the sale and distribution of fabrics manufactured by others.

After the filing of the transcript with the court, the Commission filed its cross petition asking that its order be affirmed and the company commanded to comply therewith. Briefs were filed by the company and the Commission on April 16 and May 10, 1938, respectively; and the case was argued on the merits, June 7, 1938. It was awaiting decision on June 30, 1938.

*Belmont Laboratories, Inc., Philadelphia*, engaged in the manufacture, sale, and distribution of "Mazon," a proprietary preparation which it advertises and sells as a treatment or remedy for various skin ailments and conditions, petitioned the Third Circuit (Philadelphia) on March 23, 1938, to review and set aside the Commission's cease and desist order directed against it.

The Commission's findings are to the effect that the petitioner's statements concerning the effectiveness of its product as a remedial agent in the treatment of ailments such as eczema, psoriasis, alopecia, ringworm, tinea sycosis, and acne, are not justified by the evidence in the record, that its advertising has resulted in the deception of a substantial portion of the purchasing public, and that there has been a diversion of trade to the petitioner from its competitors engaged in the manufacture, sale, and distribution of preparations sold for similar purposes who truthfully represent the therapeutic value of their products.

As of June 30, 1938, the case awaited printing of the transcript, briefs, and argument.

*Biddle Purchasing Co., New York, and others.*--Operating market information and purchasing services, this company, on October 8, 1937, joined 8 other concerns in filing in the Second Circuit (New York) a petition to review and set aside the Commission's order of July 17, 1937, requiring these companies to cease and desist from certain alleged violations of Section 2 (c), the brokerage section of the Robinson-Patman Anti-discrimination Act.

The Commission found that those of the petitioners who were sellers violated Section 2 (c) of the act by paying brokerage fees to the Biddle company, with knowledge of the fact that the fees were intended to be and were being paid over by the Biddle company to its buyers; that the buyers were violating the statute by receiving and accepting

brokerage fees paid by the sellers in connection with the purchase of commodities by said buyers, through the Biddle company; and that the latter was violating the statute by accepting such fees and transmitting them to the buyers.

This was the first case involving the legality of an order by the Commission under the Robinson-Patman Act to reach the Federal courts.

Briefs for the petitioners and the Commission were filed January 31 and March 7, 1938, respectively; the case was argued April 5, 1938, and decided May 2, 1938, the prayer of the petition that the order be set aside having been denied. In concluding its opinion (96 F. (2d) 687), the Court said:

Congress may have had in mind that one of the principal evils inherent in the payment of brokerage fees by the seller to the buyer directly or through an intermediary, is the fact that this practice makes it possible for the seller to discriminate in price without seeming to do so. If a price discount is given as a brokerage payment to a controlled intermediary, it may be and often is concealed from other customers of the seller. One of the main objectives of Section 2 (e) was to force price discriminations out into the open where they would be subject to the scrutiny of those interested, particularly competing buyers. \* \* \* The order entered is responsive to and justified by the findings of the Commission and satisfies the requirements of due process.

Petitioners refer to *Fairmont Creamery Co. v. Minn.*, 274 U. S. 1, 47 S. Ct. 506, 71 L. Ed. 893, 52 A. L. R. 163, which recognizes the distinction between prohibition and regulation. The rule of that case is not inconsistent with the principle here announced. Section 2 (c) was clearly intended to restore equality of opportunity in business by strengthening the anti-trust laws through protecting trade and commerce against unfair practices and unlawful price discrimination. The power of Congress to define this trade practice and declare it to be unfair cannot be doubted. *Federal Trade Commission v. Keppel & Bro.*, 291 U.S. 304, 54 S. Ct. 423, 78 L. Ed. 814.

A petition for rehearing was denied June 7, 1938.

*Bourjois, Inc., and Barbara Gould Sales Corporation, New York.*-These corporations, on May 19, 1938, filed with the Second Circuit (New York) their joint petition to review and set aside the Commission's order directing them to cease and desist from misrepresentation of the therapeutic value and place of origin of certain cosmetics manufactured and sold by them. The products involved in the order are "Barbara Gould Irradiated Face Powder," "Barbara Gould Irradiated Skin Food," "Barbara Gould Irradiated Skin Cream," and "Evening in Paris Talcum."

As to the so-called "irradiated" products, the companies, by the terms of the order, were required to discontinue representing that such products contain any beneficial elements of the natural rays of the Sun, or give off ultra-violet or any other rays which are beneficial in the treatment of the skin. The companies also were ordered to cease and desist from use of the names "Paris" and "France," and other

representations implying that various products were manufactured in France and imported into the United States, when such products were manufactured in this country. The order, however, did not prohibit use of the trade name "Evening in Paris" if not employed with the additional words "Paris" or "France," or picturizations or symbols indicating French origin.

*California Rice Industry, an association, its officers and members, San Francisco and points in California.*--Substantially all of the round grain or "Japan type" rice produced in the United States is grown in California, and is milled, sold, and distributed in interstate commerce by the members of this association. The average annual crop is about three million 100-pound bags of paddy (unhusked) rice, which is equivalent to 1,500,000 bags of clean rice.

The association and its officers and members, May 20, 1938, petitioned the Ninth Circuit (San Francisco) to review and set aside the Commission's order of March 26, 1938, which directed them to cease and desist from:

1. Fixing and maintaining uniform prices.
2. Compiling, publishing, and distributing any joint or uniform list or compilation of prices.
3. Adopting any joint or uniform price list or other device which fixes prices.
4. Discussing through the medium of meetings of the California Rice Industry or its Marketing and Crop Boards, or in any similar manner, uniform prices, terms, discounts, agreements upon prices, by resolution or otherwise, or employing any similar device which fixes or tends to fix prices, or which is designed to equalize or make uniform the selling prices, terms, discounts, or policies of respondent millers.
5. Fixing or determining the quotas or percentages of the rice crop that the miller respondents may mill or process which, thereby, unlawfully restricts or hinders the sale of rice or rice products in interstate commerce.

This cease and desist order is based upon detailed findings as to the facts, made after extensive hearings before a trial examiner, and after the Commission had concluded that the purposes, practices, and policies of the several respondents constituted an unlawful agreement to fix and maintain prices of rice and rice products in commerce; that competition in the sale of these products had been restricted and suppressed; and that the respondents had acquired a monopoly in the sale of California-Japan type rice.

As of June 30, 1938, the case awaited certification and printing of the transcript, briefing, and argument.

*Candy Lottery Cases, Denver, Chicago, Boston, St. Joseph, Mo., St. Louis, Brooklyn, Philadelphia, Salt Lake City, Seattle, Tacoma,*

*Wash., Eau Claire, Wis., and Milwaukee.*--Details of 22 Commission cases in the Federal courts involving lottery methods in the sale of candy and candy products are presented in the chronological order in which the respective proceedings were instituted.

On September 28, 1937, the Commission filed with the Tenth Circuit (Denver) applications for enforcement of its orders against three Denver companies, Cosner Candy Co., Brecht Candy Co., and Savage Candy Co., each of which elected not to contest the proceedings. The Court, October 21, 1937, made and entered its decree affirming the Commission's order against the Brecht company and commanding obedience thereto (92 F. (2d) 1002); and, on October 23, 1937, entered similar decrees against the Cosner (92 F. (2d) 1002) and Savage (92 F. (2d) 1003) companies.

The Second Circuit (New York), October 7, 1937, affirmed from the bench, without opinion, the Commission's order directed against Leader Novelty Candy Co., of Brooklyn (92 F. (2d) 1002). The case had arisen May 27, 1937, when the Commission docketed its application for enforcement.

The Commission, October 25, 1937, filed with the Seventh Circuit (Chicago) petitions for rules on A. McLean & Son, and M. J. Holloway & Co., both of Chicago, to show cause why they should not be adjudged in contempt for violation of decrees of that court entered July 1, 1936 (see 84 F. (2d) 910) affirming the Commission's orders. The court issued its rules November 4, 1937; the companies afterwards filed answers in the nature of motions to dismiss; argument was had January 11, 1938, and the court, February 8, 1938, dismissed the Commission's petitions for rules in the premises, although the decrees of affirmance still hold (94 F. (2d) 802).

An enforcement proceeding was instituted in the Seventh Circuit (Chicago) on October 28, 1937, against the Barager-Webster Co., of Eau Claire, Wis. The case was not contested, with the result that the court, December 15, 1937, entered its decree affirming the Commission's order and commanding obedience thereto (95 F. (2d) 1000).

Other enforcement proceedings were instituted by the Commission against Sol Block and Sidney Blumenthal, trading as Rittenhouse Candy Co., Philadelphia, as of November 24, 1937, resulting in an uncontested decree of affirmance and enforcement on January 5, 1938, by the Third Circuit (Philadelphia), and against Chase Candy Co., St. Joseph, Mo., as of December 11, 1937, resulting in an uncontested decree of the Eighth Circuit (St. Louis), January 20, 1938 (97 F. (2d) 1002), affirming the Commission's order and commanding obedience thereto.

The Commission applied to the First Circuit (Boston) on January 11, 1938, for enforcement of its order directed against Charles N. Miller Co., of that city. Argument on the merits was heard April 15,

1938; and the court, June 10, 1938, modified and affirmed the cease and desist order. In the course of its opinion (97 F. (2d) 563), it said:

This case differs in no respect from the one before the Court of Appeals in the Seventh Circuit, in *Federal Trade Commission v. A. McLean & Son, et al.* 84 Fed. (2d) 910 (certiorari denied, 299 U. S. 590), in which the court held that an order like the modified one here in question was too broad. It was there said:

“We are convinced, however, that paragraphs (1) and (2) of the cease and desist order are too broad in that they prevent the sale and distribution to jobbers and wholesalers for resale to retailers of any candy so packed and assembled that retail sales may be made by means of a lottery, or gaming device. This clearly would prevent the sale of any candy which might afterwards be sold by the retailer by means of a lottery, gaming device, or gift enterprise. Obviously, this was not the intention of Congress, and we think it was not the intention of the Commission. We have there fore stricken the word ‘may’ from paragraphs (1) and (2) of the orders and substituted the words are designed to, and as thus modified, the orders of the Commission are affirmed, and respondents, their officers, directors, agents, representatives, and employees are hereby ordered to comply therewith.”

We approve the decision in the McLean case and strike the word “may” from paragraphs (1) and (2) of the modified order and in its place substitute the words “are designed to”. With these modifications, the order of the Commission is affirmed and the respondent, its officers, directors, agents, representatives. and employees are merely ordered to comply therewith.

The Commission brought an enforcement proceeding against American Candy Company, of Milwaukee, in the Seventh Circuit (Chicago) February 21, 1938. It was uncontested, and the court, on Julie 29, 1938, entered its decree (97 F. (2d) 1001) affirming the cease and desist order and commanding the respondent to comply therewith.

Petitions to review and set aside the Commission’s orders in other lottery cases were filed with the Ninth Circuit (San Francisco) May 16, 1938, by Helen Ardelle, Inc., Canterbury Candy Makers, Inc., Imperial Candy Co., and Rogers Candy Co., all of Seattle, and by Brown & Haley, Tacoma, Wash.; with the Seventh Circuit (Chicago), May 16, by National Candy Co., St. Louis ; with the Third Circuit (Philadelphia) , May 18, by Minter Brothers and Douglass Candy Co., both of Philadelphia ; with the Seventh Circuit (Chicago) on May 18, by March of Time Candies and Dietz Gum Co., and on May 19, by Bunte Bros., Inc., all of Chicago ; and with the Tenth Circuit (Denver), May 19, by Sweet Candy Co., of Salt Lake City. These cases await certification and printing of transcripts of record, briefing and argument.

*Capon Water Co., Philadelphia, and Capon Springs Mineral Water , Inc., Capon Springs, W. Va.*, on May 19, 1938, petitioned the Third Circuit (Philadelphia) to review amid set aside the Commission’s order of January 20, 1938. This order directed them to cease and desist

from representing, directly or by implication, that the use of their product, "Capon Springs Water" alone, either externally or internally, will cure kidney troubles, nephritis, rheumatism, arthritis, and some 30 other diseases and ailments.

As of June 30, 1938, the case awaited certification and printing of the record, briefing and argument.

*Chicago Silk Co., Chicago*, on October 23, 1937, petitioned the Supreme Court for writ of certiorari to review the decision of the Seventh Circuit (Chicago) of June 24, 1937 (90 F. (2d) 689), unanimously sustaining the Commission's cease and desist order directed against the sale of hosiery and lingerie by means of lottery methods. The petition for certiorari was denied on December 6, 1937 (302 U.S. 753).

*Electro-Thermal Co., Steubenville, Ohio.*-The Ninth Circuit (San Francisco) , July 19, 1937, unanimously affirmed the Commission's cease and desist order prohibiting certain misrepresentations concerning this company's electrical device for treatment of prostatic and other ailments.

The Court in the course of its opinion, said (91 F. (2d) 477):

In this case there are definitely identified parties manufacturing and selling in interstate commerce a device adapted to the same purposes as is the petitioner's. The manner of their competition--how one may divert trade from another--is obvious. There is sufficient evidence to warrant a finding that competition exists.

What the record lacks is any direct evidence to the effect that petitioner's misleading advertising claims diverted any business from its competitors. This, however, is not required by the decision in the *Raladam* case, and would in many cases be impossible to prove. It would seem to be sufficient to show actual or potential competition and unfair trade practices which reasonably tend to give the perpetrator an advantage in such competition. That much certainly was shown here.

\* \* \* \* \*

the Commission's informal prayer for affirmation of the Commission's order is properly here. It appears that the court is vested with plenary Jurisdiction no matter which party brings the cause before it.

The company petitioned the Supreme Court for a writ of certiorari on October 14, 1937; the Commission filed its opposition brief, November 3, and the petition was denied, November 15 (302 U.S. 748).

*Fairyfoot Products Co., Chicago.*--The Commission, October 25, 1937, filed with the Seventh Circuit (Chicago) its petition for a rule to show cause why this company should not be adjudged in contempt for violation of the Court's decree of December 23, 1935 (see 80 F. (2d) 684), affirming the Commission's order to cease and desist, which was directed against various extravagant claims for the curative properties of a medicated pad for bunion treatment. The Court issued its rule November 13, 1937 ; argument was had January 12,

1938, and the Court, February 11, 1938, dismissed the Commission's petition, holding that its former decree of affirmance "was not in legal effect an enforcement decree \* \* \* enjoining the petitioner from violating the injunctive order of this Court." (94 F. (2d) 844).

*Louis Dubinoff, trading as Famous Pure Silk Hosiery Co., Newark, N. J.*--The Commission, November 24, 1937, filed with the Third Circuit (Philadelphia) an application for enforcement of its cease and desist order which forbade Dubinoff from representing in any way: that he owned, controlled, or operated the mill or factory in which was manufactured the hosiery offered for sale or sold by him, "unless and until he does in fact own, control, or operate such mill or factory;" that lie was a direct mill distributor when lie was not, and that the hosiery sold by him was "runproof" when the contrary was the case. The Court heard argument on March 11, 1938, and on June 3, 1938, entered its decree affirming the Commission's order and commanding obedience thereto.

*Fioret Sales Company, Inc., New York*, in connection with the interstate sale and distribution of perfumes, was directed to cease and desist from representing, directly or through implication, through the use of such words as "Les Parfums des Jardine de Fioret," or through the use of any foreign words or phrases, or through any other means or device, or in any manner, that perfumes manufactured or compounded in the United States are made or compounded in France or in any other foreign country, or are imported. The company, May 17, 1938, petitioned the Second Circuit (New York) to review and set aside the Commission's order, and at the close of the fiscal year the case awaited the printing of the record, briefing, and argument.

*Goodyear Tire & Rubber Co., Akron, Ohio.*--The petition of the Goodyear Tire & Rubber Co. to review and set aside the Commission's order to cease and desist issued March 5, 1936, was pending as of July 1, 1937, in the Sixth Circuit (Cincinnati). The Commission's order had directed the Goodyear company, its subsidiaries, and their officers and agents, to cease and desist from discriminating in price in violation of Section 2 of the Clayton Act, between Sears, Roebuck & Co. and the Goodyear Company's retail-dealer customers by selling automobile tires to Sears, Roebuck & Co. at net realized prices lower than those at which the Goodyear Company sold the same sizes of tires of comparable grade and quality to individual the dealers or other purchasers. A printed condensation of the large record had been filed with the Court, together with briefs for both parties.

The case was argued on the merits October 5, 1937, and the Court, November 5, 1937, set aside the Commission's order and remanded the case, but without direction to the Commission to dismiss the complaint and without prejudice to its filing a supplemental com-

plaint in the original proceeding if, under the Robinson-Patman Act, this might be done. The Court was of the opinion that the controversy between the Goodyear Company and the Commission had become moot (92 F. (2d) 677), because the Goodyear Company, after the effective date of the Robinson-Patman Act, had ceased the manufacture of tires for Sears-Roebuck under the terms of the existing contract and had received notice of its cancellation; and, because all transactions between the two companies had ceased and obligations were terminated by mutual releases.

A petition for writ of certiorari, filed on behalf of the Commission with the Supreme Court of the United States, February 5, 1938, was granted March 7, 1938 (303 U. S. 631). The case was argued April 25, 1938, and the Court, May 16, 1938, in a *per curiam* decision (304 U. S. 257), reversed the decree of the Sixth Circuit and remanded the case for determination of the merits. The Court said:

Discontinuance of the practice which the Commission found to constitute a violation of the Act did not render the controversy moot. \* \* \* The Commission, reciting its findings and the conclusion that respondent had violated the Act, required respondent to cease and desist from the particular discriminations which the order described. That is a continuing order. Its efficacy, if valid, was not affected by the subsequent passage or the provisions of the amendatory Act. As a continuing order, the Commission may take proceedings for its enforcement if it is disobeyed. But under the statute respondent was entitled to seek review of the order and to have it set aside if found to be invalid. The question which both parties sought to have the Circuit Court of Appeals decide *was* whether respondent's conduct was a violation of the original statute. Upon the conclusion that it was such a violation, the Commission based its order. Neither the transactions subsequent to that order nor the passage of the amendatory Act deprived the respondent of its right to challenge the order and to have its validity determined or the Commission of its right to have its order maintained if validly made.

*Great Atlantic & Pacific Tea Co., New York*, on March 18, 1938, petitioned the Third Circuit (Philadelphia) to review and set aside the Commission's cease and desist order of January 25, 1938. This was the second Commission case involving the legality of the Robinson-Patman Anti-discrimination Act to reach the courts.

The order directed the respondent company to cease and desist from the following practices held to be in violation of the brokerage section of the Robinson-Patman Act:

(1) Making purchases of commodities, and the policy and practice of making purchases of commodities, at a so-called net price, and every other price, which reflects a deduction or reduction, or is arrived at or computed by deducting or subtracting, from the prices at which sellers are selling said commodities to other purchasers thereof, any amount representing, in whole or in part, brokerage currently being paid by sellers to their brokers on sales of said commodities made for said sellers by, or by said sellers through, their said brokers, and:

(2) Accepting, and the policy and practice of accepting, on its purchases of commodities from sellers any so-called quantity discounts and payments of all kinds representing, in whole or in part, brokerage currently being paid by sellers to their brokers on sales of said commodities made for said sellers by, or by, said sellers through, their said brokers, and:

(3) Accepting, and the policy and practice of accepting, on its purchases of commodities from sellers prices reflecting, and all allowances and discounts representing, brokerage savings effected by sellers on their sales of commodities to the respondent.

(4) Accepting, and the policy and practice of accepting, on its purchases of commodities all allowances and discounts in lieu of brokerage, in whatever form said allowances and discounts may be allowed, granted, paid, or transmitted to the respondent.

As of June 30, 1938, a certified transcript of the record had been filed with the Court and the next steps were to be printing of the transcript, filing of briefs, and oral argument.

*Hamilton-Brown Shoe Co., St. Louis.*--On March 19, 1938, there was filed in the District Court of the United States for the Eastern District of Missouri a suit for approximately \$69,000, which represented penalties for failure of the Hamilton-Brown Shoe Co. to file with the Commission up to that time certain information called for in questionnaires sent to the company in 1936.

The proceeding was instituted under direction of the Attorney General under Section 10 of the Federal Trade Commission Act. The information in question was desired by the Commission in connection with its report on agricultural income (see p.30).

Due to certain mitigating circumstances, and the fact that the company finally had furnished the Commission with all the information requested, the suit was settled by the imposition of a nominal penalty on April 29, 1938.

*Justin Haynes & Co., Inc., New York.*--Petition for review of the Commission's order prohibiting certain alleged misrepresentations concerning the therapeutic value of a medication designated "Aspirub," was docketed with the Second Circuit (New York) June 10, 1938.

The Commission's findings, based on testimony and other evidence, are to the effect that the company's advertising representations have the capacity amid tendency to and do mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken beliefs that the company's preparation has a substantial therapeutic and curative value in the treatment of the ailments for which it is recommended.

*H. N. Heusner & Son, Hanover, Pa.*, on May 18, 1938, petitioned the Third Circuit (Philadelphia) to review and set aside the Com-

mission’s order of May 29, 1937, which directed it to cease and desist from “representing, through the use of the words “Havana” or “Habana,” alone or in conjunction with any other word or words, or through the use of any other words of similar import and effect, or in any other manner, that cigars not manufactured entirely from tobacco grown on the Island of Cuba are Havana cigars.” The Commission found that the petitioner’s “Heusner’s Havana Smokers” and “Martinez Havana Smokers,” have not at any time contained Havana tobacco, but have been manufactured entirely from domestic tobacco grown in the United States.

*Illinois Lumber & Material Dealers Association, Springfield, Ill.*, on May 18, 1938, docketed with the Seventh Circuit (Chicago) its petition to review and set aside the Commission’s order of December 30, 1937, directed against it as one of the members of the National Federation of Builders Supply Associations (Docket No.2191) which association, according to findings, participated in certain practices tending to substantially lessen and suppress competition in the sale of building materials and builders’ supplies and enhance the cost to consumers of the industry’s products. The Court, June 28, 1938 (97 F. (2d) 1005), entered its order dismissing this proceeding on the basis of a prior order of the Commission dismissing its complaint against the Illinois association.

*L. & C. Mayers Co. Inc., New York.-The* Second Circuit (New York), June 6, 1938, in a unanimous decision, affirmed the Commission’s cease and desist order in this case and directed enforcement thereof. The suit originated December 21, 1935, when this company petitioned the Court to set aside the order, which was directed against alleged misrepresentations to the effect that the company was a “wholesaler” of jewelry selling directly to the purchasing public, with consequent saving of the usual retailer’s profit.

Pertinent excerpts from the opinion of the Court follow (97 F. (2d) 365):

The theory of the Commission’s complaint is that the company sells to ultimate consumers; that in aid of such sales it uses catalogues designating itself as a wholesaler and that the purchasing public regards it as such--one selling to retailers at a price lower than the price at which the retailer sells; that consumers infer from this representation that they are buying at the prices at which retailers purchase, thereby saving an amount equal to the retailer’s profit, and that the prices as fixed in the catalogues are wholesale prices; but such is not the fact and the consumer purchaser is thereby deceived.

\* \* \* \* \*

The evidence of experts as well as of other manufacturers and Jewelers justifies the conclusion of the respondent [the Commission] that the petitioner was not a wholesaler. Such false and misleading representations which have a tendency and capacity to induce the purchase of petitioner’s products in preference to the products of others (competitors) constitutes unfair competition within the meaning of Section 5 of the Federal Trade Commission Act.

\* \* \* \* \*

Petitioner contends that there is no public Interest involved and therefore the order should not be approved. It Is in the interest of the public to prevent the sale of commodities by the use of false and misleading statements and representations.

\* \* \* \* \*

Indeed, a representation may be unlawful under Section 5 although the trader makes It innocently. *F. T. C. v Algoma Lumber Co.*, 291 U. S. 67, 81. It is not necessary that the product so misrepresented be Inferior or harmful to the public; it Is sufficient that the sale of the product be other than as represented. *F. T. C. v. Royal Milling Co.*, *supra*.

*Millinery Creators' Guild, Inc. and others, New York*, on November 19, 1937, filed with the Second Circuit (New York) their petition for review and reversal of the Commission's cease and desist order of April 29, 1937, directed against certain "cooperative" practices having the alleged effect of lessening competition in the interstate sale of women's hats.

The companies concerned, through their guild, effected a plan which involved a "declaration of cooperation" among them and some 1,600 high-grade retailers throughout the country, all of whom, according to the Commission's findings, agreed to promote and observe the guild rules intended to prevent "piracy" of styles and designs originated by the members, and to restrict the sale of high-grade millinery to models originated by such members.

The transcript has been printed and the Commission has filed a cross petition requesting the Court to affirm and enforce the Commission's order to cease and desist. As of June 30, 1938, the case awaited briefing and argument.

*National Kream Co., Inc., and National Foods, Inc., Brooklyn*, on July 9, 1937, petitioned the Second Circuit (New York) to review and set aside the Commission's cease and desist order directing the discontinuance of alleged unfair methods of competition in the sale of preserves and jams or imitations thereof.

The Commission's findings, supported by evidence, are to the effect that the respondents sold certain products as preserves and jams prepared under formulas at variance with the commercially recognized ratio of a minimum of 45 pounds of actual fruit to each 55 pounds of sugar. Findings disclose that the respondents' products are adulterated by substitution of a mixture of water, sugar, and pectin for part of the fruit content required in pure preserves and jams, with the result that, in selling such adulterated products as genuine, the respondents have saved considerable expense in manufacture and gained an unfair advantage over competitors selling the genuine products.

On the basis of the Commission's motion that the petitioners had failed to print the transcript in accordance with the rules, the Court, June 6, 1938, dismissed the petition.

*National Silver Co., New York*, filed with the Second Circuit (New York), May 17, 1938, a petition to set aside the Commission's cease and desist order which forbade "using the word 'Stainless' as a trade name, brand, stamp, label, or part thereof, or otherwise, upon or for knives and flatware cutlery, or in advertising or representing the same unless such knives and flatware cutlery are made of steel containing from 9 percent to 16 percent of chromium and containing not more than 0.7 percent carbon."

The order further prohibited "marking, branding, stamping, designating, or advertising chromium-plated knives and flatware cutlery with the word 'Stainpruf,' or with a similar word or words indicating that such products are in fact stain proof."

The percentages of chromium and carbon referred to in the order represent, according to findings supported by evidence, the recognized proportions of these ingredients in cutlery stainless steel, an alloy produced from iron, chromium, and carbon and possessing to a high degree the quality of resisting oxidation and corrosion.

As of June 30, 1938, no further action had been taken.

*Oliver Brothers, Inc., New York, and others.*--A petition to review and set aside the Commission's order of December 31, 1937, was docketed with the Fourth Circuit (Richmond, Va.) on May 20, 1938.

The Commission's order prohibited practices found to have been in violation of the brokerage section of the Robinson-Patman Anti-discrimination Act and named as respondents this New York concern which sells a market information service and purchasing services principally to wholesalers, and certain companies for which Oliver Brothers either purchases or sells commodities, including automobile, electrical, radio, mill, machine, plumbing, steam, and hardware supplies.

The order prohibited:

(1) Receiving or accepting any fee or commission, as brokerage or as an allowance in lieu thereof, from any seller of commodities, which fee or commission is intended to be paid over to the purchaser of such commodities, or which is to be applied for the use and benefit of such purchaser;

(2) Paying or granting to any purchaser of commodities any fee or commission received or accepted by said Oliver Brothers, Inc., as brokerage or an allowance in lieu thereof, from the seller of such commodities.

As of June 30, 1938, the case awaited certification of the record, briefing, and argument.

*Raladam Co., Detroit*, engaged in the interstate sale of a desiccated thyroid preparation described as "Marmola," on May 16, 1938, petitioned the Sixth Circuit (Cincinnati) to review and set aside the Commission's order of January 21, 1937, directed against what the

Commission found to be unwarranted and extravagant claims as to the value of Marmola as a weight reducing agent.

The Commission found that the acts and practices of the Raladam Co. were to the prejudice of the public and of the company's competitors, and constituted unfair methods of competition in interstate commerce.

As of June 30, 1938, no further action had been taken.

*Benjamin D. Ritholz and others, trading as National Optical Stores Co. and others, Chicago.*--This case involved various alleged misrepresentations with reference to optical goods. It had been set down for the taking of testimony on December 2, 1937, before a Commission trial examiner. On November 30, 1937, counsel for the several respondents filed with the District Court of the United States for the Northern District of Illinois their motion for a temporary injunction, alleging, among other things, that their business was purely intrastate and that the Commission, therefore, was without jurisdiction to hold hearings in pursuance of the charges set forth in its complaint. The Commission countered with a motion to dismiss the respondents' bill of complaint, which motion was sustained. The injunction proceedings were dismissed December 3, 1937, and the Commission was free to continue taking testimony before its trial examiner.

*Sheffield Silver Co., Jersey City, N.J.*, on March 17, 1938, filed with the Second Circuit (New York) its petition to set aside the Commission's cease and desist order. The company, a manufacturer of silver-plated hollow-ware, had been ordered to cease using the word "Sheffield" in its corporate name or in any other manner, so as to represent or imply that its electroplated products were "Sheffield" or made by the Sheffield process, which originated in England about 200 years ago.

Transcript was filed with the Court and the Commission cross-petitioned for affirmance and enforcement of its order. After briefing, the case was argued on the merits, June 7, 1938. As of June 30, it awaited decision.

*Standard Education Society, and others, Chicago.*--On certiorari granted April 26, 1937 (301 U.S. 674), this case was pending July 1, 1937, in the Supreme Court for review of the Second Circuit's (New York) decision of December 14, 1936 (86 F. (2d) 692), reversing, in certain particulars, the Commission's cease and desist order, which was directed against misleading advertisements and representations in connection with the interstate sale and distribution of encyclopedias and so-called extension services.

Briefs were filed and the case argued October 18, 1937. The Supreme Court, on November 8, 1937 (302 U. S. 112), unanimously

reversed the Second Circuit's decree, saying in the course of its opinion:

The fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced. There is no duty resting upon a citizen to suspect the honesty of those with whom he transacts business. Laws are made to protect the trusting as well as the suspicious. The best element of business has long since decided that honesty should govern competitive enterprises, and that the rule of *caveat emptor* should not be relied upon to reward fraud and deception.

The practice of promising free books where no free books were intended to be given, and the practice of deceiving unwary purchasers into the false belief that loose leaf supplements alone sell for \$69.50, when in reality both books and supplement regularly sell for \$69.50, are practices contrary to decent business standards. To fail to prohibit such evil practices would be to elevate deception in business and to give to it the standing and dignity of truth.

\* \* \* \* \*

The courts do not have a right to ignore the plain mandate of the statute which makes the findings of the Commission conclusive as to the facts if supported by testimony. The courts cannot pick and choose bits of evidence to make findings of fact contrary to the findings of the Commission. The record in this case is filled with evidence of witnesses under oath which support the Commission's findings.

Petition for rehearing was denied by the Supreme Court December 20, 1937 (302 U. S. 779) and a subsequent motion to amend the opinion and to recall and amend the mandate was denied January 10, 1938 (302 U.S. 661).

On June 13, 1938, the Second Circuit, in a per curiam decision (97 F. (2d), 513), denied the motion of the Standard Education Society and its associates for resettlement of the decree and adopted the form of decree submitted by the Commission. In this connection it said:

The respondents insist that the tenth paragraph of our order should be left unchanged, and that by enjoining the individual respondents in respect of the conduct there forbidden, we have added to the mandate of the Supreme Court.

\* \* \* \* \*

However, not to enjoin the Individual respondents so far as the corporation is enjoined, would falsify the whole theory of the Supreme Court, which reversed us for not including them *pari passu* with the corporation.

\* \* \* \* \*

It is true that a lower court must not undertake to change by one jot the decision of the court above; but for that very reason it should try to understand it; and to adhere to a purely verbal construction which will defeat its obvious intent, is not a way to do so. For these reasons we have signed the Commission's order, and denied the respondents' motion for resettlement

*United States Steel Corporation, American Bridge Company, Carnegie-Illinois Steel Corporation, the American Steel and Wire Co. of*

*New Jersey, and Tennessee Coal, Iron and Railroad Co.*--These corporations, May 18, 1938, petitioned the Third Circuit (Philadelphia) to review and set aside the Commission's cease and desist order of July 21, 1924, which was directed against so-called "Pittsburgh plus" prices for rolled-steel products, in violation of Section 2, the price-discrimination section of the Clayton Act, and of Section 5 of the Federal Trade Commission Act, as an unfair method of competition.

A separate petition was filed simultaneously with the Fifth Circuit (New Orleans) by the Tennessee Coal, Iron and Railroad Co. By stipulation of the parties, it is provided that the judgment and decree of the Fifth Circuit may be made in conformity with such decision as may be rendered in the Third Circuit or in the Supreme Court.

Under the "Pittsburgh plus" system, the prices of steel made by mills in the Chicago area and other districts outside of Pittsburgh were quoted f. o. b. Pittsburgh, although such steel was not manufactured in Pittsburgh. The result was that when a steel user in Chicago, for instance, purchased steel from a Chicago mill, he paid a price f. o. b. Pittsburgh plus an amount equivalent to what the freight charge would have been on such steel if the same had been shipped from Pittsburgh to Chicago. In other words, the Chicago user had to pay a higher price for his steel than a Pittsburgh competitor paid by the amount of the freight rate between the two points. The same was true as to every other point outside Pittsburgh except as to certain products of the southern steel mills.

The Commission's order directed the United States Steel Corporation and certain of its subsidiaries to cease and desist from (1) quoting or selling rolled-steel products at "Pittsburgh plus" prices; (2) quoting or selling such steel products upon any other basing point than that where the products were manufactured or from which they were shipped; (3) selling or contracting to sell or invoicing such products without clearly indicating in such sales, or upon such contracts or invoices, how much was charged for such steel products f. o. b. the producing mill or shipping point, and how much was charged for actual freight, if any, from the producing or shipping point to destination; and (4) from discriminating in the price of their products between different purchasers thereof in violation of law.

As of June 30, 1938, the case awaited certification and printing of the transcript, briefing and argument.

## TABLES SUMMARIZING WORK OF THE LEGAL DIVISIONS AND COURT PROCEEDINGS 1915-38

TABLE 1.--*Preliminary inquiries*

	1915	1916	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938
Pending beginning of year	0	4	12	32	19	29	61	68	147	102	191	176	298	328	224	260	409	307	423	478	760	185	111	152
Instituted during year	119	265	482	611	843	1,107	1,070	1,223	1,284	1,568	1,612	1,483	1,265	1,331	1,469	1,605	1,380	1,650	1,593	2,151	847	837	899	527
Total for disposition	119	269	474	643	862	1,136	1,131	1,291	1,381	1,670	1,303	1,659	1,503	1,659	1,693	1,765	1,789	1,965	2,016	2,629	1,607	1,022	1,010	679
Consolidated with other proceedings	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Closed after investigation	3	123	289	292	298	351	500	731	897	1,157	1,270	1,075	912	1,153	1,049	1,060	1,150	1,319	1,274	1,597	935	624	583	453
Docketed as applications for																								
complaints	112	134	153	332	535	724	503	413	382	322	357	286	293	282	384	296	332	224	264	272	487	237	275	110
Total disposition during year	115	257	442	624	833	1,075	1,063	1,144	1,279	1,479	1,627	1,361	1,235	1,435	1,433	1,356	1,482	1,543	1,518	1,849	1,422	911	858	563
Pending end of year	4	12	32	19	29	61	68	147	102	191	176	298	328	224	260	409	307	423	478	760	185	111	152	116

## CUMULATIVE SUMMARY--TO JUNE 30, 1939

Inquiries instituted		27,040
Closed after investigation	19,125	
Docketed as applications for complaints	7,819	
Total disposition		26,944
Pending June 30,1939		116

## ANNUAL REPORT OF THE FEDERAL TRADE COMMISSION

TABLE 2.--*Applications for complaints*

	1915	1916	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938						
Pending beginning of year						0	104	130	188	280	389	554	467	458	572	5665	488	420	457	530	843	753	754	440	476	469	634	685	964	
Complaints docketed						112	134	153	332	535	724	426	382	416	337	340	273	292	334	679	535	511	378	404	376	913	1,221	1,477	1,402	
Rescissions:																														
To complaints						0	0	0	0	0	0	0	0	0	0	0	0	2	2	0	3	0	0	0	0	0	3	0		
Settled by stipulations to cease and desist C.T.E. 1						0	0	0	0	0	0	0	1	1	1	0	2	2	3	5	3	3	1	6	6	9	18			
Settled by stipulations to cease and desist S.B.I. 1						0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	4	12	18	17				
Settled by acceptance of T. P.C. rules						0	0	0	0	0	0	0	0	0	0	0	1	3	2	0	0	0	0	0	0	0	0	0	0	
Consolidated with other proceedings						0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Dismissed for lack of merit							0	0	0	0	0	0	5	6	4	3	4	0	0	0	3	4	1	0	3	1	12	12	14	
Closed for other reasons						0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	3	3	9			
Total for disposition						112	238	283	520	515	1,113	980	854	880	954	909	766	712	793	1,212	1,389	1,277	1,136	850		859	1,394	1,888	2,205	2,424
To complaints						0	3	16	80	125	220	156	104	121	143	118	57	45	58	100	171	110	90	52	98	259	382	290	310	
Settled by stipulations to cease and desist--C.T.E. 1						0	0	0	0	0	0	0	0	3	5	102	80	68	118	244	160	123	96	111	228	301	252	187		
Settled by stipulations to cease and desist--S.B.I. 1						0	0	0	0	0	0	0	0	0	0	0	0	0	31	43	209	85	90	129	243	362	377			
Settled by acceptance of T.P.C. rules						0	0	0	0	0	0	0	0	0	2	3	19	17	32	5	6	3	0	1	0	0	4			
Consolidated with other proceedings						0		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed for lack of merit						0	8	105	79	160	301	339	357	292	187	243	298	185	127	118	134	158	205	268	138	91	66	4	0	
Closed for other reasons:					1		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	77	273	337	356
Total disposition during year						8	108	95	240	426	559	513	396	308	389	421	346	255	263	369	636	523	696	374	390	760	1,203	1,241	1,234	
Pending end of year						104	130	188	280	389	554	467	458	572	656	488	420	457	530	843	753	754	440	476	469	634	685	694	1,190	

TABULAR SUMMARY OF LEGAL WORK 95

CUMULATIVE SUMMARY--To June 30,1938

Applications docketed	
Rescissions:	12,726
To complaints	10
Settled by stipulations to cease and desist--C. T. E	61
Settled by stipulations to cease and desist--S. B. I	54
Settled by acceptance of trade practice conference rules	6
Dismissed for lack of merit	72
Closed for other reasons <sup>2</sup>	14
Total for disposition	12,043
To complaints	3,108
Settled by stipulations to cease and desist T. E	2,078
Settled by stipulations to cease and desist-S. B. I	1,569
Settled by acceptance of trade practice conference rules	92
Dismissed for lack of merit	3,863
Closed for other reasons <sup>2</sup>	1,043
Total disposition	11,753
Pending June 30, 1938	1,190

<sup>1</sup> C. T. E. designates stipulations concerning general unfair practices negotiated for the Commission by its chief trial examiner. S. B. I. indicates stipulations handled by the special board of investigation in cases of false and misleading advertising.

<sup>2</sup> This classification includes such reasons as death, business or practices discontinued, private controversy, controlling court decisions, etc.

## ANNUAL REPORT OF THE FEDERAL TRADE COMMISSION

TABLE 3.--*Complaints*

	1915	1916	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933	1984	1935	1936	1937	1938						
Pending beginning of year						0	0	5	10	86	133	286	312	257	232	264	220	152	147	136	198	275	225	208	144	115	218	419	358	
Complaints docketed						0	5	9	154	135	308	177	111	144	154	132	62	76	64	149	172	110	92	53	97	280	386	296	308	
Rescissions:																														
Orders to cease and desist						0	0	0	0	0	0	1	0	0	5	0	0	1	1	0	0	1	0	0	1	12	10	12		
Settled by stipulations to cease and desist						0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Settled by acceptance of T. P.C. rules						0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed for lack of merit						0	0	0	0	0	1	0	1	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0
Closed for other reasons						0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total for disposition						0	5	14	164	221	441	415	423	402	392	396	282	230	212	285	370	385	318	261	241	396	616	725	675	
Complaints rescinded						0	0	0	0	0	0	0	0	0	0	0	0	0	3	2	1	3	0	0	0	0	3	0		
Orders to cease and desist						0	0	3	71	75	111	116	91	82	92	73	44	52	48	67	48	108	83	56	111	126	161	296	245	
Settled by stipulations to cease and desist						0	0	0	0	0	0	0	0	0	6	3	1	3	3	3	0	1	1	2	1	1	17	5		
Settled by acceptance of T.P.C. rules						0	0	0	0	0	0	0	0	0	0	5	5	1	0	1	0	6	0	0	0	0	0	0	0	
Dismissed for lack of merit						0	0	1	7	13	44	37	75	88	36	97	83	25	20	16	41	49	45	41	12	38	19	13	13	
Closed for other reasons:						0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	13	16	38	16	
Total disposition during year						0	0	4	78	88	155	153	166	170	128	176	130	83	76	87	95	160	110	117	126	178	197	367	279	
Pending end of year						0	5	10	86	133	286	312	257	232	264	220	152	147	136	198	275	225	208	144	115	218	419	358	396	

TABULAR SUMMARY OF LEGAL WORK 97

CUMULATIVE SUMMARY--TO JUNE 30, 1938

Complaints	3,471	
Rescissions:		
Orders to cease and desist		
Contest	23	
Consent	21	
Settled by stipulations to cease and desist	0	
Settled by acceptance of T. P. C. rules	0	
Dismissed for lack of merit	4	
Closed for other reasons <sup>1</sup>	0	
Total for disposition		3,519
Complaint rescinded	12	
Orders to cease and desist		
Contest	2,437	
Consent	731	
Settled by stipulations to cease and desist	47	
Settled by acceptance of T. P. C. rules	18	
Dismissed for lack of merit	813	
Closed for other reasons <sup>1</sup>	84	
Total		3,124
Pending June 30, 1939		395

<sup>1</sup> This classification includes such reasons as death, business or practices discontinued, private controversy, controlling court decisions, etc.

## ANNUAL REPORT OF THE FEDERAL TRADE COMMISSION

TABLE 4.--*Court proceedings--Orders to cease and desist--Petitions for review--Lower courts*

	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938						
Pending beginning of year						0	2	8	13	9	4	14	9	8	8	8	85	3	8	15	2	1	8	8	3	
Appealed						4	9	18	5	5	15	6	5	4	4	34	1	10	22	3	1	5	8	2	29	
Total for disposition						4	11	26	18	14	19	20	14	12	7	37	38	13	30	18	3	6	9	7	82	
Decisions for Commission						1	0	1	4	5	1	6	5	4	3	1	4	3	1	2	2	3	4	3	3	
Decisions for others						1	3	11	5	4	4	3	1	2	1	1	28	1	11	13	0	0	0	0	0	
Petitions withdrawn						0	0	1	0	1	0	2	0	3	0	0	3	1	8	1	0	0	0	0	1	2
Total disposition during year						2	3	13	9	10	5	11	6	9	1	2	33	5	15	16	2	3	4	4	5	
Pending end of year						2	8	13	9	4	14	9	8	8	3	35	3	8	15	2	1	3	5	3	27	

## CUMULATIVE SUMMARY-TO JUNE 30, 1938

Appealed	188
Decision for Commission	56
Decisions for others	1 87
Petitions withdrawn	18
Total disposition	161
Pending June 30, 1939	27

1 This table lists a cumulative total of 89 decisions in favor of the respondents in Commission cases before the United States Circuit Courts of Appeals. However, the Grand Rapids furniture (vener) group (with 25 different docket numbers) was in reality 1 case, with 25 different subdivisions. It was tried, briefed, and argued, as 1 case and was so decided by the court of appeals. The same held true of the curb-pump group (with 12 different subdivisions), the Royal Milling Co. group (with 6 different subdivisions), and the White Pine cases (12 subdivisions). In reality, therefore, these 55 docket numbers mean but 4 cases; and, if cases and not docket numbers are counted, the total of decisions favor of the respondents would be 36.



TABULAR SUMMARY OF LEGAL WORK 99

TABLE 5.--*Court proceedings--Orders to cease and desist--Petitions for review--Supreme Court of the United States*

	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935	1938	1937	1938
Pending beginning of year	0	0	1	3	3	1	0	4	6	1	0	1	0	0	0	1	0	0	1	0
Appealed by Commission	0	2	2	4	5	0	5	2	1	0	0	1	1	0	8	1	2	0	0	0
Appealed by others	0	0	0	0	2	1	1	3	1	0	2	0	0	1	0	1	0	4	0	2
Total for disposition	0	2	3	7	10	2	6	9	8	1	2	2	1	1	8	14	0	4	1	2
Decisions for Commission	0	0	0	2	0	0	0	0	3	0	0	0	0	0	0	13	0	0	0	0
Decisions for others	0	1	0	0	5	1	0	0	2	0	0	1	1	0	0	1	0	0	0	0
Petitions withdrawn by																				
Commission	0	0	0	0	1	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0
Certiorari denied Commission	0	0	0	2	1	0	1	2	1	0	0	0	0	0	1	0	0	0	0	0
Certiorari denied others	0	0	0	0	2	1	1	1	1	1	1	0	0	1	0	0	0	3	1	2
Total disposition during year	0	1	0	4	9	2	2	3	7	1	1	2	1	1	7	14	0	3	1	2
Pending end of year	0	1	3	3	1	0	4	6	1	0	1	0	0	0	1	0	0	1	0	0

CUMULATIVE SUMMARY-TO JUNE 30, 1939

Appealed by Commission	43
Appealed by others	18
Total appealed	61
Decisions for Commission	24
Decisions for others	12
Petitions withdrawn by Commission	2
Certiorari denied Commission	8
Certiorari denied others	15
Total disposition	61
Pending June 30, 1939	0

ANNUAL REPORT OF THE FEDERAL TRADE COMMISSION

TABLE 6.--*Court proceedings--Order to cease and desist--Petitions for enforcement--Lower Courts*

	1919	1920	1921	1922	1922	1924	1925	1925	1927	1928	1929	1930	1931	1932	1933	1934	1935	1938	1937	1938						
Pending beginning of year							0	0	0	0	0	1	0	2	3	2	5	3	2	1	2	2	2	5	1	
Appealed							0	0	0	0	1	1	1	3	2	3	9	4	3	0	2	3	6	12	9	9
Total for disposition							0	0	0	0	1	4	2	3	4	6	11	9	6	2	3	5	8	14	14	10
Decisions for Commission							0	0	0	0	1	0	2	0	0	1	5	4	4	0	0	3	4	8	12	10
Decisions for others							0	0	0	0	0	0	1	0	1	0	1	0	1	0	0	0	0	0	0	0
Petitions withdrawn							0	0	0	0	0	0	0	1	2	0	1	0	0	1	0	2	1	1	1	0
Total disposition during year							0	0	0	0	1	0	2	1	1	4	6	6	4	1	1	3	6	9	13	10
Pending end of year							0	0	0	0	1	0	2	3	2	5	3	2	1	2	2	2	2	5	1	0

CUMULATIVE SUMMARY--TO JUNE 30, 1938

Appealed	68
Decisions for Commission	54
Decisions for others	4
Petitions withdrawn	10
Total dispositions	68
Pending June 30, 1938	0

TABULAR SUMMARY OF LEGAL WORK 101

TABLE 7.--*Court proceedings--Orders to Cease and desist--Petitions for enforcement--Supreme Court of the United States*

	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938
Pending beginning of year	0	0	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	0	0	1
Appealed by Commission	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0
Appealed by others	0	0	0	0	0	0	0	1	0	1	0	1	0	0	0	0	0	0	6	0
Total for disposition	0	0	0	0	0	0	0	1	1	1	1	2	0	0	0	0	0	0	6	1
Decisions for Commission	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Decisions for others	0	0	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0
Certiorari denied others	0	0	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0	0	5	0
Total disposition during year	0	0	0	0	0	0	0	0	1	1	0	2	0	0	0	0	0	0	5	1
Pending end of year	0	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	0	0	1	0

CUMULATIVE SUMMARY--TO JUNE 30, 1938

Appealed by Commission	1
Appealed by others	9
Total appealed	10
Decisions for Commission	1
Decisions for others	2
Certiorari denied others	7
Total disposition	10
Pending June 30, 1938	0

## ANNUAL REPORT OF THE FEDERAL TRADE COMMISSION

TABLE 8.--*Court proceedings--Miscellaneous--Lower courts*

	1919	1920	1921	1922	1922	1924	1925	1925	1927	1928	1929	1930	1931	1932	1933	1934	1935	1938	1937	1938						
Pending beginning of year							0	1	4	5	6	4	4	4	5	3	2	1	1	2	1	0	0	1	0	
Appealed by Commission							1	2	0	3	5	0	1	0	1	0	1	0	0	0	4	2	5			
Appealed by others							1	2	2	3	0	0	0	1	1	2	1	2	0	2	0	1	1	1		
Total for disposition							2	5	8	11	11	4	5	5	6	7	6	4	2	3	3	3	0	5	4	6
Decisions for Commission							1	0	1	3	0	0	0	0	1	1	4	1	1	1	2	2	0	4	3	2
Decisions for others							0	1	0	1	7	0	0	0	0	1	0	1	0	0	0	0	0	0	0	3
Petitions withdrawn by Commission							0	0	0	0	0	0	1	1	0	2	0	0	0	0	0	0	0	0	0	0
Petitions withdrawn by others							0	0	0	1	0	0	0	0	0	1	0	0	0	1	0	0	0	1	0	0
Total disposition during year							1	1	1	5	7	0	1	1	1	4	4	3	1	1	2	3	0	4	4	5
Pending end of year							1	4	5	0	4	4	4	4	5	3	2	1	1	2	1	0	0	1	0	1

## CUMULATIVE SUMMARY--TO JUNE 30, 1919-38

Appealed by Commission	28
Appealed by other	22
Total appealed	50
Decisions for Commission	27
Decisions for other	14
Petitions withdrawn by Commission	4
Petitions withdrawn by others	4
Total disposition	49
Total June 30, 1938	1

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TABLE 7.--*Court proceedings--Mandamus, injunction, etc.--Supreme Court of the United States*

	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938
Pending beginning of year	0	0	0	0	0	8	4	1	1	0	0	0	0	0	0	0	0	0	0	0
Appealed by Commission	0	0	0	0	6	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Appealed by others	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1	0	0	0	0
Total for disposition	0	0	0	0	6	6	4	1	2	0	0	1	0	0	0	1	0	0	0	1
Decisions for Commission	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Decisions for others	0	0	0	0	0	2	3	0	0	0	0	0	0	0	0	0	0	0	0	0
Certiorari denied Commission	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0
Certiorari denied others	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1	0	0	0	0
Total disposition during year	0	0	0	0	0	2	3	0	2	0	0	1	0	0	0	1	0	0	0	1
Pending end of year	0	0	0	0	0	4	1	1	0	0	0	0	0	0	0	0	0	0	0	0

CUMULATIVE SUMMARY TO JUNE 30, 1938

Appealed by Commission	8
Appealed by others	2
Total appealed	10
Decisions for Commission	2
Decision for others	5
Certiorari denied Commission	1
Certiorari denied others	2
Total disposition	10
Pending June 30, 1938	0

**PART III. TRADE PRACTICE CONFERENCES**

PURPOSES OF TRADE CONFERENCE PROCEDURE

TRADE PRACTICE CONFERENCE ACTIVITIES

TYPES OF PRACTICES COVERED IN RULES

TRADE CONFERENCE PROCEEDINGS PENDING

RULES OF PRACTICE APPLICABLE

GROUP I AND GROUP II RULES DEFINED

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## **PART III. TRADE PRACTICE CONFERENCES**

### **PURPOSES OF THE TRADE PRACTICE CONFERENCE PROCEDURE**

The trade practice conference procedure has for its purpose the establishment, by the Commission, of trade practice rules for the protection of industry, trade, and the purchasing public against unfair competitive practices. Under this procedure, effective means are made available for the voluntary participation and cooperation, with the Commission, of industry groups and other interested or affected parties in the establishment and observance of rules of fair practices. Thus cooperative action among competitors within the law and under Commission supervision may properly be taken to end trade abuses. Through such procedure the forces for good in an industry may be more effectively organized and directed.

The different competitive practices or methods, which under the statutes and the various decisions of the courts and the Commission are considered to fall within the inhibitions of the law, may be clarified and listed in the form of specific rules applicable to the particular conditions existing in the industry concerned. Such clarification and codification of legal requirements and the organization of such cooperative endeavor under supervision of the Commission in the elimination of undesirable practices and the maintenance of fair competitive conditions is of vast importance to industry, to the public, and to the Government. It leads to the wholesale elimination and abandonment of unfair and illegal methods of competition, thereby bringing to legitimate business and the purchasing and consuming public relief and protection from harmful exploitation and the waste and burdens of such methods. This voluntary cooperation in the elimination of harmful practices also effectuates a large saving to the Government and to business in the expense which otherwise would have to be incurred in instituting a multiplicity of compulsory legal proceedings against individual offenders to require a cessation of the illegal practices in question.

Rules which may receive the Commission's approval or sanction may include not only provisions for the prevention of practices which are illegal *per se* or are contrary to the general public interest, but also provisions for fostering and promoting practices which are designed to aid the maintenance of fair competitive conditions and to elevate the standards of business ethics in harmony with public policy.

The Division of Trade Practice Conferences is charged with the duty of conducting the various activities relative to the formulation and approval of trade practice rules, the holding of industry conferences in respect thereto, the administration and enforcement of all such rules which have received Commission approval and are ill effect, and all other staff duties incident to the trade practice conference procedure.

#### **TRADE PRACTICE CONFERENCE ACTIVITIES DURING THE YEAR**

During the fiscal year trade practice conference proceedings were before the Commission in respect to a large number of industries. All received consideration and the respective proceedings had advanced in the several procedural steps applicable in the premises. Of these, proceedings in the following industries had reached the point of final promulgation of rules by the Commission: (1) concrete burial vault manufacturers; (2) rayon industry; (3) popular priced dress manufacturers; (4) toilet brush manufacturers; (5) house dress and wash frock manufacturers; (6) metal clad door and accessories manufacturers; (7) wholesale jewelry industry; (8) carbon dioxide manufacturers; (9) fur industry; (10) cotton textiles, rules concerning the shrinkage of woven cotton goods; and (11) macaroni and related products industry (concerning which the order for promulgation was directed during the fiscal year, although the rules were not actually promulgated until shortly thereafter, or on July 7, 1938.)

In accordance with regular procedure and prior to promulgation of trade practice rules for the foregoing industries, drafts of proposed rules were made available to all interested or affected parties, and pursuant to public notice such parties were afforded opportunity to present, for the consideration of the Commission, such views, suggestions, or objections as they might desire.

The annual volume of sales of the products of those industries for which rules were promulgated during the year is estimated to be, in the aggregate, in excess of a billion dollars. One of the largest of these groups, the rayon industry, has a total annual volume of domestic production of rayon yarns amounting to about 290,000,000 pounds. The production, fabrication, and distribution of rayon products form a large and important part of the general textile industry in the United States.

#### **TYPES OF PRACTICES COVERED IN RULES**

Following are some of the subjects covered by provisions of the rules against unfair trade practices as promulgated for the industries mentioned: Misbranding and misrepresentation in various forms,

## TRADE PRACTICE CONFERENCE PROCEEDINGS PENDING 109

including deceptive packaging or advertising of industry products; defamation of competitors and disparagement of their products; impersonation or misrepresentation to obtain trade secrets of a competitor; harassment of competitors by circulation, in bad faith, of threats of infringement suits; full-line forcing as a monopolistic weapon; selling below cost with the purpose and where the effect may be to suppress competition, restrain trade, or create monopoly; use of "loss leaders" as a deceptive or monopolistic practice; price discriminations to injure, prevent, or destroy competition; harmful discrimination in the matter of rebates, refunds, discounts, credits, brokerage, commissions, services, promotional allowances, etc.; commercial bribery; inducing breach of a competitor's contracts; false invoicing; imitation of a competitor's trade-marks, trade names, labels, or brands; adulteration; substitution or passing off; lottery schemes; abuse of so-called "free goods" deals; price fixing, and use of consignment distribution to close competitors' trade outlets. Other provisions of rules require disclosure of fiber content of textile products to prevent unfair competition and deception of purchasing public; disclosure of fact that apparently new products are not new, but rebuilt or renovated; disclosure that products are artificial or imitations and not real or genuine; designations as to shrinkage properties or preshrunk character of product; prevention of the marketing of substandard or imitation products as and for the standard or genuine, and the specification of minimum requirements for standard or genuine product; and proper nomenclature for, and disclosure as to character of, industry products, and the prevention of deceptive or misleading designations.

### TRADE PRACTICE CONFERENCE PROCEEDINGS PENDING

Of those trade practice conference proceedings which were pending and had not reached the stage of final promulgation of rules before the close of the fiscal year, many had progressed to advanced positions in their respective proceedings. In various instances, general industry conferences had been held and in some cases, rules had received the tentative action of the Commission and public hearings had either been held or ordered to be held at specified times and places. In other cases, the necessary preliminary study and consideration were progressing preparatory to further action.

The industries as to which such trade practice conference proceedings were pending are national in scope and importance. Illustrative of this group are the following: wool industry, silk industry, wood cased lead pencil manufacturing industry, oleomargarine manufacturing industry, infants' and children's knitted outerwear industry, paint and varnish brush manufacturing industry, tomato paste

manufacturing industry, automobile industry, hosiery industry, wholesale stationery industry, and baby chick industry.

*Trade practice rules relative to fiber identification of textile merchandise.*--During the fiscal year, a series of trade practice conference proceedings were instituted for establishing rules for proper identification of fiber content of textile merchandise, to the end that unfair methods of competition and misrepresentation, confusion, and deception of the purchasing and consuming public, may be corrected and prevented. Accordingly, trade practice conference proceedings were held for the rayon industry and fiber identification rules were promulgated October 26, 1937, in respect to products containing rayon, in whole or in part.

Similar proceedings were instituted in respect to merchandise containing or purporting to contain silk. A general conference of the silk industry was held in March 1938.

Proposed rules were thereafter tentatively acted upon by the Commission and, shortly following the close of the fiscal year, were released subject to future public hearings thereon and later action of the Commission.

Likewise, trade practice conference proceedings for the wool industry were instituted and industry conferences under Commission auspices were held in March and April 1938. Proposed rules were pending before the Commission at the close of the fiscal year.

Trade practice proceedings in respect to linen, and the products thereof, also were pending and receiving attention, and at the close of the fiscal year preliminary studies in respect thereto had progressed to near completion.

The Commission's purpose in this work is to make the trade practice conference procedure available to interested or affected groups and to provide thereunder a comprehensive set of fiber identification rules for the guidance of industry and the buying public and for the correction and prevention of deceptive concealment, misrepresentation, and other unfair competitive practices respecting the content of textile merchandise.

*Administration and enforcement of trade practice rules.*--This work applies to all trade practice rules promulgated for various industries and still in effect, including those of the current fiscal year and of preceding years. It involves the handling of much correspondence in supplying information and interpretation as to the rules and, in general, assisting industry members in the application and observance of the rules to promote the genuine interests of industry and the public. It also includes the handling of complaints as to violations of rules. In a majority of such instances arising during the fiscal year, correction of the alleged infractions complained of was accomplished promptly, without expense and without the necessity of

resorting to compulsory litigation by the issuance of formal complaints. However, in the comparatively few cases where compulsory process appeared necessary to protect the public interest, effective steps were taken.

Surveys conducted periodically to ascertain the manner and form of observance of rules and the results obtained therefrom have revealed a marked improvement in competitive conditions in various industries consequent to adoption and promulgation of fair trade practice rules.

### **RULES OF PRACTICE APPLICABLE**

The procedural steps pertaining to trade practice conference matters are outlined in the Commission's Rules of Practice, Rule XXIV, paragraphs (b) to (h) of which, inclusive, are as follows:

(b) *When authorized.*--Trade practice conference proceedings may be authorized by the Commission upon its own motion or upon application therefor whenever such proceedings appear to the Commission to be in the interest of the public. In authorizing proceedings, the Commission may consider whether such proceedings appear to have possibilities (1) of constructively advancing the best interests of industry on sound competitive principles in consonance with public policy, or (2) of bringing about more adequate or equitable observance of laws under which the Commission has jurisdiction, or (3) of otherwise protecting or advancing the public interest.

(c) *Applications.*--Applications for a trade practice conference may be filed with the Commission by any interested party or group. Such application shall be in writing and be signed by the applicant or the duly authorized representative of the applicant or group desiring such conference. The following information, to the extent known to the applicant, shall be furnished with such application or in a supplement thereto.

- (1) A brief description of the industry, trade, or subject to be treated.
- (2) The kind and character of the products involved.
- (3) The size or extent and the divisions of the industry or trade groups concerned.
- (4) The estimated total annual volume of production or sales of the commodities involved.
- (5) List of membership of the industry or trade groups concerned in the matter.
- (6) A brief statement of the acts, practices, methods of competition, or other trade practices desired to be considered, or drafts of suggested trade practice rules.
- (7) Evidence of authority to so act, where the application is signed by a person or organization acting in behalf of others.

(d) *Informal discussions with members of the commission's staff.*-- Any interested party or group may, upon request, be granted opportunity to confer in respect to any proposed trade practice conference with the Commission's trade practice conference division, either prior or subsequent to the filing of any such application. They may also submit any pertinent data or information which they desire to have considered. Such submission shall be made during such period of time as the Commission or its duly authorized official may designate.

(e) *Industry conferences.*--Reasonable public notice of the time and place of any such authorized conference shall be issued by the Commission. A member of the Commission or of its staff shall have charge of the conference and shall conduct the conference pursuant to direction of the Commission and in such manner as will facilitate the proceeding and afford appropriate consideration of matters properly coming before the conference. A transcript of the conference proceedings shall be made, which, together with all rules, resolutions, modifications, amendments, or other matters offered, shall be filed in the office of the Commission and submitted for its consideration.

(f) *Public hearing on proposed rules.*--Before final approval by the Commission of any rules, and upon such reasonable public notice as to the Commission seems appropriate, further opportunity shall be afforded by the Commission to all interested persons, corporations or other organizations, including consumers, to submit in writing relevant suggestions or objections and to appear and be heard at a designated time and place.

(g) *Promulgation of rules.*--When trade practice rules shall have been finally approved and received by the Commission, they shall be promulgated by official order of the Commission and published, pursuant to law, in the *Federal Register*. Said rules shall become effective upon such promulgation and publication or thereafter at such time as may be specified. Copies of the final rules shall be made available at the offices of the Commission to the public and to members of the industry. Under the procedure of the Commission, a copy of the trade practice rules as promulgated by the Commission is sent to each member of the industry whose name and address is available, together with an acceptance form providing opportunity to such member to signify his intention to observe the rules in the conduct of his business.

(h) *Violations.*--Complaints as to the use, by any person, corporation or other organization, of any act, practice, or method inhibited by the rules may be made to the Commission by anyone having information thereof. Such complaints, if warranted by the facts and the law, will receive the attention of the Commission in accordance with law. In addition the Commission may act upon its own motion in proceeding against the use of any act, practice, or method contrary to law.

**GROUP I AND GROUP II RULES DEFINED**

Trade practice rules, as finally promulgated, are classified by the Commission as Group I and Group II rules, respectively.

*Group I rules.*--The unfair trade practices which are embraced in Group I rules are considered to be unfair methods of competition, unfair or deceptive acts or practices, or other illegal practices, prohibited under laws administered by the Federal Trade Commission as construed in the decisions of the Commission or the courts and appropriate proceedings in the public interest will be taken by the Commission to prevent the use of such unlawful practices in or directly affecting interstate commerce.

*Group II rules.*--Compliance with the trade practice provisions embraced in Group II rules is considered to be conducive to sound business methods and is to be encouraged and promoted individually or through voluntary cooperation exercised in accordance with existing law. Nonobservance of such rules does not, per se, constitute violation of law. Where, however, the practice of not complying with any such Group II rules is followed in such manner as to result in unfair methods of competition contrary to law, corrective proceedings may be instituted by the Commission as in the case of a violation of Group I rules.

**PART IV. SPECIAL PROCEDURE IN CERTAIN TYPES OF  
ADVERTISING CASES**

NEWSPAPER, MAGAZINE, AND RADIO ADVERTISING

## **PART IV. SPECIAL PROCEDURE IN CERTAIN TYPES OF ADVERTISING CASES**

### **NEWSPAPER, MAGAZINE, AND RADIO ADVERTISING**

False and misleading advertising matter as published in newspapers and magazines and as broadcast over the radio is surveyed and scrutinized by a special board set up by the Federal Trade Commission in 1929. This board, known as the Special Board of Investigation,<sup>1</sup> consists of three Commission attorneys designated to conduct hearings and specialize in this class of cases.

Misrepresentation of commodities sold in interstate commerce is a type of unfair competition with which the Commission has dealt under authority of the Federal Trade Commission Act since its organization. By 1929, it had become apparent that misrepresentation embodied in false and misleading advertising in the periodical field was of such volume that it should receive specialized attention from the Commission. Since that time, the Commission, through its special board, on the alert for misleading representations, has reviewed the advertising columns of newspapers and magazines, and, since 1934, commercial advertising continuities broadcast by radio, and also has received from the public complaints of false and misleading advertising. Each misrepresentation so noted and each complaint received from the public has been carefully investigated, and, where the facts have warranted, and informal procedure has not resulted in the prompt elimination of misleading claims and representations, formal procedure has been instituted. While many orders have been issued requiring the respondents to cease and desist from advertising practices complained of, in a large majority of cases the matters have been adjusted by the respondents signing stipulations to abandon the unfair practices.

In its examination of advertising, the Commission's only purpose is to prevent false and misleading representations. It does not undertake to dictate what an advertiser shall say, but rather indicates what he may not say under the law. Jurisdiction is limited to cases which have a public interest as distinguished from a mere private controversy, and which involve practices held to be unfair methods of competition or unfair or deceptive acts or practices in interstate commerce.

<sup>1</sup> As of October 22, 1938. the status of the Special Board of Investigation was changed to that of a division to be known as the Radio and Periodical Division.

The Commission feels its work in this field has contributed substantially to the improvement which has been evident in recent years in the character of advertising.

*Newspaper and magazine advertising.*--In reviewing advertisements in current publications, the Commission, through its special board, has found it advisable to call for some newspapers and magazines on a continuous basis, due to the persistently questionable character of the advertisements published. However, as to publications generally, of which there are some 20,000, it is physically impossible to review, continuously, all advertisements of a doubtful nature; also, it has been found unnecessary to review all the issues of publications of recognized high ethical standard whose publishers carefully censor all copy before acceptance.

With this situation in mind, the Commission has found it of material value to continue the procuring of periodicals in cognate groups as to type or class, volume of circulation, and character of field of distribution, such as agricultural, fiction, informational, motion picture, trade, sales promotion, and the like. Advertisements of similar character, purpose, and appeal are thus assembled and reviewed to advantage in a related manner.

Through periodical calls for magazines and newspapers during the fiscal year ended June 30, 1938, the Commission procured 524 editions of representative newspapers of established general circulation and 907 editions of magazines of interstate distribution, representing a combined circulation of 117,381,539.

The Commission examined 129,075 advertisements appearing in the aforementioned newspapers and magazines and noted 23,843 as containing allegations that appeared to be false or misleading. The 23,843 questioned advertisements provided current specimens for check with existing advertising cases as to their compliance with actions, stipulations and orders of the Commission, and formed the bases of 2,688 prospective cases not previously set aside for investigation.

As an important supplement to its review of current periodical advertising, the Commission includes the examination of advertising almanacs, which are widely distributed in the interests of many drug articles, devices, and commodities designed or alleged to treat and cure sufferers from a wide variety of ailments.

The Commission has developed from its data accumulated in the review of newspapers and magazines analyses showing the principal sources of false and misleading advertisements, segregated in groups as to fiction, motion picture, scientific information, home and women's publications, and other classes of magazines, and as to newspapers of general interstate and regional distribution, classified as to circulation and geographical location. These data, however, are solely

for the use of the Commission in its survey of such advertisements and necessarily are confidential.

*Radio advertising.*--The Commission, in its systematic review of advertising copy broadcast over the radio, issues calls to individual radio stations about 4 times yearly. The continuity returns resulting from such calls for commercial script cover specified 15-day broadcast periods.

National and regional networks respond on a continuous weekly basis, submitting copies of commercial continuities for all programs wherein linked hook-ups are used involving two or more affiliated or member stations.

Producers of electrical transcription recordings submit monthly returns of typed copies of the commercial portions of all recordings produced by them for radio broadcast. This material is supplemented by periodical reports from individual stations listing the programs of recorded transcriptions and other essential data.

The combined radio material received furnishes representative and specific information on the character of current broadcast advertising which is proving of great value in the efforts to prevent false and misleading representations.

During the fiscal year ended June 30, 1938, the Commission received 490,670 copies of commercial radio broadcast continuities, amounting to 1,069,944 pages of typewritten script. These comprised 677,074 pages of individual station script and 392,870 pages of network script.

The special board, through its examining staff, read and marked 490,612 commercial radio broadcast continuities, amounting to 885,857 pages of typewritten script. These comprised 352,870 pages of network script and 532,987 pages of individual station script. An average of 2,905 pages of radio script were read each working day. From this material, 22,959 commercial broadcasts were marked for further study as containing representations that may have been false or misleading. The 22,959 questioned commercial continuities provided current specimens for check with existing advertising cases as to their compliance with actions, stipulations, and orders of the Commission and formed the bases of 1,544 prospective cases not previously set aside for investigation.

The Commission has developed from its commercial broadcast review data analyses showing the principal sources of false and misleading advertisements, segregated as to network, transcription, and individual station type of broadcasts, the latter being further broken down as to zone location and transmitting power. Such analyses are prepared only for the Commission's use in this type of work.

Many requests have been received from radio stations for advice and information concerning certain advertisers and their products. The

Commission cannot give the information requested in many cases either because the matters may be under investigation or it is not fully advised of all the facts and cannot render opinions therein. It is the Commission's policy to treat as confidential all proceedings prior to acceptance of a stipulation or issuance of a complaint. After a stipulation has been accepted and approved, or a complaint issued, the facts concerning such proceedings are for the public record and available to anyone who may request them.

*Cooperation of radio and publishing industries.*--In general, the Commission has received the helpful cooperation of nation-wide and regional networks, and transcription producers, in addition to that of some 617 active commercial radio stations, 252 newspaper publishers, and 408 magazine publishers, and has observed an interested desire on the part of such broadcasters and publishers to aid in the elimination of false, misleading, and deceptive advertising.

*Commodity advertising.*--The Commission's representative coverage of current national and regional advertising, between July 1, 1934, and June 30, 1938, includes examination of 2,069,306 newspaper, magazine, and radio advertisements for questionable representations. An analysis of commodity data, drawn from the questionable advertisements set aside for investigation in connection with this review, discloses the following classifications with respect to type, purpose, or use as advertised:

#### Commodities Named in Advertisements Marked for Investigation, 1934-1938

Name of commodity	Percentage of total advertised articles in group investigated
Drugs, drug products, drug component preparations, and alleged remedies	30.5
Food products and beverages	6.8
Cosmetics and toiletries	6.1
Health devices, instruments, apparatus, contrivances, and similar specialty articles	5.3
Commodity sales promotion plans, with agency and employment offers, and specialty, novelty goods advertising	14.9
Correspondence courses, stamps, coins, astrological data, books, and similar mail order offers	12.5
Automobile, radio, refrigerator, and other equipment lines	9.0
Miscellaneous, including apparel, tobacco products, pet breeding, poultry raising, gasoline and lubricants, specialty building materials, etc	14.9

The above compilation was based on an analysis of 105,962 questionable commercial radio continuities, and 55,863 questionable pub-

lished advertisements, contained in 12,759 prospective advertising case files, assembled during the 4 fiscal years from July 1, 1934, to June 30, 1938, inclusive.

*Sources of special board cases.*--Examination of current newspaper, magazine, and radio advertising, in the manner described, has provided the basis of an average of 80.4 percent of the cases handled by the Commission through its special board in the last 3 years. Complaints received from the public and information referred to the board from other divisions of the Commission and from other Government agencies formed the basis of the balance of this work.

*Number of cases handled.*--During the fiscal year ended June 30, 1938, the Commission, through its special board, sent questionnaires to advertisers in 733 cases, negotiated 383 stipulations, and settled and closed by its various methods of procedure a total of 625 cases. The board recommended that complaints be issued in 29 cases for failure to execute stipulations or for violating stipulations. In 11 cases the board recommended that complaints be issued without giving the advertisers an opportunity to stipulate because of gross deception or danger to the public involved in the practices in which they were engaged.

In 205 cases the board recommended filing the assembled data and closing the cases without prejudice to the right of the Commission to reopen them at any time the facts warranted. Eleven cases were closed because the Post Office Department had issued fraud orders against the respondents concerned or had accepted stipulations in lieu of fraud orders. Others were closed because the parties respondent had discontinued advertising or selling without intent to resume, and others because the advertisers were able to justify their claims.

Three hundred and six cases were pending before the special board on July 1, 1937; 414 on June 30, 1938.

*Commission has access to scientific services.*--Effective cooperation continues with other departments of the Government. The Commission has access to the laboratories, libraries, and other facilities of Federal Government agencies, including the Bureau of Standards, Public Health Service, and the Food and Drug Administration, Bureau of Home Economics, and Bureau of Animal Husbandry of the Department of Agriculture, to any of which it may refer a matter for scientific opinion. When necessary, the Commission obtains medical and other scientific information and opinions from non-government hospitals, clinics, and laboratories. Such material and cooperation are often particularly helpful in enabling the Commission to reach sound and fair conclusions with respect to scientific and technical questions which come before it, and especially so in connection with much of the work of the special board.

*Procedure in advertising cases.*--If a published or broadcast advertisement coming to its attention appears on its face to be misleading, the special board sends a questionnaire to the advertiser, requesting a sample of his product, if this is practicable, and a quantitative formula, if the product is a compound, and also requesting copies of all advertisements published or commercial continuities broadcast (if such continuities are not already on file) during a specified period, together with copies of all booklets, folders, circulars, form letters, and other advertising literature used.

Upon receipt of this data, the claims, sample, and formula are referred to an appropriate technical agency of the Government for a scientific opinion. Upon receipt of the opinion the advertising is carefully scrutinized, and portions of the copy that appear to require substantiation or explanation are marked as excerpts and numbered. A copy of this numbered list, and a copy of the opinion received, are sent to the advertiser, who is extended the privilege of submitting evidence which he thinks may substantiate or satisfactorily explain the representations found in his advertising. He may answer by letter or, upon his request, may confer with the special board in person or through counsel.

If the advertiser is able to substantiate or explain all representations questioned, the board reports the matter to the Commission with the recommendation that the data be filed without prejudice--and that there be no further proceedings for the time being.

If the advertiser fails to substantiate or explain any material statement in his advertising which the board has reason to believe is false or misleading, the board refers the matter to the Commission with recommendation that application for complaint be docketed and the matter returned to the board for negotiation of a stipulation, provided the advertiser desires to dispose of it by such voluntary agreement to cease and desist from the objectionable representations involved.

If the Commission approves such recommendation the board prepares a stipulation and forwards it to the advertiser for execution. Should he object to any of its provisions, he may discuss them by mail or in person. When he agrees upon the terms of the stipulation and signs and returns it, the matter is again reported to the Commission with recommendation that the stipulation be accepted and the case closed without prejudice.

*Simplified methods adopted.*--The object of all Commission procedure is to prevent unfair methods of competition and unfair and deceptive acts and practices in commerce, and experience has shown that this can be accomplished not only by cease and desist orders, but by the stipulation method, which is effective and speedy as well as inexpensive for both Government and respondent.

## **PART V. FOREIGN-TRADE WORK**

THE EXPORT TRADE ACT (WEBB-POMERENE LAW)

EXPORTS SHOW SUBSTANTIAL INCREASE

EXPORT ASSOCIATIONS IN OPERATION

SUPPLEMENTAL REPORT ON ANTIDUMPING LEGISLATION

TRUST LAWS AND UNFAIR COMPETITION ABROAD

## **PART V. FOREIGN-TRADE WORK**

### **THE EXPORT TRADE ACT (WEBB-POMERENE LAW)**

Foreign-trade work of the Commission includes administration of the Export Trade Act and inquiries under Section 6 (h) of the Federal Trade Commission Act. This work is done by the Export Trade Section, under direction of the Chief Counsel.

The Export Trade Act, known also as the Webb-Pomerene Law, which was passed in 1918, provides that nothing contained in the Sherman Act (passed in 1890) shall be construed as declaring to be illegal any combinations or “associations” entered into for the sole purpose of engaging in, and actually solely engaged in, export trade or agreements or acts done in aforesaid export trade by such associations, under certain safeguarding provisions set out in the law.

The Export Trade Act also provides that nothing contained in section 7 of the Clayton Act (passed in 1914) “shall be construed to forbid the acquisition or ownership by any corporation of the whole or any part of the stock or other capital of any corporation organized solely for the purpose of engaging in export trade, and actually engaged solely in such export trade, unless the effect of such acquisition or ownership may be to restrain trade or substantially lessen competition within the United States.”

An export trade association must be entered into for the sole purpose of engaging in export trade from the United States to foreign countries. It may not produce, manufacture, or sell for consumption or resale in the domestic market; nor may it enter into any agreement or act in restraint of trade within the United States or in restraint of the export trade of a domestic competitor. Such association must not either in the United States or elsewhere enter into any agreement or conspiracy or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association or which substantially lessens competition within the United States. The prohibition against unfair methods of competition contained in the Federal Trade Commission Act is extended to competitors engaged in export trade even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States.

The organization papers of such export trade groups are placed on file with the Federal Trade Commission, supplemented by annual

reports and such other information as the Commission may require as to their business, conduct, practices, management, and relation to other associations, corporations, partnerships, and individuals. The law provides for a procedure to be followed in case of violation of its terms.

### EXPORTS SHOW SUBSTANTIAL INCREASE

Shipments by export trade associations during 1937 amounted to \$197,875,832, which was a substantial increase (\$48,579,307) over exports in 1936. The products shipped, and money value thereof, are as follows:

Commodities	1936	1937
Metals and metal products, copper, iron and steel, metal lath, machinery, railway equipment, pipes and valves, screws, electrical apparatus, and signal apparatus	\$40,507,335	\$93,958,850
Products of mines and wells, crude sulphur, phosphate rock, carbon black	40,780,283	32,580,219
Lumber and wood products, pine, fir, hardwood, redwood, walnut, plywood, tool handles, barrel and box shooks, and wood naval stores	8,533,374	7,456,922
Foodstuffs, such as milk, meat, sugar, flour, fruit (fresh, canned, and dried), and rice	21,250,433	19,921,343
Other manufactured goods, rubber, paper, textiles, glass, cement, abrasives, and chemicals	38,225,100	43,958,498
Total	149,296,525	197,875,832

Early in 1937, exports were materially increased, partly on orders placed in 1936. This increase continued in some markets, but shipments to the Orient lessened as the Sino-Japanese war advanced, and associations dependent upon the Chinese trade were materially affected by the chaotic Conditions in that market. Increased freight rates late in 1937 were preceded by a spurt of buying to replenish Stocks before the new rates were made effective: but later increased transportation costs were an important factor in lessening sales. As costs began to reflect such factors as the higher prices of raw materials, labor costs, loss through strikes, and other domestic conditions, export prices were increased and it was more difficult to meet the competition of foreign producers whose costs were not increasing in proportion.

The growing effort on the part of foreign countries to increase production to the point of supplying domestic needs, and the continuance of foreign exchange controls in some countries, have lessened shipments of Some American products, notably foodstuffs. Associations shipping to the German market found it difficult to obtain exchange. In Argentina, preferences given to goods from Germany

and Britain, under special treaties, resulted in a scarcity of exchange for American goods. This was true to some extent in other Latin American countries.

In some markets, agreements negotiated under the United States Trade Agreements Act have removed or lessened restrictions and paved the way for better business relations. Members of the Webb-Pomerene law groups were in a position to place their problems before the negotiators through the association officers.

Collective bargaining in the matter of forwarding and freight rates proved also of advantage to the associations. Groups that operate as selling agencies reduce the cost of marketing for all of the member companies. Uniform terms of sale and contract forms, standardization of products and packing methods, pooling of shipments, and the elimination of impracticable and unsound trade customs, by association action, make for efficiency and economy in the export business. Shipments may be so controlled as to prevent periodic glutting of foreign markets. It is also possible to split large orders between the members of an association and thereby effect prompt shipment to the satisfaction of the foreign purchaser. In some countries, such as the Soviet Union, where buying is centralized, the association provides a single contact for all of the members' products.

New markets have been developed through joint effort and expense; credit losses and claims for unsatisfactory shipments have been reduced; and the newer associations report substantial increase in export business over that obtained through individual sales prior to their organization.

#### **44 EXPORT ASSOCIATIONS IN OPERATION**

Forty-four associations were on file with the Federal Trade Commission at the close of the fiscal year, June 30, 1938. These included a new group formed in October 1937, the Rice Export Association, comprising 23 mills located in Louisiana, Texas, and Arkansas, with a headquarters office in New Orleans. Two associations were dissolved during the year, the Inter-America Exporters, Inc., which had been organized to ship fresh fruit, and the Scrap Export Associates of America, which had been formed in June 1937 to ship scrap iron and steel but did not become operative, finally dissolving in November of that year. The present list is as follows:

American Box Shook Export Association, Barr Building, Washington, D. C.

American Hardwood Exporters, Inc., 604 Carondelet Building, New Orleans.

American Locomotive Sales Corporation, 30 Church Street, New York.

American Paper Exports, Inc., 75 West Street, New York.

American Provisions Export Co., 80 East Jackson Boulevard, Chicago.

American Soda Pulp Export Association, 230 Park Avenue, New York.

American Spring Manufacturers Export Association, 30 Church Street, New York.

American Tire Manufacturers Export Association, 30 Church Street, New York.

California Alkali Export Association, 523 West 6th Street, Los Angeles.

California Dried Fruit Export Association, 1 Drumm Street, San Francisco.

California Prune Export Association, 1 Drumm Street, San Francisco.

Carbon Black Export, Inc., 500 Fifth Avenue, New York.

Cement Export Co., Inc., 150 Broadway, New York.

Copper Exporters, Inc., 50 Broadway, New York.

Douglas Fir Export Co., Henry Building, Seattle, Wash.

Durex Abrasives Corporation, 63 Wall Street, New York.

Electrical Apparatus Export Association, 70 Pine Street, New York.

Export Screw Association of the United States, 23 Acorn Street, Providence, R. I.

Florida Hard Rock Phosphate Export Association, Savannah Bank & Trust Building, Savannah, Ga.

General Milk Co., Inc., 19 Rector Street, New York.

Goodyear Tire & Rubber Export Co., 1144 East Market Street, Akron, Ohio.

Grapefruit Distributors, Inc., Davenport, Fla.

Metal Lath Export Association, 47 West 34th Street, New York.

Northwest Dried Fruit Export Association, Title & Trust Building, Portland, Ore.

Pacific Flour Export Co., care of Fisher Flouring Mills Co., Seattle, Wash.

Pacific Forest Industries, Tacoma Building, Tacoma, Wash.

Pacific Fresh Fruit Export Association, 333 Pine Street, San Francisco.

Phosphate Export Association, 393 Seventh Avenue, New York.

Pipe Fittings & Valve Export Association, 1421 Chestnut Street, Philadelphia.

Plate Glass Export Corporation, Grant Building, Pittsburgh.

Redwood Expert Co., 405 Montgomery Street, San Francisco.

Rice Export Association, 1103 Queen & Crescent Building, New Orleans.

Rubber Export Association, 19 Good-year Avenue, Akron, Ohio.

Shook Exporters Association, Stahlman Building, Nashville, Tenn.

Signal Export Association, 420 Lexington Avenue, New York.

Steel Export Association of America, 75 West Street, New York.

Sugar Export Corporation, 120 Wall Street, New York.

Sulphur Export Corporation, 420 Lexington Avenue, New York.

Textile Export Association of the United States, 320 Broadway, New York.

United States Alkali Export Association, Inc., 11 Broadway, New York.

United States Handle Export Co., Piqua, Ohio.

Walnut Export Sales Co., Inc., 12th Street & Kaw River, Kansas City, Kans.  
Walworth International Co., 60 East 42nd Street, New York.

Wood Naval Stores Export Association, 1220 Delaware Trust Building, Wilmington, Del.

### SUPPLEMENTAL REPORT ON ANTIDUMPING LEGISLATION

In June 1938, the Commission presented to Congress a *Supplemental Report on Antidumping Legislation and Other Import Regulations in the United States and Foreign Countries*, which brought to date material in a report on the same subject published in 1934 as Senate Document No.112, Seventy-third Congress, second session.

This work was done under the provisions of Section 6 (h) of the Federal Trade Commission Act which directs the Commission to investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States.”

### TRUST LAWS AND UNFAIR COMPETITION IN FOREIGN COUNTRIES

Also under Section 6 (h) of the Federal Trade Commission Act, the Commission follows trust legislation and unfair competition in foreign countries. Recent measures are briefly summarized.

*Argentina.*--A governmental committee appointed to study the petroleum situation reported in 1937, recommending establishment of a National Petroleum Council to control and administer reserves, organize petroleum companies with Government and private capital, establish pipe lines, and regulate the import and export trade.

Three decrees were issued by the President in 1938 for regulation of flour milling, fixing official standards for the different grades, authorizing the Ministry of Agriculture to regulate and control the activities of the Chamber of Millers, and establishing an advisory board comprising millers, pastry makers, and bakers, to settle controversies in the industry and to present recommendations for legislation.

A decree published on January 30, 1938, established an Office of Commercial Policy in the Ministry of Agriculture to conduct general studies of domestic and foreign economic conditions in connection with production, trade, and consumption, internal tax systems, economic balances, internal commercial policy, customs tariffs, commercial treaties, import quotas, embargoes, temporary importation, import premiums, dumping, drawbacks, clearing and compensation agreements, and exchange control.

*Belgium.*--A decree dated January 13, 1937, prohibited the extension of certain retail sales establishments (chain and department stores) and the period of enforcement was extended to the end of 1938 by further decrees. As authorized by law and Royal order on January 15, 1938, and by ministerial orders on April 30, 1938, a National Office of Milk and its Derivatives has been established to control the production and sale of milk, butter, and cheese, and to

promote and improve the distribution and marketing of milk and its derivatives.

*Bolivia.*--A decree of April 28, 1938, provided further Government supervision of the development and management of stock companies in order to prevent fraudulent acts.

*Brazil.*--A new constitution decreed by the President and published on November 11, 1937, provided for complete reorganization of the Government by the President as Supreme Authority of the State, including the power to dissolve and reconstitute legislative bodies and the federal courts.

Decree No.366, published on April 12, 1938, added to the Mining Code regulations governing the subsoil deposits of petroleum and natural gas. These and mineral deposits are the property of the national Government. Decree No.395 of April 29, 1938, completed nationalization of the petroleum industry. Production, refining, importation, exportation, and distribution of petroleum and its products are subject to regulations to be issued by a newly created National Petroleum Council. Concessions shall be granted only to Brazilians and Brazilian enterprises.

*Canada.*--Following decision of the Privy Council at London in 1937, holding the Natural Products Marketing Act to be unconstitutional, a Canadian Order in Council dated December 22, 1937, canceled all the marketing schemes set up under the act. But in some cases growers have organized associations to carry on marketing schemes on a voluntary basis, including tobacco and cheese associations in Ontario, and milk and fruit associations in British Columbia. The Royal Commission on the Textile Industry completed its hearings and presented a comprehensive report to the Minister of Finance in January 1938. In December 1937 the Provincial Legislature of British Columbia passed the Commodities Retail Sales Act, which makes it a statutory offense to sell for less than the price fixed by the wholesaler or producer.

*Cuba.*--The Petroleum Act promulgated on May 10, 1938, effected nationalization of the industry, including petroleum, naphtha, natural kerosene, hydrocarbon gas, helium, asphalt, resin, and coal. All deposits are deemed the property of the State. Concessions are to be granted for development of the resources.

*Czechoslovakia.*--Decree No.121, June 18, 1937, provided for basic minimum prices in certain trades. Decree No.122, also dated June 18, amended the law of December 22, 1933, which restricted the establishment of single-price stores and extended the restriction to December 31, 1938. Decree No.148, June 24, 1937, extended until December 31, 1938, provisions of a decree issued in 1935 prohibiting establishment of new brand sales in certain industries. A decree dated June 26, 1937, gave to the Ministry of Social Welfare power

to declare binding certain labor contracts. A law dated December 21, 1937, affirmed and prolonged until March 31, 1939, the effect of a Government decree issued in 1934, prohibiting the unjustified closure of factories and mass release of employees. Law No. 245, dated December 21, 1937, imposed a tax on domestic cartels, from which export and international cartels are exempt.

*Denmark.*--New legislation in Denmark in 1937 extended the Government's control over domestic trade and industry by providing control of private price agreements and forced arbitration of labor disputes. A new grain law, effective on January 1, 1938, supersedes prior acts in 1936 and 1937.

*Ecuador.*--Decree No.159, August 9, 1937, established absolute control over the manufacture, import, sale, and advertising of chemical and biological products intended for medicinal or veterinary use, and pharmaceutical specialties. Registration is required, and all advertising matter must be approved by the -Department of Health.

A Presidential Decree on October 28, 1937, created a Council of National Economy to centralize national statistics, advise with Government departments on economic and financing operations, customs duties and fiscal policies, and to draft legislation of an economic character. A decree dated December 28, 1937, established a Commissariat of Industries, which shall take immediate control over the industrial and manufacturing production of the country with respect to commerce. Representatives of the Commissariat are empowered to inspect account books, invoices, and other commercial documents regarding industry or manufacture.

A decree published on January 7, 1938, provided for the establishment of and compulsory membership in chambers of commerce which shall have authority to defend and develop national commerce, to examine into the morality and honesty of commercial transactions and into the strict fulfillment of contracts and obligations to which their members are parties, to cooperate with the Government in the study of social-economic problems, and to require that all merchants located within their territorial jurisdiction join the chambers. They also will promote commercial fairs, expositions, and conventions, undertake propaganda in favor of Ecuadoran products, and if requested to do so, may arbitrate claims arising between foreign shippers and Ecuadoran importers.

Decrees No.45 of February 16, 1938, and No.9 of March 9, 1938, provided for mining and petroleum concessions under the general principle that private individuals or entities may operate only as concessionaires for the exploitation of natural resources.

*Estonia.*--After several years of experimenting with subsidies, equalization fees, and guaranteed minimum prices, in February 1937,

Estonia formed a monopoly for the processing and exportation of all livestock and meat products.

*France.*--Acts dated June 30, 1937, and April 13, 1938, authorized the Government to take by decree any measures required to insure repression of attacks on the credit of the State, the combating of speculation, economic recovery, the control of prices, the balancing of the budget, and the defense of the reserve of the Bank of France, without control of exchange. Under this authority, a number of decrees have been issued. One dated June 30, 1937, modified the Monetary Law of October 1, 1936. Another decree also dated June 30, 1937, prescribed duties of the Departmental Commission of Price Control and prohibited any increase in the wholesale, semi-wholesale or retail prices of goods and foodstuffs or in the price lists applied in industrial and commercial enterprises which were in force on June 28, 1937. The new provisions supersede those of the Price Control Act of August 19, 1936. Numerous protests against the prohibition of increase in price resulted in some exemptions; and the decree was further relaxed by a decree on November 7, 1937, which authorized retail price increases resulting directly from higher wholesale prices, transportation charges and taxes.

A decree on April 4, 1938, provided for establishment of a commission to study ways and means by which control of production in the French industries may be effected. A law dated July 9, 1937, effective until January 31, 1938, conferred upon the Government special authority to modify customs duties by decree, and amended the antidumping powers of the Government.

A company act dated July 24, 1937, and decrees issued thereunder, included new provisions for the protection of stockholders and investors. Decrees dated August 26 and October 24, 1937, modified the Export Credit Guarantee Act of August 22, 1936. Four decrees dated August 27, 1937, provided for control of French colonial products, including their production, distribution, exportation from the French colonies, and importation into France and into the colonial territories.

A decree on August 31, 1937, provided for nationalization of the country's railroads under an agreement effective January 1, 1938, whereby all main-line railways are taken over by a new state-controlled company which acquires all assets, assumes all their obligations, and will operate them as a unit until January 1, 1983, at which time they will revert to the State.

*Germany.*--A decree of May 24, 1937, applied to mail order houses the prohibition of establishment or expansion of retail shops covered by the law of May 12, 1933. A decree dated July 15, 1937, superseded a decree of September 22, 1934, for regulation of the domestic prices of foreign merchandise, and provided that the price base shall be the

actual cost rather than the market price abroad; and profits and prices charged by dealers in handling foreign merchandise shall be fixed by the Reich Price Commissioner.

A decree dated March 13, 1938, forbade persons in Germany to establish new industrial enterprises, acquire existing concerns, or to form branches, offices, or agencies, in Austria. This plan was abandoned, and the decree of March 13 abrogated on April 26, 1938, after passage of a law published in the Austrian Gazette on April 13, 1938, which authorized the Governor of Austria to control the establishment of Industrial enterprises, and to appoint commissioned administrators or supervisors for all enterprises located therein. A decree published on March 30, 1938, prohibited increases in prices and remunerations of all kinds, as far as they relate to goods of daily necessity, to the entire agricultural, handicraft and industrial production, and to the shipment of goods of all kinds, within the State of Austria, and in all business transactions from Austria to the other parts of the Reich. Exceptions may be granted by the Reich Price Commissioner. The German Stock Company Law of January 30, 1937, and subsequent regulations, were made applicable to Austria by a German decree dated April 11, 1938.

*Great Britain.*--Laws passed in 1937 included: the Livestock Industry Act, July 20, 1937, which provides for the regulation of importation of livestock and meat (except bacon), continuation of subsidies to producers of beef cattle, the regulation of markets and of central slaughter houses; the Control of Imports Amendment Act, which provides certain changes in the act of 1934; the Export Guarantee Act, which amends and extends the authority of the Export Credit Guarantee Department of the Board of Trade; an Agricultural Act; a Trade Marks Amendment Act (the first major revision of British trade mark legislation since 1905); and the Factories Act, July 30, 1937, which serves as a consolidating measure and repeals a number of prior laws regulating labor and factory conditions.

A Special Committee on Share-Pushing, appointed by the Board of Trade in 1936, made its report in July 1937, recommending further regulation of the sale of stocks and shares in order to safeguard investors. An important report of the Import Duties Advisory Committee on the Present Position and Future Development of the Iron and Steel Industry (Command 5507) was issued in July 1937, with recommendations for regulation of the industry. Report on an inquiry into the Costs and Profits of Retail Milk Distribution in Great Britain, was submitted by the Food Council of the Board of Trade in November 1937, recommending: rationalization through concentration of processing and distributing depots, reduction in the number of shops and in the expense of advertising, decrease in costs on book debts and their collection, and economies from simplified services; these ends

to be accomplished through voluntary action by the industry, compulsory legislation, or a combination of the two. Report of a Joint Committee on Cotton Trade Control, in October 1937, proposed a bill which would establish a Cotton Industry Board for further regulation of the trade, covering all phases of production and merchandizing of cotton and allied textiles; including reduction of surplus capacity, prevention of waste through excessive competition, the regulation of production, supply and sale, establishment of minimum prices or margins, institution of pools and quotas, the imposition of levies, and legalization of wage agreements. The first annual report of the Spindles Board was issued in 1938 covering purchase of redundant mills and machinery, under the Cotton Spinning Act of 1936.

A coal bill introduced in 1937 would vest ownership and control of all unmined coal and mines in a National Coal Commission. Other features include amendments to the Coal Mines Act of 1930 to bring about further amalgamations in the mines and a continuance of organized marketing schemes. A films bill would extend and amend the existing film quota system and set up an advisory films council. The Essential Commodities Purchase Bill would authorize further buying of products for reserve; stocks of wheat, sugar, whale oil, and other materials have already been purchased.

*International.*--An agreement for the control of coke exports, both in volume and in price, was entered into by producers in the United Kingdom, Germany, Holland, Belgium, Poland, and Danzig, in June 1937, effective for 3 years, with administration by an international association office in Brussels. The international tin agreement was renewed for a 5-year period beginning January 1, 1937. The mercury agreement was terminated in December 1936, due to war conditions in Spain. The European zinc cartel was reformed, comprising manufacturers in Great Britain, Belgium, Holland, Germany, Poland, Austria, and Czechoslovakia. An agreement entered into in October 1937 by buyers of cacao in West Africa, whereby a pool should be formed to buy at an agreed price, resulted in a boycott by Gold Coast farmers, and the pool agreement was suspended until October 1938. An important report on the Possibility of Obtaining a General Reduction in the Obstacles to International Trade, was prepared by M. Paul Van Zeeland, of Belgium, upon request of the Governments of England and France, and was printed as a British White Paper in January 1938.

The United States entered into a reciprocal trade agreement with Czechoslovakia on March 7, 1938, effective on April 16, 1938.

*Iran.*--An agricultural act was passed on November 16, 1937, for setting up a program to increase production, reclaim and improve lands, repair buildings and roads, and finance agricultural projects.

*Italy.*--Interest is centered primarily upon the activities of the

Guilds, to which have been assigned the duties of regulating prices and wages, authorizing the opening of new plants or the enlargement of those in existence, regulating investments, and planning economic policies with a view to increasing the national wealth.

*Japan.*--Legislation in Japan in 1937 and 1938 increasing Governmental authority over industry and trade, included: the Temporary Fund Adjustment Law, controlling new industrial investments which has been applied to a number of industries, namely, airplanes, metal production machinery, munitions, steel ships, iron and steel, gold, coal, and petroleum; the Emergency Import and Export Control Law, authorizing the Government to control imports and exports, production, distribution and consumption of commodities, during the Sino-Japanese hostilities and for a year after their termination; the Ship Control Law; the Law Concerning Emergency Rice Measures to replenish stocks of Government-owned rice; the Fertilizer Distribution Control Law; the Application of Armament Industries Mobilization Law; the Imperial Fuel Investment Company Law; the Iron and Steel Industry Investment Company Law; the Iron and Steel Industry Law, which contemplates doubling the output of the mills, effecting compulsory extension of plants and furnaces, and granting to new plants exemption from taxation for a period of 10 years; the Gold Mining Act of August 10, 1937, providing for regulation of mining activities and the sale of ores, under a license plan, with subsidies to miners and refiners; the China Incident Taxation Law; and the Anti-Profiteering Amendment Law, which revived an ordinance issued in 1917 in prevention of price increase. Measures adopted in October 1937 placed all stages of the cotton industry under State control. An Imperial ordinance on May 7, 1938, provided for a Materials Adjustment Bureau to adjust the supply and demand of important materials, including iron and steel, other metals, coal, machinery, fibers, chemicals, and articles in foreign trade. Price committees will enforce official quotations and standard prices.

*Latvia.*--Under the Chambers of Commerce and Industry Law of 1934, State control of industrial activities has been extended to cover many important productive lines, including railways, airplanes, telephones, and radio service, hydroelectric power, forest lands, sugar, flax, grain, wool fabrics, confectionery, alcohol, beer, tobacco, refined oil, cellulose, plywood, iron and steel products, wire, bricks, lime, peat, and films. The State also owns the Bank of Latvia, a number of credit institutions, two resort hotels, a life insurance company, a shipping company, and a travel bureau. Special attention is given to export commodities, such as butter, seeds, flax, and lumber. Plants for the packing and export of bacon, hams, butter, and eggs, have been erected under State control. A price inspector has authority to supervise the production of all merchandise and to regulate

prices in all lines of trade and industry, including housing. The value of State owned property is estimated at one-third of the national wealth.

*Manchukuo.*--The Law for the Control of Important Industries effective on May 10, 1937, gave wide power over industries designated as important, of which more than 20 have been named; changes in equipment or production, and any agreements relating to production, price, or sales, must be approved by the Government. An Emergency Trade Control Law was passed in June 1937, for protecting agricultural products, adjusting internal prices, and controlling imports. A Foreign Trade Control Law passed in December 1937, went farther toward adjustment of supply and demand. An Iron and Steel Control Law became effective on April 1, 1938.

*Mexico.*--In addition to the program of land distribution and the organization of rural communities for collective farming under Government supervision, a number of important decrees were issued in 1937, including decrees in June 1937, for control of the silk and artificial silk industries, providing also that imports of certain textile materials and thread, and machinery for knitting and weaving thereof, shall be placed under license control by the Department of National Economy; a decree effective on June 24, 1937, for expropriation of the railways (under the Expropriation Law of November 23, 1936); a decree effective on June 25, 1937, establishing control of production, importation, distribution and prices of all commodities which may be declared to be of fundamental importance and requiring the formation of state producers' associations and national producers' unions; a decree under which a foreign trade bank was set up on June 28, 1937, and a workers' bank in July, to finance syndicates of employees and small merchants and manufacturers; and in August 1937, a decree authorizing creation of a Federal Electrical Commission to organize and administer a national system of electric generation, transmission, and distribution. A Petroleum Council was formed in March 1938, to administer property expropriated from the petroleum companies.

*Netherlands.*--A law effective on April 8, 1937, authorized the Minister of Commerce, Industry, and Shipping to control and limit new operators of retail business, trade and small industries. This was supplemented by the Industrial Establishment Law passed in March 1938, for the control of new industrial enterprises or the increase in capacity of those already established.

Decree of the Governor General of Netherlands Indies, dated December 30, 1937, extended for an indefinite period the Industrial Control Ordinance of 1934, which has been applied to a number of industries, including dairies, metal foundries, the cigarette industry,

ice factories, storage warehouses, the printing industry, the weaving industry, and native rubber smoke houses.

*New Zealand.*--The Primary Products Marketing Amendment Bill presented to the Parliament in December, 1937, would empower the Marketing Department to fix maximum and minimum wholesale and retail prices for dairy produce, fruit, honey, eggs, and other foodstuffs prescribed by Order in Council, and to buy foodstuffs at fixed prices, exporting the surplus over home requirements.

A law passed on March 15, 1938, provided for establishment of an iron and steel monopoly, under Government operation, utilizing domestic deposits of iron ore, and constructing *new* works for manufacturing purposes. Prior to this, iron and steel products have been imported, largely from the United Kingdom and *Australia*.

*Newfoundland.*--The Act to Amend and Consolidate the Law relating to the Customs and Excise, dated March 26, 1938, included provisions for valuation of goods for duty purposes, and also in case of imports at prices or values involving unfair competition with producers or manufacturers in the British Empire.

*Nyasaland (Central Africa.)*--Under the Tobacco Marketing Law, December 21, 1937, all fire-cured leaf tobacco grown in the country must be marketed through licensed auction warehouses, under a Tobacco Control Board.

*Panama.*--A decree in 1938 required that fixed charges (retail prices) must be asked for all merchandise offered for sale. Each article must bear a tag showing the sales price to be observed by all stores.

*Peru.*--A decree of June 17, 1937, required all commercial organizations to report to the Government in January and July of each year, declaring all raw material handled by them in their business undertakings.

*Portugal.*--Law No.1957, May 20, 1937, placed Portuguese agriculture under direct supervision and control of the State, to be effected through corporate organizations or guilds which will be authorized to promote the sale and marketing of farm products, and to enforce regulations laid down by the State for the protection of the national economy. The guilds also may own and operate stores, granaries, agricultural machinery, and livestock, and install various services for the common interest of the members.

*Rhodesia, Southern.*---The Customs and Excise Amendment Act of May 18, 1937, repeats the antidumping provisions of the Act of 1935.

*South Africa, Union of.*--Marketing Act No.26, 1937, provides for voluntary regulation of the production and sale of agricultural products, establishment of certain regulatory boards, the grading

and standardization of agricultural products, and other matters incidental thereto.

*Spain.*--The Government has set up a committee to buy all the raw wool produced in the country and to take over imports, which will be placed at the disposal of the spinning industry. The purpose is said to be to reduce the price of wool and to prevent undue increase in the price of manufactured goods. A tobacco monopoly has been created to regulate the production, importation, manufacture, and distribution of tobacco, matches, and lighters. The production of raw tobacco will be increased, manufacturing plants may not be shut down or opened without Governmental consent; and prices to be paid to the growers will be fixed by the Government.

*Sweden.*--In an effort to strengthen the Government's control over prices and money market, a number of laws were passed in 1937: (1) extending authorization of the National Debt Office to furnish the Riksbank with treasury bills or other State bonds, for sale in the open market; (2) authorizing the Government to issue special regulations concerning the cash reserves of commercial banks; (3) appropriation of 70,000,000 crowns to purchase commodities for storage; (4) increase of the stamp tax on the transfer of shares, effective to May 31, 1938, and (5) release of the Riksbank from its obligation to redeem its notes in gold, extended to February 28, 1938.

*Turkey.*--Law No. 3003, 1937, authorized the Minister of Economy to control and fix the wholesale and retail prices of industrial products where he considers such action necessary, and to make all inquiries requisite for the purpose.

*Uruguay.*--Decree of October 21, 1937, provided for control of retail sales prices of pharmaceutical specialties and dietetic products, in order to safeguard the public health and also to prevent unduly high retail prices.

**FISCAL AFFAIRS**

ACTS PROVIDING FUNDS FOR COMMISSION WORK

APPROPRIATIONS AND EXPENDITURES FOR FISCAL YEAR

APPROPRIATIONS AND EXPENDITURES, 1915-1938

## **FISCAL AFFAIRS**

### **APPROPRIATION ACTS PROVIDING FUNDS FOR COMMISSION WORK**

The Independent Offices Appropriation Act, 1938 (Public, No.171, 75th Cong.), approved June 28, 1937, provided funds for the fiscal year 1938 for the Federal Trade Commission as follows:

For five commissioners, and for all other authorized expenditures of the Federal Trade Commission in performing the duties imposed by law or in pursuance of law, including Secretary to the Commission and other personal services, contract stenographic reporting services; supplies and equipment, law books, books of reference, periodicals, garage rentals, traveling expenses, including not to exceed \$900 for expenses of attendance, when specifically authorized by the Commission, at meetings concerned with the work of the Federal Trade Commission, for newspapers and press clippings not to exceed \$600, foreign postage, and witness fees and mileage in accordance with section 9 of the Federal Trade Commission Act; \$1,950,000: *Provided*, That the Commission may procure supplies and services Without regard to section 3709 of the Revised Statutes (U. S. C., title 41, Sec. 5) when the aggregate amount involved does not exceed \$50.

For all printing and binding for the Federal Trade Commission, \$31,000.

Total, Federal Trade Commission, \$1,981,000.

The Independent Offices Appropriation Act, 1939 (Public, No. 534, 75th Cong.), approved May 23, 1938, made immediately available the sum of \$15,000 for printing and binding parts of the report on principal farm products of the agricultural income inquiry made pursuant to Public Resolutions Nos. 61 and 112, Seventy-fourth Congress.

### **APPROPRIATIONS AND EXPENDITURES FOR FISCAL YEAR**

Appropriations available to the Commission for the fiscal year ended June 30, 1938, under the Independent Offices Act approved June 28, 1937, \$1,981,000; under the Independent Offices Act, 1939, approved May 23, 1938, \$15,000; in all, \$1,996,000. This sum is made up of three separate items: (1) \$50,000 for salaries of the Commissioners, (2) \$1,900,000 for the general work of the Commission, and (3) \$46,000 for printing and binding.

*Appropriations, Allotments, Expenditures, Liabilities, and Balances*

	Amount available	Amount expended	Liabilities and liabilities	Expenditures	Balances
Federal Trade Commission 1938,					
Salaries, Commissioners and all other authorized expenses	\$1,950,000.00	\$1,768,468.98	\$127,050.49	\$1,895,519.47	\$54,480.53
Printing and binding, Federal Trade Commission 1938	31,000.00	31,000.00			31,000.00
Printing and binding Federal Trade Commission, 1938 and 1939	15,000.00	15,000.00			15,000.00
Total, fiscal year 1938	1,996,000.00	1,814,468.98	127,050.49	1,941,519.47	54,480.53
Unexpended balances:					
Federal Trade Commission, 1937	112 503.80	66,722.42	222.72	66,945.14	45,558.66
Federal Trade Commission, 1936, Dec. 31, 1936	128.46				128.46
Federal Trade Commission, 1936	66.26	1 6.06		1 6.06	72.32
Federal Trade Commission, 1935- 1936	12.18				12.18
Federal Trade Commission, 1935	250.73	1 49.87		1 49.87	300.60
Total	2,108,961.43	1,881,135.47	127,273.21	2,008,408.68	100,552.75

1 Credit.

*Detailed Statement of Costs for the Fiscal Year ended June 30, 1938*

	Salary	Travel ex- pense	Other	Total
Commissioners	\$49,999.20	\$681.46		\$50,680.66
Clerks to Commissioners	15,539.16			15,539.16
Messengers to Commissioners	5,503.29			5,503.29
Total	71,041.65	681.46		71,723.11
Administration:				
Office of Secretary	31,253.60			31,253.60
Accounts and Personnel Section	28,270.64			28,270.64
Docket Section	43,234.38			43,234.38
Hospital	1,897.95			1,897.95
Labor	4,075.67			4,075.67
Legal Research & Compiling Section	3,104.70			3,104.70
Library Section	12,242.48			12,242.48
Mail & Files Section	18,790.85			18,790.85
Messenger Service	17,782.78			17,782.78
Public Relations Section	18,092.87			18,092.87
Publications Section	30,755.34			30,755.34
Purchases & Supplies Section	16,257.86			16,257.86
Stenographic Section	116,889.27			116,889.27
Communications			\$11,732.19	11,732.19
Contract Service			1,753.80	1,753.80
Equipment			73,994.48	73,994.48
Miscellaneous			577.90	577.90
Rents			644.80	644.80
Repairs			1,588.67	1,588.67
Reporting Service			5,435.64	5,435.64
Supplies			20,226.28	20,226.28
Transportation of things			782.51	782.51
Witness fees			2,006.25	2,006.25
Total	342,648.39		118,742.52	461,390.91
Legal:				
Application for complaints	250,362.27	30,102.90	608.80	281,073.97
Complaints	378,543.89	41,041.78	152.61	419,738.28
Export Trade	7,096.58	30.35		7,126.93
Preliminary Inquiries	301,926.40	14,091.81	437.60	315,455.21

Newsprint Paper Investigation	10,649.84	1,216.35	70.94	11,937.13
Trade Practice Conference	61,116.39	1,665.61		62,782.00
Total	1,009,695.37	88,148.80	1,269.35	1,099,113.52

Detailed Statement of Costs for the Fiscal Year ended June 30, 1938--Continued

	Salary	Travel ex- pense	Other	Total
General Investigations:				
Agricultural Income	\$2,378.39	\$1.00		\$2,379.39
Farm Machinery	131,602.03	17,164.38		148,766.41
Fruits & Vegetables	11,148.88	1 9.30		11,139.58
Increased Cost of Living	16,256.92	560.19		16,817.11
Industrial Cooperations Reports	3,306.45	35.00		3,341.45
Motor Vehicle Investigation	12,169.91	40.75		12,210.66
Petroleum Decree, 1936		2.19		2.19
Power & Gas	5,766.96			5,766.96
Price Bases	2,237.59			2,237.59
Report on Cooperations	246.59			246.59
Total	185,113.72	17,794.21		202,907.93
Printing & Binding			\$16,681.74	16,681.74
Total			16,681.74	16,681.74
Summary:				
Commissioners	71,041.65	681.46		71,723.11
Administration	342,648.39		118,742.52	461,390.91
Legal	1,009,695.37	88,148.80	1,269.35	1,699,113.52
General Investigations	185,113.72	17,794.21		202,907.93
Printing and Binding			16,681.74	16,681.74
Total	1,608,499.13	106,624.47	136,693.61	1,851,817.21

RECAPITULATION OF COSTS BY DIVISIONS

Administrative	\$429,230.76	\$681.46	\$127,466.57	\$557,378.79
Economic	273,849.90		18,143.64	291,993.54
Chief Counsel	237,274.43		22,980.74	267,871.98
Chief Examiner	445,222.99		52,706.00	499,426.17
Special Board of Investigation	88,995.10			113.05
Trial Examiner	78,443.47		10,435.37	88,878.84
Trade Practice conference	55,482.48		1,677.26	57,159.74
Total	1,608,499.13	106,624.47	136,693.61	1,851,817.21

1 Denotes red figure.

**APPROPRIATIONS AND EXPENDITURES, 1915-1938**

Appropriations available to the Commission since its organization and expenditures for the same period, together with the unexpended balances, are shown by the following table:

Year	Appropriations	Expenditures	Balance	Year	Appropriations	Expenditures	Balance
1915	\$184,016.23	\$90,442.05	\$93,574.18	1927	\$997,000.00	\$960,654.71	\$36,345.29
1916	430,964.08	379,927.41	51,036.67	1928	984,350.00	972,966.64	11,383.96
1917	567,025.92	472,501.20	94,524.72	1929	1,163,192.62	1,169,459.76	3,732.77
1918	1,608,865.92	1,462,187.32	156,678.60	1930	1,495,821.69	1,494,619.69	1,202.00
1919	1,753,530.75	1,522,331.95	231,198.50	1931	1,863,348.42	1,861,971.72	1,376.70
1920	1,305,708.82	1,120,301.32	186,407.80	1932	1,817,382.49	1,778,427.88	38,954.61
1921	1,032,005.67	938,659.69	93,345.98	1933	1,426,714.70	1,393,427.90	33,286.80
1922	1,026,150.54	956,116.50	70,034.04	1934	1,314,013.49	1,313,614.33	399.16
1923	974,480.32	970,119.66	4,360.66	1935	2,097,397.01	1,956,313.34	141,083.67
1924	1,010,000.00	977,018.28	32,981.72	1936	2,035,466.58	1,821,725.81	213,739.77
1925	1,010,000.00	1,008,998.80	1,001.20	1937	1,938,925.89	1,894,027.77	44,898.12
1926	1,008,000.00	996,745.58	11,254.42	1938	1,996,000.00	1,941,619.47	54,480.53

## **APPENDIXES**

FEDERAL TRADE COMMISSION ACT

CLAYTON ACT

ROBINSON-PATMAN ACT

EXPORT TRADE ACT

SHERMAN ACT

MILLER-TYDINGS ACT

RULES OF PRACTICE

STATEMENT OF POLICY

INVESTIGATIONS, 1915-1939

## FEDERAL TRADE COMMISSION ACT 1

(15 U.S. C., Secs. 41-58)

AN ACT To create a Federal Trade Commission, to define Its powers and duties,  
and for

other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That a commission is hereby created and established, to be known as the Federal Trade Commission (hereinafter referred to as the Commission) , which shall be composed of five commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the commissioners shall be members of the same political party. The first commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from the date of the taking effect of this Act, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed : *Provided, however,* That upon the expiration of his term of office a commissioner shall continue to serve until his successor shall have been appointed and shall have qualified. The Commission shall choose a chairman from Its own membership. No commissioner shall engage in any other business, vocation, or employment. Any commissioner may be removed by the President for Inefficiency, neglect of duty, or malfeasance in office. A vacancy in the Commission shall not impair the right of the remaining commissioners to exercise all the powers of the Commission.

The Commission shall have an official seal, which shall be judicially noticed.

SEC. 2. That each commissioner shall receive a salary of \$10,000 a year, payable in the same manner as the salaries of the judges of the courts of the United States. The commission shall appoint secretary who shall receive a salary of \$5,000 a year, payable in like manner, and it shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

With the exception of the secretary, a clerk to each commissioner, the attorneys, and such special experts and examiners as the Commission may from time to time find necessary for the conduct of its work, all employees of the commission shall be a part of the classified civil service, and shall enter the service under such rules and regulations as may be prescribed by the Commission and by the Civil Service Commission.

All of the expenses of the Commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders, in making *any* investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Commission.

Until otherwise provided by law, the commission may rent suitable offices for its use.

The Auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the Commission. 2

SEC. 3. That upon the organization of the Commission and election of its chairman, the Bureau of Corporations and the offices of Commissioner and Deputy Commissioner of Corporations shall cease to exist; and all pending investigations and proceedings of the Bureau of Corporations shall be continued by the Commission.

All clerks and employees of the said bureau shall be transferred to and become clerks and employees of the Commission at their present grades and salaries. All records, papers, and property of the said bureau shall become records, papers,

<sup>1</sup> For limitations on the Commission's jurisdiction, see footnote, p. 35.

and property of the Commission, and all unexpended funds and appropriations for the use and maintenance of the said bureau, including any allotment already made to it by the Secretary of Commerce from the contingent appropriation for the Department of Commerce for the fiscal year nineteen hundred and fifteen, or from the departmental printing fund for the fiscal year nineteen hundred and fifteen, shall become funds and appropriations available to be expended by the Commission in the exercise of the powers, authority, and duties conferred on it by this Act.

The principal office of the Commission shall be in the city of Washington, but it may meet and exercise all Its powers at any other place. The Commission may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

SEC. 4. The words defined in this section shall have the following meaning when found in this Act, to wit:

“Commerce” means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

“Corporation” shall be deemed to include any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, which is organized to carry on business for its own profit or that of its members, and has shares of capital or capital stock or certificates of interest, and any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, without shares of capital or capital stock or certificates of interest, except partnerships, which is organized to carry on business for its own profit or that of its members.

“Documentary evidence” includes all documents, papers, correspondence, books of account, and financial and corporate records.

“Acts to regulate commerce” means the Act entitled “An Act to regulate commerce,” approved February 14, 1887, and all Acts amendatory thereof and supplementary thereto and the Communications Act of 1934 and all Acts amendatory thereof and supplementary thereto.

“Antitrust Acts” means the Act entitled “An Act to protect trade and commerce against unlawful restraints and monopolies,” approved July 2, 1890; also sections 73 to 77, inclusive, of an Act entitled “An Act to reduce taxation, to provide revenue for the Government, and for other purposes,” approved August 27, 1894; also the Act entitled “An Act to amend sections 73 and 76 of the Act of August 27, 1894, entitled ‘An Act to reduce taxation, to provide revenue for the Government, and for other purposes,’” approved February 12, 1913; and also the Act entitled “An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,” approved October 15, 1914.

Sec. 5. (a) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful.

The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, common carriers, subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to the Civil Aeronautics Act of 1938, and persons, partnerships, or corporations subject to the Packers and Stockyards Act, 1921, except as provided in section 406 (b) of said Act, from using unfair

methods of competition in commerce and unfair or deceptive acts or practices in commerce.

(b) Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition or unfair or deceptive act or practice in commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the Commission to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission.

If upon such hearing the Commission shall be of the opinion that the method of competition or the act or practice in question is prohibited by this Act, it shall make a report in writing in which It shall state Its findings as to the facts and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition or such act or practice. Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the transcript of the record in the proceeding has been filed in a circuit court of appeals of the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission may at any time, after notice and opportunity for bearing, reopen and alter, modify, or set aside, in whole or in part, any report or order made or issued by it under this section, whenever In the opinion of the Commission conditions of fact or of law have so changed as to require such action or if the public interest shall so require: Provided, however, That the said person, partnership, or corporation may, within sixty days after service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate circuit court of appeals of the United States, in the manner provided in subsection (c) of this section.

(c) Any person, partnership, or corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the circuit court of appeals of the United States, within any circuit where the method of competition or the act or practice in question was used or where such person, partnership, or corporation resides or carries on business, by filing in the court, within sixty days <sup>2</sup> from the date of the service of such order, a written petition praying that the order of the Commission be set aside. A copy of such petition shall be forthwith served upon the Commission, and thereupon the Commission forthwith shall certify and file in the court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order of the Commission. Upon such filing of the petition and transcript the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, evidence, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed, and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pendente lite. The findings of the Commission as to the facts, if supported by evidence, shall be conclusive. To the extent that the order of the Commission is affirmed, the court shall there-upon issue its own order commanding obedience to the terms of such order of the Commission. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner

and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 240 of the Judicial Code.

<sup>2</sup> Section 5 (a) of the amending Act of 1938 provides :

SEC. 5. (a) In case of an order by the Federal Trade Commission to cease and desist, served on or before the date of enactment of this Act, the sixty-day period referred to in section 5 (c) of the Federal Trade Commission Act, as amended by this Act, shall begin on the date of the enactment of this Act.

(d) The jurisdiction of the circuit court of appeals of the United States to affirm, enforce, modify, or set aside orders of the Commission shall be exclusive.

(e) Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the Commission or judgment of court to enforce the same shall in any wise relieve or absolve any person, partnership, or corporation from any liability under the Antitrust Acts.

(f) Complaints, orders, and other processes of the Commission under this section may be served by anyone duly authorized by the Commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the residence or the principal office or place of business of such person, partnership, or corporation; or (c) by registering; and mailing a copy thereof addressed to such person, partnership, or corporation at his or its residence or principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

(g) An order of the Commission to cease and desist shall become final--

(1) Upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; but the Commission may thereafter modify or set aside its order to the extent provided in the last sentence of subsection (b); or

(2) Upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Commission has been affirmed, or the petition for review dismissed by the circuit court of appeals, and no petition for certiorari has been duly filed; or

(3) Upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review dismissed by the circuit court of appeals; or

(4) Upon the expiration of thirty days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the order of the Commission be affirmed or the petition for review dismissed.

(h) If the Supreme Court directs that the order of the Commission be modified or set aside, the order of the Commission rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of thirty days from the time it was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected to accord with the mandate, in which event the order of the Commission shall become final when so corrected.

(i) If the order of the Commission is modified or set aside by the circuit court of appeals, and if (1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered in accordance with the mandate of the circuit court of appeals shall become final on the expiration of thirty days from the time such order of the Commission was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate, in which event the order of the Commission shall become final when so corrected.

(j) If the Supreme Court orders a rehearing ; or if the case is remanded by the circuit court of appeals to the Commission for a rehearing, and if (1) the time allowed for filing a petition for certiorari has expired, and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered upon such rehearing shall become final in the same manner as though no prior order of the Commission has been rendered.

(k) As used in this section the term “mandate,” in case a mandate has been recalled prior to the expiration of thirty days from the date of issuance thereof, means the final mandate.

(l) Any person, partnership, or corporation who violates an order of the Commission to cease and desist after it has become final, and while such order is

in effect, shall forfeit and pay to the United States a civil penalty of not more than \$5,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

Sec. 6. That the commission shall also have power--

(a) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the Act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.

(b) To require, by general or special orders, corporations engaged in commerce, excepting banks, and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the commission may prescribe, and shall be filed with the commission within such reasonable period as the commission may prescribe, unless additional time be granted in any case by the commission.

(c) Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust Acts, to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General it shall be its duty to make such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation and the report shall be made public in the discretion of the commission.

(d) Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust Acts by any corporation. <sup>3</sup>

(e) Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust Acts in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

(f) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest ; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

(g) From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this Act.

(h) To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

SEC. 7. That in any suit in equity brought by or under the direction of the Attorney

General as provided in the antitrust Acts, the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The Commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe, and upon the coming in of such report

<sup>3</sup> Public No.78, 73d Cong., approved June 16, 1933, making appropriations for the fiscal year ending June 16, 1934, for the "Executive Office and sundry independent executive bureaus, boards, commission," ect., made the appropriation for the Commission contingent upon the provision (48 Stat. 261; 15 U. S. C. A., sec. 46a) that "hereafter no new investigations shall be initiated by the Commission as to the result of a legislative resolution, except the same be a concurrent resolution of the two Houses of Congress."

such exceptions may be filed and such proceedings had in relation thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as the nature of the case may in its judgment require.

SEC. 8. That the several departments and bureaus of the Government when directed by the President shall furnish the commission, upon Its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this Act, and shall detail from time to time such officials and employees to the commission as he may direct.

SEC. 9. That for the purposes of this Act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question ; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the commission made In pursuance thereof.

The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this Act at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken, and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpoena of the commission on the ground or for the reason that the testimony or evidence,

documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpoena issued by it ; *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

Sec. 10. That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Act, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this Act, or who shall willfully neglect or fail to make, or cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than \$1,000 nor more than \$5,000 or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

If any corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Any officer or employee of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

SEC. 11. Nothing contained in this Act shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust Acts or the Acts to regulate commerce, nor shall anything contained in the Act be construed to alter, modify, or repeal the said antitrust Acts or the Acts to regulate commerce or any part or parts thereof.

SEC. 12. (a) It shall be unlawful for any person, partnership, or corporation to disseminate, or cause to be disseminated, any false advertisement--

(1) By United States mails, or in commerce by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics ; or

(2) By any means, for the purposes of inducing, or which is likely to induce directly or indirectly, the purchase in commerce of food, drugs, devices, or cosmetics.

(b) The dissemination or the causing to be disseminated of any false advertisement within the provisions of subsection (a) of this section shall be an unfair or deceptive act or practice in commerce within the meaning of section 5.

SEC. 13. (a) Whenever the Commission has reason to believe--

(1) that any person, partnership, or corporation is engaged in, or is about to engage in, the dissemination or the causing of the dissemination of any advertisement in violation of section 12, and

(2) that the enjoining thereof pending the issuance of a complaint by the Commission under section 5, and until such complaint is dismissed by the Commission or set aside by the court on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 5, would be to the interest of the public, the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States or In the United States court of any Territory, to enjoin the dissemination or the causing of the dissemination of such advertisement. Upon proper showing a temporary injunction or

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restraining order shall be granted without bond. Any such suit shall be brought in the district in which such person, partnership, or corporation resides or transacts business.

(b) Whenever it appears to the satisfaction of the court in the case of a newspaper, magazine, periodical, or other publication, published at regular intervals--

(1) that restraining the dissemination of a false advertisement in any particular issue of such publication would delay the delivery of such issue after the regular time therefor, and

(2) that such delay would be due to the method by which the manufacture and distribution of such publication is customarily conducted by the publisher in accordance with sound business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such false advertisement or any other advertisement. the court shall exclude such Issue from the operation of the restraining order or injunction.

Sec. 14. 4 (a) Any person, partnership, or corporation who violates any provision of section 12 (a) shall, if the use of the commodity advertised may be injurious to health because of results from such use under the conditions prescribed in the advertisement thereof, or under such conditions as are customary or usual, or if such violation is with intent to defraud or mislead, be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than six months, or by both such fine and imprisonment; except that if the conviction is for a violation committed after a first conviction of such person, partnership, or corporation, for any violation of such section, punishment shall be by a fine of not more than \$10,000 or by imprisonment for not more than one year, or by both such fine and imprisonment : *Provided*, That for the purposes of this section meats and meat food products duly inspected, marked, and labeled In accordance with rules and regulations issued under the Meat Inspection Act approved March 4, 1907, as amended, shall be conclusively presumed not injurious to health at the time the same leave official "establishments."

(b) No publisher, radio-broadcast licensee, or agency or medium for the dissemination of advertising, except the manufacturer, packer, distributor, or seller of the commodity to which the false advertisement relates, shall be liable under this section by reason of the dissemination by him of any false advertisement, unless he has refused on the request of the Commission, to furnish the Commission the name and

post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the United States, who caused him to disseminate such advertisement. No advertising agency shall be liable under this section by reason of the causing by it of the dissemination of any false advertisement, unless it has refused, on the request of the Commission, to furnish the Commission the name and post-office address of the manufacturer, packer, distributor, or seller, residing in the United States, who caused it to cause the dissemination of such advertisement.

SEC. 15. For the purposes of section 12, 13, and 14--

(a) The term "false advertisement" means an advertisement, other than labeling, which is misleading in a material respect ; and In determining whether any advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the commodity to which the advertisement relates under the conditions prescribed in said advertisement or, under such conditions as are customary or usual. No advertisement of a drug shall be deemed to be false if it is disseminated only to members of the medical profession, contains no false representations of a material fact, and includes, or is accompanied in each instance by truthful disclosure of, the formula showing quantitatively each ingredient of such drug.

(b) The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.

<sup>4</sup> Section 5 (b) of the amending Act of 1938 provides :

Sec. 5 (b) Section 14 of the Federal Trade Commission Act, added to such Act by section 4 of this Act, shall take effect on the expiration of sixty days after the date of the enactment of this Act.

(c) The term “drug” means (1) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them ; and (2) articles Intended for use In the diagnosis, cure, mitigation, treatment, or prevention of disease In man or other animals ; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals ; and (4) articles intended for use as a component of any article specified in clause (1), (2) , or (3); but does not Include devices or their components, parts, or accessories.

(d) The term “device” (except when used in subsection (a) of this section) means instruments, apparatus, and contrivances, including their parts and accessories, intended (1) for use In the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals ; or (2) to affect the structure or any function of the body of man or other animals.

(e) The term “cosmetic” means (1) articles to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof intended for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such articles; except that such term shall not include soap.

Sec. 16. Whenever the Federal Trade Commission has reason to believe that any person, partnership, or corporation is liable to a penalty under section 14 or under subsection (1) of section 5, It shall certify the facts to the Attorney General, whose duty it shall be to cause appropriate proceedings to be brought for the enforcement of the provisions of such section or subsection.

SEC. 17. If any provision of this Act, or the application thereof to any person, partnership, corporation, or circumstance, Is held invalid, the remainder of the Act and the application of such provision to any other person, partnership, corporation, or circumstance shall not be affected thereby.

SEC. 18. This Act may be cited as the “Federal Trade Commission Act.”

Original act approved September 26, 1914.

Amended act approved March 21, 1938.

## **SECTIONS OF THE CLAYTON ACT ADMINISTERED BY THE FEDERAL TRADE COMMISSION**

(U.S.C., Title 15, Sec. 12)

AN ACT To supplement existing laws against unlawful restraints and monopolies,  
and

for other purposes

*Be it enacted by the Senate and House of Representatives of the United States Of America in Congress assembled, That “antitrust laws,” as used herein, includes the Act entitled “An Act to protect trade and commerce against unlawful restrains and monopolies,” approved July second, eighteen hundred and ninety: sections seventy-three to seventy-seven, inclusive, of an Act entitled, “An Act to reduce taxation, to provide revenue for the Government, and for other purposes,” of August twenty-seventh, eighteen hundred and ninety-four; an Act entitled “An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred*

and ninety-four, entitled ‘An Act to reduce taxation, to provide revenue for the Government, and for other purposes,’” approved February twelfth, nineteen hundred and thirteen; and also this Act.

“Commerce,” as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the Jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the Jurisdiction of the United States: *Provided*, That nothing In this Act contained shall apply to the Philippine Islands.

The word “person” or “persons” wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States the laws of any of the Territories, the laws of any State; or the laws of any foreign country.

SEC. 2.1 (a) That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia, or any insular possession or other place under the Jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to in June, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided*, That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered; *Provided, however*, That the Federal Trade Commission may, after due investigation and hearing to all interested parties, fix and establish quantity limits. and revise the same as it finds necessary, as to particular commodities or classes of commodities, where it finds that available purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly in any line of commerce; and the foregoing shall then not be construed to permit differentials based on differences in quantities greater than those so fixed and established: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade: *And provided further*, That nothing herein contained shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, the burden of rebutting the prima-facie case thus made by showing Justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: *Provided, however*, That nothing herein contained shall prevent a seller rebutting the prima-facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

(c) That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(d) That it shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person

in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offering for sale by such person, unless such payment or consideration is available on proportionately equal terms to all other customers competing in the distribution of such products or commodities.

(e) That it shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or

<sup>1</sup> This section of the Clayton Act contains the provisions of the Robinson-Patman Anti-Discrimination Act, approved June 19, 1936, amending Section 2 of the original Clayton Act, approved October 15, 1914. For certain exemptions from the provisions of the later act concerning cooperatives and purchases for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit, see the later act as published at p.168.

by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(f) That it shall be unlawful for any person engaged In commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this section.

\* \* \* \* \*

SEC. 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

\* \* \* \* \*

SEC. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the

branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other such common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an Interest therein is so acquired

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*. That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

SEC. 8. \* \* \* That from and after two years from the date of the approval of this Act no person at the same time shall be a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than \$1,000,000 engaged in whole or in part in commerce

other than banks, banking associations, trust companies, and common carriers subject to the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, If such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws. The eligibility of a director under the foregoing provision shall be determined by the aggregate amount of the capital, surplus, and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of said corporation next preceding the election of directors, and when a director has been elected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter.

When any person elected or chosen as a director or officer or selected as an employee of any bank or other corporation subject to the provisions of this Act is eligible at the time of his election or selection to act for such bank or other corporation In such capacity his eligibility to act in such capacity shall not be affected and he shall not become or be deemed amenable to any of the provisions hereof by reason of any change in the affairs of such bank or other corporation from whatsoever cause, whether specifically excepted by any of the provisions hereof or not, until the expiration of one year from the date of his election or employment.

\* \* \* \* \*

SEC. 11. That authority to enforce compliance with sections two, three, seven, and eight of this Act by the persons respectively subject thereto is hereby vested: in the Interstate Commerce Commission where applicable to common carriers subject to the Interstate Commerce Act, as amended; in the Federal Communications Commission where applicable to common carriers engaged In wire or radio communication or radio transmission of energy; in the Civil Aeronautics Authority where applicable to air carriers and foreign air carriers subject to the Civil Aeronautics Act of 1938 2; in the Federal Reserve Board where applicable to banks, banking associations, and trust companies; and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:

Whenever the commission, authority, or board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections two, three, seven, and eight of this Act, it shall issue and serve upon such person a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission, authority, or board requiring such person to cease and desist from the violation of the law so charged in said complaint. Any person may make application, and upon good cause shown, may be allowed by the commission, authority, or board, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission, authority, or board. If upon such bearing the commission, authority, or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report In writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of

sections seven and eight of this Act, if any there be, in the manner and within the time fixed by said order. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission, authority, or board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside in whole or in part, any report or any order made or issued by it under this section.

<sup>2</sup> By subsection (g) of Section 1107 of the "Civil Aeronautics Act of 1938," approved June 23, 1938. Public, No. 706, 75th Congress. Ch. 601. 3d Sess., S. 3845, 52 Stat. 1028, Section 11 of the Act of October 15, 1914, the Clayton Act. was amended by inserting after the word "energy" (in the tenth line from the beginning of the paragraph, rendering "communication or radio transmission of energy:"). the following: "in the Civil Aeronautics Authority where applicable to air carriers and foreign air carriers subject to the Civil Aeronautics Act of 1938:" and by inserting after the word "commission" wherever it appears in that section a comma and the word "authority,".

If such person fails or neglects to obey such order of the commission, authority, or board while the same is in effect, the commission, authority, or board may apply to the circuit court of appeals of the United States, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission, authority, or board. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, and thereupon shall have Jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission, authority, or board. The findings of the commission, authority, or board as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, authority, or board, the court may order such additional evidence to be taken before the commission, authority, or board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission, authority, or board may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The Judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Any party required by such order of the commission, authority, or board to cease and desist from a violation charged may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission, authority, or board be set aside. A copy of such petition shall be forthwith served upon the commission, authority, or board, and thereupon the commission, authority, or board forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission, authority, or board as in the case of an application by the commission, authority, or board for the enforcement of its order, and the findings of the commission, authority, or board as to the facts, if supported by testimony, shall in like manner be conclusive.

The Jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission, authority, or board shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission, authority, or board or the judgment of the court to enforce the same shall in any wise relieve or absolve any person from any liability under the antitrust Acts.

Complaints, orders, and other processes of the commission, authority, or board under this section may be served by anyone duly authorized by the commission, authority, or board, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other

executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person; or (c) by registering and mailing a copy thereof addressed to such person at his principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

\* \* \* \* \*

Approved October 15, 1941.

**ROBINSON-PATMAN ANTI-DISCRIMINATION ACT**

(U. S. C., Title 15, Sec. 13, as amended)

AN ACT To amend section 2 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 2 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914, as amended (U. S. C., title 15, Sec. 13), is amended to read as follows:

"SEC. 2. (a) That it shall be unlawful for any person engaged in commerce" (etc., as published on p. 176 as the text of sec. 2, namely, subparagraphs (a) to (f), inclusive, ending with the words "which is prohibited by this section").

SEC. 2. That nothing herein contained shall affect rights of action arising, or litigation pending, or orders of the Federal Trade Commission issued and in effect or pending on review, based on section 2 of said Act of October 15, 1914, prior to the effective date of this amendatory Act: *Provided*, That where, prior to the effective date of this amendatory Act, the Federal Trade Commission has issued an order requiring any person to cease and desist from a violation of section 2 of said Act of October 15, 1914, and such order is pending on review or is in effect, either as issued or as affirmed or modified by a court of competent Jurisdiction, and the Commission shall have reason to believe that such person has committed, used or carried on, since the effective date of this amendatory Act, or is committing, using, or carrying on, any act, practice or method in violation of any of the provisions of said section 2 as amended by this Act, it may reopen such original proceeding and may issue and serve upon such person its complaint, supplementary to the original complaint, stating its charges in that respect. Thereupon the same proceedings shall be had upon such supplementary complaint. as provided in section 11 of said Act of October 15, 1914. If upon such hearing the Commission shall be of the opinion that any act, practice, or method charged in said supplementary complaint has been committed, used, or carried on since the effective date of this amendatory Act, or is being committed, used or carried on, in violation of said section 2 as amended by this Act, It shall make a report in writing in which it shall state its findings as to the facts and shall issue and serve upon such person its order modifying or amending its original order to include any additional violations of law so found. Thereafter the provisions of section 11 of said Act of October 15, 1914, as to review and enforcement of orders of the Commission shall in all things apply to such modified or amended order. If upon review as provided in said section 11 the court shall set aside such modified or amended order, the original order shall not be affected thereby, but it shall be and remain in force and effect as fully and to the same extent as if such supplementary proceedings had not been taken.

SEC. 3. It shall be unlawful for any person engaged in commerce, in the course of such commerce, to be a party to, or assist in, any transaction of sale, or contract to sell, which discriminates to his knowledge against competitors of the purchaser, in that, any discount, rebate, allowance, or advertising service charge is granted to the purchaser over and above any discount, rebate, allowance, or advertising service charge available

at the time of such transaction to said competitors in respect of a sale of goods of like grade, quality, and quantity; to sell, or contract to sell, goods in any part of the United States at prices lower than those exacted by said person elsewhere in the United States for the purpose of destroying competition, or eliminating a competitor In such part of the United States; or, to sell, or contract to sell, goods at unreasonably low prices for the purpose of destroying competition or eliminating a competitor.

Any person violating any of the provisions of this section shall, upon conviction thereof, be fined not more than \$5,000 or imprisoned not more than one year, or both.

## EXPORT TRADE ACT 161

SEC. 4. Nothing in this Act shall prevent a cooperative association from returning to its members, producers, or consumers the whole, or any part of, the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to, or through the association. 1

Approved, June 19, 1936.

### **EXPORT TRADE ACT**

(U. S. C., Title 15, Sec. 61)

An Act to promote export trade, and for other purposes

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the words "export trade" where-ever used in this Act mean solely trade or commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States or any Territory thereof to any foreign nation; but the words "export trade" shall not be deemed to include the production, manufacture, or selling for consumption or for resale, within the United States or any Territory thereof, of such goods, wares, or merchandise, or any act in the course of such production, manufacture, or selling for consumption or for resale.

That the words "trade within the United States" wherever used in this Act mean trade or commerce among the several States or in any Territory of the United States, or in the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States.

That the word "Association" wherever used In this Act means any corporation or combination, by contract or otherwise, of two or more persons, partnerships, or corporations.

SEC. 2. That nothing contained in the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade, or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or act Is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: *And provided further,* That such association does not, either in the United States or elsewhere, enter info any agreement, understanding, or conspiracy, or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein.

SEC. 3. That nothing contained in section seven of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October fifteenth, nineteen hundred and fourteen, shall be construed to forbid the acquisition or ownership by any corporation of the whole or any part of the stock or other capital of any corporation organized solely for the

purpose of engaging in export trade, and actually engaged solely in such export trade, unless the effect of such acquisition or ownership may be to restrain trade or substantially lessen competition within the United States.

SEC. 4. That the prohibition against “unfair methods of competition” and the remedies provided for enforcing said prohibition contained in the Art entitled “An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes”, approved September twenty-sixth, nineteen hundred and fourteen, shall be construed as extending to unfair methods of competition used in export trade against competitors engaged in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States.

<sup>1</sup> By Public. No.550, 75th Congress, Chapter 283. Third Session (H. R. 8148), approved May 26, 1938. it was further provided “That nothing in the Act approved June 19, 1936 (Public, Number 692. Seventy-fourth Congress, second session), known as the Robinson-Patman Anti-discrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit.”

SEC. 5. That every association now engaged solely” in export trade, within sixty days after the passage of this Act, and every association entered into hereafter which engages solely In export trade, within thirty days after its creation, shall file with the Federal Trade Commission a verified written statement setting forth the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members, and if a corporation, a copy of its certificate or articles of incorporation and by-laws, and if unincorporated, a copy of its articles or contract of association, and on the first day of January of each year thereafter it shall make a like statement of the location of Its offices or places of business and the names and addresses of all its officers and of all its stockholders or members and of all amendments to and changes In its articles or certificate of incorporation or in its articles or contract of association. It shall also furnish to the commission such information as the commission may require as to its organization, business, conduct, practices, management, and relation to other associations, corporations, partnerships, and individuals. Any association which shall fail so to do shall not have the benefit of the provisions of section two and section three of this Act, and It shall also forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the association has its principal office, or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of the forfeiture. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Whenever the Federal Trade Commission shall have reason to believe that an association or any agreement made or act done by such association is in restraint of trade within the United States or in restraint of the export trade of any domestic competitor of such association, or that an association either in the United States or elsewhere has entered into any agreement, understanding, or conspiracy, or done any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein, it shall summon such association, its officers, and agents to appear before it, and thereafter conduct an. investigation into the alleged violations of law. Upon investigation, if It shall conclude that the law has been violated, it may make to such association recommendations for the readjustment of its business, in order that it may thereafter maintain its organization and management and conduct its business in accordance with law. If such association fails to comply with the recommendations of the Federal Trade Commission, said commission shall refer its findings and recommendations to the Attorney General of the United States for such action thereon as he may deem proper.

For the purpose of enforcing these provisions the Federal Trade Commission shall have all the powers, so far as applicable, given it in “An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes.”

Approved, April 10, 1918.

(U. S. C., Title 15, Sec. 1)

AN ACT To protect trade and commerce against unlawful restraints and monopolies

SECTION 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: *Provided*, That nothing herein contained shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when

<sup>1</sup> Published as amended by Miller-Tydings Act (Pub., No.314, 75th Cong.. H. R. 7472. approved Aug. 17, 1937).

contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such) resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 5, as amended and supplemented, of the act entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914: *Provided further*, That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and convicted thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order Or prohibition as shall be deemed Just in the premises.

SEC. 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to

that end may be served in any district by the marshal thereof.

SEC. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court <sup>2</sup> of the United

<sup>2</sup> Act of Mar. 3 1911. c. 231. 36 Stat 1167 abolishes the courts referred to and confers their powers upon the district courts.

States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover three-fold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

SEC. 8. That the word "person," or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

Approved, July 2, 1890.

### MILLER-TYDINGS ACT

(Approved August 17, 1937, as a rider to the District of Columbia revenue act)

SECTION 1 of the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890 [the Sherman Act], is amended to read [see Sherman Act, sec. 1, p.192]

### RULES OF PRACTICE

#### RULE I. THE COMMISSION

*Offices.*--The principal office of the Commission is at Washington, D. C.

All communications to the Commission must be addressed to: Federal Trade Commission, Washington, D. C., unless otherwise specifically directed.

Branch offices are maintained at New York, Chicago, San Francisco, Seattle, and New Orleans.

Their addresses are: Federal Trade Commission, room 509, 45 Broadway, New York, N. Y.; Federal Trade Commission, 1118 New Post Office Building, 433 West Van Buren Street, Chicago, Ill.; Federal Trade Commission, 548 Federal Office Building, San Francisco, Calif.; Federal Trade Commission, 801 Federal Building, Seattle, Wash.; Federal Trade Commission, 217 Custom House, New Orleans, La.

*Hours.*--Offices are open on each business day, except Saturday, from 9 a. m. to 4:30 Pm., and on Saturdays from 9 a. m. to 1 p.m.

*Sessions.*--The Commission may meet and exercise all its powers at any place, and may, by one or more of its members, or by such examiners as It may designate, prosecute any inquiry necessary to its duties in any part of the United States.

Sessions of the Commission for hearings will be held as ordered by the Commission.

Sessions of the Commission for the purpose of making orders and for transaction of other business unless otherwise ordered will be held at the principal office of the Commission at Pennsylvania Avenue at Sixth Street, Washington, D. C., on each business day at 10 a. m.

*Quorum.*--A majority of the members of the Commission shall constitute a quorum for the transaction of business.

#### RULE II. THE SECRETARY

The Secretary is the executive officer of the Commission and shall have the legal custody of its seal, papers, records, and property; and all orders of the Commission

shall be signed by the Secretary or such other person as may be authorized by the Commission.

### RULE III. SERVICE

Complaints, orders, and other processes of the Commission, and briefs in support of the Complaint, will be served by the secretary of the Commission by registered mail, except when service by other method shall be specifically ordered by the Commission, by registering and mailing a copy thereof addressed to the person, partnership, or corporation to be served at his or its principal office or place of business. When proceeding under the Federal Trade Commission Act service may also be made at the residence of the person, partnership, or corporation to be served.

When service is not accomplished by registered mail complaints, orders, or other processes of the Commission, and briefs in support of the complaint may be served by anyone duly authorized by the Commission, or by any examiner of the Commission,

(a) By delivering a copy of the document to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or

(b) By leaving a copy thereof at the principal office or place of business of such person, partnership, or corporation. When proceeding under the Federal Trade Commission Act service may also be made at the residence of the person, partnership, or corporation to be served.

The return post-office receipt for said complaint, order, or other process or brief registered and mailed as aforesaid, or the verified return by the person serving such complaint, order, or other process or brief, setting forth the manner of said service, shall be proof of the service of the document.

#### RULE IV. APPEARANCE

Any individual or member of a partnership which is a party to any proceeding before the Commission may appear for himself, or such partnership upon adequate identification, and a corporation or association may be represented by a bona fide officer of such corporation or association upon a showing of adequate authorization therefor.

A party may also appear by an attorney at law possessing the requisite qualifications, as hereinafter set forth, to practice before the Commission.

Attorneys at law who are admitted to practice before the Supreme Court of the United States, or the highest court of any State or Territory of the United States, or the United States Court of Appeals for the District of Columbia, or the District Court of the United States for the District of Columbia, may practice before the Commission.

No register of attorneys who may practice before the Commission is maintained. No application for admission to practice before the Commission is required. A written notice of appearance on behalf of a specific party or parties in the particular proceeding should be submitted by attorneys desiring to appear for such specific party or parties, which notice shall contain a statement that the attorney is eligible under the provisions of this rule. Any attorney practicing before the Commission or desiring so to practice may, for good cause shown, be disbarred or suspended from practicing before the Commission, but only after he has been afforded an opportunity to be heard in the matter.

No former officer, examiner, attorney, clerk, or other former employee of this Commission shall appear as attorney or counsel for or represent any party in any proceeding resulting from any investigation, the files of which came to the personal attention of such former officer, examiner, attorney, clerk, or other former employee during the term of his service or employment with the Commission.

#### RULE V. DOCUMENTS

*Filing.*--All documents required to be filed with the Commission in any proceeding shall be filed with the Secretary of the Commission.

*Title.*--Documents shall clearly show the docket number and title of the proceeding.

*Copies.*--Documents, other than correspondence, shall be filed *in triplicate*, except as otherwise specifically required by these rules.

*Form.*--Documents not printed shall be typewritten, on one side of paper only; letter size, 8 inches by 10 ½ inches; left margin, 1 ½ inches; right margin, 1 inch.

Documents may be printed, in 10 or 12 point type, on good, unglazed paper, of the dimensions and with the margins above specified.

Documents shall be bound at *left side only*.

The originals of all answers, briefs, motions, and other documents shall be signed in ink, by the respondent or his duly authorized attorney. Where the respondent is an individual or a partnership, the originals of said documents shall be signed by said individual or by one of the partners, or by his or its attorney. Where the respondent is a corporation, the originals of said documents shall be signed under the corporate name by a duly authorized official of such corporation, or by its attorney. Where the respondent is an associa-

tion, the originals of said documents shall be signed under the association name for said association by a duly authorized official of such association, or by its attorney.

Answers shall be signed in quadruplicate. One copy of a brief or other document required to be printed shall be signed as the original.

#### RULE VI. COMPLAINTS

Any person, partnership, corporation or association may apply to the Commission to institute a proceeding in respect to any violation of law over which the Commission has jurisdiction.

Such application for complaint shall be in writing, signed by or in behalf of the applicant and shall contain a short and simple statement of the facts constituting the alleged violation of law and the name and address of the applicant and of the party complained of.

The Commission shall investigate the matters complained of in such application.

If, upon investigation made either on its own motion or upon application, the Commission shall have reason to believe that there is a violation of law over which the Commission has jurisdiction, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, the Commission shall issue, and serve upon the party complained of, a complaint stating its charges and containing a notice of a hearing upon a day and at a place therein fixed, at least 80 days after the service of said complaint.

#### RULE IX. ANSWERS

In case of desire to contest the proceeding the respondent shall, within twenty (20) days from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.

Four copies of answers shall be furnished. All answers shall be signed in ink, by the respondent or by his attorney at law. Corporations or associations shall file answers through a bona fide officer or by an attorney at law. Answers shall show the office and post-office address of the signer.

Failure of the respondent to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission, without further notice to respondent, to proceed in regular course on the charges set forth in the complaint.

If respondent desires to waive hearing on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged in the complaint to be true. Respondent by such answer shall be deemed to have waived a hearing on the allegations of fact set forth in said complaint and to have authorized the Commission, without further evidence, or other intervening procedure, to find such facts to be true. Respondent by such answer shall be deemed to have waived a bearing on the allegations of fact set forth in said complaint and to have authorized the Commission, without further evidence, or other intervening procedure, to find such facts to be true, and if in the judgment of the Commission such facts admitted constitute a violation of law or laws as charged in the complaint to make and serve findings as to the facts and

an order to cease and desist from such violations. Upon application In writing made contemporaneously with the filing of such answer, the respondent, in the discretion of the Commission, may be heard on brief, in oral argument, or both, solely on the question as to whether the facts so admitted constitute the violation or violations of law charged in the complaint.

#### RULE VIII. MOTIONS

Motions before the Commission or the trial examiner shall state briefly the purpose thereof and all supporting affidavits, records, and other papers, except such as have been previously filed, shall be filed with such motions and clearly referred to therein.

Three copies of the motion shall be filed.

## RULE IX. CONTINUANCES AND EXTENSION OF TIME

The Commission may, in its discretion, grant continuances, or, on good cause shown, in writing, extend time fixed in these rules.

Applications for continuances and extensions of time should be made prior to the expiration of time prescribed by these rules.

## RULE X. INTERVENTION

Any person, partnership, corporation, or association desiring to intervene in a contested proceeding shall make application in writing, setting out the grounds on which he or it claims to be interested

The Commission may, by order, permit intervention by counsel or in person to such extent and upon such terms as it shall deem proper.

## RULE XI. HEARINGS ON COMPLAINTS

All hearings before the Commission or trial examiners on complaints issued by the Commission shall be public, unless otherwise ordered by the Commission.

Upon the joining of issue in a proceeding upon complaint issued by the Commission, the taking of evidence therein shall proceed with all reasonable diligence and with the least practicable delay.

Not less than 5 days' notice of the time and place of the initial hearing before the Commission, a Commissioner, or a trial examiner, shall be given by the Commission to counsel of record or to parties.

## RULE XII. HEARINGS ON INVESTIGATIONS

When a matter for investigation is referred to a single Commissioner, or examiner, for examination or report, such Commissioner, or examiner, if authorized by the Commission, may conduct or hold conferences or hearings thereon, and reasonable notice of the time and place of such hearings shall be given to parties in interest and posted.

The chief counsel, or such attorney as shall be designated by him, or by the Commissioner, or by the Commission, shall attend such hearings and prosecute the investigation, which shall be public, unless otherwise ordered by the Commission.

## RULE XIV. TRIAL EXAMINERS

*Duties.*--When evidence is to be taken in a proceeding upon complaint issued by the Commission, a trial examiner may be designated for that purpose by the Commission.

It shall be the duty of the trial examiner to complete the taking of evidence with all due dispatch.

The trial examiner shall state the place, day, and hour to which the taking of evidence may from time to time be adjourned.

*Reports.*--The trial examiner shall, within 15 days after receipt by him of the complete stenographic transcript of all testimony in a proceeding, make his report upon the evidence.

A copy of such report shall forthwith be served upon each attorney for the Commission, upon each attorney for respondents, and upon each respondent riot

represented by counsel.

The trial examiner's report upon the evidence is not a decision, finding, or ruling of the Commission. It is not a part of the formal record in the proceeding, and is not to be included in a transcript of the record.

#### RULE XIV. EXCEPTIONS

Attorneys or other persons served with a copy of the report of the trial examiner, within ten (10) days after receipt of such copy of report, file, in writing, their exception, if any, to the report.

They shall specify the particular part of the report to which exception is made, and the exceptions shall include any additional facts which the person filing the exception may deem proper.

Citations to the record shall be made in support of the exceptions.

Seven copies of the exceptions, signed, in ink, shall be filed.

If exceptions are to be argued, they shall be argued at the time of final argument upon the merits.

Exceptions are not a part of the formal record in the proceeding and are not to be included in a transcript of the record.

#### RULE XV. STATEMENTS OF FACTS

When, in the opinion of the trial examiner engaged in taking evidence in any proceeding upon complaint issued by the Commission, the size of the transcript, or complication or importance of the issues involved warrants, he may, of his own motion, or at the request of counsel, at the close of taking of evidence, announce to attorneys for the Commission and for respondents that the trial examiner will receive within such time as he shall fix, a statement in writing from attorneys for the Commission and attorneys for respondents setting forth, in concise outline, the contentions of each as to the facts proved in the proceeding. The time so fixed shall not change the times limited in Rule XIII for filing report by the trial examiner or Rule X for the filing of briefs.

Such statements shall not be exchanged between counsel, are not argued before the trial examiner, and are not a part of the record of the proceeding.

#### RULE XVI. SUBPOENAS

Subpoenas requiring the attendance of witnesses from any place in the United States, at any designated place of hearing, may be issued by the presiding trial examiner or a member of the Commission. Application therefor may be made either to the Secretary to the presiding trial examiner.

Subpoenas for the production of the documentary evidence will be issued only upon application in writing to the Commission. The application must specify, as exactly as possible the documents desired, and show their competence, relevancy, and materiality. The application by a respondent shall be verified by oath or affirmation.

#### RULE XVII. WITNESSES

Witnesses shall be examined orally except that for good and exceptional cause for departing from the general rule the Commission may permit their testimony to be taken by deposition.

Witnesses summoned by the Commission shall be paid the same fees and mileage as are paid witnesses in the courts of the United States.

Witnesses whose depositions are taken, and the persons taking such depositions, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

Witness fees and mileage, and fees for depositions, shall be paid by the party at whose instance witnesses appear.

#### RULE XVIII. DEPOSITIONS

The Commission may order evidence to be taken by deposition in any proceeding or investigation pending at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commission and having power to administer oaths.

Unless notice be waived, no deposition shall be taken except after at least five (5) days' notice to the parties within the United States, and fifteen (15) days' notice when deposition is to be taken elsewhere.

Any party desiring to take the deposition of a witness shall make application in writing, setting out the reasons why such deposition should be taken, and stating the time when, the place where and the name and post-office address of the person before whom it is desired the deposition be taken, the name and post-office address of the witness, and the subject matter or matters concerning which the witness is expected to testify. If good cause be shown, the Commission will make and serve upon the parties, or their attorneys, an order wherein the Commission shall name the witness whose deposition is to be taken and specify the time when, the place where, and the person before whom the witness is to testify, but such time and place, and the person before whom the deposition is to be taken, so specified in the Commission's order, may or may not be the same as those named in said application to the Commission.

The testimony of the witness shall be reduced to writing by the officer before

whom the deposition is taken, or under his direction after which the deposition shall be subscribed by the witness and certified in usual form by the officer. After the deposition has been so certified, it shall, together with three additional copies thereof made by such officer or under his direction, be forwarded by such officer under seal in an envelope addressed to the Commission at its office in Washington, D. C. Such deposition, unless otherwise ordered by the Commission for good cause shown, shall be filed in the record in said proceeding and a copy thereof supplied to the party upon whose application said deposition was taken, or his attorney.

Depositions shall be typewritten, on one side of paper only; letter size, 8 inches by 10 ½ inches; left margin, 1 ½ inches; right margin, 1 inch.

Depositions shall be bound at *left side only*.

#### RULE XIX. EVIDENCE

*Documentary.*--Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant and not intended to be put in evidence, such immaterial or irrelevant parts shall be excluded, and shall be segregated insofar as practicable.

*Objections.*--Objections to evidence before a trial examiner, a Commissioner, or the Commission, shall be in short form, stating the grounds of objections relied upon, and the transcript shall not include argument or debate thereon.

#### RULE XX. BRIEFS

*Filing.*--Any party to a proceeding may file a brief with the Secretary of the Commission, in support of his contentions, within the time limits fixed by these rules.

Briefs not filed on or before the time fixed in the rules will be received only by special permission of the Commission.

Appearance of additional counsel in a case will not constitute grounds for extending time for filing briefs.

*Time.*--Opening brief shall be filed by the attorney supporting the complaint within twenty (20) days after service upon him of a copy of the report of the trial examiner.

Brief on behalf of respondent shall be filed within twenty (20) days after service upon respondent or respondent's attorney of copy of brief in support of the complaint.

Reply briefs in support of the complaint, if any, shall be filed within ten (10) days after filing of brief on behalf of respondent.

*Number.*--Twenty (20) copies of each brief shall be filed.

*Contents.*--Briefs, except the reply brief in support of the complaint, shall contain, in the following order:

(a) A concise abstract or statement of the case.

(b) A brief of the argument, exhibiting a clear statements of the-points of- fact or law to be discussed, with references to the pages of the record and the authorities relied upon in support of each point.

(c) The exceptions, if any, to the report of the trial examiner.

*Index.*-- Briefs comprising more than ten (10) pages shall contain on their top fly leaves a subject index with page references. The subject index shall be supplemented by an alphabetical list of all cases referred to, with references to pages where references are cited.

*Reply briefs.*--Reply brief in support of the complaint shall be filed only with permission of the Commission, and shall be strictly in answer to brief on behalf of

respondent.

No further reply brief on behalf of respondent shall be filed.

*Form.*--Briefs on behalf of respondent shall be printed on 10 or 12 point type; on good, unglazed paper; size 8 by 10 ½ inches; left margin of 1 ½ inches, right margin of 1 inch; width double-leaded text and single-leaded citations.

#### RULE XXI. ORAL ARGUMENTS

Oral arguments before the Commission shall be had as ordered, on written application of the chief trial counsel of the Commission, or of the respondent, or of attorney for respondent, filed within fifteen (15) days after filing of brief on behalf of respondent.

Appearance of additional counsel in a case will not constitute grounds for enlarging time for oral argument.

RULE XXII. REPORTS SHOWING COMPLIANCE WITH ORDERS AND  
WITH  
STIPULATIONS

In every case where an order to cease and desist is issued by the Commission for the purpose of preventing violations of law and in every instance where the Commission approves and accepts a stipulation in which a party agrees to cease and desist from the unlawful methods, acts, or practices involved, the respondents named in such orders and the parties so stipulating shall file with the Commission, within sixty days of the service of such order and within sixty days of the approval of such stipulation, a report, in writing, setting forth in detail the manner and form in which they have complied with said order or with said stipulation; provided, however, that if within the said sixty (00) day period respondent shall file petition for review in a circuit court of appeals, the time for filing report of compliance will -begin to run *de novo* from the final judicial determination; and provided further, that where the order prevents the use of a false advertisement of a food, drug, device, or cosmetic, which may be injurious to health because of results from such use under the conditions prescribed in the advertisement, or under such conditions as are customary or usual, or if the use of such advertisement is with intent to defraud or mislead, an interim report stating whether and how respondents intend to comply shall be filed within ten days.

Within its sound discretion, the Commission require any respondent upon whom such order has been served may and any party entering into such stipulation, to file with the Commission, from time to time thereafter, further reports in writing, setting forth in detail the manner and form in which they are complying with said order or with said stipulation.

Reports of compliance shall be signed in ink by respondents or by the parties stipulating.

RULE XXIII. REOPENING PROCEEDINGS

In any case where an order to cease and desist or an order dismissing a proceeding has been issued by the Commission, the Commission may (a) in the case of an order to cease and desist, at anytime until the transcript of the record in the proceeding has been filed in a circuit court of appeals of the United States upon a petition for review or enforcement, or after the expiration of the statutory time for filing of a petition for review where no such petition has been filed, or (b) in the case of an order dismissing a proceeding at any time thereafter, give reasonable notice to all respondents and to all intervenors, if any, of a hearing as to whether the said proceeding should be reopened. If after said hearing the Commission shall have reason to believe that conditions of fact or of law have so changed since the said order was made as to require, or that the public interest requires, the reopening of such proceeding, the Commission will issue an order for the reopening of the same.

## RULE XXVII. TRADE PRACTICE CONFERENCE PROCEDURE <sup>1</sup>

(a) *Purpose.*--The trade practice conference procedure has for its purpose the establishment, by the Commission, of trade practice rules in the interest of industry and the purchasing public. This procedure affords opportunity for voluntary participation by industry groups or other interested parties in the formulation of rules to provide for elimination or prevention of unfair methods of competition, unfair or deceptive acts or practices and other illegal trade practices. They may also include provisions to foster and promote fair competitive conditions and to establish standards of ethical business practices in harmony with public policy. No provision or rule, however, may be approved by the Commission which sanctions a practice contrary to law or which may aid or abet a practice contrary to law.

<sup>1</sup> Paragraphs (b) to (h), inclusive, are published at p. 111, under Trade-Practice Conferences.

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### STATEMENT OF POLICY

#### POLICY AS TO PRIVATE CONTROVERSIES

It is the policy of the Commission not to institute proceedings against alleged unfair methods of competition or unfair or deceptive acts or practices where the alleged violation of law is a private controversy redressable in the courts, except where said practices tend to affect the public. In cases where the alleged injury is one to a competitor only and is redressable in the courts by an action by the aggrieved competitor and the interest of the public is not involved, the proceeding will not be entertained.

#### SETTLEMENT OF CASES BY STIPULATION

Whenever the Commission shall have reason to believe that any person has been or is using unfair methods of competition or unfair or deceptive acts or practices in commerce, and that the interest of the public will be served by so doing, it may withhold Service of complaint and extend to the person opportunity to execute a stipulation satisfactory to the Commission, in which the person, after admitting the material facts, promises and agrees to cease and desist from and not to resume such unfair methods of competition or unfair or deceptive acts or practices. All such stipulations shall be matters of public record, and shall be admissible as evidence of prior use of the unfair methods of competition or unfair or deceptive acts or practices involved in any subsequent proceeding against such person before the Commission. It is not the policy of the Commission to thus dispose of matters involving intent to defraud or mislead; false advertisement of food, drugs, devices, or cosmetics which are

inherently dangerous or where injury is probable; suppression or restraint of competition through conspiracy or monopolistic practices; violations of the Clayton Act; violations of the Wool Products Labeling Act of 1939 or the rules promulgated thereunder; or where the Commission is of the opinion that such procedure will not be effective in preventing continued use of the unlawful method, act, or practice. The Commission reserves the right in all cases, for any reasons which it regards as sufficient, to withhold this privilege.

#### STATUS OF APPLICANT OR COMPLAINANT

The so-called “applicant” or complaining party has never been regarded as a party in the strict sense. The Commission acts only in the public interest. It has always been and now is the rule not to publish or divulge the name of an applicant or complaining party, and such party has no legal status before the Commission except where allowed to intervene as provided by the statute.

## INVESTIGATIONS BY THE COMMISSION, 1915-38

### DESCRIPTIONS OF GENERAL INQUIRIES INCLUDING TITLES OF PUBLISHED REPORTS

General Investigations of the Federal Trade Commission are described in the following paragraphs devoted to the more than 100 inquiries undertaken at the request of the Congress, the President, the Attorney General, other departmental heads, and on motion of the Commission in pursuance of certain provisions of its organic act.

Published reports of the Commission in connection with these inquiries are also listed, including the Senate and House document members for those of the reports that were ordered printed by Congress. Publications not designated by such document members were published as Commission reports. Although available in reference libraries, any of the publications mentioned are now out of print and are so designated herein. Those available may be attained from the Superintendent of Documents, Government Printing Office, Washington, D. C.

**Accounting Systems.**--This inquiry was made on motion of the Commission, with a view to improving accounting practices, and led to the publication of two reports entitled, *Fundamentals of a Cost System for Manufacturers* (31 pages) and *A System of Accounts for Retail Merchants* (19 pages, out of print), both published in 1916.

**Agricultural Implement and Machinery Industry.**--This inquiry was made pursuant to Public Resolution No.130 otherwise known as Senate Joint Resolution No.277, Seventy-fourth Congress, second session, approved June 24, 1936. It called for the investigation to determine whether there had been recently any conspiracy in unlawful restraint of trade or unfair methods of competition in the manufacture or sale of agriculture implements and machinery, the extent of concentration and control in the industry, the cost, prices, and profits of manufactures and distributors, the methods and price margins of dealers, and the course of prices of farm machinery and of other similar machinery, since 1914. The report, *Agricultural Implement and Machinery Industry*, was issued June 6, 1938 and ordered printed as House Document No.702, Seventy-fifth Congress, third session. For details of the investigation, see p. 23. (See also Farm Implements and independent Harvester.)

**Agricultural Income.**--This inquiry was made pursuant to Senate Joint Resolution No. 9, Seventy-fourth Congress, first session (Public Resolution No.61, Seventy-fourth Congress, approved August 27, 1935, as amended by Public resolution No.112, Seventy-fourth Congress.) The first resolution called for an inquiry with respect to "principal farm products," and the last one with respect to "table and juice grapes, fresh fruits and vegetables." The chief topics to be covered were: the decline in agricultural income; the increases or decreases in the income of principal corporations engaged in the manufacture and distribution of principal farm products; the proportion of total consumer cost of such products represented by proceeds to the farmers, manufacturers, and distributors; the financial position of the aforementioned principal corporations, including assets, investment, and rates of return; the salaries of officers

of such corporations; the concentration of control of major farm products, the methods used for obtaining such control, and the extent to which unfair methods were employed in handling farm products, such methods including any combinations, monopolies, and price-fixing. The resolution also required an inquiry into the extent to which cooperative agencies had entered into the processing and marketing of such farm products.

Five reports were submitted to Congress: (1) *Interim Report of the Federal Trade Commission on the Agricultural Income Inquiry*, December 26, 1935, printed as House Document No.380, Seventy-fourth Congress, second session (6 pages); (2) *Fruits and Vegetables--Agricultural Income Inquiry* (interim report), February 1, 1937, printed as Senate Document No. 17, Seventy-fifth Congress, first session (16 pages); (3) *Agricultural Income Inquiry, Part I, Principal Farm Products*, March 2, 1937, of which the first two chapters, were printed,

namely (a) summary, and (b) conclusions and recommendations, as Senate Document No. 54, Seventy-fifth Congress, first session (40 pages), the complete report (1,134 pages) later being printed by the Commission; (4) *Part II, Fruits, Vegetables and Grapes*, June 10, 1937, printed by the Commission (906 pages), and *Part III, Supplementary Report*, November 8, 1937, printed by the Commission (154 pages). (See also Price Deflation.)

**Bakeries.**--At the request of the United States Food Administration the Commission made a brief report on the cost of bread, and other related factors, which was printed, with other data, by the Food Administration, November 1917, and entitled *United States Food Administration, Report of the Federal Trade Commission on Bakery Business in United States* (pp.5-18, out of print).

**Bread and Flour.**--This inquiry was made pursuant to Senate Resolution No. 163, Sixty-eighth Congress, first session, adopted February 16, 1924. The resolution directed the Commission to investigate the production, distribution, transportation, and sale of flour and bread, showing costs, prices, and profits at each stage of the process of production and distribution; the extent and methods of price fixing, price maintenance, and price discrimination; concentration of control in the milling and baking industries, and evidence indicating the existence of agreements, conspiracies, or combinations in restraint of trade. Two preliminary reports dealt with competitive conditions in the flour-milling and bakery combines and profits. The final report showed, among other things, that wholesale baking in recent years had been generally profitable. It disclosed also price cutting wars by big bakery combines and subsequent price-fixing agreements. Reports were: *Competitive Conditions in Flour Milling*, submitted May 3, 1926, and printed as Senate Document No. 97, Seventieth Congress, first session (140 pages); *Bakery Combines and Profits*, submitted February 11, 1927, and printed as Senate Document No. 212, Sixty-ninth Congress, second session (95 pages); and *Competition and Profits in Bread and Flour*, submitted January 11, 1928, and printed as Senate Document No. 98, Seventieth Congress, first session (509 pages). A supplementary report, *Conditions in the Flour Milling Business*, covering data withheld during court proceedings (Millers' National Federation against Federal Trade Commission) was submitted to the Senate May 28, 1932, and printed as Senate Document No. 96, Seventy-second Congress, first session (26 pages), May 9, 1932. (See also Bakeries, Flour Milling and Food Investigation.)

**Calcium Arsenate.**--This inquiry was made pursuant to Senate Resolution No. 417, Sixty-seventh Congress, fourth session, adopted January 23, 1923. It appeared that the cause of such prices was the sudden increase in demand rather than any restraints of trade. The report, *Calcium Arsenate Industry*, was submitted to the Senate March 3, 1923, and printed as Senate Document No. 345, Sixty-seventh Congress, fourth session (21 pages).

**Cement Industry.**--This inquiry was made pursuant to Senate Resolution No. 448, Seventy-first Congress, third session, adopted February 16, 1931. This resolution instructed the Commission to investigate competitive conditions and distributing processes in the cement industry to determine the existence, if any, of unfair trade practices or violations of the anti-trust laws. The report indicated that rigid application of the multiple basing-point price system, universally used in the industry, tended to lessen price competition and destroy the value of sealed bids; that manufacturers in concert with dealer organizations had engaged in activities which strengthened the

system's price effectiveness and that dealers' associations had engaged in practices designed to restrict sales to those recognized as legitimate dealers by the associations. It was indicated such practices also tended to control sales terms. The report entitled *Cement Industry*, reiterated certain findings and conclusions of the Commission's earlier report on the cement industry made as a part of the price bases inquiry (see Price Bases and Steel Investigations herein for further reference to basing-point Systems) The cement report was submitted to the Senate June 9, 1933, and printed as Senate Document No.71, Seventy-third Congress, first session (160 pages).

**Chain Stores.**--This inquiry was made pursuant to Senate Resolution No.224, Seventieth Congress, first session, adopted May 12, 1928. The Commission was directed to ascertain the advantages and disadvantages of chain-store distribution as compared with other types of distribution and how far the increase in the former system depended upon quantity prices and whether or not such quantity prices were in violation of law and what legisla-

tion, if any, should be enacted regarding them. The resolution also called for a report upon the extent to which practices of the chain stores had tended to monopoly or concentration of control, the existence of unfair methods, and agreements in restraint of trade. The factual data, submitted in 33 separate reports published as Senate documents under the general title *Chain Stores*, contained detailed statistical analyses of almost every phase of chain-store operation.

Subtitles of the chain store reports, their dates of issue, and the document numbers under which they were printed, are as follows:

*Cooperative Grocery Chains*, 199 pages, July 13, 1931, Senate Document No. 12, Seventy-second Congress, first session.

*Wholesale Business of Retail Chains*, 38 pages, December 22, 1931, Senate Document No.29, Seventy-second Congress, first session.

*Sources of Chain-Store Merchandise*, 76 pages, December 22, 1931, Senate Document No.30, Seventy-second Congress, first session.

*Scope of the Chain-Store Inquiry*, 33 pages, December 22, 1931, Senate Document No.31, Seventy-second Congress, first session.

*Chain-Store Leaders and Loss Leaders*, 57 pages, January 15, 1932, Senate Document No.51, Seventy-second Congress, first session.

*Cooperative Drug and Hardware Chains*, 28 pages, April 18, 1932, Senate Document No. 82, Seventy-second Congress, first session.

*Growth and Development of Chain Stores*, 81 pages, June 11, 1932, Senate Document No.100, Seventy-second Congress, first session.

*Chain-Store Private Brands*, 126 pages, September 26, 1932, Senate Document No. 142, Seventy-second Congress, second session.

*Short Weighing and Over Weighing in Chain and Independent Grocery Stores*, 42 pages, December 15, 1932, Senate Document No.153, Seventy-second Congress, second session.

*Sizes of Stores of Retail Chains*, 50 pages, December 21, 1932, Senate Document No.156, Seventy-second Congress, second session.

*Quality of Canned Vegetables and Fruits (Under Brands of Manufacturers, Chains, and Other Distributors)*, 53 pages, January 13, 1933, Senate Document No.170, Seventy-second Congress, second session.

*Gross Profit and Average Sale per Store of Retail Chains*, 75 pages, February 2, 1933, Senate Document No.178, Seventy-second Congress, second session

*Chain Store Manufacturing*, 129

*Sales, Coats, and Profits of Retail Chains*, 120 pages, April 22, 1933, Senate Document No. 40, Seventy-third Congress, first session.

*Prices and Margins of Chain and Independent Distributors*, Washington, D. C.--*Grocery*, 98 pages, May 15, 1933, Senate Document No. 62, Seventy-third Congress, first session.

*Prices and Margins of Chain and Independent Distributors, Memphis--Grocery*, 43 pages, June 8, 1933, Senate Document No. 69, Seventy-third Congress, first session.

*Prices and Margins of Chain and Independent Distributors, Detroit--Grocery*, 42 pages, June 22, 1933, Senate Document No. 81, Seventy-third Congress, second session.

*Prices and Margins of Chain and Independent Distributors, Cincinnati Grocery*, 50 pages, November 12, 1933, Senate Document No.88, Seventy-third Congress, second session.

*Prices and Margins of Chain and Independent Distributors, Cincinnati Drug*, 43 pages, December 30, 1933, Senate Document No. 95, Seventy-third Congress, second session.

*Prices and Margins of Chain and Independent Distributors, Detroit--Drug*, 51 pages December 30, 1933, Senate Document No. 96, Seventy-third Congress, second session.

*Prices and Margins of Chain and Independent Distributors, Memphis--Drug*, 40 pages, December 30, 1933, Senate Document No. 97, Seventy-third Congress, second session.

*Prices and Margins of Chain and Independent Distributors, Washington, D. C.--Drug*, 40 pages, December 30, 1933, Senate Document No.98, Seventy-third Congress, second session.

*Chain-Store Wages*, 116 pages, July 15, 1933, Senate Document No.82, Sev-

enty-third Congress, second session.  
*Chain-Store Advertising*, 89 pages, October 14, 1933, Senate Document No. 84, Seventy-third Congress, second session

*Chain-Store Price Policies*, 146 pages,

pages, April 5, 1933, Senate Document  
No. 13, Seventy-third Congress, first  
session.

October 20, 1933, Senate Document No.  
85, Seventy-third Congress, second ses-  
sion

*Special Discounts and Allowances to Chain and Independent Distributors-Tobacco Trade*, 118 pages, October 26, 1933, Senate Document No.86, Seventy-third Congress, second session.

*Special Discounts and Allowances to Chain and Independent Distributors--Grocery Trade*, 44 pages, November 14, 1933, Senate Document No. 89, Seventy-third Congress, second session.

*Special Discounts and Allowances to Chain and Independent Distributors-Drug Trade*, 98 pages, November 24, 1933, Senate Document No.94, Seventy-third Congress, second session.

*Invested Capital and Rates of Return of Retail Chains*, 142 pages, October 29, 1933, Senate Document No. 87, Seventy-third Congress, second session.

*Service Features in Chain Stores*, 67 pages, November 20, 1933, Senate Document No.91, Seventy-third Congress, second session.

*The Chain Store in the Small Town*, 112 pages, November 22, 1933, Senate Document No. 93, Seventy-third Congress, second session.

*Miscellaneous Financial Results or Retail Chains*, 93 pages, December 31, 1933, Senate Document No.99, Seventy-third Congress, second session.

*State Distribution of Chain Stores*, 1913-28, 55 pages, November 16, 1933, Senate Document No. 130, Seventy-third Congress, second session.

*Final Report on the Chain-Store Investigation*, 110 pages (out of print), December 14, 1934, Senate Document No. 4, Seventy-fourth Congress, first session.

**Coal, Anthracite.--**This investigation was conducted pursuant to Senate Resolution No.217, Sixty-fourth Congress, first session, adopted June 22, 1916, and Senate Resolution No.51, Sixty-fifth Congress, first session, adopted May 1, 1917. A rapid advance in the prices of anthracite at the mines, compared with costs, and the overcharging of anthracite jobbers and dealers, were disclosed in the Inquiry in response to these resolutions. Current reports of operators' and retailers' selling prices were obtained, and this was believed to have substantially benefited the consumer. A preliminary report, *Anthracite Coal Prices*, was transmitted to Congress May 4, 1917, and printed as Senate Document No.19, Sixty-fifth Congress, first session (4 pages, out of print) ; the general report and summary, entitled *Anthracite and Bituminous Coal*, was transmitted to Congress June 19, 1917 and printed as a Commission publication and as Senate Document No.50, Sixty-fifth Congress, first session (420 pages, out of print), and the summary was submitted to Congress separately, entitled *Anthracite and Bituminous Coal Situation*, and printed as House Document No.193, Sixty-fifth Congress, first session (29 pages, out of print).

**Coal, Anthracite.--**This inquiry was made on motion of the Commission, and dealt with premium prices of anthracite coal charged by certain mine operators and the premium prices and gross profits of wholesalers in the latter part of 1923 and early in 1924. The report discussed also the development of the anthracite combination and the results of the Government's efforts to dissolve it. The *Report of the Federal Trade Commission on Premium Prices of Anthracite* (97 pages), dated July 6, 1925, was transmitted to Congress and printed.

**Coal, Bituminous.--**An inquiry was made on motion of the Commission. The reports on investment and profit in soft-coal mining were prepared and transmitted to Congress in the belief that the information would be of timely value in consideration of pending legislation regarding the coal trade. The data cover the years 1916 to 1921, inclusive. Reports were issued in two parts, dated May 31, 1922, and July 6, 1922, but printed in one volume, entitled *Investment and Profit in Soft Coal Mining. Part I Summary and Conclusions; Part II. Explanatory and Statistical Material Supporting Part I* (222 pages).

**Coal, Bituminous.--**This inquiry was made pursuant to House Resolution No. 852,

Sixty-fourth Congress, first session, adopted August 18, 1916. The resolution called for an investigation of the alleged depressed condition of the industry, but subsequent to its adoption there was a marked advance in coal prices, and the Commission, in a preliminary report, suggested various measures for insuring a more adequate supply at reasonable prices. This report, entitled *Preliminary Report by the Federal Trade Commission on the Production and Distribution of Bituminous Coal* was printed as House Document No. 192, Sixty-fifth Congress, first session (8 pages, out of print).

**Coal Reports--Cost of Production.**--This inquiry was made at the direction of President Wilson. Before the passage of the Lever Act in August 1917, the Commission was called upon by the President to furnish information to be used by him in fixing coal prices under that act. On the basis of the Informa-

tion furnished the prices of coal were fixed by Executive order. The work of the Commission in determining the cost of production of coal was continued by obtaining monthly reports. This information was compiled for use of the United States Fuel Administration in continuing the control of prices. Detailed cost records were collected from January 1917, through December 1918, for about 99 percent of the anthracite tonnage production and for about 95 percent of the bituminous coal production. This information was summarized, after the war, in a series of reports for the principal coal producing States or regions, which were all dated June 30, 1919, and printed as follows: *Cost Reports of the Federal Trade Commission--Coal. No.1. Pennsylvania--Bituminous* (103 pages). *No.2. Pennsylvania-Anthracite* (145 pages, out of prints). *No.3. Illinois--Bituminous* (127 pages). *No.4. Alabama, Tennessee, and Kentucky--Bituminous* (210 pages). *No.5. Ohio, Indiana, and Michigan--Bituminous* (288 pages). *No.6. Maryland, West Virginia, and Virginia--Bituminous* (208 pages). *No. 7. Trans-Mississippi States--Bituminous* (359 pages). (See also War-Time Cost Finding.)

**Coal--Current Monthly Reports.**--In December 1919, provided with a special appropriation by Congress, the Commission initiated a system of current monthly returns from the soft-coal industry somewhat similar to those required from coal-producing companies during the war. An injunction to prevent the Commission from calling for such reports (denied about 7 years later) led to their abandonment. Mimeographed reports of the results were published monthly regarding operations from January to June, inclusive, 1920, as follows: Bulletin No.1 (January 1920 costs), April 20, 1920 ; Bulletin No. 2 (February 1920 costs), May 24, 1920 ; Bulletin No.8 (March 1920 costs) June 25, 1920 ; Bulletin No.4 (April 1920 costs), July 26, 1920 ; Bulletin No. 5 (May 1920 costs), August 25, 1920 ; Quarterly Report No.1 (revised costs--First Quarter of 1920), August 25, 1920 ; Quarterly Report No. 2 (revised costs--Second Quarter of 1920), December 6, 1920.

**Coal--Retail Situation.**--An inquiry was made on motion of the Commission into the retail coal situation in Washington, D. C., and a typewritten report was issued on August 11, 1917, entitled *Washington, D. C., Retail Coal Situation* (5 pages).

**Commercial Bribery.**--An inquiry made on motion of the Commission into the prevalence of bribery of employees of customers as a method of obtaining trade was described in a special report to Congress, dated May 15, 1918, entitled *Special Report on Commercial Bribery*, printed as House Document No.1107, Sixty-fifth Congress, second session (3 pages, out of print). The report contained recommendations for legislation striking at this practice. On August 22, 1918, a letter from the Commission to Senator Duncan U. Fletcher of Florida, in the nature of a report, discussed this subject and was printed under the title *Commercial Bribery*, as Senate Document (unnumbered), Sixty-fifth Congress, second session (36 pages, out of print). On March 18, 1920, a brief report was transmitted to the Senate by the Commission, on its own motion, entitled *Commercial Bribery*, which was printed as Senate Document No.258, Sixty-sixth Congress, second session (7 pages, out of print).

**Cooperation in Foreign Countries.**--This investigation was initiated on motion of the Commission. The subsequent report on this subject was the result of inquiries made by the Commission regarding the cooperative movement in 15 European countries. It contained recommendations for further developments of cooperation in the United States. The report, dated December 2, 1924, was entitled *Cooperation in*

*Foreign Countries* (202 pages, out of print), and was printed as a Senate Document.

**Cooperative Marketing.**--This inquiry was made pursuant to Senate Resolution No.34, Sixty-ninth Congress, special session, adopted March 17, 1925. It covered the development of the cooperative movement in the United States and illegal interferences with the formation and operation of cooperatives. The report included also a study of comparative costs, prices, and marketing practices as between cooperative marketing organizations and other types of marketers and distributors handling farm products. Entitled *Cooperative Marketing*, the report was transmitted to the Senate April 30, 1938, and printed as Senate Document No.95, Seventieth Congress, first session (721 pages, out of print).

**Copper.**--This inquiry was a part of the war-time work done at the direction of President Wilson. One Of the first products for which the Government established a definite maximum price during the World War was copper. The information upon which the price was fixed was primarily the cost findings of the Federal Trade Commission, and a summary of this cost information was printed

in the report entitled *Cost Reports of the Federal Trade Commission--Copper* (26 pages, issued June 30, 1919). (See also War-time Cost Finding.)

**Cost of Living.**--At the outbreak of the World War, the rapid rise of prices led the Commission, at the direction of President Wilson, to call a conference on April 30, 1917, to which official delegates of the various States were invited. The proceedings, entitled *The High Cost of Living*, were subsequently printed (119 pages, out of print).

**Cost of Living.**--This inquiry was made upon the request of President Roosevelt as contained in a published letter dated November 16, 1937, and a confidential report was submitted to him a few months thereafter. A resolution of the Commission, concerning its undertaking of the investigations, was adopted November 20, 1937.

**Cotton Merchandising.**--This inquiry was made pursuant to Senate Resolution No. 252, Sixty-eighth Congress, first session, adopted June 7, 1924. The report discussed abuses in handling consigned cotton and made recommendations designed to correct or alleviate existing conditions. The report, *Cotton Merchandising Practices*, was transmitted to the Senate January 20, 1925, and printed, as Senate Document No. 194, Sixty-eighth Congress, second session (88 pages).

**Cottonseed Industry.**--An inquiry was made pursuant to House Resolution No. 439, Sixty-ninth Congress, second session, adopted March 2, 1927. Alleged fixing of the prices paid for cottonseed led to this investigation. The Commission found considerable evidence of cooperation among the State associations, but the evidence as a whole did not indicate that prices had been fixed in violation of the antitrust laws by those engaged in crushing or refining cottonseed. One of the main causes of dissatisfaction to both the producer of cottonseed and those engaged in its purchase and manufacture was found to have been a lack of a uniform system of grading. The report, *Cottonseed Industry*, was submitted to the House March 5, 1928, and printed as House Document No. 193, Seventieth Congress, first session (37 pages).

**Cottonseed Industry.**--An inquiry was made pursuant to Senate Resolution No. 136, Seventy-first Congress, first session, adopted October 21, 1929, and Senate Resolution 147, Seventy-first Congress, first session, adopted November 2, 1929. These resolutions instructed the Commission to investigate practices of corporations operating cottonseed-oil mills to determine the existence of unlawful combinations seeking to lower and fix prices of cottonseed, and seeking to sell cottonseed meal at a fixed price under boycott threat. The Commission was also directed to determine whether such corporations were acquiring control of cotton gins for the purpose of destroying competitive markets as well as for depressing or controlling prices paid to seed producers. The final report (207 pages) was submitted to the Senate on May 19, 1933. Thus report and twelve volumes covering hearings during the course of the investigation were printed as Senate Document No. 209, Seventy-first Congress, second session, under the general title, *Investigation of Cottonseed Industry*.

**Cotton Trade.**--An inquiry was made pursuant to Senate Resolution No. 262, Sixty-seventh Congress, second session, adopted March 29, 1922. A preliminary report discussed especially the causes of the decline in cotton prices during the period 1922. A report entitled *Cotton trade--A preliminary report* (28 pages, out of print) was transmitted February 26, 1923 (See next paragraph.)

**Cotton Trade.**--An inquiry was made pursuant to Senate Resolution No. 429, Sixty-seventh Congress, fourth session, adopted January 31, 1923. The inquiry in response to this second resolution on the cotton trade was combined with the one mentioned

above and resulted in a report which was sent to the Senate in April 1924. This report recommended that Congress enact legislation providing for some form of southern warehouse delivery on New York contracts, and as a part of such a delivery system the adoption of a future contract which would require that not more than three adjacent or contiguous grades should be delivered on any single contract. The Commission also recommended a revision of the system of making quotations and differences at the various spot markets and the abolition of deliveries on futures at New York. The special warehouse committee of the New York Cotton Exchange, on June 28, 1924, adopted the recommendations of the Commission with reference to the southern delivery on New York contracts, including the contiguous grade contract. A report entitled *The Cotton Trade*, printed in two volumes, contained, respectively, the report and the transcript of hearings. It was transmitted to the Senate April 28, 1924, and printed as Senate Document No.100, Sixty-eighth Congress, first session (510 pages, out of print).

**Du Pont Investments.**--This inquiry was made on motion of the Commission of July 29, 1927. The reported acquisitions of E. I. du Pont de Nemours & Co., of the stock of the United States Steel Corporation, together with previously reported holdings in General Motors Corporation, caused an inquiry into these relations with a view to ascertaining the facts and their probable economic consequences. The report, entitled *Report of the Federal Trade Commission on Du Pont Investments*, was mimeographed (43 pages), together with views of Commissioner William E Humphrey on the resolution and on the report (3 pages).

**Electric and Gas Utilities.**--See Electric Power, Interstate Power Transmission, and Utility Corporations.

**Electric Power.**--This inquiry, made pursuant to Senate Resolution No.329, Sixty-eighth Congress, second session, adopted February 9, 1925, resulted in two reports on the control of the electric-power industry. The first dealt with the organization, control, and ownership of commercial electric-power companies, and showed, incidentally, the dangerous degree to which pyramiding had been practiced in superposing a series of holding companies over the underlying operating companies. The second report related to the supply of electrical equipment and competitive conditions existing in the industry. The dominating position of the General Electric Co. in the field of electric equipment was clearly brought out. These reports, entitled *Electric Power Industry--Control of Power Companies* (272 pages), printed as Senate Document No. 213 Sixty-ninth Congress, second session (out of print), and *Supply of Electrical Equipment and Competitive Conditions* (282 pages), printed as Senate Document No.46, Seventieth Congress, first session, were transmitted to the Senate February 21., 1927, and January 12, 1928, respectively. (See also Interstate Power Transmission and Utility Corporations.)

**Farm Implements.**--This inquiry was made pursuant to Senate Resolution No. 223, Sixty-fifth Congress, second session, adopted May 13, 1918. The high prices of farm implements and machinery led to this inquiry, which disclosed that there were numerous trade combinations to advance prices and that the consent decree for the dissolution of the International Harvester Co. was inadequate. The Commission recommended a revision of the decree and the Department of Justice proceeded against the company to that end. The report, entitled *Report of the Federal Trade Commission on the Causes of High Prices of Farm Implements* (713 pages, out of print), was transmitted to the Senate May 4, 1920.

**Farm Implements and Machinery.**--See Agricultural Implements and Machinery, and Independent Harvester.

**Farm Products.**--See Agricultural Income.

**Feeds.**--This inquiry was made pursuant to Senate Resolution No.140, Sixty-sixth Congress, first session, adopted July 31, 1919. Its purpose was to discover whether there were any combinations or restraints of trade in that business; and, though it disclosed some association activities in restraint of trade, it found no important violation of the antitrust laws. Certain minor abuses in the trade were eliminated. The *Report of the Federal Trade Commission on Commercial Feeds* (206 pages), was transmitted to the Senate March 29, 1921, and printed.

**Fertilizer.**--An inquiry was made pursuant to Senate Resolution No.487, Sixty-second Congress, third session, adopted March 1, 1913. Begun by the Commissioner of Corporations, the investigation disclosed the extensive use of bogus independent fertilizer companies for purposes of competition, but through conferences with the

principal manufacturers agreements were reached for the abolition of such unfair competition. A report, entitled *Fertilizer Industry* (269 pages) was transmitted by the Federal Trade Commission to the Senate August 19, 1916, and printed as Senate Document No.551, Sixty-fourth Congress, first session.

**Fertilizer.**--An inquiry made pursuant to Senate Resolution No.307, Sixty-seventh Congress, second session, adopted June 17, 1922, developed that active competition generally prevailed in the fertilizer industry in this country, though in certain foreign countries combinations controlled some of the most important raw materials. The Commission recommended constructive legislation to improve agricultural credits and more extended cooperative action in the purchase of fertilizer by farmers. The report, entitled *Fertilizer Industry* (87 pages), was transmitted to the Senate March 3, 1923, and printed as Senate Document No.347. Sixty-seventh Congress, fourth session.

**Flags.**--This inquiry, made pursuant to Senate Resolution No.35, Sixty-fifth Congress, first session, adopted April 16, 1917, resulted from unprecedented increases in the prices of American flags due to the war-time demand. A report entitled *Prices of American Flags*, printed as Senate Document No.82, Sixty-

fifth Congress, first session (6 pages, out of print), was transmitted to the Senate, July 26, 1917.

**Flour Milling.**--An inquiry into the flour-milling industry was made pursuant to Senate Resolution No.212, Sixty-seventh Congress, second session, adopted January 18, 1922. A report on the inquiry was sent to the Senate In May 192~ It showed the costs of production of wheat flour and the profits of the flour-milling companies in recent years. It also discussed the disadvantages of the miller and consumer arising from an excessive and confusing variety in the sales of flour packages. A report, entitled *Wheat Flour Milling Industry* (130 pages), was transmitted to the Senate May 16, 1924, and printed as Senate Document No. 130, Sixty-eighth Congress, first session (out of print). (See also Bakeries, Bread, and Food Investigation.)

**Food Investigation.**--This inquiry was made pursuant to an order of President Wilson dated February 7, 1917. The general food investigation, undertaken with a special appropriation of Congress, resulted in two major series of reports, namely, meat packing and the grain trade, both described elsewhere in this list. In 'addition separate inquiries were made into flour milling, canned vegetables and fruits, and canned salmon. (See Food Investigation: Flour Milling, Grain Trade, Meat Packing, Food-Canning, Private Car Lines, and Wholesale Marketing of Food.)

**Food Investigation--Flour Milling.**--This inquiry was begun pursuant to the order of President Wilson dated February 7, 1917, but was continued as a separate inquiry. A report entitled *Commercial Wheat Flour Milling* was issued on September 15, 1920 (118 pages). (See also Bakeries, Bread, and Flour Milling.)

**Food Investigation--Flour Milling and Jobbing.**--In connection with the food Inquiry ordered by President Wilson, the Commission on April 4, 1918, issued a report entitled *Food Investigation, Report of the Federal Trade Commission on Flour Milling and Jobbing* (27 pages, out of print). (See also Bakeries, Bread, and Flour Milling.)

**Food Investigation--Food Canning.**--As a part of the general food investigation ordered by President Wilson in 1917, the Commission made a study of canned foods, and published two reports, one May 15, 1918, entitled *Food Investigation. Report of the Federal Trade Commission on Canned Foods. General Report and Canned Vegetables and Fruits* (103 pages, out of print) and another December 27, 1918, entitled *Food Investigation. Report of the Federal Trade Commission on Canned Foods. Canned Salmon* (83 pages). Also, the Com mission, in connection with its general war-the cost finding activity, obtained a large amount of cost data for use of the War and Navy Departments, including data on canned foods. A volume was published November 21, 1921, in accordance with section 6 (f) of the Federal Trade Commission Act, and en-titled *Report of the Federal Trade Commission on Canned Foods, 1918. Corn, Peas, String Beans, Tomatoes and Salmon* (86 pages).

**Food Investigation--Grain Elevators.**--In connection with the Inquiry into the grain trade ordered by President Wilson as elsewhere described, the Commission, In a letter dated June 13, 1921, transmitted to the Senate, on its own motion, in accordance with section 6 of the Federal Trade Commission Act, its report, *Profits of Country and Terminal Grain Elevators, a Preliminary Report*. This was printed as Senate Document No.40, Sixty-seventh Congress, first session (12 pages, out of print). (See also Grain Exporters and Grain-Wheat Prices.)

**Food Investigation--Grain Trade.**--Made pursuant to the direction of President Wilson dated February 7, 1917, this investigation covered the grain trade generally

from the country elevator to the central markets, and included an extensive statistical analysis of the trading in cash, grain, and future contracts used as recorded in the books of commission men, brokers, and others. The Commission recommended that the quotations of the various grain exchanges should be made up and published on a more uniform basis and that railroads should be required to operate public elevators for the convenience of their shippers or that there should be governmental operation of storage elevators to permit small dealers to compete more nearly on an equality with the large elevator merchandisers. *The Report of the Federal Trade Commission on the Grain Trade* was printed in seven volumes, as follows: *I. Country Grain Marketing* (350 pages), September 15, 1920; *II. Terminal Grain Markets and Exchanges* (333 pages) September 15, 1920; *III. Terminal Grain Marketing* (332 pages), December 21, 1921; *IV. Middlemen's Profits and Margins* (215 pages), September 26, 1923; *V. Future Trading Operations in Grain*

(347 page, out of print), September 15, 1920; VI. *Prices of Grain and Grain Futures* (374 pages), September 10, 1924; VII, *Effects of Future Trading* (419 pages), June 25, 1926 (See also Grain Exporters and Grain-Wheat Prices.) Food Investigation-Meat Packing. As a part of the food inquiry ordered by President Wilson as of February 7, 1917, a comprehensive inquiry was made into the meat-packing industry. Evidence was obtained of a combination among meat packers and of various unfair methods of competition. It also was developed that they were rapidly extending their operations into various unrelated lines of food products such as fruits, and dairy products. As a result of the Inquiry, the Commission recommended divorcing the meat packers from the control of the stockyard., a recommendation subsequently adopted by Congress in enacting the Packers and Stockyards Act, and also recommended restricting their operations in the unrelated lines, which was included in the provisions of a consent decree enjoining them from engaging in such merchandising. (See Packer Consent Decree below.) Six reports were Issued as a result of this inquiry, the sixth having been prepared by the Department of Agriculture which cooperated with the Commission in making a study of the costs of raising and marketing cattle for slaughter. These six reports submitted to the President were: *Food Investigation. Report of the Federal Trade Commission on the Meat-Packing Industry. Summary and Part I (Extent and Growth of Power of the Five Packers in Meat and Other Industries)*, submitted June 24, 1919 (574 pages); *Part II, Evidence or Combination Among Packers*, submitted November 25, 1918 (290 pages); *Part III. Methods of the Five Packers in Controlling the Meat Packing Industry*, submitted June 28, 1919 (325 pages, out of print); *Part IV. The Five Large Packers in Produce and Grocery Foods*, submitted June 30, 1919 (390 pages) ; *Part V. Profits or the Packers*, submitted June 28, 1919 (110 pages): and *Part VI Cost of Growing Beef Animals, Cost of Fattening Cattle, and Cost or Marketing Live Stock*, submitted June 30, 1919 (183 pages). The summary was also printed separately by the Commission and as House Document 1297, Sixty-fifth Congress, second session, with a letter of transmittal of the President, dated September 24, 1918. (See also Meat Packing Profit Limitations and Packer Consent Decree.)

**Food Investigation--Wholesale Marketing.--**Undertaken as a part of the food Inquiry ordered by President Wilson as of February 7, 1917, this inquiry consisted of an examination of the methods of marketing, including especially the facilities necessary therefor and the private control or public regulation thereof. The printed report, *Food Investigation, Report of the Federal Trade Commission on the Wholesale Marketing of Food* (268 pages, out of print), was dated June 30, 1919

**Food Investigation--Private Car Lines.--**This inquiry also was undertaken as a part of the food investigation ordered by President Wilson as of February 7, 1917. It comprised chiefly an examination of livestock car lines and refrigerator ear lines, both for meats and for fruits and vegetables, including a study of the effect of the ownership of such facilities on competition. Certain remedial measures were recommended. The report entitled *Food Investigation, Report of the Federal Trade Commission on Private Car Lines* (271 pages), was dated June 27, 1919. and printed.

**Foreign Trade--Antidumping Legislation.--**The inquiry was begun in the spring of 1933, on motion of the Commission, when amendments to the antidumping laws of this country were under consideration by Congress. Authority for this study is found In sections 5 and 6 (h) of the Federal Trade Commission Act. The several recognized

types of dumping--(1) real or ordinary dumping, (2) bounty dumping, (3) freight dumping, (4) dumping of materials, (5) consignment dumping, (6) exchange dumping, and (7) social dumping, were studied, as well as certain general provisions which may be used to prevent the dumping of goods from foreign countries. International action in suppression of dumping was briefly mentioned, and the legislation of each country was studied separately. A report entitled *Antidumping Legislation and Other Import Regulations in the United States and Foreign Countries*, was ordered printed on January 11, 1934, as Senate Document No.112, Seventy-third Congress, second session (100 pages). In June 1938 the Commission presented to Congress a *Supplemental Report on Antidumping Legislation and Other Import Regulations in the United States and Foreign Countries*, which brought to date the material in the report mentioned above. A summary of the supplemental report (4 pages) is available in mimeographed form. (See p. 129.)

**Foreign Trade--Cooperation in American Export Trade.--**This inquiry was made on motion of the Commission. An extensive investigation was undertaken of competitive conditions affecting Americans in international trade. The report disclosed the marked advantages of various other nations in foreign trade by reason of their superior facilities and more effective organizations. The Webb-Pomerene Act authorizing the association of manufacturers for export trade was enacted as a direct result of the recommendations embodied in the report. The report was issued as of June 30, 1916, under the general title *Cooperation in American Export Trade*, in two volumes: *Part I. Summary and Report* (387 pages), *Part II. Exhibits* (597 pages) (both out of print).

**Foreign Trade--Cotton Growing Corporation.--**This inquiry was made pursuant to Senate Resolution No.317, Sixty-eighth Congress, second session, adopted January 27, 1925, and concerned the development, methods, and activities of the Empire Cotton Growing Corporation, a British company. The report discussed world cotton production and consumption and concluded that there was then little danger of serious competition to the American cotton grower and that it would be many years before there would be a possibility that the United States would lose its position as the largest producer of raw cotton. The report, entitled *Empire Cotton Growing Corporation* (30 pages) was transmitted to the Senate February 28, 1925, and printed as Senate Document No.226, Sixty-eighth Congress, second session (out of print).

**Fruits and Vegetables.--**See Agricultural Income.

**Gasoline.--**Pursuant to the direction of President Coolidge as of February 7, 1924, the Commission made an investigation of the sharp advance in gasoline prices, reporting in the form of a *Letter of Submittal and Summary of Report on Gasoline Prices in 1924*, dated June 4, 1924 (typewritten or mimeographed copy, 24 pages). It was referred by the President to the Attorney General and reprinted in the Congressional Record of February 28, 1925, beginning on page 5158. (See also Petroleum Decree Investigation and eight subsequent paragraphs.)

**Gasoline.--**Pursuant to Senate Resolution No.109, Sixty-third Congress, first session, adopted June 18, 1913, and Senate Resolution No.457, Sixty-third Congress, second session, adopted September 28, 1914, the Commission investigated gasoline prices for the year 1915 and published its *Report on the Price of Gasoline in 1915* (224 pages) as of April 11, 1917, in which were discussed the high prices of petroleum products and how the various Standard Oil companies had continued to maintain a division of marketing territory among themselves. The Commission suggested several plans for restoring effective competition in the oil industry. A preliminary report, *Investigation of the Price of Gasoline*, was issued April 10, 1916, and printed as Senate Document No.403, Sixty-fourth Congress, first session (15 pages, out of print).

**Gasoline Importation.--**This inquiry, made pursuant to Senate Resolution No. 274, Seventy-second Congress, first session, adopted July 16, 1932, had its inception in complaints filed against four major oil companies operating in Detroit, alleging price discrimination due to zoning divisions in which different retail prices prevailed. The Commission transmitted its report to the Senate February 27, 1933, in the form of a letter entitled *Importation of Foreign Gasoline at Detroit, Mich.* (3 pages), printed as Senate Document No.206, Seventy-second Congress, second session.

**Gasoline Prices.--**This inquiry was made pursuant to Senate Resolution No. 166, Seventy-third Congress, second session, adopted February 2, 1934. The Commission

investigated the causes and effects of increased gasoline prices during the 6-month period preceding the resolution's adoption. The report revealed an average price increase of 2 cents about the time of the effective date, September 2, 1933, of the petroleum code. Following subsequent declines the average net increase was 1.04 cents. The report submitted May 10, 1934, entitled *Gasoline Prices*, was printed as Senate Document No. 178, Seventy-third Congress, second session (22 pages).

**Grain Exporters.**--The low prices of export wheat gave rise to this inquiry, which was made pursuant to Senate Resolution No.133, Sixty-seventh Congress, second session, adopted December 22, 1921. The study developed facts regarding extensive and harmful speculative manipulations of prices on the grain exchanges and conspiracies among country grain buyers to agree on maximum prices for grain purchased. Legislation for a stricter supervision of grain exchanges were recommended, together with certain changes in their rules. The Commission also recommended governmental action looking to additional storage facilities for grain uncontrolled by grain dealers. Reports, entitled *Report of*

*the Federal Trade Commission on Methods and Operations of Grain Exporters, Vol. I, Interrelations and Profits* (123 pages), and *Vol. II, Speculation, Competition, and Prices* (264 pages), were transmitted to the Senate May 16, 1922, and June 18, 1923, respectively. (See Food Investigation: Grain Elevators and Grain Trade.)

**Grain--Wheat Prices.--**The extraordinary decline of wheat prices in the summer and autumn of 1920 led to a direction of President Wilson (as of October 12, 1920) to inquire into the reasons. These were found chiefly in abnormal market conditions, including certain arbitrary methods pursued by the grain-purchasing departments of foreign governments. The resulting report, entitled *Report of the Federal Trade Commission on Wheat Prices for the 1920 Crop* (91 pages), was transmitted to the President December 13, 1920. (See Food Investigation: Grain Elevators and Grain Trade.)

**Guarantee Against Price Decline.--**The Commission, in 1919, made an inquiry into the practice of guarantee against price decline through a circular letter calling for information and opinions. The report, entitled *Digest of Replies \* \* \* Relative to the Practice of Giving Guarantee Against Price Decline*, was published May 27, 1920 (60 pages).

**House Furnishings.--**Pursuant to Senate Resolution No.127, Sixty-seventh Congress, second session, adopted January 4, 1922, the Commission investigated the alleged high prices for house furnishing goods which had prevailed since 1920, as compared to the price declines in other lines. Three reports were issued showing that in respect to several kinds of household furnishings there had been conspiracies to inflate the prices of such goods. These reports, entitled *Report of the Federal Trade Commission on House Furnishing Industries, Vol. I. House hold Furniture* (484 pages), *Vol. II, Household Stoves* (187 pages) and *Vol. II, Kitchen Furnishings and Domestic Appliances* (347 pages), were transmitted to the Senate, January 17, 1923, October 1, 1923, and October 6, 1924, respectively. A summary of Volume I was printed in 1923.

**Independent Harvester Co.--**This inquiry was made pursuant to Senate Resolution No.212, Sixty-fifth Congress, second session, adopted March 11, 1918, calling for an investigation of the organization and methods of operation of the company which had been formed several years before to compete with the "Harvester trust." The company passed into receivership and the report disclosed that mismanagement and insufficient capital brought about its failure. A summary, entitled *Federal Trade Commission Report to the Senate on the Independent Harvester Co.* (mimeographed, 5 pages, out of print), was transmitted to the Senate May 15, 1918. (See also Agricultural Implements and Machinery, and Farm Implements.)

**Interstate Power Transmission.--**This inquiry was made pursuant to Senate Resolution No. 151, Seventy-first Congress, first session, adopted November 8, 1929, which called for ascertainment of the quantity of electric energy used for development of power or light, or both, generated in any State and transmitted across State lines, or between points within the same State but through any place outside thereof. The report, entitled *Interstate Movement of Electric Energy*, was printed as Senate Document No.238, Seventy-first Congress, third session (134 pages), and transmitted to the Senate December 20, 1930. Interim reports had been issued as of December 9, 1929, March 10, June 11, and September 19, 1930. (See also Electric Power and Utility Corporations.)

**Leather and Shoes.**--This inquiry was made on motion of the Commission, on account of general complaint regarding the high prices of shoes, and dealt chiefly with the costs and prices of heather and shoes. A report, entitled *Report on Leather and Shoe Industries* (180 pages), was published August 21, 1919. Previously, as of January 23, 1918, the Commission had issued *Hide and Leather Situation. A Preliminary Report to the "Report on Leather and Shoe Industries."* (Out of print.)

**Leather and Shoes.**--Under this inquiry, made pursuant to House Resolution No.217, Sixty-sixth Congress, first session, adopted August 19, 1919, a further study of leather and shoe costs and prices was conducted. The report, entitled *Report of the Federal Trade Commission on Shoe and Leather Costs and Prices* (212 pages), and a summary were printed and transmitted to the House, June 10, 1921.

**Lumber--Costs.**--The war-time examination of lumber costs authorized by President Wilson as of July 25, 1917, resulted in an accumulation of information which led the Commission to compile certain reports among which was one titled *Report of the Federal Trade Commission on War-Time Costs and Profits*

of *Southern Pine Lumber Companies*, transmitted to Congress May 1, 1922 (94 pages). (See also War-Time Cost Finding.)

**Lumber Trade Associations.**--Pursuant to request of the Attorney General dated September 4, 1919, an extensive survey was made of lumber manufacturers' associations throughout the United States. The information obtained was presented in a series of published reports revealing the activities and attitude of lumber manufacturers toward national legislation, amendments to the revenue laws, elimination of competition of competitive woods, control of prices and production, restriction of reforestation, and other matters. In consequence of the Commission's findings and recommendations, the Department of Justice initiated proceedings against certain of these associations for violations of the antitrust laws. A report was printed entitled *Report of the Federal Trade Commission on Lumber Manufacturers' Trade Associations, Incorporating Reports of January 10, 1921* (Preliminary Survey of Lumber Manufacturers' National and Regional Trade Associations) ; *February 18, 1921* (Southern Pine Association of New Orleans, La.) ; *June 9, 1921* (Douglas Fir Lumber Manufacturers' amid Loggers' Associations) ; and *February 15, 1922* (Western Pine Manufacturers' Association of Portland, Oreg.) (150 pages, out of print). On May 7, 1923, a further report was made, entitled *Report of the Federal Trade Commission on Northern Hemlock and Hardwood Manufacturers' Association* (52 pages). Further information on these associations was developed in connection with the inquiry into open price associations. (See Open Price Associations.) On January 24, 1923, a report was made on three additional associations, entitled *Activities of Trade Associations and Manufacturers of Posts and Poles in the Rocky Mountains and Mississippi Valley Territory* (22 pages). The three associations were: Western Red Cedar Association, Lifetime Post Association, and Western Red Cedar Men's Information Bureau.

**Lumber Trade Associations.**--An investigation of the activities of five large lumber trade associations bringing down to date the study made at the request of the Attorney General in 1919-20, was conducted on motion of the Commission in conjunction with the inquiry into open-price associations. Transmitted February 13, 1929. (See Open-Price Associations.)

**Meat-Packing Profit Limitations.**--This inquiry was made pursuant to Senate Resolution No.177, Sixty-sixth Congress, first session, adopted September 3, 1919, and had to do with the system of war-time control established by the United States Food Administration. Certain changes were recommended by the Commission, including more complete control of the business and lower maximum profits. The report, entitled *Maximum Profit Limitation on Meat-Packing Industry* (179 pages), on September 25, 1919, was ordered by the Senate to be printed and was published as Senate Document No.110, Sixty-sixth Congress, first session. (See also Food Investigation: Meat Packing.)

**Milk--Canned.**--An inquiry was made into the milk industry pursuant to Senate Resolution No.431, Sixty-fifth Congress, third session, adopted March 3, 1919. The investigation of the fairness of milk prices to producers and of canned milk prices to consumers, and whether they were affected by fraudulent or discriminatory practices, resulted in a report showing marked concentration of control and of questionable practices in the buying and handling of cream by butter manufacturers, many of which practices have since been recognized as unfair by the trade itself. The report, entitled *Report of the Federal Trade Commission on Milk and Milk Products, 1914-1918* (234

pages), was transmitted to the Senate June 6 1921, with a summary.

**Milk Investigation.**--This inquiry was made pursuant to House Concurrent Resolution No.32, Seventy-third Congress, second session, adopted June 15, 1934, concerning questionable trade practices in the milk industry and alleged monopolistic tendencies in the control of milk supply. The titles of seven reports issued are as follows: *Report of the Federal Trade Commission on the Sale and Distribution of Milk and Milk Products, Connecticut and Philadelphia Milksheds*, dated April 5, 1935, and printed as House Document No.152, Seventy-fourth Congress, first session (105 pages); *Connecticut and Philadelphia Milksheds*, dated December 81, 1935, and printed as House Document No.387, Seventy-fourth Congress, second session (125 pages); *Chicago Sales Area*, dated April 15, 1936, and printed as House Document No.451, Seventy-fourth Congress, second session (103 pages) ; *Boston, Baltimore, Cincinnati and St. Louis*, dated June 4, 1936, and printed as House Document No.501, Seventy-fourth Congress, second session (243 pages); *Twin Cities Sales Area*, dated June 15, 1936, and printed as House Document No.506, Seventy-fourth Congress, second session (90 pages); *New York Milk Sales Area*, dated September 30, 1936, and printed as House

Document No.95, Seventy-fifth Congress, first session (138 pages) ; and *Summary Report on Conditions with Respect to the Sale and Distribution of Milk and Dairy Products*, dated January 4, 1937, and printed as House Document No.94, Seventy-fifth Congress, first session.

**Motor Vehicles.**--Pursuant to Public Resolution No.87, Seventy-fifth Congress, third session, approved April 13, 1938, the Commission undertook an investigation of "the policies employed by manufacturers in distributing motor vehicles, accessories and parts, and the policies of dealers in selling motor vehicles at retail, as these policies affect the public interest." The resolution also called for investigation of alleged monopolistic practices. (See p.30.)

**National Wealth and Income.**--This inquiry was made pursuant to Senate Resolution No.451, Sixty-Seventh Congress, fourth session, adopted February 28, 1923, calling for a comprehensive inquiry into national wealth and income and specially indicating for investigation the problem of tax exemption and the increase in Federal and State taxes (for reference to which see Taxation and Tax Exempt income). In the report devoted to national wealth and income, the national wealth was estimated to have been \$353,000,000,000 in 1922 and the national income to have been \$70,000,000,000 in 1923. The nature of the wealth and income and its distribution among various classes were also given. The report on *National Wealth and Income* was transmitted to the Senate May 25, 1926, and printed as Senate Document No. 126, Sixty-ninth Congress, first session (381 pages).

**Open Price Associations.**--This inquiry was made pursuant to Senate Resolution No.28, Sixty-ninth Congress, special session, adopted March 17, 1925, calling for an investigation to ascertain the number and names of so-called open-price associations, their importance in the industry, and the nature of their activities, with particular regard to the extent to which uniform prices were maintained among members to wholesalers and retailers. A report, entitled *Open Price Trade Associations*, was transmitted to the Senate February 13, 1929, and printed as Senate Document 226, Seventieth Congress, second session (516 pages). (See also Lumber Trade Associations.)

**Packer Consent Decree.**--Pursuant to Senate Resolution No.278, Sixty-eighth Congress, second session, adopted December 8, 1924, a report was made reviewing the legal history of the consent decree and the efforts made to modify or vacate it. A summary was given of the divergent economic interests involved in the question of packer participation in unrelated lines. The report, entitled *Packer Consent Decree*, recommended the enforcement of the decree against the Big Five packing companies. it was transmitted to the Senate February 20, 1925, and printed as Senate Document No.219, Sixty-eighth Congress, second session (44 pages, out of print). (See also Food Investigation Meat Packing and Meat-Packing Profit Limitations.)

**Paper--Book.**--This inquiry, made pursuant to Senate Resolution No.269, Sixty-fourth Congress, first session, adopted September 7, 1916, was begun that year, shortly following the newsprint inquiry. (See below.) It had a similar origin and it disclosed similar restraints of trade, resulting in proceedings by the Commission against the manufacturers involved therein to prevent *enhancement* of prices. The Commission also recommended legislative action to repress restraints of trade by certain associations. Reports were transmitted to the Senate June 13, 1917, and August 21, 1917, entitled, respectively, *Book Paper Industry--A Preliminary Report* (11 pages),

Senate Document No.45, Sixty-fifth Congress, first session (out of print), and *Book Paper Industry--A Final Report* (125 pages), Senate Document No.79, Sixty-fifth Congress, first session.

**Paper--Newsprint.**--This inquiry, made pursuant to Senate Resolution No. 177, Sixty-fourth Congress, first session, adopted April 24, 1916, resulted from a sharp advance in prices of newsprint. The reports of the Commission showed that these high prices had been partly the result of certain newsprint association activities which were in restraint of trade. Through the aid of the Commission, distribution of a considerable quantity of paper to needy publishers was obtained at comparatively reasonable prices. The Department of Justice instituted proceedings in consequence of which the association was abolished and certain newsprint manufacturers indicted. A letter to the Senate from the Commission entitled *Newsprint Pa per Industry*, transmitted March 3, 1917, was printed as Senate Document No. 3, Sixty-fifth Congress, special session. The report, entitled *Report of the Federal Trade Commission on the Newsprint Paper Industry* (162 pages), was transmitted to the Senate June

13, 1917, and printed. Following this inquiry the Commission established a system of monthly reporting of current figures dealing with production, stocks, sales, and the like, which was continued for several years. On July 10, 1917, an additional brief report was submitted to the Senate pursuant to Senate Resolution No.95, Sixty-fifth Congress, first session, entitled *Newsprint Paper Investigation*, which was printed as Senate Document No.61, Sixty-fifth Congress, first session (8 pages, out of print).

**Paper--Newsprint.--**An inquiry was made pursuant to Senate Resolution No. 337, Seventieth Congress, second session, adopted February 27, 1929. The question was whether there existed an alleged monopoly among manufacturers and distributors of newsprint paper in the supplying of paper to publishers of small daily and weekly newspapers. A report, *Newsprint Paper Industry*, was transmitted to the Senate July 3, 1930, and printed as Senate Document No. 214, Seventy-first Congress, special session (116 pages).

**Paper--Newsprint.--**This inquiry was undertaken in response to the Attorney-General's request of January 24, 1938, that the Commission investigate the manner in which certain newsprint manufacturers have complied with] a consent decree entered against them on November 26, 1917, by the United States District Court for the Southern District of New York. (See p. 31.)

**Peanut Prices.--**This inquiry was made pursuant to Senate Resolution No.193, Seventy-first Congress, first session, adopted October 22, 1929. The Commission sought data concerning an alleged combination of peanut crushers and mills for price fixing purposes in violation of the antitrust laws, as well as information with respect to an alleged arbitrary decrease in prices. The report, entitled *Prices and Competition Among Peanut Mills*, was transmitted to the Senate June 30, 1932, and printed as Senate Document No.132, Seventy-second Congress, first session (78 pages).

**Petroleum Decree Investigation.--**Pursuant to duty imposed upon and the power granted to it under Section 6 (c) of the Federal Trade Commission Act, and at the request of the Attorney General made April 16, 1936, the Commission conducted an investigation to determine the manner in which a consent decree entered September 15, 1930, in the case of the United States against the Standard Oil Company of California, Inc., and others, had been or was being observed. The decree in question perpetually enjoined and restrained seven major oil companies, twelve independent oil companies, and one individual, operating primarily on the Pacific Coast, from conspiring to monopolize and restrain interstate trade and commerce in the manufacture, transportation, or sale of gasoline in violation of the Sherman Antitrust Act. The Commission transmitted its report to the Attorney-General on April 2, 1937. (See *Ga sol lime and three subsequent paragraph*".)

**Petroleum--Foreign Ownership.--**This inquiry was made pursuant to Senate Resolution No. 311, Sixty-seventh Congress, second session, adopted June 29, 1922. The acquisition of extensive oil interests in this country by the Dutch-Shell concern, amid alleged discrimination practiced against Americans in foreign countries, caused this inquiry which] developed the situation in a manner to promote greater reciprocity on the part of foreign governments. The report, entitled *Report of the Federal Trade Commission on Foreign Ownership in the Petroleum Industry* (152 pages), was transmitted to the Senate February 12, 1923.

**Petroleum Industry.--**This inquiry was made pursuant to Senate Resolution No.31, Sixty-ninth Congress, first session, adopted June 3, 1926. A comprehensive study

covered all branches of the industry from the ownership of oil lands and the production of crude petroleum to the conversion of petroleum into finished products and their distribution to the consumer. The report described not only the influences affecting the movements of gasoline and other products, but also discussed the organization and control of the various important concerns in the industry. No evidence was found of any understanding, agreement, or manipulation among the large companies to raise or depress prices of refined products. A report, entitled *Petroleum Industry-Prices, Profits, and Competition* (360 pages), was transmitted to the Senate December 12, 1927, and printed as Senate Document No. 61, Seventieth Congress, first session.

**Petroleum, Pacific Coast.**--The great increase in the prices of gasoline, fuel oil, and other petroleum products on the Pacific coast led to this inquiry, made pursuant to Senate Resolution 138. Sixty-sixth Congress, first session, adopted July 31, 1919. It disclosed that several of the companies were fixing prices. Reports entitled *Pacific Coast Petroleum Industry: Part I. Production, Owner*

*ship and Profits* (270 pages) and *Part II. Prices and Competitive Conditions* (202 pages), were transmitted to the Senate April 7, 1921, and November 26, 1921, respectively, each with a summary.

**Petroleum--Panhandle.--**This inquiry into conditions in the Panhandle (Texas) oil fields was made on a motion of the Commission of October 0, 1926, in response to requests of crude-petroleum producers. The reduction of prices late in 1926 as complained of was largely a result of difficulties of handling and expenses of marketing this oil because of peculiar physical properties, according to the report, which was entitled *Report of the Federal Trade Commission On Panhandle Crude Petroleum* (19 pages), Issued as of February 3, 1928.

**Petroleum--Pipe Lines.--**This inquiry, made pursuant to Senate Resolution No. 109, Sixty-third Congress, first session, adopted June 18, 1913, was begun by the former Bureau of Corporations. The report, entitled *Report on Pipe-Line Transportation of Petroleum* (467 pages, out of print), which was transmitted to the Senate February 28, 1916, showed the dominating importance of the pipe lines of the great midcontinent oil fields. It also pointed out that the pipe-line companies, which were controlled by a few large oil companies, not only charged excessively high rates for transporting petroleum, but also evaded their duties as common carriers by insisting on unreasonably large shipments, to the detriment of the numerous small producers.

**Petroleum prices--1920.--**Pursuant to House Resolution No. 501, Sixty-sixth Congress, second session, adopted April 5, 1920, a brief inquiry was made into the high prices of petroleum products. The report pointed out that the Standard companies practically made the prices in their several marketing territories and avoided competition among themselves. Various constructive proposals to conserve the oil supply were made by the Commission. The report, entitled *Advance in the Prices of Petroleum Products* (57 pages), was transmitted to the House June 1, 1920, and printed as House Document No. 801, Sixty-sixth Congress, second session.

**Petroleum--Wyoming.--**This inquiry was made on motion of the Commission. Complaints of several important producing companies in the Salt Creek oil field led to the investigation. The report, entitled *Report of the Federal Trade Commission on the Petroleum Industry of Wyoming* (54 pages, out of print), which was issued January 3, 1921, covered the production, pipe-line transportation, refining, and wholesale marketing of crude petroleum and petroleum products in the State of Wyoming.

**Petroleum--Wyoming and Montana.--**This inquiry, made on motion of the Commission, resulted in a special report directing the attention of Congress to conditions existing in the petroleum trade in Wyoming and Montana. Remedial legislation was recommended by the Commission. The report, entitled *Petroleum Trade in Wyoming and Montana* (4 pages), was dated July 13, 1922, and printed.

**Power and Gas Utilities.--**See Electric Power, Interstate Power Transmission, and Utility Corporations.

**Price Bases.--**This inquiry was made on motion of the Commission of July 27, 1927, for the purposes of studying methods in use to compute delivered prices on industrial products and of determining what actual and potential influences such methods might have on competitive markets and price levels. The study also included factors which determined the methods used. This survey extended to more than 3,500 reporting manufacturers representing practically every industrial segment. Inquiry into conditions in the cement industry revealed that the basing-point system contributed to

imperfect price competition and tended to establish an unhealthy uniformity of delivered prices from the competitive standpoint together with a lack of price flexibility over variable periods of time. Cross-haul or cross-freighting was found to be one of the cement industry's economic evils and to be generally admitted as such by the industry itself. The first report, *Report of the Federal Trade Commission on Price Bases Inquiry, Basing-point Formula and Cement Prices* (218 pages), was submitted to Congress on March 26, 1932, and printed. A mimeographed report, entitled, *Study of Zone-Price Formula in Range Boiler Industry*, was issued March 30, 1936. (See Steel Code Inquiry, Steel Code as Amended, and Cement Industry.)

**Price Deflation.**--To an inquiry of President Harding dated March 21, 1921, the Commission made immediate reply (undated) giving its views of the causes of the disproportional decline of agricultural prices compared with consumers' prices. This was entitled *Letter of the Federal Trade Commission to the President of the United States* (8 pages, out of print).

**Profiteering.**--This report was made in response to Senate Resolution No. 255, Sixty-fifth Congress, second session, adopted June 10, 1918, on the then current conditions of profiteering as disclosed by various inquiries of the Commission, and transmitted to the Senate on June 29, 1918. It was printed under the title of *Profiteering* as Senate Document No.248, Sixty-fifth Congress, second session (20 pages, out of print).

**Radio.**--This inquiry was made pursuant to House Resolution No.548, Sixty-seventh Congress, fourth session, adopted March 4, 1923. As a result of this investigation, It was found that a large number of patents were owned by and cross-licensed among a number of large companies. At the conclusion of the investigation, the Commission instituted proceedings against these companies charging a monopoly of the radio field. A report entitled *Report of the Federal Trade Commission on the Radio Industry* (347 pages), was transmitted to the House, December 1, 1923, and printed.

**Raisin Combination.**--Allegations of a combination among raisin growers in California were referred to the Commission for examination by the Attorney General as of September 30, 1919, pursuant to the Federal Trade Commission Act. The Commission found that the enterprise was not only organized in restraint of trade but was being conducted in a manner that was threatening financial disaster to the growers. The Commission recommended changes to conform to the law. These were adopted by the raisin growers. A report in the form of a letter entitled *California Associated Raisin Co.*, was made to the Attorney General June 8, 1920 (28 pages, mimeographed, out of print).

**Resale Price Maintenance.**--This report was made on motion of the Commission. The question whether a manufacturer of standard articles, identified by trade mark or trade practice, should be permitted to fix by contract the price at which the purchasers could resell them, led to this inquiry. The Commission recommended to Congress the enactment of legislation permitting resale-price maintenance under certain conditions. The report, dated December 2, 1918, was in the form of a letter to Congress, printed as House Document No.1480, Sixty-fifth Congress, third session (3 pages, out of print).

**Resale Price Maintenance.**--A report was made on motion of the Commission in the form of a letter addressed to Congress, June 30, 1919, and was printed as House Document *No.145*, Sixty-sixth Congress, first session (3 pages, out of print).

**Resale Price Maintenance.**--This inquiry was made on motion of the Commission of July 25, 1927. The study was conducted from the point of view of the economic advantages or disadvantages of resale price maintenance to the manufacturer, distributor, and consumer, the effects on costs, profits, and prices, and the purpose and results of price cutting. Part I of the report, *Resale Price Maintenance*, was transmitted to Congress January 30, 1929, and printed as House Document No.546, Seventieth Congress, second session (141 pages, out of print); Part II (final, 215 pages) was transmitted on June 22, 1931, and printed.

**Salaries Inquiry.**--This Inquiry was made pursuant to Senate Resolution No 75, Seventy-third Congress, first session, adopted May 21, 1933, which directed that an inquiry be made by the Commission concerning the salaries of executive officers and directors of corporations engaged in interstate commerce (other than public utilities corporations) having capital and assets of more than a million dollars, whose securities were listed on the New York Stock Exchange or the New York Curb Exchange. The

investigation was confined to the 5-year period 1928-32, and was necessarily limited to a comparatively small proportion of corporations. coming within the Commission's jurisdiction. A statement explaining the report, but not containing the lists of salaries, and entitled *Report of the Federal Trade Commission on Compensation of Officers and Directors of Certain Corporations*, was issued in mimeographed form (15 pages). It was transmitted to Congress, February 26, 1934, together with copies of the lists of officers and salaries (a public record).

**Sisal Hemp.**--This inquiry was made pursuant to Senate Resolution No.170, Sixty-fourth Congress, first session, adopted April 17, 1916, calling on the Commission to assist the Senate Committee on Agriculture and Forestry by advising how certain quantities of hemp, promised by the Mexican Sisal Trust might be fairly distributed among American manufacturers of binder twine. The Commission made an inquiry and submitted a plan of distribution, which was followed. The report entitled *Mexican Sisal Hemp*. was transmitted to the Senate May 9, 1916, and printed as Senate Document No. 440, Sixty-fourth Congress, first session (8 pages out of print).

**Southern Livestock Prices.**--This inquiry was made pursuant to Senate Resolution No.133, Sixty-sixth Congress, first session, adopted July 25, 1919. The low prices of southern livestock, which gave rise to the belief that discrimination was being practiced, were investigated, but the alleged discrimination did not appear to exist. The report, entitled *Southern Live-stock Prices*, was transmitted to the Senate February 2, 1920, and printed as Senate Document No.209, Sixty-sixth Congress, second session (11 pages).

**Steel Code Inquiry.**--This inquiry was made pursuant to Senate Resolution No.166, Seventy-third Congress, second session, adopted February 2, 1934. The resolution directed the Commission to investigate and report upon certain practices of the steel industry with particular reference to price fixing, the increased prices of steel products, and "other such matters as would give a full presentation of the facts touching the industry since it went under the National Recovery Administration code." The inquiry centered largely upon alleged collusive activities of steel producers in fixing identical delivered prices and eliminating competition under the code, the effects of the multiple basing-point system incorporated in the code, composition of the delivered selling prices which the code imposed, the influence of various code restrictions on competition, and a general analysis of price increases attributable to the organized efforts of the industry. The Commission found that adherence to the code required violation by certain producers of a cease and desist order issued some years before by the Commission against the basing-point system in what is known as the "Pittsburgh Plus" case. The report, entitled *Practices of the Steel Industry Under the Code*, was transmitted to the Senate on March 19, 1934, and printed as Senate Document No.159, Seventy-third Congress, second session (79 pages). Certain modifications of the steel code were approved by the President on May 30, 1934.

**Steel Code as Amended.**--This inquiry was made pursuant to Executive order of President Roosevelt dated May 30, 1934. This order directed the Commission and the National Recovery Administration to undertake a point study of the effect of the multiple basing-point system other the amended steel code, particularly within the realm of the system's influence on prices to consumers, effects of the system in either permitting or encouraging price fixing, or "providing unfair competitive advantages for producers, or disadvantages for consumers not based on immaterial causes." The order called for "recommendations for revisions of the code." The *Report of the Federal Trade Commission to the President in Response to Executive Order of May 30, 1934, with Respect to the Basing Point System in the Steel Industry* (125, pages), was transmitted to the President on November 30, 1934, and printed. It recommended code revisions eliminating provisions giving sanction to the multiple basing-point system provisions in aid of price fixing and those relating to regulation of production and new capacity. It found that the multiple basing-point system not only permitted and encouraged price fixing but that it was price fixing. It found also that the system did provide unfair competitive advantages for producers and disadvantages for consumers not based on natural causes.

On March 15, 1935, there was Issued in mimeograph form the *Summary of Report of the Federal Trade Commission to the President \* \* \*. In re: Iron and Steel Industry's Basing Point System* (9 pages, out of print). On the same day the National Recovery Administration issued its *Summary of the Report of the National Industrial Recovery Board to the President on the Operation of the Basing Point System in the*

*Iron and Steel Industry* (7 pages, mimeographed, not obtainable from the Federal Trade Commission).

**Steel Companies, Proposed Merger.**--Pursuant to Senate Resolution No.286, Sixty-seventh Congress, second session, adopted May 12, 1922, the Commission was requested to inquire into a proposed merger of steel companies, namely, of the Bethlehem Steel Corporation and the Lackawanna Steel Co., and of the Midvale Steel & Ordnance Co., Republic Iron & Steel Co., and Inland Steel Co. Two reports were made, June 5, 1922. and September 7, 1922, both entitled *Merger of Steel and Iron Companies*, regarding the purpose and probable effects of the proposed merger, which were printed as Senate Document No.208. Sixty-seventh Congress, second session, part 1, and as Senate Document No. 208, Sixty-seventh Congress, second session, part 2 (9 pages and 2 pages, respectively, out of print).

**Steel Industry--Costs and Profits.**--Inquiry into the costs and profits of the steel industry during the war was made pursuant to the order of President Wilson dated July 25, 1917, and after its conclusion certain data in regard thereto were compiled by the Commission in a report entitled *Report of the Federal Trade Commission on War-Time Profits and Costs of the Steel Industry* (138

pages), which was sent to Congress February 15, 1925. (See also War-time cost-finding.)

**Steel Sheet Piling--(Collusive Bidding) .--**In response to a direction of President Roosevelt dated November 20, 1935, to investigate the prices of steel sheet piling on certain Government contracts in New York, North Carolina, and Florida, the Commission, as of June 10, 1936, made a report demonstrating the existence of collusive bidding because of a continued adherence to the basing point system and other provisions of the code. The report (mimeographed) was entitled *Federal Trade Commission Report to the President on Steel Sheet Piling* (42 pages).

**Stock Dividends.--**This inquiry was made pursuant to Senate Resolution No. 304, Sixty-ninth Congress, second session, adopted December 22, 1926. This resolution called for a list of the names and capitalizations of those corporations which had issued stock dividends, together with the amount of such stock dividends, since the decision of the Supreme Court, March 8, 1920, holding that stock dividends were not taxable. The same information for an equal period prior to that decision was called for. The report, entitled *Stock Dividends*, contains a list of 10,245 such corporations and a brief discussion. The report points out that the declaration of stock dividends at the rate prevailing for a few years preceding the date of its publication did not appear to be the result of any controlling necessity and seemed to be of questionable advantage as a business policy. The report was transmitted to the Senate on December 5, 1927, and printed as Senate Document No. 26, Seventieth Congress, first session (273 pages).

**Sugar.--**This inquiry was made pursuant to House Resolution No. 150, Sixty-sixth Congress, first session, adopted October 1, 1919. The extraordinary advance in the price of sugar in 1919 led to the investigation. The price advance was found to have been due chiefly to speculation and hoarding in sugar. Certain recommendations were made for legislative action to correct these abuses. The report, entitled *Report of the Federal Trade Commission on Sugar Supply and Prices* (205 pages), was transmitted to the House, November 15, 1920, and printed.

**Sugar-Beet.--**This inquiry was initiated by the Commissioner of Corporations at the direction of the Secretary of Commerce, but was completed by the Federal Trade Commission. It dealt with the cost of growing beets and the cost of beet-sugar manufacture. The report, entitled *Report on The Beet Sugar Industry in the United States* (164 pages), was published May 24, 1917 (out of print).

**Taxation and Tax Exempt Income.--**This inquiry was made pursuant to Senate Resolution No. 451, Sixty-seventh Congress, fourth session, adopted February 28, 1923. The resolution was directed chiefly to a study of national wealth and income. A separate report, entitled *Taxation and Tax Exempt Income*, was transmitted to the Senate on June 6, 1924, and printed as Senate Document No. 148, Sixty-eighth Congress, first session (144 pages, out of print). (See National Wealth and Income.)

**Textiles--Combed Cotton Yarns.--**This inquiry was made pursuant to House Resolution No. 451, Sixty-sixth Congress, second session, adopted April 5, 1920. The Commission was called upon to investigate the high prices of combed cotton yarn. The inquiry disclosed that there had been an unusual advance in price and that the profits in the industry had been extraordinarily large for several years, but at the end of 1920 the prices of combed yarns, like other cotton textile products, showed a sharp decline. The *Report of the Federal Trade Commission on Combed Cotton Yarns* (94 pages), was transmitted to the House April 14, 1921, and printed.

**Textile Industry**--This Inquiry was directed by an Executive order of President Roosevelt dated September 26, 1934, instructing the Commission to inquire into the industry's labor costs, profits, and Investment structure to determine whether increased wages and reduced working hours could be sustained under prevailing economic conditions. The order also established The Textile Labor Relations Board and directed the Department of Labor to report on actual hours of employment In the industry, employees' earnings, and general working conditions. Conditions prevailing in the 20 months preceding the 1934 textile strike were first studied. These were divided into three 6-month periods and a 2-month period--January-June, 1933, before National Recovery Administration codes became effective; July-December 1933, covering their effective dates; January-June 1934, while codes were functioning; and July-August 1934, the

60-day period prior to the strike. Due to the desirability of an early report, essential information was obtained by means of a comprehensive schedule, subscribed to under oath and forwarded to approximately 2,600 textile manufacturing companies. Material for immediate comparable results was transmitted by 765 concerns, with an aggregate investment of almost \$1,200,000,000. The following reports were issued (and printed, except where hereinafter designated as processed):

*Report of the Federal Trade Commission on Textile Industries:*

*Part I. Investment and Profit*, December 31, 1934 (26 pages).

*Part II. The Cotton Textile Industry*, March 6, 1935 (34 pages).

*Part III. The Woolen and Worsted Textile Industry*, January 1935 (21 pages).

*Part IV. The Silk and Rayon Textile Industry*, February 1935 (37 pages).

*Part V. Thread, Cordage, and Twine Industry*, February 18, 1935 (14 pages).

*Part VI. Tabulations Showing Financial and Operating Results for Textile Companies According to Rates of Return on Investment, Rates of Net Profit or Loss on Sales, and Amount of Investment (Six-Month Periods from January 1, 1933, to June 30, 1934, and for July-August 1935),* (24 tables), June 20, 1935. (Processed, out of print.)

*Report of the Federal Trade Commission on the Textile Industries in 1933 and 1934:*

*Part I. The Cotton Industry*, August 1, 1935 (34 pages).

*Part II. The Woolen and Worsted Textile Industry*, September 25, 1935 (31 pages, processed).

*Part III. The Silk and Rayon Textile Industry*, November 29, 1935 (45 pages, processed).

*Part IV. --Thread, Cordage and Twine Industries*, December 5, 1935 (21 pages, processed).

*Cotton Weaving Companies Grouped by Types of Woven Goods Manufactured During 1933 and 1934* (46 tables, processed).

*Cotton Spinning Companies Grouped by Types of Yarn Manufactured During 1933 and 1934* (18 tables, processed).

*Textile Industries in the First Half of 1935:*

*Part I. The Cotton Textile Industry, Including Thread, Cordage and Twine*, May 22, 1936, (52 pages, processed).

*Part II. The Woolen and Worsted Textile Industry*, July 20, 1936 (40 pages processed).

*Part III. The Silk and Rayon Textile Industry*, August 22, 1936 (47 pages, processed).

*Textile Industries in the Last Half of 1935:*

*Part I. The Cotton Textile Industry, including Thread, Cordage and Twine*, November 20, 1936 (66 pages, processed).

*Part II. The Woolen and Worsted Textile Industry*, December 21, 1936 (42 pages, processed).

*Part III. The Silk and Rayon Textile Industry*, January 6, 1937 (46 pages, processed).

*Textile Industries in the First Half of 1936:*

*Part I, The Cotton Textile Industry, Including Thread, Cordage and Twine*, January 21, 1937 (74 pages, processed).

*Part II. The Woolen and Worsted Textile Industry*, January 29, 1937 (47 pages,

processed).

*Part III. The Silk and Rayon Textile Industry*, February 11, 1937 (42 pages, processed).

**Textiles--Woolen Rag Trade.**--This report was published on motion of the Commission, and contains certain information gathered during the war, at the request of the War Industries Board, for its use in regulating the prices of woolen rags used for making clothing. The report, entitled *Report on the Woolen Rag Trade* (90 pages), was printed as of June 30, 1919.

**Tobacco.**--This inquiry was made -pursuant to Senate Resolution No. 329, Sixty-eighth Congress, second session, adopted February 9, 1925. The report on the investigation related to the activities of the American Tobacco Co. and the Imperial Tobacco Co. of Great Britain. The alleged illegal agreements, combinations or conspiracies between these companies did not appear to exist. The report, entitled *The American Tobacco Co. and the Imperial Tobacco Co.*, was transmitted December 23, 1925, to the President, who sent it to the Senate.

It was printed as Senate Document No.34, Sixty-ninth Congress, first session (129 pages, out of print).

**Tobacco Marketing--Leaf.--**This inquiry, made on motion of the Commission in 1929, was instituted upon complaint of representative groups of North Carolina tobacco farmers charging the existence of territorial and price agreements among larger manufacturers to control cured leaf tobacco prices. In 1929 the price to growers was approximately 25 percent below cost of production. The inquiry was broadened to include the entire flue-cured belt, extending from southern Virginia through north central Florida. The Commission found no evidence of price agreements. It recommended curtailing production, improved marketing processes, a standardized system of grading, and greater cooperation between manufacturers and growers. It also recommended enactment of legislation similar to the Cotton Standardization Act, which would make mandatory existing classification under the Tobacco Stocks and Standards Act. The *Report on Marketing of Leaf Tobacco in the Flue-Cured District of the States of North Carolina and Georgia* (54 pages, mimeographed), was released May 23, 1931.

**Tobacco Prices.--**This inquiry was made pursuant to House Resolution No 533, Sixty-sixth Congress, second session, adopted June 3, 1920. The unfavorable relationship between the prices of leaf tobacco and the selling prices of tobacco products was reported to be due in part to the purchasing methods of the large tobacco companies. As a result of this inquiry, the Commission recommended that the decree dissolving the old Tobacco Trust should be amended and that proceedings be instituted in the matter of alleged violations of the existing decree. Better systems of grading tobacco were also recommended by the Commission. The *Report of the Federal Trade Commission on the Tobacco Industry* (162 pages), was transmitted to the House, December 11, 1920, and printed.

**Tobacco Prices.--**This inquiry was made pursuant to Senate Resolution No. 129, Sixty-seventh Congress, first session, adopted August 9, 1921. Among the subjects of investigation were the low prices of leaf tobacco and the high prices of tobacco products. It was alleged that in the sale of tobacco several of the largest companies were engaged in numerous conspiracies with their customers, the jobbers, to enhance the selling prices of tobacco. Proceedings were instituted by the Commission. The report, entitled *Prices of Tobacco Products* (109 pages), was transmitted to the Senate, January 17, 1922, and printed.

**Trade and Tariffs in South America.--**This inquiry, directed by President Wilson as of July 22 1915, was an outgrowth of the First Pan American Financial Conference which met in Washington, May 24-29, 1915. The immediate purpose of the inquiry was to furnish the American branch of the International High Commission, appointed as a result of this financial conference, with information to assist in the deliberations of that commission. Customs administration and related matters, including tariff policy, were discussed in the *Report on Trade and Tariffs in Brazil, Uruguay, Argentina, Chile, Bolivia, and Peru* (246 pages, out of print), which was transmitted to the President under date of June 30, 1916.

**Utility Corporations.--**This inquiry was made pursuant to (1) Senate Resolution No.83, Seventieth Congress, first session, adopted February 15, 1928, (2) Senate Joint Resolution No.115, Seventy-third Congress, second session, adopted June 1, 1934, and

to (3) section 6 of the Federal Trade Commission Act. The former resolution directed the Commission to investigate the growth of the capital assets and liabilities of public utility corporations doing an interstate business in electrical energy or gas, and of their holding companies and other companies controlled by such holding companies, the method of issuing securities, the value received, the commissions paid, and so forth, the extent to which holding companies control financial, engineering, construction, or management corporations and their corporate interrelations with such companies and their operating utility companies, the services furnished and the fees received therefor, the earnings and expenses of all such companies, the value or detriment to the public of such holding companies, and what remedial legislation should be adopted ; also the efforts of such companies, directly or indirectly, to influence public opinion with respect to municipal ownership of electric utilities, or to influence the elections of certain Federal officers or United States Senators. The second resolution directed the Commission to conclude the investigation and submit its final report in January 1936.

During the investigation monthly interim reports presented many hundreds of detailed reports by Commission accountants, attorneys, engineers, economists and statisticians, based on examination of corporation accounts and other records. These data and the oral testimony of the experts and other witnesses

are included in 84 printed volumes which, with 11 summary, final, index and appendix volumes, or a total of 95 were published as Senate Document No.92, Seventieth Congress, first session, under the general title, *Utility Corporations*. Several of the earlier published volumes are out of print.

The final and summary volumes, their sub-titles (omitting certain routine designations), dates of Issue and numbers of pages, are as follows: *No. 69-A, Compilation of Proposals and Views for and Against Federal Incorporation or Licensing of Corporations and Compilation of State Constitutional, Statutory, and Case Law 'Concerning Corporations, With Particular Attention to Public Utility Holding and Operating Companies*, September 21, 1934, 618 pages ; *No. 71-A, Efforts by Associations and Agencies of Electric and Gas Utilities to Influence Public Opinion*, December 12, 1934, 480 pages ; *No. 71-B, Index of Association Publicity and Propaganda and Index of Named in Parts 1 to 20, Inclusive, and Accompanying Exhibit Volumes*, 1935, 545 pages ; *No. 72-A, Economic, Financial and Corporate Phases of Holding and Operating Companies of Electric and Gas Utilities*, June 17, 1935, 882 pages ; *No. 73-A, Holding and Operating Companies of Electric and Gas Utilities--Survey of State' Laws and Regulations, Present Extent of Federal Regulation and the Need or Federal Legislation, Conclusions and Recommendations and Legal Studies in Support Thereof*, January 18, 1935, 218 pages ; *No. 81-A, Publicity and Propaganda Activities by Utilities Groups and Companies, With Index*, November 14, 1935, 570 pages ; and (final report) *No. 84-A, Economic, Corporate, Operating and Financial Phases of the Natural-Gas Producing Pipe-Line, and Utility Industries, with Conclusions and Recommendations*, December 31, 1935, 617 pages ; *No. 84-B, Legal Appendixes to Final Report (No. 84A) \* \* \**, December 31, 1935, 118 pages ; *No. 84-C, Economic Appendixes to Final Report (No. 84A) \* \* \**, December 31, 1935, 126 pages, and *No. 84-D, General Index to Parts 21 -to 84-C, Inclusive*, August 12, 1937, 1360 pages.

A list of the companies investigated and the volume numbers of the reports concerning them are printed in the Commission's annual reports for 1935 and 1936, beginning at pages 21 and 36, respectively. During the Investigation, the Commission's accountants, engineers, and economists examined 29 holding companies having total assets of \$6,108,128,713 ; 70 subholding companies with total assets of \$5,685,463,201, and 278 operating companies with total assets of \$7,245,106,464.

**War-time Cost Finding.**--This series of cost inquiries was ordered by President Wilson as of July 25, 1917. The numerous cost investigations made by the Federal Trade Commission during the World War into the coal, steel, lumber, petroleum, cotton-textile, locomotive, leather, canned foods, and copper industries, and scores of other important industries, on the basis of which prices were fixed by the Food Administration, the War Industries Board, and purchasing departments such as the Army, Navy, Shipping Board, and Railroad Administration, were all done under the President's special direction, and it has been estimated that -they helped to save the country many billions of dollars by checking un-justifiable price advances. Lists of most of the reports prepared for this purpose (not printed or otherwise published) are given in the annual reports of the Commission for the years 1918 and 1919. Subsequent to the war a number of reports dealing with costs and profits was published based on these war-time inquiries. (See Coal Reports--Cost of Production,

Copper. Food Investigation--Food Canning, Lumber--Costs, and Steel Industry--Costs and Profits).

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