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REMARKS OF

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FEDERAL TRADE COMMISSION

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OHIO VALLEY BUSINESS CONFERENCE

OF XAVIER UNIVERSITY

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CURRENT DEVELOPMENTS IN PUBLIC POLICY TOWARD MARKETING

Mr. Chairman and Members of the Ohio Valley Business Conference:

The subject you have suggested to me for discussion, "Current Developments in Public Policy Toward Marketing," happily is sufficiently broad for me to charge off rhetorically in every conceivable direction. It coincides in that respect with one of the more important characteristics of some of our basic antitrust laws and with our Federal Trade Commission Act. One cannot envisage broader provisions than those contained in the Sherman Act declaring illegal "every contract, combination . . . or conspiracy in restraint of trade or commerce among the several states or with foreign nations," (Sec. 1) or efforts to "monopolize, or attempt to monopolize or combine or conspire to monopolize" such trade (Sec. 2). 1/ The broad sweep of the Federal Trade Commission Act 2/ prohibiting: "unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce" likewise has a generality comparable to that found to be desirable in constitutional provisions. This requires that such laws be interpreted in the course of application to specific situations. To a considerable degree this is likewise true of the statutory prohibitions contained in the Clayton Act as amended by the Robinson-Patman Act. 3/ Since the enactment of these basic trade regulation laws by the Congress, both the Department of Justice and the Federal Trade Commission have been busily engaged in covering the skeleton of these statutory phrases with the flesh and blood of decisional law.

It is interesting to consider for a moment the evolution of our present public policy in this area, an area so important in the marketing field -- the area of antitrust. Trade regulation evolved in spite of continuing agitation against it by selfish interests. Initially "it was contended that combination, even to the extent of monopoly, was not only the normal outcome of competition but was beneficial rather than harmful to the public; the costs of production would be reduced and fear of competition would induce the monopolist to avoid

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1. 26 Stat. 209 (1890), 15 U.S.C. §§ 1, 2 (1958).

2. 38 Stat. 719 (1914), 15 U.S.C. § 45(a) (1958).

3. 49 Stat. 1526 (1936), 15 U.S.C. § 13 (1958).

extravagant profit which would tempt newcomers into the attractive business." 4/ It was argued that to regulate the activities of business was to limit freedom of individual action, of the right to contract. Congress, however, thrust aside this argument due to the business abuses and excesses of the late 1890's. Following the Supreme Court decisions in the Standard Oil 5/ and American Tobacco 6/ cases, conviction became general that existing legislation (the Sherman Act) was ineffective in curbing industrial combinations. There was a persistent public outcry for additional legislative curbs to stop combinations in restraint of trade in their incipiency and to outlaw unfair methods of competition which had been, and could be, used in the attainment of monopolistic positions in industries. There was a growing realization, as well, that the judicial system needed supplementation in the handling of trade abuses and was not adequate to cope with such problems in a rapidly developing industrial economy. In the 1912 political campaign all the major political parties by platform committals expressly or impliedly advocated a Trade Commission. After the election of that year Woodrow Wilson wasted no time in urging the establishment of such a law upon the Congress and the final outcome was the enactment of two statutes, one creating the Federal Trade Commission and investing it with power to prevent unfair methods of competition in commerce, and the other, the Clayton Act, supplementing the Sherman and Federal Trade Commission Acts and dealing with certain specific practices.

These two statutes still represent the basic centrifugal thrust activating this Commission. Indeed some of our more important statutory responsibilities fall under Section 5 of our basic Federal Trade Commission Act under which in addition to false advertising, we attack price fixing conspiracies and

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4. Clark, The Federal Trust Policy, at 8 (1931). The author continued: "The argument has changed greatly in recent years and has become plaintive rather than scientific in tone. Selfish motives are no longer attributed to the businessman; his impulses, it is said, have become social. Much less is said about the public being protected by potential competition from exploitation by monopolistic combinations and a great deal is said about general public benefit flowing from stabilization of production, of prices, and of employment." ibid. The public, therefore, would be saved the expense of "ruinous" competition, the argument runs. id. at 9.

5. Standard Oil Co. of New Jersey v. United States, 221 U.S. 1 (1911).

6. United States v. American Tobacco Co., 221 U.S. 106 (1911).

a number of other trade restraints and the Clayton Act under which we attack exclusive dealing contracts, full requirements contracts, and tying contracts having tendencies towards monopoly, (Sec. 3 Clayton Act), and mergers of corporations having similar tendencies (Sec. 7 Clayton Act). In our efforts to protect and preserve fair, free and open competition in the market place we have instituted many proceedings under both of these basic statutes. This constitutes a major portion of our work in the antitrust field, the only other portion being our enforcement of the Robinson-Patman Amendments to the Clayton Act passed in 1936. But the vital thrust and power of the Commission in the antitrust field lies within these two basic statutes, the Federal Trade Commission Act and the Clayton Act, both enacted by the Congress in 1914.

The complex of statutes that make up our antitrust laws possess a common purpose: the preservation of liberty, "freedom of choice and action, first in the economic sphere but ultimately in the political sphere as well. Businessmen are to be free from direction or coercion of other businessmen. Buyers are to be free from concerted exploitation by sellers and vice-versa. No one is to build, alone or in combination with others, an industrial empire of such scope that others must perforce deal with him or on his terms. Entry into all trades and businesses shall be as free as physical limitations permit." 7/

Among other accomplishments, the antitrust laws refined the import of that valuable property right, the power to exclude another from use. 8/ With enlightened skepticism the courts reexamined the precise scope of "the long-recognized right of a trader or manufacturer engaged in an entirely private business, freely to exercise his own independent discretion as to parties with whom he will deal." 9/

A man may possess a monopoly in his own product, but the grant of power is strictly limited. Quite early the Supreme Court stated:

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7. Schwartz, "The Schwartz Dissent", 1 Antitrust Bulletin 37, 38-39 (1954).

8. Loevinger, The Law of Free Enterprise, at 4 (1949).

9. United States v. Colgate & Co., 250 U.S. 300, 307 (1919).

> "It (the product) is an article of commerce and the rules concerning freedom of trade must be held to apply to it. Nor does the fact that the margin of freedom is reduced by control of production make the protection of what remains, in such a case, a negligible matter. And where commodities have passed into the channels of trade and are owned by dealers, the validity of agreements to prevent competition and to maintain prices is not to be determined by the circumstance whether they were produced by several manufacturers or by one, or whether they were previously owned by one or by many. The complainant having sold its product at prices satisfactory to itself, the public is entitled to whatever advantage may be derived from competition in the subsequent traffic." 10/

Absent specific statutory authority the seller may extract no resale price maintenance agreement from the buyer. Nor may the seller institute an intricate police system to insure buyer adherence to his pricing program. 11/ The freedom that lies with the seller to do with his product what he will may not be taken as a license to enslave the buyer. The Supreme Court has clearly indicated "that when the manufacturer's actions 'go beyond mere announcement of his policy and the simple refusal to deal, and he employs other means which effect adherence to his resale prices' then he has put together a combination in violation of the Sherman Act." 12/

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10. Dr. Miles Medical Co. v. Park & Sons Co., 220 U.S. 373, 408-09.

11. F.T.C. v. Beech-Nut Packing Co., 257 U.S. 441, 454 (1921): "The system here disclosed necessarily constitutes a scheme which restrains the natural flow of commerce and the freedom of competition in the channels of interstate trade which it has been the purpose of all the antitrust acts to maintain. In its practical operation it necessarily constrains the trader, if he would have the products of the Beech-Nut Co., to maintain the prices 'suggested' by it. If he fails to do so, he is subject to be reported to the company either by special agents, numerous and active in that behalf, or by dealers whose aid is enlisted in maintaining the system and the prices fixed by it."

12. George W. Warner v. Black & Decker Mfg. Co., 277 F.2d 787, 790 (2d Cir. 1960). See also, United States v. Parke, Davis & Co., 362 U.S. 29 (1960).

A product must stand or fall on its merits; this the laws of trade regulation endeavor to insure. 13/ Thus, a seller may not foreclose substantial competition through the imposition of exclusive dealing arrangements. Section 3 of the Clayton Act outlaws exclusive dealing "where the effect of . . . such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce."

Further, the courts have read this section broadly enough to accomplish its purpose. The law is capable of dealing with the realities of life. It recognizes that an agreement need not be committed to writing. The powerful seller need only whisper a word of warning to the recalcitrant buyer; the threat will bring compliance. 14/ The same result might be achieved by selling at a more favorable discount to the exclusive purchasing buyer; the purchaser who chose not to be bound might still obtain the seller's product, but at a higher price. 15/ Thus threats to cancel distributional agreements and to eliminate special discounts in order to enforce exclusivity are alike condemned.

The law does not consider facts in the abstract; one may not escape responsibility by means of a technicality. It will not do for a seller to argue that its customers possess a small quantity of competing products, and, therefore, no exclusive dealing arrangement exists. This was tried by the Sun Oil Company and a District Court answered:

> The mere fact that a Sun dealer may have a few containers of motor oil not of (the) Sun brand or

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13. Dictograph Products, Inc. v. F.T.C., 217 F.2d 821, 828 (2d Cir. 1954), cert. denied, 349 U.S. 940.

14. In the Matter of Timken Roller Bearing Company, Dkt. 6504 (1961). Indeed, it was the purpose of Section 3 to prevent the larger seller from controlling small businesses, as if they were merely agencies. See H.R. Rep. No. 627, 63rd Cong., 2d Sess., at 11 (1914).

15. Carter Carburetor Corp. v. F.T.C., 112 F.2d 722 (8th Cir. 1940).

several items of competitive TBA (tires, batteries, and accessories) openly displayed either from left-over stock or because of token purchases to satisfy the brand preference of a few customers is not indicative in and of itself that the dealer is free to handle such product in any quantity he chooses. 16/

So, too, for the mandate of the law to apply the seller need not be the largest in the industry. In one instance the exclusive-dealing proviso was invoked against a corporation whose sales amounted to less than $2 million a year. 17/ The corporation, however, stood as a leader in the industry. It was dominant, but not controlling. Of approximately 1,000 buyers who purchased for resale 220 were tied to the exclusive strings of the challenged corporation. This was enough to condemn the agreements; quantitatively a substantial share of the market had been foreclosed. 18/ No searching inquiry

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16. United States v. Sun Oil Co., 176 F. Supp. 715, 719 (E. D. Pa. 1959); see also, International Salt Co. v. United States, 332 U.S. 392, 396-97 (1947).

17. Dictograph Products, Inc. v. F.T.C., 217 F.2d 821 (2d Cir. (1954), cert. denied, 349 U.S. 940.

18. The Rule of Quantitative Substantiality was promulgated in Standard Oil Co. of California v. United States, 337 U.S. 293 (1949). Accounting for only 6.7 percent of the market Standard was held to have violated Section 3 through the use of exclusive dealing agreements. The court stated: "We conclude, therefore, that the qualifying clause of § 3 is satisfied by proof that competition has been foreclosed in a substantial share of the line of commerce affected." id. at 314.

It has been urged, however, that the Tampa Electric Co. case (Tampa Electric Co. v. Nashville Coal Co., 365 U.S. 320 (1961)) has watered down any quantitative substantiality rule and has in effect removed the alarm that the Court's previous exclusive dealing decisions under Section 3, particularly Standard Stations, created. This case undoubtedly gives some indication that the Court is interested in an examination of the competitive effects of exclusive dealing in any given case. However, Mr. Justice Clark's

(footnote continued)

into either the economic effects or the merits of the system was conducted. No weight was given to the corporation's argument that competition in the industry had increased, that the market was open to newcomers. This type of agreement created "just such a potential clog on competition as it was the purpose of Section 3 to remove . . ." 19/

The Court of Appeals for the Second Circuit in Dictograph Products, Inc. v. F.T.C. 20/ stated: "It is the policy of the Congress that this merchandise must stand on its own feet in the open market, with whatever benefits may be derived from the use by petitioner of its own methods . . . but without the competitive advantage to be obtained by the use of the prohibited exclusionary agreements."

As one court stated: 21/ "It would require a naive mind to conclude, as petitioner would have us do, that the agreements under consideration could result in other than an adverse effect upon competition. Suppose, for instance, that a salesman for any of petitioner's competitors should attempt to sell to or to obtain an order for sale from any of petitioner's contract holders. Such an attempt would be barren of results because of the customer's obligation to petitioner, and this would be true even though the salesman offered a superior product on more favorable terms. It thus appears plain that the products handled by petitioner's exclusive contract holders are removed from the competitive area." 22/

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18. (cont'd) opinion warns against carrying this wishful thinking too far and indicates that prior Section 3 cases would not have been decided differently on their facts. Therefore, I leave for the present the possible impact of the Tampa Electric Company case to those plausible pundits who write interminably for leading law school periodicals and who make a career of rushing in where angels fear to tread.

19. Standard Oil Co. of California v. United States, 337 U.S. 293 (1949).

20. Dictograph Products, Inc. v. F.T.C., 217 F.2d 821 at 828 (2d Cir. 1954) cert. denied 349 U.S. 940.

21. Anchor Serum Co. v. F.T.C., 217 F.2d 867 (7th Cir. 1954).

22. id. at 873.

Supporting this very precise statute, indeed, filling the interstices of the Clayton Act as a whole is Section 5 of the Federal Trade Commission Act under which the Commission "is . . . entitled to challenge . . . conduct economically equivalent to the anti-competitive practices in Clayton Act provisions but not reachable . . . due to lack of technical prerequisites." 23/

Section 5 with its prohibition against unfair methods of competition and unfair or deceptive acts or practices in commerce stands as a weapon capable of meeting changing conditions. The Supreme Court has declared: "The 'unfair methods of competition', which are condemned by Section 5(a) of the Act, are not confined to those that were illegal at common law or that were condemned by the Sherman Act . . . Congress advisedly left the concept flexible to be defined with particularity by the myriad of cases from the field of business . . . It is also clear that the Federal Trade Commission Act was designed to supplement and bolster the Sherman Act and the Clayton Act . . . to stop in their incipiency acts and practices which, when full blown would violate those Acts . . ., as well as to condemn as 'unfair methods of competition' existing violations of them. . ." 24/

One of the great appellate judges, the late Learned Hand of the United States Court of Appeals for the Second Circuit, has said, "The Commission's powers * * * are more than procedural; its duty in part at any rate is to discover and make explicit those unexpressed standards of fair dealing which the conscience of the community may progressively develop."

In sum, Section 5 of the Federal Trade Commission Act with its language of great simplicity and breadth is an affirmation of the concept of free enterprise -- and free enterprise is no easy concept. It calls upon the individual in his own self-interest to take a broad view of life, to recognize that by placing another in economic serfdom he has begun to enslave himself. Free enterprise requires a thinking individual, one who is capable of growth and change.

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23. Oppenheim, Antitrust Highlights, 17 ABA Antitrust Section Rep. 242.

24. F.T.C. v. Motion Picture Advertising Service Co., 344 U.S. 392, 394 (1955).

I started out by referring to the breadth of language of some of our great antitrust statutes. Some criticism has been leveled at some of the antitrust laws for lack of "certainty". This current quest for certainty both in legislation and in other matters can go too far. As Judge Learned Hand has pointed out, "no human purpose possesses itself so completely in advance as to admit of final definition." Sometimes efforts to be specifically inclusive result in excluding something which is of great importance. The classic example of this is in connection with the original Section 7 of the Clayton Act. Congress was so precise in using the word "stock" that it took thirty-four years to add "asset" acquisitions to the scope of the statute.

In connection with this problem of certainty or precision of expression, the Federal Trade Commission has met with some criticism for phrasing its orders in the broad terms of the particular statute involved rather than in more precise terms. To a degree I am inclined to believe that this criticism has some merit. In this connection the case of F.T.C. v. Henry Broch & Co., decided by the Supreme Court of the United States on January 15, 1962, is illuminating. The Court in this case directed the Court of Appeals for the Seventh Circuit to affirm a broad Section 2(c) Clayton Act order of the Commission which was couched in the broad language of the statute. In doing so, however, the Court indicated that it was influenced by the fact that the order was entered by the Commission prior to the effective date of the so-called 1959 amendment to Section 11 of the Clayton Act known as the Clayton Finality Act. 25/ However, the Court explicitly stated:

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25. The 1959 Amendments resulted from a congressional conclusion that the former § 11 procedures were too cumbersome to assure effective enforcement of agency orders. It was said in the House Committee Report accompanying the 1959 amendments:

> "The Clayton Act, in its present enforcement procedures, permits a person to engage in the same illegal practices three times before effective legal penalties can be applied as a result of action by the Commission or board vested with jurisdiction. First, in order to issue and serve a cease-and-desist order initially, the commission

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"We do not wish to be understood, however, as holding that the generalized language of paragraph (2) would necessarily withstand scrutiny under the 1959 amendments. The severity of possible penalties prescribed by the amendments for violations of orders which have become final underlines the necessity for fashioning orders which are, at the outset, sufficiently clear and precise to avoid raising serious questions as to their meaning and application. * * *"

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25. (cont'd.) or board must investigate and prove that the respondent has violated the prohibitions of the Clayton Act. No provision of the Clayton Act, however, makes the commission or board's cease-and-desist order final in the absence of an appeal by the respondent for judicial review. At the present time, the Clayton Act contains no procedure by which the commission or board may secure civil penalties for violations of its orders.

"Second, before the commission or board may obtain a court ruling that commands obedience to its cease-and desist order, it must again investigate and prove that the respondent has violated both the order and the Clayton Act. The jurisdiction of the court of appeals, under the present provisions of Clayton Act section 11, cannot be invoked by the commission or board unless a violation of the cease-and-desist order is first shown.

"Third, enforcement of the court's order must be secured in a subsequent contempt proceeding, which requires proof that new activities of the respondent have violated the court's order. This entails a third hearing before the commission and a review thereof by the court of appeals.

"In contrast, the procedures that are contained in the Federal Trade Commission Act for enforcement of cease-and-desist orders issued thereunder are much simpler and more direct. A cease-and-desist order issued pursuant to section 5 of the Federal Trade Commission Act, as amended, becomes final upon the expiration of the time allowed for filing a petition for review, if no such petition is filed within that time." H.R. Rep. No. 580, 86th Cong., 1st Sess. 4. See also S. Rep. No. 83, 86th Cong., 1st Sess. 2-3.

Furthermore, four of the Justices refused to join the majority opinion and indicated that the Commission should show a "responsible awareness" of the difference between a "specific, closely confined illegality" and a "wide spread illegal practice inimical to the public interest" in shaping its orders to cease and desist. The implications of this opinion may be far-reaching and perhaps will not be fully known except by the gradual process of judicial exclusion and inclusion. However, the decision seems to me to create a warning signal against the issuance of broad orders couched in the language of the statute violated unless a clear predicate is laid in the record justifying the necessity for such an order. I doubt if isolated instances of violation in a particular narrow product line would justify such an order under this decision. However, continuous violations establishing a continuous course and pattern of conduct perhaps would furnish sufficient justification. These are matters of great interest both to businessmen and to the Commission and deserve careful study and scrutiny.

In this discussion of some of the aspects of the antitrust laws, which have an obvious impact upon marketing and distributional techniques, it is, I think, rather important for marketing and business specialists to realize that the alternative to these laws is not a total absence of inhibiting legal principles. In our sophisticated economy there will, I assure you, be no return to the law of the jungle that antidated the passage of the Sherman Act. Congressman Celler very recently in a speech before the Antitrust Section of the New York Bar Association sounded this solemn warning:

> "I think you will agree that if the economic forces of the marketplace be perverted against the interests of the public, the elective as well as the appointed representatives of the people may have to take action in their respective spheres to vindicate the public interest. Gentlemen, if your clients would have less legislation and less regulation, let them pay more than lip service to the competitive philosophy and policies of this nation."

In fact the only alternative I can envisage to effective antitrust regulation is either the direct governmental regulation of business or government ownership in some form of nationalization or socialism. None of us would like to see

this come about, so we continue to seek through the medium of the antitrust laws the maintenance and preservation of the free enterprise system as we know it. In making this effort in the economic realm we also assist, in my judgment, in accomplishing a vital political objective -- the preservation of our democratic political and social institutions. In the recent Northern Pacific case the Supreme Court aptly summed it up as follows:

> "The Sherman Act was designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade. It rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions." Northern Pacific v. U.S., 356 U.S. 1, 4.

Now, I have been discussing some of the more recent developments with respect to some of the more recent judicial interpretations of some of the statutes which we administer which affect certain national marketing and distributional functions. But as a world power, and a first class world power, engaged in world trade of great magnitude and importance, I should like this group, sitting here in this mid-western city of Cincinnati, to lift their eyes to the hills of international trade and to consider and realize how important it is to every segment of our economy, and this includes our great middle west, to keep our international trade strong, vigorous, and dynamic.

Recently it was my privilege, as one of the American delegates, to attend a council of experts on restrictive trade practices which was held at the Chateau du Musette in Paris, December 3-7 of this year. Not only all the members of the Common Market countries were represented, but also all the members of the free world including a delegation from the European Economic Community (Common Market) and the European Coal and Steel Community. This is not a policy making group and its main function heretofore has been to exchange information on country developments and on selected problems of mutual interest, and to arrange for the compilation and dissemination of materials in the

field of restrictive business practices, including a guide to legislation on restrictive business practices. Undoubtedly continuing studies will be carried on looking towards a possible harmonization and perhaps an eventual reconciliation of our various laws affecting competition and trade. The American delegation also met in London with members of the British Board of Trade and in Brussels with the Director General for Competition and the Director for Cartels of the European Economic Community. These meetings were to me -- a somewhat provincial country lawyer rooted in the traditions of his native Indiana -- a real eyeopener. My economic and political horizons were lifted and I quickly came to the realization that in addition to the two great economic giants, the United States and Russia, a third giant had arisen, the European Economic Community known as the Common Market. If the United Kingdom combines with this group, as it undoubtedly will on some mutually compatible basis, it will constitute a more powerful combination than Russia. Clearly, economic necessity as well as political advantage suggests, indeed demands, that the United States likewise follow the United Kingdom in effecting some form of working partnership with this new, this vigorous, dynamic colossus. Our President in his recent State of the Union message has placed the matter squarely before the American people, and their representatives the Congress, for decision. In that address with eloquence, sincerity and conviction, he said:

> "But the greatest challenge of all is posed by the growth of the European Common Market. Assuming the accession of the United Kingdom, there will arise across the Atlantic a trading partner behind a single external tariff similar to ours with an economy which nearly equals our own. Will we in this country adapt our thinking to these new prospects and patterns -- or will we wait until events pass us by?
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> "This is the year to decide. The Reciprocal Trade Act is expiring. We need a new law -- a wholly new approach -- a bold new instrument of American trade policy. Our decision could well affect the unity of the West, the course of the Cold War and the growth of our nation for a generation or more to come.
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> "If we move decisively, our factories and farms can increase their sales to their richest, fastest-growing market. Our exports will increase. Our

balance of payments position will improve. And we will have forged across the Atlantic a trading partnership with vast resources for freedom."

It is heartening to me but not surprising that some of our more able and progressive business leaders have already likewise recognized the vital importance of the issue before us. Eric Johnston, former president of the U. S. Chamber of Commerce, in an article appearing in the New York Times Magazine stated:

"Our third choice is to join the Common Market. This is the course I favor.

"Fully entering the Common Market will mean sacrifices now for future benefit. Only by joining can we hope to produce here and sell there, hold on to United States capital and salvage our present losses.

"I know the arguments against our entering. They are many and persuasive. But they overlook what is happening to us and what will happen to us if we do not act.

* * * * *

"American capital, through its own initiative, is already joining the Common Market. We have been powerless to halt this commercial exodus. And we know it will increase.

"But what of the United States industrial worker? Is his best chance for economic advancement inside or outside the Common Market?

"In my judgment, he will be hurt most if we hold back."

Likewise, Henry Ford II, in a recent speech before the Advertising Council in New York, said:

"Basically, we must now decide whether we move aggressively to strengthen our commercial relationships with Europe, or sit back on our status quo and watch the rest of the world go

by. We have little real choice . . . If the United States is to be influential in the economic, political and military decisions of Europe, it must become a near partner in European affairs, not a distant cousin.

"A 'liberalized' trade program must contain an effective, clean and simple mechanism that will rationally protect American institutions against cruel punishment by imports, but will not be so broad or loose as to undermine the larger purpose of the program or to insulate the American economy from the disciplines of competition.

* * * * *

"To give the United States the greatest benefit, costs must be kept competitive and industry and labor must take steps to get them more in line with those of Europe. Liberalizing trade alone will not do the job."

And believe it or not, the Wall Street Journal -- a news source from which one has come to expect a Cassandra-like chorus of anguish and doomsday prophecy at every Administration proposal -- carried a lead editorial in its January 26, 1962 issue on our closer collaboration with the Common Market entitled "Mr. Kennedy Is Right". This editorial concludes with the following cogent statement:

"The President's requests, then, are only one step, but an essential first step. If Congress succumbs to the local and marginal pleas of the protectionists, it cannot delude itself that it is acting in the national interest.

"It will, instead, be taking the nation behind a wall without having deciphered the handwriting on it. Many another nation has discovered it, and it is still the same old message - trade or die."

Close collaboration as an effective working partnership with the Common Market obviously will entail some sacrifices. It will require a dedicated effort on the part of both management and labor to bring about its effective implementation. But isn't it high time that we stop thinking in

terms of petty, selfish considerations and commence thinking in terms of the overall advantages not only to ourselves as a free nation but to the entire free world? Labor must recognize the necessity of remaining competitive with other free world countries -- surely this is of more overriding importance than either present payrolls or the balance of power between management and labor.

It is my earnest hope that the recent strike of key electrical construction workers in New York City for a 4 hour day which ended in a settlement for a 5 hour day, is not typical of the attitude of the labor movement generally in this country. For if it is, then we will lose any and all efforts to maintain or better our trade position in the expanding markets of the free world. The 9,000 electricians involved in this dispute were among the highest paid workers in this country and held a monopoly of skilled labor in an essential field. Predicated upon their monopolistic position, their behavior was in my view not only anti-social, but clearly in restraint of trade -- immunized, however, under existing law. The lesson in the electrical workers union case seems clear. The effect of their selfish tactics cannot be but to inflate prices and reduce trade. It is a classic example of how selfish men can hold back our national progress. The result is not only inimical to the general good but also to the specific good of the big unions and the labor movement. Let labor remember that if we fail in our efforts to expand world trade, then darkened and shut down factories throughout our land might reduce the work week to zero -- it might also reduce this great country to a third class world power.

Where not only prosperity but perhaps survival is at stake surely our citizens, as they have always done in the past, will rise to the emergency and prove their patriotism. I recognize that the details of this great blueprint for expanded world trade have yet to be filled in. In the last analysis, as is proper in this democracy of ours, the Congress will decide and we shall abide by its decision. But it seems clear to me that there is a concerted American movement in the direction of the Common Market and that this movement is in the public interest. It is a movement that should not be impeded by obstacles placed in its path by selfish, by wilful, or by partisan men. It is a movement, based as it is on the stimulus of freer trade over large areas of the free world, which could supersede the Cold War. It is a movement which I hope this great middlewestern section of the country, this

heartland of America, will support in principle -- and eventually help implement with your usual patriotic vigor and determination.

May I in closing express the very deep pleasure and appreciation I feel in being asked to come before this distinguished conference. The high educational standards of Xavier University and the vital part it plays in the educational and cultural, as well as religious life, of this great section of the country is a matter of common knowledge. It is for this reason that I was particularly gratified to be able to accept your kind invitation to be with you on this occasion. Again I thank you.