For a.m. Release on
March 14, 1963

REMARKS
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BEFORE THE
ANNUAL MEETING OF THE NATIONAL ACCOUNT MANAGERS ASSOCIATION
NEW YORK, N.Y., MARCH 13,1963

REPORT ON THE FEDERAL TRADE COMMISSION

On March 13 last year I enjoyed visiting and talking with you about the exchange of views between and among representatives of business and representatives of government. At that time I suggested to you that communication is necessary to a better understanding between and among us. Without a common understanding of our mutual problems we are handicapped in our efforts to find solutions.

The contacts we have made and the communications between and among us indicate that we have made progress in our effort to achieve a better and common understanding of each other's problems. For that reason, as well as the pleasure of visiting with you, this meeting is to me an important event.

On the occasion of my previous visit with you, I discussed some of the background and purposes underlying the establishment of the Federal Trade Commission. I shall not repeat that discussion but I wish to summarize some of the highlights.

The Federal Trade Commission was created to assist us in preserving and protecting our free and competitive enterprise system. Indeed, it is a manifestation of the practical genius of the American people.

With the progress of the 20th century and the great growth of our country in population, economy and trade, it became clear that we need agencies of government which are able to assist the Congress in carrying out its Constitutional authority, responsibility and duty in the appropriate regulation of interstate commerce. It became clear that agencies of the Federal government have not been able to fulfill that role solely through the enactment of statutory laws prohibiting specified acts and practices and the adjudication of "cases and controversies" arising thereunder. The countless questions and controversies relating to the establishment of rates for transportation, veterans claims, social security claims and a host of other matters must be handled from day to day unless we are to experience a complete breakdown in government and suffer

the pain of anarchy. Administrative law agencies were provided as a solution.

It was with respect to the need for an administrative law agency to deal with the questions arising from day to day about trade in commerce that led to the creation of the Federal Trade Commission. It has become a special agency of the government in helping to build a body of law for the guidance of our businessmen and the public. Businessmen need such guidance to help them avoid unfairness in the effort to preserve and protect free and competitive enterprise.

Previously, I explained to you that the Federal Trade Commission has devoted its resources, time, and effort to aid in the establishment of guidelines for business that they may avoid the pitfalls of law violations. One method utilized in this regard has been litigation. This has involved the filing of formal charges by the Federal Trade Commission in complaints directed to firms and individuals in situations where the Federal Trade Commission had reason to believe that such parties were engaged in conduct in violation of the law. In those instances where the charges were sustained, orders to cease and desist were issued to prevent further violations.

Other methods have been devised and used. As I pointed out to you last year, the Commission's Trade Practice Conference procedures advise businessmen about possible illegality of certain trade practices. This method has been utilized since 1918. I pointed up not only the strong points but the shortcomings of the Trade Practice Conference procedures. I suggested that the deficiencies be remedied through the establishment of new and supplementary procedures which would involve substantive rule making. I explained that through the suggested supplementary proceedings certain industrywide unfair trade practices could be halted simultaneously. The small percentage in the industry seeking to take advantage of competitors would not be left entirely free of sanctions as in the past under Trade Practice Conference procedures. Thus, it was suggested that the new supplementary procedure would provide more equitable treatment for all competitors. It would avoid the singling out of a firm from among many in an industry engaged in the use of an unfair act or practice. As you know, when a firm is put under the sanctions of a cease and desist order and his competitors left free for prolonged periods to use similar practices,

the disadvantages to the firm under the cease and desist order become obvious. Likewise, the suggested supplementary rule making procedure was designed to avoid the weaknesses of the Trade Practice Conference procedures. As I pointed out to you last year, the Trade Practice Conference procedures provide for interpretations and advice only. They carried no sanctions. Therefore, willful violators were not deterred from continuing violations of the law to the disadvantage of their competitors who wished to abide by the law.

The suggestions I made in my talk to you on March 13, 1962, I made as proposals to my colleagues at the Federal Trade Commission. It is gratifying to report to you that on May 15, 1962 the Federal Trade Commission announced that it had approved and would put into effect on June 1, 1962 a new procedure providing for the establishment of Trade Regulation Rule proceedings. The procedures thus approved provide for many of the things I suggested.

Under this new procedure the Commission will promulgate rules expressing its experience and judgment, based upon facts of which it has knowledge derived from studies, reports, investigations, hearings, and other proceedings, or

within official notice, concerning the substantive requirements of the statutes it administers. The rules thus developed and issued by the Commission may cover all applications of a particular statutory provision and may be nationwide in effect, or they may be limited to particular areas or industries or to particular products or geographical markets as may be appropriate. Following its promulgation and issuance, and where any such rule is relevant to any issue involved in an adjudicative proceeding thereafter instituted, the Commission may rely upon such rule, provided that the respondent shall have been given a fair hearing on the legality and propriety of applying the rule to the issue in his particular case. That is to say that the effective rule would be to take it as the basis for the establishment of a prima facie case with opportunity for the respondent charged with the violation of the rule to defend on the contention and showing that the rule should not be regarded as legally binding and appropriately applicable to the practices which have been challenged as being in violation of the rule.

Of course before the Commission would promulgate and issue rules of this kind under its new rule making process, it would give proper notice and afford hearings to all interested parties on any proposed rule. The proceedings

may be initiated by the Commission upon its own motion or pursuant to a petition filed by any interested party. Following notice and hearings, the Commission, after due consideration of all relevant matters of fact, law, policy and discretion, would proceed to promulgate and issue the rule with a brief general statement of its basis and purpose. It would not become effective until after published in the Federal Register.

In this dynamic and space age it is anticipated that changing conditions are likely to bring about need for revision or repeal of rules. Therefore, the Commission's policy and procedure will provide for amendment, suspension, and repeal of any such rule. In that way the administrative process will serve the needs of the public interest and businessmen from day to day. Rapidly changing conditions emphasize that those needs can be served in no other way.

Under the new supplementary rule making procedure, applications have been received from representatives of firms in a number of industries. Our Trade Regulation Rule Division in the Federal Trade Commission's Bureau of Industry Guidance, has under study and consideration proposals for trade regulation proceedings affecting more than a dozen industries. At this time I am able to report to you that

the Commission has announced two hearings on the first proposed rules under this new Trade Regulation Rules Procedure which became effective in June 1962.

These two proceedings involve the sewing machine manufacturing industry and the industry engaged in the production of sleeping bags. The objective of these initial undertakings is to formulate proper rules regarding industrywide use of the word "automatic" for describing sewing machines and the use of certain size dimensions for sleeping bags.

These proceedings are designed to inform all concerned of their obligations under the law and assure equitable treatment in obtaining compliance with the law. Any trade regulation rule eventually adopted will be binding upon the entire industry.

Another major innovation has been the Commission's decision to issue advisory opinions. This is a very recent development, and many of you may not be aware of it. The decision was long overdue, for if the Commission is to fulfill its purpose of providing guidance to businessmen what better time is there to provide the guidance than before the law is violated? Previously, advice in the form of opinions was offered only by the Commission's staff and such advice was not binding on the Commission. This made the advice of such limited value to businessmen

that few bothered to ask for it. Under our new system, advisory opinions do bind the Commission. And, in the unlikely event that such opinions would have to be changed, sufficient notice would be given before any adversary action would be taken.

Perhaps it is of interest to you to know that more than one hundred requests have been made to the Commission for advisory opinions as provided for under this new procedure. These requests have involved proposed courses of action presenting many questions about the application of laws entrusted to the Commission. In each instance where the Commission found it practicable to do so, it rendered an advisory opinion, binding on the Commission, regarding the legality of the proposed course of action under the laws administered by the Commission.

A third major step has been taken by the Commission to assist it in the performance of its responsibilities. This major step involved a substantial overhaul of the Commission's Rules of Practice in the Commission's attack on the delays in the handling of its case work. These changes in the Rules of Practice have taken several forms and the results have been gratifying. Previously when the Commission determined that a complaint should issue, the case would drag along for months with new press

releases issued at each stage of the proceedings. Negotiations of the parties in and efforts to settle the proceedings by agreement and consent were not only publicized but were intermingled with the litigation of the issues. Now, under the new Rules, the Commission's determination to issue a complaint against a particular firm or individual is not publicized. Notice of that determination is given to the party to whom the complaint is to be directed and a ten-day period is provided within which that party may ask for an opportunity to negotiate a settlement of the proceedings by agreement. In the event the negotiations are undertaken, a period of thirty days is provided for that purpose. These steps are taken without publicity. If agreement is reached and the proceedings concluded by consent, a single announcement is made noting the proceedings had been ordered but that they had been concluded by consent. Even in contested cases delays and publicity have been reduced under the new rules. Cases are scheduled for continuous hearings at one place until they are completed. Other important rule changes have contributed to the speeding up of our work.

In taking these forward steps the Federal Trade Commission has moved to fulfill one of the most important roles for which it was created. President Wilson, who

had asked the Congress to create the Commission, made it clear that he wanted the agency to assist businessmen in securing a better understanding of their responsibility under the law.

Other developments of the past year illustrate current efforts to make the Federal Trade Commission effective. First, we are trying to assure that, insofar as practicable, our adversary proceedings shall not single out only one member of an industry that is engaging in a particular unlawful practice and, by issuing an order against him alone, put him at a competitive disadvantage with those who are left free to continue the practice. Thus we have suspended proceedings against a particular respondent while the staff investigates the other members of his industry. And, in furtherance of this objective of industrywide enforcement where possible, we recently extended to 248 wearing apparel manufacturers an opportunity to consent simultaneously to a proposed consent order designed to stop certain violations of Section 2(d) of the Robinson-Patman Act. All complaints were mailed at the same time. All firms were given the same time period in which to choose between consent settlement and trial. More than 150 cases were concluded last month. Moreover, all orders in these cases will become final on the same date.

From the report I have given you this evening you are advised about what we have been doing at the Federal Trade Commission. From this report you can see that we are moving to provide more effective assistance to businessmen and the public.

You are assured that we at the Federal Trade Commission shall continue our endeavors to improve our procedures and our work to assist business and the public as much as possible so that unfair acts and practices are avoided and, if possible, eliminated.

One proposal that leading representatives of manufacturing firms have advanced is for a change in the procedure and practice at the Federal Trade Commission to provide greater opportunity for firms whose practices are questioned to act promptly and voluntarily in bringing themselves into compliance with the law without being made the subject of investigation and litigation. Proposals along this line have been made from time to time over the years. Many of the proposals as made in the past were severely criticized in Congress and elsewhere because they smacked of suggestions that cases which had been developed against law violators be dropped on the promise that the violators would "go and sin no more." Some of

the more recent proposals advanced by representatives of leading manufacturing firms have avoided much of the basis for this criticism. Therefore, they were given careful consideration by a number of us at the Federal Trade Commission.

It is argued that under the present administration of the law little support is given to those who are trying to live under it. Also, it is argued that unless some supplementary procedure is devised, adopted and utilized to provide for voluntary compliance with the law, businessmen inevitably will be treated inequitably. The point of that argument is that when we proceed by way of litigation against one, six, eight or ten firms for the use of a widespread discriminatory pricing practice in an industry, prolonged litigation ensues. Perhaps some cases will be concluded promptly. Others will drag along for many years. The result is that some business firms are put under sanctions and prohibited from using a practice that competitors will be permitted to continue until the prolonged litigation is concluded. It is argued that this inequity can be avoided and in many instances would be avoided if all of these businessmen were afforded the opportunity to voluntarily comply with the law before investigation and

litigation. It is further argued that a voluntary compliance procedure may substantially reduce the load upon the Commission's staff and, in turn, enable it to expeditiously dispose of, in a proper manner, the cases requiring formal action.

In view of these circumstances it is believed that we should act to improve our procedures to assist us more effectively in our efforts to persuade businessmen into voluntary compliance with the law. In making this suggestion I am not proposing that we consider changing our policy or procedures to provide for the dropping of antimonopoly cases once they are taken up and have reached the stage where the Commission has undertaken litigation or otherwise has been led to believe that injury in violation of our antimonopoly laws is actually occurring. However, I do believe that there is room for us to move forward and make considerable progress in our effort to persuade businessmen into voluntary compliance with the law without doing violence to policies the Commission has adhered to heretofore. I say that because it is my firm belief that we can make changes in our policy and procedures which will provide a greater opportunity for us to persuade businessmen into voluntary compliance with the law before we are compelled to investigate and litigate cases against them.

These thoughts prompt me to say that I shall urge the Commission to adopt a procedure along these lines designed to promote more effectively voluntary compliance with the law. For the purpose of identification at this time I would describe this suggested procedure as a "Pre-Investigation Conference."

It is believed that if the Federal Trade Commission should approve and put into effect a procedure such as I suggest, business and the public will benefit. It could mark the real beginning of an effective partnership of government and business in developing a program for voluntary compliance with the law. The end point result would be a greater degree of fairness and far more effectiveness flowing from the application of our Federal Trade Regulatory Laws.

There is no question but that our goals in this respect are the same. Representatives of business and the government want unfairness in trade eliminated. Of course efficiency and effectiveness in accomplishing that result are desired.

I deeply appreciate the opportunity you have provided for me to visit and discuss these problems with you this evening. I say that because I sincerely believe that the better we understand each other, the better we can work together for the good of business and the public.