

Complaint

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IN THE MATTER OF

ASSOCIATED PEST CONTROL SERVICES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SECTION 2(f) OF THE CLAYTON ACT*Docket C-1638. Complaint, Nov. 26, 1969—Decision, Nov. 26, 1969*

Consent order requiring a Memphis, Tenn., association of pest controllers to cease inducing and receiving discriminatory prices for pesticides and related products from suppliers of such products.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, have violated and are now violating the provisions of subsection (f) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, Section 13), hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Associated Pest Control Services, Inc., hereinafter referred to as "Associated," is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 1313 Poplar Avenue, Memphis, Tennessee.

Respondent Associated is an association of pest control organizations which was ostensibly organized to further the interests and development of the members of the association, through the interchange of ideas, the dissemination of scientific information and other services and purposes incidental to the general welfare of its members. Its membership is comprised of persons, partnerships and corporations engaged in the performance of pest control, industrial sanitation and exterminating services. Associated also performs other services for its members, including the negotiation of discounts for its members from distributors of pesticides, application equipment and other necessary supplies.

Respondent Associated had approximately 37 members in October 1967, which members were located in 17 States of the United States, the Dominion of Canada, and the Bahamas. The membership of Associated constitutes a class so numerous and changing as to make it impracticable to specifically name and describe each and all of such members as parties respondent herein.

Respondent Kotler Exterminating Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee with its principal office and place of business located at 1313 Poplar Avenue, Memphis, Tennessee. It is a member of respondent Associated and is fairly representative of the entire membership of Associated. It is named as a respondent herein in its individual capacity and as representative of all members of respondent Associated. All such members not named specifically are therefore made parties respondent herein as though they had been named individually.

Respondent Louis I. Kotler, 1313 Poplar Avenue, Memphis, Tennessee, is an officer of respondent Associated and the president of respondent Kotler Exterminating Co., Inc. He has been responsible, in part, for the direction and control of Associated. He is named as a respondent herein in his individual capacity, as an officer of respondent Associated and as the chief executive officer of respondent Kotler Exterminating Co., Inc.

PAR. 2. The members of respondent Associated have purchased and now purchase in commerce from suppliers engaged in commerce numerous pesticides and other supplies, such as application equipment, for use, consumption or resale within the United States. Said members and said suppliers cause the products and supplies so purchased to be shipped and transported among and between the several States of the United States, the Dominion of Canada, and the Bahamas from the respective State or States of location of said suppliers to the respective locations of said members of Associated. The members of respondent Associated and said suppliers are therefore engaged in commerce, as "commerce" is defined in the Clayton Act.

PAR. 3. In the purchase, use and resale of said pesticides and supplies, the members of respondent Associated are in active competition with independent persons, partnerships and corporations not affiliated with respondent Associated; and the suppliers selling to said members of Associated and their independent competitors are in active competition with other suppliers of similar products and supplies.

PAR. 4. Respondent Associated, since its formation in February 1959, has been and is now, maintained, managed and operated by its secretary-treasurer, respondent Louis I. Kotler, for its membership and each member has participated in, approved, furthered, or cooperated with respondent Louis I. Kotler and the other mem-

bers of Associated in the carrying out of the procedures and activities hereinafter described.

In practice and effect, respondent Associated has been, and is now, serving as the medium or instrumentality by, through, or in conjunction with, which the said members of Associated exert the influence of their combined bargaining power on the competitive suppliers hereinbefore described. As a part of their operating procedure, said members of respondent Associated direct the attention of said suppliers to their aggregate purchasing power as a buying group and, by reason of such, have knowingly demanded and received, upon their individual purchases, discriminatory prices, discounts, allowances, rebates and terms and conditions of sale. Suppliers not acceding to such demands are usually replaced as sources of supply for the commodities concerned and such market is closed to them, in whole or in substantial part, in favor of such suppliers as can be, and are, induced to afford the discriminatory prices, discounts, allowances, rebates, and terms and conditions of sale so demanded.

This procedure effects a discrimination in price on goods of like grade and quality between the members of respondent Associated and competing independent persons, partnerships and corporations whose discounts, allowances or rebates from such suppliers are based upon only their individual volumes.

PAR. 5. Respondents have induced or received from their suppliers, in the the manner aforescribed, favorable prices, discounts, allowances, rebates, terms and conditions of sale which they knew or should have known constituted discriminations in price prohibited by subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

PAR. 6. The effect of knowing inducement or receipt by respondents of the discriminations in price, as above alleged, has been, and may be, substantially to lessen, injure, destroy or prevent competition between suppliers of pesticides and other supplies granting such discriminations and other suppliers of such products and supplies who do not grant or allow such discriminations, and also between respondent members and competing independent customers not receiving or securing such discriminations.

PAR. 7. The foregoing acts and practices of respondents in knowingly inducing or receiving discriminations in price prohibited by subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, are in violation of subsection (f) of Section 2 of said Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of subsection (f) of Section 2 of the Clayton Act, as amended, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Associated Pest Control Services, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 1313 Poplar Avenue, Memphis, Tennessee.

Respondent Kotler Exterminating Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 1313 Poplar Avenue, Memphis, Tennessee. It is a member of Associated and is fairly representative of the entire membership of Associated.

Respondent Louis I. Kotler is an officer of Associated and is president of Kotler Exterminating Co., Inc. He has been responsible in part, for the direction and control of Associated. His address is the same as that of said corporations.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

ORDER

It is ordered, That respondents Associated Pest Control Services, Inc., a corporation, Kotler Exterminating Co., Inc., a corporation, individually and as a member of and as representative of the entire membership of Associated Pest Control Services, Inc., all other members of Associated Pest Control Services, Inc., and Louis I. Kotler, individually and as an officer of respondents Associated Pest Control Services, Inc., and Kotler Exterminating Co., Inc., their respective successors and assigns, officers, agents, representatives, employees and members, directly or through any corporate or other device, in connection with the offering to purchase or purchase of any pesticides and other supplies, such as application equipment, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Directly or indirectly inducing and receiving, receiving or accepting any discrimination in the price of such products by accepting from any seller a net price respondents know or should know is below the net price at which said products of like grade and quality are being sold by such seller to other purchasers where respondents are competing with the purchaser paying the higher price or with a customer of the purchaser paying the higher price.

For the purpose of determining the "net price" under the terms of this order, there shall be taken into account all discounts or other terms and conditions of sale by which net prices are affected.

It is further ordered, That the respondent corporation, Associated Pest Control Services, Inc., shall forthwith distribute a copy of this order to each of its members.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation, which may affect compliance obligations arising out of the order.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

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IN THE MATTER OF

KEENEY BROTHERS FARMS, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-1639. Complaint, Nov. 26, 1969—Decision, Nov. 26, 1969*

Consent order requiring a New Freedom, Pa., seller of chinchilla breeding stock to cease making exaggerated earning claims, misrepresenting the quality and fertility of its stock, and misrepresenting its services to purchasers.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Keeney Brothers Farms, a partnership, and Alvin L. Keeney and Elmer H. Keeney, individually and as copartners trading and doing business as Keeney Brothers Farms, and Larry Keeney, individually and as an office manager of said partnership, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Keeney Brothers Farms is a partnership comprised of Alvin L. Keeney and Elmer H. Keeney who formulate, direct and control its acts, policies and practices, including those hereinafter set forth. The principal office and place of business of said partnership is located at Route 2, New Freedom, Pennsylvania.

Respondents Alvin L. Keeney and Elmer H. Keeney are individuals and copartners trading and doing business as Keeney Brothers Farms, with their principal office and place of business at the above-stated address.

Respondent Larry Keeney is an individual and office manager of said partnership. He cooperated in and effectuated the acts, policies and practices of the partnership. His address is the same as that of the partnership.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of chinchilla breeding stock to the public.

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PAR. 3. In the course and conduct of their aforesaid business, respondents now cause, and for some time last past have caused, their said chinchillas, when sold, to be shipped from their place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of obtaining the names of prospective purchasers and inducing the purchase of said chinchillas, respondents have made, and are now making numerous statements and representations in magazine publications, direct mail advertising and through the oral statements and display of promotional material to prospective purchasers by their salesmen, with respect to the breeding of chinchillas in the home for profit without previous experience, the rate of reproduction of said animals and the expected income from their sale.

Typical and illustrative of the statements and representations contained in said advertising and promotional material, but not all inclusive thereof, are the following:

*** Here is a ready made market! The demand for Chinchilla breeding stock is so great authorities estimate that 500,000 animals will be needed for breeding stock alone, before pelting can be seriously considered.

* * * * *

*** The space you will need to raise, breed and sell Chinchillas to start, need be no more than your garage, basement, or even the kitchen or bedroom. ***

The return is quick and BIG. You can have Chinchillas ready for market in just five or six months. A chinchilla can have up to three litters a year, averaging from 1 to as high as 6 in a litter. The young can bring from \$200.00 a pair on up.

YOU CAN MAKE UP TO \$800.00 IN ONE YEAR JUST FROM ONE PAIR OF CHINCHILLAS!

Here's how. Supposing you get a real conservative average of 2 young per litter. In a year's time you can have 3 pair from your original pair, plus at least one pair from the first offspring. If you sell your young at \$200.00 per pair, you would then have \$800.00. By keeping at least one pair for future breeding the next year, you could make from \$600.00 to \$1800.00. ***

* * * * *

CAN YOU USE \$1,000.00 to \$5,000.00-\$10,000.00 per year?

Of course you can. And by answering our advertisement you have taken a step forward in that direction. ***

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Then consider carefully our program: A tremendous National Advertising Campaign (to millions every month all over the United States) specially designed to sell the Chinchillas YOU BREED AT HOME. Yes, you'll agree after digesting this information that we want to work with you as a sort of "YOU BREED 'EM—WE'LL HELP SELL 'EM" team.

* * * * *

Is Chinchilla breeding difficult? Absolutely not. Nature takes care of the breeding, as paired animals are left together at all times. * * *

* * * * *

WHAT OTHER BUSINESS OFFERS YOU THESE THRILLING ADVANTAGES?

* * * YOU ARE IN PARTNERSHIP WITH NATURE and nature does the work for you. * * *

YOUR HOME, GARAGE, BARN, BASEMENT IS YOUR FACTORY

* * * * *

YOU DON'T HAVE TO FIND A MARKET FOR THE CHINCHILLAS YOU BREED, BECAUSE Our National Advertising was originated with the idea of making people interested in raising Chinchillas come to you * * * no matter where you live. YOUR SUCCESS IS OUR SUCCESS. That is why we pay for this large nation-wide advertising campaign to help you. No other type of home business offers you this extra assurance of profits.

* * * * *

They have hardy constitutions and with proper care, feed and housing, are relatively free from illness and disease.

* * * * *

PAR. 5. By and through the use of said statements and representations made by respondents in their advertising and promotional material, and others of similar import and meaning but not expressly set out herein, and in oral statements and representations made by their salesmen, respondents represent, and have represented, directly or by implication, that:

1. It is commercially feasible to breed and raise chinchillas from breeding stock purchased from respondents in homes, basements, garages, kitchens, bedrooms and that large profits can be made in this manner.

2. The breeding of chinchillas from breeding stock purchased from respondents as a commercially profitable enterprise requires no previous experience in the breeding, raising and caring for such animals.

3. Chinchillas are hardy animals and are free from illness and disease.

4. Each female chinchilla purchased from respondents and each female offspring will produce at least three live offspring per year.

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5. Each female chinchilla purchased from respondents and each female offspring will produce several successive litters of from one to six live offspring each year.

6. The offspring referred to in Paragraph Five subparagraph (5) above will sell for at least \$200 a pair, a pair being one female and one male.

7. A purchaser starting with one female and one male of respondents' chinchilla breeding stock will have a gross income of at least \$600 from the sale of animals in the second year.

8. There is a great demand for the offspring and for the pelts of the offspring of chinchilla breeding stock purchased from respondents.

9. The purpose of respondents' national advertising is to help purchasers of their chinchilla breeding stock market the chinchillas they raise.

PAR. 6. In truth and in fact:

1. It is not commercially feasible to breed or raise chinchillas from breeding stock purchased from respondents in homes, basements, garages, kitchens, bedrooms and large profits cannot be made in this manner. Such quarters or buildings, unless they have adequate space and the requisite temperature, humidity, ventilation and other necessary environmental conditions are not adaptable to or suitable for the breeding or raising of chinchillas on a commercial basis.

2. The breeding of chinchillas from breeding stock purchased from respondents as a commercially profitable enterprise requires specialized knowledge in the breeding, raising and care of said animals much of which must be acquired through actual experience.

3. Chinchillas are not hardy animals and are not free from illness and disease.

4. Each female chinchilla purchased from respondents and each female offspring will not produce at least three live offspring per year, but generally less than that number.

5. Each female chinchilla purchased from respondents and each female offspring will not produce several successive litters of from one to six each year, but generally less than that number.

6. The offspring referred to in subparagraph (5) Paragraph Five above will not sell for at least \$200 a pair but substantially less than that amount.

7. A purchaser starting with one female and one male of respondents' breeding stock will not have a gross income of at least \$600 from the sale of animals in the second year but substantially less than that amount.

8. There is not a great demand for the offspring nor for the pelts of the offspring of chinchilla breeding stock purchased from respondents.

9. The purpose of respondents' national advertising is not to help purchasers of their chinchilla breeding stock market the chinchillas they raise but to sell respondents' own breeding stock.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of chinchilla breeding stock.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the tendency and capacity to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' chinchillas by reason of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of the respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Keeney Brothers Farms is a partnership comprised of Alvin L. Keeney and Elmer H. Keeney who formulate, direct and control its acts, policies and practices. The principal office and place of business of said partnership is located at Route 2, New Freedom, Pennsylvania.

Respondents Alvin L. Keeney and Elmer H. Keeney are individuals trading and doing business as a copartnership under the aforesaid name and style. Their address is the same as that of the partnership.

Respondent Larry Keeney is an individual and office manager of said partnership. He cooperated in and effectuated the acts, policies and practices of the partnership. His address is the same as that of the partnership.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Keeney Brothers Farms, a partnership, and Alvin L. Keeney and Elmer H. Keeney, individually and as copartners trading and doing business as Keeney Brothers Farms, or trading and doing business under any other name or names, and Larry Keeney, individually and as an office manager of said partnership, and respondents' representatives,

agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of chinchilla breeding stock or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that:

1. It is commercially feasible to breed or raise chinchillas in homes, basements, garages, kitchens or bedrooms, or other quarters or buildings unless in immediate conjunction therewith it is clearly and conspicuously disclosed that the represented quarters or buildings can only be adaptable to and suitable for the breeding and raising of chinchillas on a commercial basis if they have the requisite space, temperature, humidity, ventilation and other environmental conditions.

2. Breeding chinchillas as a commercially profitable enterprise can be achieved without previous knowledge or experience in the breeding, raising and care of such animals.

3. Chinchillas are hardy animals or are free from illness or disease.

4. Each female chinchilla purchased from respondents and each female offspring produce at least three live young per year.

5. The number of live offspring produced per female chinchilla is any number or range of numbers; or representing, in any manner, the past number or range of numbers of live offspring produced per female chinchilla of purchasers of respondents' breeding stock unless, in fact, the past number or range of numbers represented are those of a substantial number of purchasers and accurately reflect the number or range of numbers of live offspring produced per female chinchilla of these purchasers under circumstances similar to those of the purchaser to whom the representation is made.

6. Each female chinchilla purchased from respondents and each female offspring will produce several successive litters of one to six live offspring each year.

7. The number of litters or sizes thereof produced per female chinchilla is any number or range thereof; or representing, in any manner, the past number or range

of numbers of litters or sizes produced per female chinchilla of purchasers of respondents' breeding stock unless, in fact, the past number or range of numbers represented are those of a substantial number of purchasers and accurately reflect the number or range of numbers of litters or sizes thereof produced per female chinchilla of these purchasers under circumstances similar to those of the purchaser to whom the representation is made.

8. The offspring of respondents' chinchilla breeding stock sell for at least \$200 per pair.

9. Chinchilla offspring from respondents' breeding stock will sell for any price, average price, or range of prices; or representing, in any manner, the past price, average price or range of prices of purchasers of respondents' breeding stock unless, in fact, the past price, average price or range of prices represented are those of a substantial number of purchasers and accurately reflect the price, average price or range of prices realized by these purchasers under circumstances similar to those of the purchaser to whom the representation is made.

10. A purchaser starting with one female and one male will have, from the sale of animals, a gross income, earnings or profits of \$600 in the second year after purchase.

11. Purchasers of respondents' breeding stock will realize earnings, profits or income in any amount or range of amounts; or representing, in any manner, the past earnings, profits or income of purchasers of respondents' breeding stock unless, in fact, the past earnings, profits or income represented are those of a substantial number of purchasers and accurately reflect the average earnings, profits or income of these purchasers under circumstances similar to those of the purchaser to whom the representation is made.

12. Purchasers of respondents' breeding stock can expect to be able to sell the offspring or the pelts of the offspring of respondents' chinchillas because said chinchillas or pelts are in great demand.

13. The purpose of respondents' national advertising is to help purchasers of their chinchilla breeding stock

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market the chinchillas they raise; or misrepresenting, in any manner, the advertising, promotional or sales assistance engaged in by respondents or furnished to purchasers of respondents' products.

B. Misrepresenting, in any manner, the earnings or profits to purchasers or the quality or reproduction capacity of any chinchilla breeding stock.

C. Failing to deliver a copy of this order to cease and desist to all present and future salesmen or other persons engaged in the sale of respondents' products or services, and failing to secure from each such salesman or other person a signed statement acknowledging receipt of said order.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

KAYE BROTHERS, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION AND THE WOOL PRODUCTS
LABELING ACTS

Docket C-1640. Complaint, Nov. 26, 1969—Decision, Nov. 26, 1969

Consent order requiring a Chicago, Ill., manufacturer of men's and boys' sport jackets to cease misbranding its wool products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Kaye Brothers, a partnership, and Ben Kaye and Edward Kaye, individually and as co-partners trading as Kaye Brothers, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public inter-

