

HISTORY OF SECTION 6 REPORT-WRITING  
AT THE FEDERAL TRADE COMMISSION

OFFICE OF POLICY PLANNING  
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## I. Introduction

The FTC's report writing as authorized by Section 6 of the FTC Act, has contributed significantly to many of the agency's legislative successes and market improvements as well as controversy about the Commission. This paper reviews some of the major developments over the years.

The importance of the FTC's report-writing authority in its early days cannot be overemphasized. The agency's predecessor, the Bureau of Corporations, had no direct regulatory power and undertook investigations primarily for the benefit of the President. When President Wilson proposed the establishment of a Federal Trade Commission in 1914, he envisaged a role for it limited to providing advice, guidance and information to industry, courts, Congress and the public. <sup>1/</sup>

Over the years, several FTC reports have been successful in either influencing legislation or improving market performance. Reports have served other functions as well, such as providing support for litigation and supplying information needed for war production during World War I and World War II. The first Hoover Commission Task Force commented on the significance of the FTC's reports:

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<sup>1/</sup> T.L. Moore, The Establishment of a "New Freedom" Policy: The Federal Trade Commission 1912-1918, at 42 (1980) (unpublished Ph.D. dissertation, University of Alabama).

Of all its activities, the Commission's investigations have probably had the most substantial impact and enduring value. Its general investigations, more than 100 in number, have in several instances resulted in the passage of major legislation - notably the Packers and Stockyards Act, the Securities Act of 1933, the Stock Exchange Act of 1934, and the Public Utility Holding Company Act of 1935. 2/

In the sections below, this paper reviews the history of Section 6 report-writing at the FTC. It describes some of the major reports issued, the Congressional restrictions placed on the FTC's report-writing functions, and other significant developments. Detailed "case studies" are included on a number of reports.

2/ Boyle, Economic Reports and the Federal Trade Commission: 50 Years' Experience, 24 Fed. Bar J. 489, 493 (1964) [hereinafter cited as Boyle] (quoting Federal Trade Commission, Task Force Report on Regulatory Commission, app. N, at 127 (1949)). Boyle was Chief of the Division of Industry Analysis at the Federal Trade Commission in 1964.

## II. BUREAU OF CORPORATIONS

The Bureau of Corporations was established in 1903 and existed until 1914, when the Federal Trade Commission was created. The Bureau had limited authority and existed as part of the Department of Commerce and Labor -- it had no direct regulatory powers and it could not require annual reports or other special reports from business. Investigations were conducted to enable the President to recommend legislation to Congress.

The Bureau of Corporations issued 13 economic reports between 1905 and 1914. Included were analyses of the beef, petroleum, tobacco, and steel industries, a report on the International Harvester Company, and a study of the economic effects of state taxation of corporations. The reports of the Bureau were highly competent, according to at least one analyst. 3/

3/ The Bureau of Corporations Report on the Steel Industry (1911-1913) provides a good example of the level of analysis in the Bureau's report:

This report examines the development and structure of the industry, the origins of the major company [U.S. Steel], the competitive effects of mergers and acquisitions, and the extent and competitive significance of vertical integration in the industry. In addition, it contains a substantial analysis of steel costs, both investment and production, prices and profits, and attempts to relate these performance characteristics to structural conditions prevailing in the industry. Boyle, supra note 2, at 492.

The Bureau of Corporations regarded publicity as a powerful tool. Its 1912 Annual Report concluded that:

The experience of the past 10 years has therefore clearly demonstrated that publicity, in the form of a clear and unprejudiced report of the facts after painstaking investigation, actually does have an important remedial effect, and beyond this has a very positive value in furnishing a basis for constructive legislation. 4/

Herbert K. Smith, a commissioner of the Bureau, used the term "efficient publicity" to describe the policy of making the results of investigations of competitive conditions available to the average citizen through channels such as news releases. 5/

Although the Bureau compiled a variety of information through its investigations, it lacked the means to demand annual and special reports from the business community. Annually, the Commissioner of the Bureau of Corporations would recommend to Congress that the agency's authority be expanded to allow direct access to business records. 6/ Section 6(b) of the FTC Act was enacted to provide the Commission with the compulsory process recommended.

4/ Annual Report of the Commissioner of Corporations to the Secretary of Commerce and Labor for the fiscal year ended June 30, 1912, at 10, quoted in Boyle, supra note 2, at 492.

5/ T. Blaisdell, *The Federal Trade Commission: An Experiment in the Control of Business* 107 (1932) [Hereinafter cited as Blaisdell].

6/ Id. at 110.

According to the Bureau's annual reports, the Bureau's reporting activities were often effective. For example, in response to its investigations the tobacco industry ended the use of secret subsidiaries; the New York and New Orleans cotton exchanges voluntarily changed some of their business practices; and railroads stopped rebating to the Standard Oil Company. 7/

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7/ Id. at 108.

### III. 1914-1939

#### Introduction

On January 20, 1914, President Wilson proposed the establishment of an Interstate Trade Commission in an address personally delivered before a joint session of Congress. 8/ Wilson envisioned the Commission as "an indispensable instrument of information and publicity ... as a clearing house for the facts by which both the public mind and the managers of great business undertakings should be guided." 9/ The original bills introduced in Congress reflected Wilson's emphasis on investigatory and publicity powers. 10/ After going through the Congressional committee process, however, the Commission's authority was strengthened with the addition of the "unfair methods of competition" language now found in Section 5. 11/

The first 25 years of the FTC's life built on the economic report-writing tradition established by the Bureau of Corporations and introduced the FTC's reporting function

8/ G. Davis, Federal Trade Commission: Promise and Practice in Regulating Business, 1900-1929, at 111 (1969) (unpublished Ph.D. dissertation at Univ. of Illinois available in FTC library) [hereinafter cited as Davis]. This represented Woodrow Wilson's first endorsement of this approach. He had protested the "regulated monopoly" approach during the 1912 presidential campaign. See id. at 112-13.

9/ H.R. Rep. No. 533, 63d Cong., 2d Sess. 2 (1914).

10/ See Averitt, The Meaning of "Unfair Methods of Competition" in Section 5 of the Federal Trade Commission Act, 21 B.C.L. Rev. 227, 234 (1980).

11/ Id.

as an effective but often controversial policy tool. At times the FTC found itself caught in the middle of Senate/House conflicts regarding the role of report-writing. The controversial Report on the Meatpacking Industry (1919-1920) and other reports led to Congressional restrictions on the FTC's report-writing authority in 1926 and 1934.

Economic reports written during these early years were very effective in influencing new legislation. For example, the FTC's Report on the Grain Trade (1924-1926) had a major impact on the Grain Futures Act. The multi-volume report on electric and gas utilities, published between 1931 and 1935, was critical to the enactment of the Securities Act of 1933, the Public Utility Holding Company Act, the Federal Power Act, and the Natural Gas Act. Finally, the Chain Stores Report (1931-1934) pointed the way to passage of the Robinson-Patman Act of 1936.

Although reports contributed to the enactment of new laws, the legislation did at times deviate from FTC recommendations. For example, the Report on the Meatpacking Industry led to the enactment of the Packers and Stockyard Act of 1921, which essentially transferred jurisdiction over packers from the FTC to the Department of Agriculture.

During those early years, Congressional support and requests for reports were highly significant. One of the first Congressional requests was for a study of the conditions of export trade. In 1916, the FTC published Report on Cooperation in American Export Trade which explained problems encountered by U.S. firms in competing with foreign businesses.

The FTC report deplored the presence of large cartelized foreign buyers and sellers and the existence of 'more effective [foreign] organizations' which placed American exporting firms at a significant competitive disadvantage. The FTC's study further noted that the threat of Sherman Act prosecutions deterred exporters from carrying out collective efforts to challenge such cartels and large commercial entities. 12/

The report led in large part to the passage of the Webb-Pomerene Export Trade Act of 1918, which allows associations of U.S. producers to engage in cooperative activities solely for the purpose of export trade. 13/

12/ McDermid, The Antitrust Commission and the Webb-Pomerene Act: A Critical Assessment, 37 Wash. and Lee L. Rev. 108 (1980).

13/ In 1968, the FTC published a report, Webb-Pomerene Associations: A 50-Year Review which concluded that the Webb-Pomerene Act had not significantly increased U.S. exports.

A second early Congressional request was the 1923 directive that the FTC prepare a report on national wealth and income. In 1926, the FTC submitted to Congress a report on national income for the years 1918 to 1923. 14/ It was one of the first efforts at estimating national wealth and income, and is reported "to have been as carefully done as was possible with the data then available." 15/

Not long after the establishment of the FTC, the beginning of World War I defined a major role for the FTC in its early years. Seventy-one studies were conducted for the war industries board, forty were written for the War Department, thirty-nine were prepared for the Navy Department, and several others were written for various other agencies. 16/ President Wilson requested 11 studies. These requests led to a long series of reports from 1917 to 1921 on topics including the food industry, production and distribution of coal, cost of living, price of farm implements, increases in shoe prices, the book/paper industry, the price of newsprint, petroleum prices, and war time profiteering.

14/ FTC, National Wealth and Income, S. Doc. No. 126, 69th Cong., 1st Sess. (1926).

15/ E.Z. Palmer, The Meaning and Measurement of the National Income 30 (1966).

16/ FTC, Annual Report 18 (1951). Most of the 71 studies prepared for the war industries board were cost studies used for price determination. Id.

Case Study: Report on Cooperation in American Export Trade of 1916

Introduction. Whether a report has an impact on legislation is certainly one criterion for evaluating the effectiveness of a report. If it were the sole criterion, the FTC's Report on Cooperation in American Export Trade would have to be classified as an overwhelming success. It is an indisputable fact that the hearings on the Webb-Pomerene Act were comprised of the summary of the Commission's report and comments addressed to the report's findings. <sup>17/</sup> Indeed, the Commission's findings that American exporters were inhibited from developing effective organizations due to their fear of antitrust prosecution premised the passage of the limited exception for export associations.

Initiation of the Report. As former Chairman Dixon stated to the Senate Subcommittee on Antitrust and Monopoly in 1967, "As one of its first orders of business following administration of the oath of office to the Commissioners on March 15, 1916, the Federal Trade Commission undertook an extensive inquiry into the necessity for cooperation in American export trade under Section 6(h) of its enabling Act." <sup>18/</sup> The Commission's decision to investigate American exporting disadvantages was certainly not an impulsive reaction to new problems. In fact, interest in an antitrust exception for American exporting firms commenced around the turn of the century. Organizations such as the National Federal Trade Council, the United States Chamber of Commerce, and the National Association of Manufacturers all had been advancing the idea of an export exemption through the passage of the original Clayton Act. <sup>19/</sup>

The Report. Probably the greatest strength of the report, from a historical perspective, was its farsighted analytical approach. Instead of advancing a particular argument, the FTC alerted Congress to both sides of the export dilemma. Increasing amounts of exports would benefit the United States economy (and U.S. firms), the expected

<sup>17/</sup> See Hearings on the Promotion of Export Trade before the House Judiciary Committee, 64th Cong., 1st Sess. (1916). [Hereinafter cited as 1916 House Hearings].

<sup>18/</sup> International Aspects of Antitrust -- Review of the Webb-Pomerene Act of 1918: Hearings before the Subcommittee on Antitrust and Monopoly of the Senate Judiciary Committee 90th Cong., 1st Sess. 132 (1967).

<sup>19/</sup> 1916 House Hearings, supra note 17, at 38-39.

results of any cooperative arrangement. The danger, however, of a deleterious impact on the home market as well as possible exclusions of United States firms by cooperatives, were all viewed as salient factors in the Commission's report.

The conclusions were sufficient to spur Congressional action. At the end of its two volume report the Commission stated that:

- 1) other nations enjoy market advantages in foreign trade from superior facilities and more effective organization
- 2) doubt and fear as to legal restrictions prevent Americans from developing equally effective organizations for overseas business and that the foreign trade of our manufacturers and producers, particularly the smaller concerns, suffers in consequence. 20/

In addition to these findings, the Commission recommended certain courses of action for American exporters and Congress. Focusing upon raw materials and food stuffs, the report warned against profitless exploitation of our natural resources. As far as factory products were concerned, the report stated that "[s]uch goods must be advertised, demonstrated, and a market created among alien peoples." 21/ Faced with great foreign combinations with which to battle, only strong organizations would be able to undertake the contest.

The Commission's concern for progress in foreign trade, however, did not blind the report writers from potential problems resulting from cooperative associations. As stated in the report, "the dangers in cooperative action must be faced frankly and provided against fully." 22/ To shield the economy from possible harm from these cooperatives, the report suggested that export organizations report to the FTC and concomitantly, the FTC take jurisdiction over these exporters under Section 5's unfair practices language. 23/ Any domestic harm resulting from the cooperatives would be subject to the antitrust laws.

20/ FTC, Report on Cooperation in American Export Trade, Vol. 1, at 3 (1916).

21/ Id.

22/ Id.

23/ Id.

In the final section of the report, the Commission advocated legislative action to assure exporters of their abilities to compete. This was to be done by legislating that the foreign activities of export associations would not be within the purview of the antitrust laws.

Conclusion. In 1919, the Webb-Pomerene Act was passed. The Act, largely based on the Commission's report, provided that certain export associations would be exempt from the antitrust laws so far as the right to cooperate was concerned. Throughout the years, the FTC has done several more studies of the exporting situation, reviewing the Commission's findings of 1916. The reports praised the earlier study for addressing a real problem of the times. Although it appears that certain factors that were essential to the law's passage have changed, the Webb-Pomerene law is still intact. 24/ Thus, the Report on Cooperation in American Export Trade formed the basis of a law that has stood the test of time. ○

Case Study: Meat Packing Report of 1917 to 1920

Introduction. In 1917, President Wilson requested the Federal Trade Commission to investigate the meat packing industry. 25/ The request, in large part, was the result of the livestock producers' deep-rooted feelings that the violent fluctuation in prices of livestock was not justified by the law of supply and demand. 26/ The investigation focused upon the activities of five packers -- Swift, Armour, Morris, Wilson and Cudahay. Combined, these five firms controlled approximately 93% of the packing industry. Even more disturbing, the big five, as they were referred to in the industry, controlled the major sources of distribution and held related investments in canning and wholesale groceries. 27/

24/ It appears that World War II greatly diffused the power of the foreign cartels.

25/ Blaisdell, supra note 5, at 76.

26/ Clemen, American Livestock and Meat Industry 769 (1923) [Hereinafter cited as Clemen].

27/ See generally Corey, Meat and Men 74-94 (1950), [Hereinafter cited as Corey].

The Report. Even some of the staunchest critics of the FTC investigation allowed that the Commission had done a comprehensive job in gathering data and preparing the report. 28/ After eighteen months of investigation, the FTC concluded that there were widespread monopoly practices in the meatpacking industry. Specifically, the FTC report found that the big five: 1) had an agreement for the division of livestock purchases; 2) exchanged confidential information which was used to control and manipulate livestock markets; 3) were in ownership control of 91% of all refrigerator cars; 4) received unfair rebates from railroads; 5) controlled a system of wholesale distribution; 6) acted collusively in the sale of fresh meat; and 7) controlled market newspapers. 29/

The Commission recommended that the government acquire, through the Railroad Administration, a variety of the packers' operations to remedy the situation. In effect, the Commission was recommending Government ownership of a large part of the packing industry to ensure competition.

As a result of the report, the Justice Department initiated an antitrust prosecution. Both the report and prosecution fostered numerous Congressional hearings on the subject. In thousands of pages of testimony to several Congressional committees, the packers criticized the report on several grounds, including the Commission's lack of sufficient knowledge about the industry to undertake the study in the first place. 30/

Indeed the Commission found itself in the middle of a heated debate -- a so-called "Baptism by Fire". 31/ In August 1918, the Chamber of Commerce's Federal Trade Committee prepared a detailed analysis of the FTC's performance. The Chamber's magazine, Nation's Business, published the analysis in September 1918. It claimed the Commission "had abused its

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28/ See Clemen supra, note 26.

29/ FTC, Meat-Packing Industry, Summary Vol. (1918).

30/ Id.

31/ S. Wagner, The Federal Trade Commission 76 (1971) [Hereinafter cited as Wagner].

powers of investigation by publicizing charges against defendants without warning ... Moreover, its publicity releases on certain industries had been biased and inaccurate, reflecting lack of responsibility through the use of 'broad accusation and innuendo.' In its investigation of the food industry the FTC had greatly abused its powers of publicity by presuming the defendant to be guilty without hearing or trial." 32/ Senator Watson from Indiana went so far as to propose a Congressional resolution to investigate the FTC for suspected bolshevik members; however, little support was mustered and the resolution failed to pass. 33/ By contrast, the public was generally supportive of the report and the FTC's willingness to examine a major industry. 34/ Unions especially voiced credence in the FTC's findings. 35/ "Farmers, workers and housewives were ready to proclaim the Commission their champion." 36/

The Consent Decree. As a result of the FTC's report, the Department of Justice filed a criminal suit against the meatpackers and later settled for a consent decree. Under the consent decree, the packers agreed: 1) to give up their holdings in public stockyards and railroad terminals; 2) to give up their holdings in market newspapers; 3) to discontinue their retail meat stores; and 4) to give up their public cold storage warehouse for products other than meats. Significantly, the packers were permitted to keep their refrigerator cars and distribution networks, major elements of their power. Moreover, in 1924 the packers challenged the provisions of the decree; pending the litigation, the operation of the decree was suspended for five years.

Although the consent decree did not end the packers' monopoly, it may have contributed to their inability to expand their power. Beginning in the 1920's, the big five's market share started falling. In 1921, the big five accounted for 64 percent of total packing sales. In comparison, the 1930 sales figure was 60 percent. 37/ The ratio continued to fall to 56

32/ Davis, supra note 8, at 191.

33/ See Clemen, Supra note 26.

34/ Corey, supra note 27.

35/ Id.

36/ E.P. Herring, Public Administration and the Public Interest 121 (1936) [hereinafter cited as Herring].

37/ See Corey, supra note 27. In 1923 the "Big Five" became the "Big Four" as Armour acquired Morris.

percent in 1935, 38/ to 41 percent in 1947 and to 22 percent in 1972. 39/

Legislation. Subsequent to the FTC's report, and simultaneous to the consent agreement, several bills were introduced in Congress in an effort to regulate the packing industry. 40/ As a result, Congress finally passed the Packers and Stockyards Act in 1921. The Act gave the Department of Agriculture jurisdiction over the packers. 41/ Although the packers were exempted from FTC scrutiny, the Act still enabled the Department of Agriculture to oversee the packers for unfair, deceptive or discriminatory practices that would create a monopoly or restrain trade. 42/ If, after hearings, the Secretary finds the packers guilty, the packers must be ordered to cease and desist. 43/ Furthermore, the packers are required to keep books and accounts subject to the Secretary's scrutiny. 44/

Conclusion. The FTC's meat packer investigation was certainly the subject of considerable controversy. The report and the consent decree that followed played an important role in limiting the concentration in the meat packing industry. In addition, the conclusion of the report that the big five packing firms controlled the stockyards, was accepted and quoted by the Supreme Court in Stafford v. Wallace. 45/

38/ G. Means, The Structure of the American Economy, Part 1 at 265 (National Resources Committee 1939).

39/ The four firm ratio dropped in each of the five Census of Manufactures following 1947. 1972 is the latest year for which data are available. Concentration Ratios in Manufacturing, U.S. Bureau of Census, 1972 Census of Manufactures 5, Table 5 (1975). USDA Packers and Stockyard data on livestock slaughter show the four largest firms' share declining further, from 23.6 percent in 1972 to 21.3 percent in 1977. Agricultural Marketing Service, U.S. Dep't of Agriculture, Concentration in the Meatpacking Industry -- National and Local Procurement Levels app. 14, at 43.

40/ See Clemen, supra note 26.

41/ Id.

42/ Id.

43/ Id.

44/ Id.

45/ 258 U.S. 495, 500, 425 Sup.Ct. 397, 399-400 (1922). In Stafford, the Court held that the Packers and Stockyard Act of 1927 was constitutionally within the realm of Congressional authority to regulate interstate commerce. 21?

Appropriations Restriction FY 1926

The year 1925 was a turning point for the Commission, with the appointment of William E. Humphrey, an Ohio Congressman, to the Commission. Humphrey strongly advocated cooperation between the Commission and business 46/ and led the Commission into a policy of curtailing the use of publicity and investigation. 47/

As a result of the new directions established by Humphrey, businessmen began supporting the FTC and progressives began attacking it after 1925. A banking and finance trade periodical, the Magazine of Wall Street, commented that under Humphrey the Commission had been converted from a "hectoring tyrannical and ... tireless snooper" into "an instrument of protection," thus heralding a "new trend toward making government the fair and understanding arbiter of business." 48/

Despite Humphrey's opposition to the Wilsonian policy of "pitiless publicity", report writing continued -- and in a sense flourished -- because of requests from the Senate. 49/ The ability of the Senate to request reports was limited in 1926 by the following rider attached to the appropriations bill:

46/ Herring, supra note 36, at 124.

47/ Davis, supra note 8, at 258.

48/ G.C. Davis, The Transformation of the Federal Trade Commission 1914-1929, 49 Miss. Valley Hist. Rev. 451 (1962) (quoting 39 Magazine of Wall Street 1064-66 (1927)).

49/ Davis, supra note 8, at 256; some reports continued to be initiated by the Commission because Commissioner Myers was able to maneuver approval when Humphrey was on vacation.

Provided, that no part of this sum shall be expended for investigations requested by either house of Congress except those requested by concurrent resolution of Congress, but this limitation shall not apply to investigations and reports in connection with alleged violations of the antitrust acts by any corporations. 50/

Because it would be more difficult to secure a concurrent resolution, Congressman Griffen, a vocal supporter of the FTC, believed the rider would reduce the number of economic investigations.

This amendment was apparently intended to restrict the FTC's authority to investigate anything other than possible legal violations as specified in the Act. Prior to this time, the FTC had fulfilled Congressional requests for reports whether or not they related to violations of the antitrust acts. 51/ Congressman Wood, the chief supporter of the amendment, expressed concern that these requests required the FTC to expend considerable sums of money that had been granted for the regular work of the Commission. 52/ At the same time, the FTC's authority was being challenged from within the agency by Commissioner William Humphrey. In a speech to the U.S. Chamber of Commerce in May 1924, he declared that carrying out resolutions of the Senate that

50/ Pub. L. No. 586, 68th Cong., 2d Sess. (1926). See H.R. Rep. No. 11505, 68th Cong., 2d Sess. (1927).

51/ E.g., Commission reports on shoe and leather costs and prices; wheat, flour milling industry; wealth and income in the fertilizer industry, made no reference to antitrust law violations.

52/ 66 Cong. Rec. 2657 (1925).

called for economic reports would be in direct violation of the law sufficient to warrant the Commissioner's dismissal. 53/

Apparently, there were two main factors influencing the Congressional restriction on the FTC. The first was disapproval of some of the Commission's activities. Congressman Wood noted that the FTC "had some outstanding and prominent investigations during the last year and some have attracted a great deal of attention." 54/ The report on kitchen furnishings and domestic appliances sent to the Senate in 1924 was one of these. It disclosed alleged violations by the Aluminum Company of America (ALCOA) of various provisions of a Sherman Act consent decree, which resulted in displeasure with the FTC, both within and outside of Congress. 55/ Congressman Wood claimed that "the public is beginning to think that the operation of the FTC is oftentimes for the purpose of discouraging legitimate business ... there is a feeling over the country that there is too much of sticking your nose in other peoples [sic] business." 56/

53/ Stevens, The Federal Trade Commission's Contribution to Industrial and Economic Analysis: The Work of the Economic Division, 8 Geo. Wash. U. L. Rev. 549 (1940) [hereinafter cited as Stevens].

54/ Hearings before a Subcommittee of the House Committee on Appropriations on the Independent Offices Appropriation Bill of 1926, 68th Cong., 2nd Sess. 133 (1925). [Hereinafter cited as 1925 Hearings]

55/ Stevens, supra note 53, at 548.

56/ 1925 Hearings, supra note 54, at 117.

Second, antagonism was directed not only toward the FTC but also toward the Senate due to the large number of Senatorial requests for investigations for which House appropriations were required. Declaring that the Senate had abused its power, Congressman Wood stated that resolutions were passed for the Senators to get the facts for themselves, were often initiated out of prejudice, and cost thousands of dollars. 57/ This claim was countered on the House floor by Congressman Griffen, who said that only 36 investigations had taken place since the FTC opened, not the hundreds that Wood had alluded to. 58/

There was disagreement both within and outside the Commission about the interpretation of this restriction, particularly, whether it applied only to studies involving allegations of antitrust violations, and whether it limited the FTC's own ability to initiate studies.

The effect of the limitation was minimal. Work on five investigations was halted until October 1925 when the Attorney General issued an opinion stating the right of the Commission to carry on the investigations in question. The rider was included in the FY 27 and FY 28 bills, but it had little impact, because investigations were undertaken pursuant to resolutions containing allegations of antitrust violations. 59/

57/ Id. at 118.

58/ 66 Cong. Rec. 3074 (1925).

59/ Congressman Wood was outraged by the ability to evade the limitation by simply making an allegation that there had been a violation of the antitrust laws. At the 1929 hearings, he

footnote cont'd on next page

Bitter feelings lasted until 1929, as indicated by the following dialogue between FTC Commissioner Myers and Congressman Wood at the 1929 Appropriations Hearings:

Mr. Wood. You have been making inquiries all summer under at least two of these resolutions when there was no complaint with reference to violation of the antitrust laws, and when there was no information that should have moved you to act.

Mr. Myers. What I am trying to state, as plainly as I can, is that the requirement that there should be an alleged violation of the antitrust laws applies only to inquiries under resolutions of Congress, and does not apply at all to the provisions of the act authorizing the commission to make inquiries on its own motion.

Mr. Wood. The point I am making is this: That unless there is a violation of the antitrust laws you have no right to act at all.

Mr. Myers. Well, that is entirely contrary to all my ideas.

Mr. Wood. Of course; I understand that that is contrary to your ideas, and that is the reason you have been disrespecting the will of Congress.

Mr. Myers. I can only say that I have not done that willfully. I can only take cognizance of the words of Congress. If a provision is put in plain English, I respect it. 60/

The restriction was eliminated in 1929.

footnote 59/ cont'd

remarked, "Then I am free to say that that is the most infamous opinion that I ever heard of coming from a so-called Department of Justice, and I do not think the Attorney General had any more to do with it than the man in the moon." Hearings before a Subcommittee of the House Committee on Appropriations on the Independent Offices Appropriation Bill of 1929, 70th Cong., 1st Sess. 598 (1929). [Hereinafter cited as 1929 Hearings].

60/ Id. at 549. Myers had been appointed to the Commission in August 1926, just one year after he, as a Department of Justice employee, had written the "Attorney General's Opinion on the Powers and Duties of the FTC in the Conduct of Investigations under Resolutions of the U.S. Senate." See FTC Annual Report 118 (1925). Myers advocated broadly exercising the Section 6 authority to undertake economic studies and in the early 1930's complained that the chief function of the FTC was in "preventing false and misleading advertising in reference to hair restorers, anti-fat remedies, etc. - a somewhat inglorious end to a noble experiment." Herring, supra note 36, at 128.

Case Study: Public Utilities Investigation of 1928

One of the FTC's most effective reports was, ironically, a product of this period. In 1928, Congress requested that the FTC inquire into certain practices and conditions relating to specified classes of public utility corporations. <sup>61/</sup> Specifically, the FTC was directed to investigate the financial structure of the electric utility holding companies. <sup>62/</sup> The

<sup>61/</sup> S. Res. 83, 70th Cong., 1st Sess., 69 Cong. Rec. 3054 (1928), provides in relevant part:

That the Federal Trade Commission is hereby directed to inquire into and report to the Senate, upon (1) the growth of the capital assets and capital liabilities of public utility corporations...; (2) the method of issuing, the price realized or value received, the commissions or bonuses paid or received and other pertinent facts with respect to the various security issues of all classes of corporations herein named...; (3) the extent to which such holding companies or their stockholders control or are financially interested in financial, engineering, construction, and/or management corporations, and the relation, one to the other, of the classes of corporations last named, the holding companies, and the public utility corporations; (4) the services furnished to such public utility corporations by such holding companies and/or their associated, affiliated, and/or subsidiary companies, the fees, commissions, bonuses, or other charges made thereof, and the earnings and expenses of such holding companies and their associated, affiliated, and/or subsidiary companies; and (5) the value or detriment to the public of such holding companies owning the stock or otherwise controlling such public utility corporations immediately or remotely, with the extent of such ownership or control, and particularly what legislation, if any, should be enacted by Congress to correct any abuses that may exist in the organization or operation of such holding companies.

The Commission is hereby further directed to report particularly whether any of the practices heretofore in this resolution stated tend to create a monopoly or constitute violation of the Federal antitrust laws.

<sup>62/</sup> Id.

Senate also requested that the FTC investigate public utility companies' attempts to use publicity to influence elections and public opinion. 63/ The inquiry lasted for seven years and provided much of the impetus for several utility and security related acts passed in the 1930's. 64/

Origin of the Investigation. The investigation originally began under an amendment to Senate Resolution No. 329, directing the Commission to investigate and report on the extent to which the General Electric Company and its subsidiaries had monopolized the power industry in restraint of trade. 65/ There was considerable controversy about whether the FTC was the appropriate agency to conduct the investigation. Some Senators, including Senator Walsh of Massachusetts, doubted that the Commission would prosecute the investigation to its fullest capabilities. 66/ Most of the Congressional resistance to handing the investigation over to the FTC can be attributed to the fear that Chairman Humphrey, who was staunchly opposed to the investigation, would not ensure the completion of the task. 67/ Despite this apprehension, the resolution's proponents nevertheless persuaded the Senate to refer the investigation to the FTC.

The Report. The investigation was divided into two segments: a general investigation and public hearings. The general investigation provided the background for effective development of testimony at the hearings and involved, among other things, the extensive examination of books of account and files of correspondence. The hearings, presided over by Commissioner McCulloch, were conducted by FTC Chief Counsel Robert Healy. Healy, with the aid of the chief economist Dr. Walker, also conducted the investigation. 68/

63/ The report detailed how electric holding company officials intended to make a concerted effort at influencing both the public and elected officials. FTC, 71a Utility Corporations Report 17 (1934).

64/ See note 72 and accompanying text, infra.

65/ See A Study of Questions of Law Involved in the Regulation of Electric Light and Power Holding Companies, Hearings on H.R. 5423 before House Committee on Interstate and Foreign Commerce, 74th Congress, 1st Sess. 116 (1935).

66/ See id.

67/ See 69 Cong. Rec. 2955 (1928) (Debates on S. Res. 83).

68/ FTC Annual Report 1 (1928).

The hearings entailed extensive testimony of hundreds of witnesses representing most of the public utilities. The Commission filed for supplementary appropriation in order to carry out the Senate's request. 69/

As predicted by several Senators, a utility company did challenge the Commission's authority to investigate under Section 6 of the FTC Act. In FTC v. Smith, 70/ the Electric Bond and Share Company asserted that the Commission had no authority under Section 6 of the FTC Act to compel witnesses to testify and produce documents if the investigation was not pursuant to a Section 5 complaint. In holding that the Commission was authorized to use compulsory process, Judge Knox refused to uphold a subpoena issued by the Commission on the ground that it was not specific enough, and thereby violated the 4th Amendment's prohibition against general warrants. Nevertheless, the case established a firm precedent for compelling public utility officials to testify at the hearings.

The Commission ended this seven-year project with conclusions and recommendations to Congress. Most prominent was the Commission's conclusion that the detriment of utility holding companies to the public exceeded their value to the public. 71/ The investigation had discovered that the holding companies were guilty of both maintaining unsound or needless financial structures and milking operating companies through contracts and numerous kinds of arrangements. Further, the conclusions recounted how the holding companies were not subject to ameliorative regulation. The final recommendations were to either entirely suppress the holding company system or employ strict regulations to curtail the omnipresent abuses.

The Effect Upon Legislation. Generally, the investigation has been noted as playing a role in the passage of at least four acts during the 1930's. 72/ During the time

69/ id. It is not clear whether the request was granted.

70/ 34 F.2d 323 (S.D.N.Y. 1929).

71/ See FTC, 73a Utility Corporations Report 59-75 (1934).

72/ See Boyle, supra note 2; Davis, Influence of Federal Trade Commission's General Investigations, 3 Fed. Bar J. 145 (1937).

when the Securities Act, the Public Utility Holding Company Act, and the Federal Power Act were passed, Congress had been receiving monthly reports from the Commission on its investigation of public utilities. 73/ Furthermore, all of the legislation dealt with the issues addressed in the reports.

More significantly, Robert Healy, chief counsel for the Commission at the time of the investigation, testified at great length during the hearings for the Securities and Public Utilities Holding Company Acts. 74/ Healy, in effect, merely provided summaries of the reports for the Senate. During his lengthy testimony, 75/ Healy gave several examples based upon the Commission's investigation all of which highlighted the public utility holding company's abuses. In fact, the Public Utility Holding Company Act seems to be directly in keeping with the Commission recommendation to regulate the holding companies. Ultimately, the investigations were the backbone of the major securities legislation in the 1930's.

#### Case Study: The Chain Store Investigation of 1928

Initiation of the Investigation. The Chain Store investigation was begun in response to Congressional concern over the explosive growth of grocery store chains following World War I; 76/ that growth was achieved, in significant part, through mergers. In addition, allegations that the chains were using their buying power anticompetitively were

73/ Senate Resolution 83 provided that the Commission submit monthly reports to Congress until the close of the investigation. See note 61 supra.

74/ Hearings on H.R. 4314 before the House Committee on Interstate and Foreign Commerce, 73rd Cong., 1st Sess. 226 (1933); Hearings on H.R. 5423 before the House Committee on Interstate and Foreign Commerce, 74th Cong., 1st Sess. 121 (1935).

75/ Healy's testimony at the Public Utility Holding Company Act hearings filled more than 200 pages. At the Securities hearings his testimony filled about 20 pages. See materials cited in note 74 supra.

76/ See FTC Annual Report 30 (1933).

also expressed. Independent food distributors were particularly concerned since the chain store movement had forced thousands of independents out of business. Chains had achieved the greatest importance in grocery distribution. 77/ In 1919 there were only three grocery chains with one hundred or more stores. By 1930, there were 35.

In 1966, the National Commission on Food Marketing described the economic force behind the movement as integration into wholesaling:

Chains combined wholesaling with retailing and, to a lesser extent, with processing to operate at lower cost. Discriminatory price concessions from suppliers also contributed to their cost advantages over independent competitors. The chains then began aggressive price cutting, and consumers responded by buying more from chain stores. 78/

The major innovator of the chain store movement was A&P, which, in the early 1920's, combined low cost procurement and warehousing with a low cost retail store format. A&P's "economy" store eliminated the traditional, but costly, industry services of home delivery, credit, long hours, and expensive promotions. The savings from these service cuts were passed on to consumers through a steadfast low-price policy that counted on high volume to reduce unit selling costs even further.

77/ This was particularly true of large chains which were of primary interest in the chain store investigation. By 1928, A&P which was nearly sixty years old, made nearly a billion dollars in sales. Its sales were approximately equal to the combined store sales of the 15 largest chains outside of grocery retailing. Eight of the 20 largest chains ranked by 1928 sales were grocery retailers. They operated nearly 90 percent of the stores of the top 20 retailers and accounted for nearly two thirds of their combined sales. As late as 1926, Sears which has since become the national largest chain retailer, had only nine stores. Its first was built in 1921. The "5 and 10 cent" general merchandise store was the only area of significant chain development outside of groceries, although there were several drug store and shoe store chains with relatively small sales. The history of low cost innovations and growth through merger of these areas was somewhat similar to that in grocery retailing. Woolworth, Kroger and J.C. Penny were the second through fourth ranked chains in 1928 with \$238 million, \$207 million and \$177 million in sales, respectively.

78/ National Commission on Food Marketing, Food from Farmer to Consumer 69 (1966).

A&P's economy store was a success: A&P's share of national sales went from three percent in 1919, to 16 percent a little over a decade later by which time it was operating 15,000 stores. The success of A&P and its emulators caused a severe hardship for independent food stores and their wholesale suppliers -- a hardship that was felt in every section of the country.

In 1928, the U.S. Senate directed the Federal Trade Commission to undertake a broad-scale investigation into the chain store system of marketing and distribution. <sup>79/</sup> In the Senate resolution, it specified several areas of inquiry and expressed a fear that in some situations, the concentration of sales that was occurring could lead to monopoly.

The Commission completed its investigation in 1933. In five volumes, the Commission detailed the growth and marketing practices of the chains. In addition, the agency sent Congress a final report, summing up the earlier volumes and drawing conclusions from them.

The Impact of the Report. The FTC report found that chain store prices, on average, were substantially below those of independents. About 85 percent of the average price differentials was explained by the lower operating costs of chains, either in warehousing or in retailing. <sup>80/</sup> About 15 percent of the differential, however, was due to the chains' ability to buy more cheaply due to their large size. These findings of the FTC chain store investigation were reported in the early 1930's. At that time, the nation was in the midst of the great depression. Independent proprietors were becoming increasingly fearful not only because of the continued growth of chains and the hardships of the depression, but also because of a new threat: the emergence of "supermarkets" which were reducing grocery margins even further. Congress was inclined toward offering protection to the independents especially against abusive practices of larger chains. Nearly all states were considering tax legislation that would have placed progressively heavy tax burdens on chains with large numbers of stores; the legislation would result in driving the chains out of existence.

The FTC's chain store report provided a basis of fact and analysis in an area of intense public concern. The report was given high marks for its description of the

<sup>79/</sup> S. Res. 224, 70th Cong., 1st Sess. (1929).

<sup>80/</sup> FTC, Final Report on the Chain Store Investigation 55 (1934).

retail distribution system and for its extensive data on prices, costs and marketing practices. The conclusions of the report generated confidence in the free market system at a time when the depression had produced a national mood of distrust for the free market and an industry was gaining strong political support for regulation and protection. The FTC report dampened this mood by showing that there were sound economic reasons for the growth of chains. Had it not been for the sobering analysis in the report, independents might have prolonged the higher cost form of retailing that chains were replacing. The chain store movement forced major changes in the independent sector to achieve the same efficiencies. Had the higher costs of the old form of retailing been prolonged, consumers in the depression era would have likely found it much more difficult to stretch their budgets to include adequate amounts of the basic necessities such as food.

The FTC findings also played an important role in the Congressional debate on the Robinson-Patman Act and have been noted as a contributing factor to its passage. 81/ In particular, its findings may have been the reason for the inclusion of a cost-justification defense in the Robinson-Patman Act.

#### Appropriations Restriction of Fiscal Year 1934

In 1933, Commission report writing was endangered by a Congressional move to cut the FTC's appropriation by 65%. 82/ The chain store and utility reports were to be concluded in 1933 and no new Congressional resolutions had been passed. The FTC initiated some of its own investigations and included funds for them in their budget requests. The House Appropriations Committee proceeded to delete \$600,000 from the agency's appropriations, half of which was for the new investigations, stating that "the committee does not approve the initiation of

81/ See Boyle, Economic Reports of the Federal Trade Commission, 24 Fed. Bar. 489, 497 (1964). But see M. Adelman, A&P: A Study in Price-Cost Behavior and Public Policy (1959).

82/ 77 Cong. Rec. 4710 (1933).

new economic investigations at this time." 83/ Two amendments were offered on the House floor: one to restore \$300,000 to permit completion of the utilities investigation, and one that included the full FTC request. Without either of these amendments, the committee's action would have terminated all economic reporting and investigatory work at the end of the year.

Debate on these amendments centered on the value of past work and the proposed investigations; the need to economize; and expectations of how the incoming administration would use the FTC. One opponent of FTC report writing was Representative Wright Patman. He remarked that "the utilities reports are not worth the paper they are made on ... because nobody will read these reports," 84/ and that the cottonseed industry report turned out to be "a useless and wasteful expenditure of public funds." 85/ Both complaints focused on the fact that the statute of limitations had run against any violations of the law, so in his mind, nothing of value could result from the investigations. Congressman Cochran of Missouri defended the usefulness of the utility report, commenting that "... if you follow the reports already made,

83/ Stevens, supra note 53 at 552.

84/ Hearings before a Subcommittee of the House Appropriations Committee on the Independent Offices Appropriation Bill of 1934, 72nd Cong., 2nd Sess. 552 (1933).

85/ Id. at 553.

you will find that state and public utility commissions have used the information to their advantage. More valuable information is on the way, as well as recommendations for legislation to cure the abuses." 86/

The amendment restoring the funds for continuing regular work did pass, so the FTC was able to complete the reports. A consensus developed to await the arrival of the new Congress and administration in March before appropriating any funds for new investigations. Congress thought that the investigations should not be started unless so ordered by the new administration. Most members recognized the possibility that President Roosevelt would be relying heavily on the FTC to carry out his campaign promises. As anticipated, full funding was restored by the new Congress in March. At the same time, however, Congress required that future investigations initiated by Congress be accompanied by concurrent resolutions. As a result, fewer Congressional requests were subsequently received.

The FTC's appropriations troubles continued in the late 1930's, and the Economic Division was the prime target of the belt-tightening.

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86/ 77 Cong. Rec. 3196 (1933).

For several years, the Economic Division's budget was only \$150,000. With fewer Congressional requests, the FTC was only conducting two or three investigations per year and the budget estimate was believed to be sufficient. Each year, however, at least \$25,000 to \$50,000 extra had to be added to complete reports.

With such a low budget, the Division was forced to set aside their own investigations whenever Congress requested a report. For instance, in FY 1939, the Commission's budget earmarked funds for two studies it had initiated: methods of cost accounting and state fair trade acts. During that year, however, Congress passed a resolution to investigate the automotive industry. Both Houses and the Budget Office directed that no additional funds be supplied, stating that the FTC's money should first go to requests from Congress and the President. 87/ By FY 1940, the Economics Division staff numbered 84, the lowest it had been since 1917. 88/

Thus, the Commission had to stop work in progress in order to conduct Congressional investigations. During the hearings on the FY 1941 bill, the Appropriations Committee

87/ Hearings before a Subcommittee of the House Appropriations Committee on the Independent Office Appropriation Bill of 1941, 76th Cong., 2d Sess. 194 (1940).

88/ Stevens, supra note 53, at 554.

discussed the problem of work interruption. 89/ Accordingly, the following year the Appropriations bill included a stipulation that resolutions from Congress must also provide funds for requested studies. 90/ This provision lasted through fiscal year 1972. However, it was seldom used since Congress stopped passing resolutions for investigations.

Summary: 1914-1939

By way of summary, three important points to highlight from this period are:

(1) Presidential and Congressional requests were a major source of report initiation 91/: between 1914

89/ Congressman Woodrum asked if it "would not be much better in the interests of logical and orderly procedure, so far as you are concerned, to have a policy that these special congressional investigations should pay their own way, without interrupting your normal procedure and causing you to divert funds and personnel from things you are doing, to something else?" Commissioner Freer replied, "Of course, that is obvious, Mr. Chairman. But the Commission also wants to hold together its personnel and not to dismiss and then reassemble an investigative staff. It wants to keep a nucleus of that staff regardless whether there is any congressional work or not." Hearings before a Subcommittee of the House Appropriations Committee on the Independent Offices Appropriation Bill of 1940, 77 Cong., 1st Sess. 208-209 (1941).

90/ Independent Office Appropriation Act of 1943, 56 Stat. 392 (1942).

91/ Blaisdell reports that the specific stimulus for most studies was price changes. He cites (1) the depressed price in the bituminous coal trade, (2) the fluctuations of prices in the grain trade, (3) the price spread between grain and bread, and (4) the failure of the prices of household furnishings to decline as much as the general price index, to be the cause of each (respective) investigation. Blaisdell, supra note 5, at 122.

and 1939, 88 out of 110 economic investigations were requested by Congress, the President, or other agencies, and 22 were initiated by the Commission. 92/

(2) Congress often requested studies, published and reviewed the FTC reports, and then enacted legislation, (e.g., utilities, chain stores);

(3) Some reports were controversial and led to Congressional attempts to restrict the FTC's authority.

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92/ Boyle, supra note 2 at 494.

#### IV. 1940 to 1960

##### Introduction

Three factors contributed to making 1940 a turning point in the economic reports activity of the FTC. First, between fiscal years 1939 and 1941, about 30% of the economic reports activity was devoted to projects for the Temporary National Economic Committee (TNEC). Second, between 1941 and 1945, a large portion of the Commission's resources were devoted to producing a series of special reports requested by various wartime agencies. Third, the FTC began a financial reporting program in 1939. 93/

The FTC's contribution to the TNEC was significant. According to Dimock in Business and Government, "Of all the federal agencies assisting the studies of the TNEC, the FTC undertook and completed the largest number of assignments. It prepared monographs on the trade-practice conference, the relative efficiency of large, medium sized and small business, monopolistic practices, and on the liquor, milk and poultry industries." 94/ Former Chief of the Division of Industry Analysis Stanley Boyle claims that the monograph, Relative Efficiency of Large, Medium Sized and Small Business, was the most important FTC economic contribution:

93/ The Bureau of the Budget approved the program in 1938; data collection began in 1939.

94/ Dimock, Business and Government 421 (1949).

This landmark volume contained an analysis of the relative efficiency of various sized firms in 18 industries. Using the cost of production measure, the report showed that the largest companies were not necessarily the most efficient companies. Rather it showed that many times the medium sized but more often the small sized companies showed the lowest costs. The report pointed out that many factors were responsible for varying rates of return, including (among others) method of evaluation, the degree of integration of companies and the extent to which lower costs may simply represent the use of monopsony buying power. The report stands, however, as one of the pioneer efforts in this area of economic analysis. 95/

During World War II the Bureau of Economics' staff devoted nearly all of its resources to preparing reports requested by other agencies. The FTC prepared 24 studies for the War Production Board (WPB); these involved investigations of basic industries to determine the extent of compliance with WPB regulations dealing with the allocation of supplies and the priority of delivery of war materials. 96/ The Commission completed a total of 45 reports between 1941 and 1945; nearly all of these reports were prepared either for the WPB or for other government agencies. Topics covered included costs, prices and profits of fertilizer products, bread baking, flour milling, household furniture, metal working machines, paperboard and two studies of steel. 97/ In 1945, the Commission published the Report of the FTC on the Cigarette Shortage.

95/ Boyle, supra note 2, at 498.

96/ Id. at 499.

97/ Id.

More than one third of the reports activity was devoted to the financial reporting program during 1940 and 1941. Initially this work was related to defense activities. During 1939 and 1940, about 3500 companies were required to submit financial reports. 98/ This program was transferred to the Office of Price Administration in 1942, then was transferred back to the FTC (and SEC) in 1946, 99/ and quarterly financial data for manufacturing corporations have been published continuously since 1947 in the Quarterly Financial Report.

There were two changes in the FTC's report activity in the years immediately following World War II. First, the subject matter of Commission reports changed as the emphasis shifted to an analysis of basic structural conditions of industries and to merger activity. Reports on merger activity were published in 1947, 1948, and 1954. Between 1945 and 1951, the Commission focused much of its emphasis on two major economic problems: international cartels and concentration in the domestic economy. 100/ These reports were severely criticized by some in the business community.

The second change that occurred was a shift in the proportion of reports initiated by the Commission as opposed to Congress, the President or other agencies. Prior to

98/ Id. at 502.

99/ Id.

100/ FTC Annual Report 10 (1951).

1940, 20% of the Commission's economic reports were initiated by motion of the Commission. Between World War II and 1964, only 12% of the Commission's reports, i.e., four reports, were initiated by either Congress or other agencies. The other 88% were undertaken on the initiative of the Commission. This shift is attributable in part to the absence in later years of Presidential or Congressional requests related to the war efforts. In addition, there was a shift of interest from the study of microeconomic programs to interest in aggregate "Keynesian" analysis, leading to increased Presidential reliance on the Council on Economic Advisers. Another factor is the increased reliance of the President on executive branch research and of the Congress on its own research agencies (e.g., Congressional Research Service, General Accounting Office) and its own staff.

#### Quarterly Financial Report Program

In 1947, the FTC began to administer the Quarterly Financial Report (QFR). Under it, selected U.S. companies are required to submit quarterly financial statements (balance sheet and income statement) to the FTC within 25 days after the end of the quarter being reported. The FTC's Section 6 authority is critical to insuring the availability of the needed data.

The FTC makes quarterly estimates of profit and loss, balance sheet and selected financial ratios for manufacturing, mining and wholesale and retail trade corporations. These estimates are broken down by major industry and asset size of company. They are derived from quarterly reports obtained from all large corporations and reports from scientific samples of small corporations. The survey results are published in Quarterly Financial Report for Manufacturing, Mining and Trade Corporations.

The FTC staff uses the data for economic studies and as benchmark data for antitrust litigation. In addition, the data are used by: (1) the Department of Commerce as economic indicators, in forecasting models and other macroeconomic analysis, and as inputs to other data series; (2) the Federal Reserve Board for economic analysis and as basic data for the regulation of the money supply and credit; (3) the Department of Treasury in implementing fiscal policy, in fiscal analysis, and for tax analysis such as tracking estimated receipts from the corporate income tax; and (4) various industry groups, universities, and private researchers who use them because of their timeliness and extensive detail. The QFR is the basic reference source of current financial data in the United States; all major libraries are among its several thousand subscribers. Each report consists of

about seventy-five pages of schedules that present virtually all of the financial statement information in absolute and ratio formats.

Case Study: Reports Leading to the Celler-Kefauver Amendment of the Clayton Act

Ever since the Supreme Court's landmark decision in Thatcher Manufacturing Company v. Federal Trade Commission, <sup>101/</sup> the FTC had been trying to get Congress to amend Section 7 of the Clayton Act. In Thatcher, a 5-4 majority held that one company's acquisition of the assets of another company was not subject to Section 7 of the Clayton Act. <sup>102/</sup> The original Clayton Act stated:

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". (Emphasis Added) <sup>103/</sup>

The FTC had submitted numerous reports during the 1940's documenting the concentration of certain industries, arguing that this "loop hole" in Section 7 allowed industries to merge without concerning themselves with the consequences of the antitrust laws. <sup>104/</sup> Much of the FTC's efforts

<sup>101/</sup> 272 U.S. 540 (1926).

<sup>102/</sup> Id. at 561.

<sup>103/</sup> 38 Stat. 730 (1914).

<sup>104/</sup> See e.g., FTC, The Merger Movement (1948); FTC, Report on the Present Trend of Mergers and Acquisitions (1947); FTC, Report on the Divergence Between Plant and Company Concentration (1947); FTC, Report on Relative Efficiency of Large, Medium Sized, and Small Business (1941).

eventually led to the passage of the Celler-Kefauver Amendment of the Clayton Act. As Stanley Boyle notes, these efforts were uniformly unsuccessful prior to World War II. 105/ In the Commission's annual reports to Congress during the years 1930 to 1949, it consistently stressed the importance of amending Section 7 to halt asset mergers. 106/ For example, in the Commission's Annual Report of 1944, Chairman Davis stated:

As a result of its studies of competitive conditions existing in many industries over the past few years, the Commission believes that when a considerable proportion of the total output of an industry is brought under one ownership, there is strong probability that competition will be lessened in the process. It is also believed that the problem created by consolidations and mergers is not merely that of lessening competition in a particular industry. The progressive enlargement of a few predominant enterprises has already gone so far that, in financial strength and in numbers of persons subject to their control, the largest concerns outrank some state governments. The dangers of such concentration of power are evident whether power is concentrated in one industry or spread over a number of industries. The Commission believes that there should be limits to growth which result from combining the assets of various enterprises for the sake of greater power which can be exercised by the combination. 107/

After the war, the Commission's argument received quite a bit more attention. Still submitting reports, the Commission demonstrated time and again that certain industries were far too concentrated. The Commission, however, received additional support from the findings of the TNEC. In its 1945 Annual Report, the Commission cited that the TNEC and the FTC concurred that amending the Clayton Act would be essential, to stay corporate consolidation. 108/

105/ Boyle, supra note 2, at 503.

106/ See FTC, Annual Reports (1930-1949).

107/ FTC, Annual Report 8 (1944).

108/ FTC, Annual Report 8 (1945).

It is widely noted that the numerous reports submitted by the Commission provided strong support for the passage of the Celler-Kefauver Act. 109/ Admittedly, it is difficult to quantify the exact percentage of credit the Commission deserves, but various factors indicate that the Commission had a primary role in the bill's passage. For instance, the FTC's Merger Movement Report was included in the hearings of an earlier bill addressed to the same subject. More persuasive, however, is the "notable similarity" between the arguments of the bill's proponents and the language of the report.

More obvious evidence of the reports' influence are the numerous times the bill's proponents either referred to or quoted them. In addressing the monopoly/merger problem, Senator Estes Kefauver quoted this language from the FTC Report on Trends of Corporate Mergers and Acquisitions: "The antitrust laws condemn attempts to control the market by means of mutual understanding or agreement among competitors, but if the same objective is achieved through the purchase of physical properties, it is lawful in the absence of monopoly, and the antitrust agencies are powerless to act." 110/

While introducing an industry report criticizing the FTC Merger Movement Report, Representative Claire Hoffman, stated that so far as he knew no publicity had been given to those whose views disagree with the FTC. 111/ Moreover, Congressman Celler commented that "you have but to pursue [sic] the recent report of the Federal Trade Commission on the concentration of productive facilities dated 1947, 'Total Manufacturing and 26 Selected Industries,' to know that there is a most unhealthy condition of concentration in American Business." 112/

109/ MacIntyre and Dixon, The Federal Trade Commission after 50 Years 24 Fed. Bar J. 377 (1964).

110/ An Act to Amend and Act Entitled an Act to supplement existing laws against unlawful restraints and monopolies and for other purpose: Hearings on H.R. 2734 before a Subcommittee of the Committee on the Judiciary, 81st Cong., 1st and 2nd Sess. 14 (1949-1950). [Hereinafter cited as 1949-1950 Hearings].

111/ 95 Cong. Rec. A3398 (1949).

112/ 1949-1950 Hearings, supra note 110, at 60.

The FTC's efforts to plug the assets loophole in Section 7 were very successful. By reporting on the concentration in certain industries and predicting serious future problems, the FTC provided the fuel for Congress to move swiftly ahead. The Commission's effort to restructure the Clayton Act was chiefly a result of diligent report making. In fact, one commentator has characterized the Commission's work in the Celler-Kefauver Act as the most significant of its reporting campaigns. 113/

Case Study: International Petroleum Cartel Report of 1952

On December 2, 1949, the Commission passed a resolution to extend its investigations of international cartels to the petroleum industry. 114/ It felt its cartel investigations would not be complete without including the highly concentrated petroleum industry. The staff report, The International Petroleum Cartel, was completed in October 1951 after over a year of investigation; due to national security reasons, however, it wasn't until August 1952, that the subcommittee on Monopoly of the Senate Select Committee on Small Business published the report. 115/

The Report. One author credits the report for bringing to the public domain most of the sparse information on Persian Gulf joint ventures. 116/ The staff report was the first comprehensive disclosure of then-existing cartel agreements among the seven major oil companies. 117/ Four international oil agreements dating from 1928 to 1934 were implemented through various industry activities including local cartels. These agreements divided control of the world market based on principles designed to maintain each company's relative share of world petroleum.

113/ Boyle, supra note 2, at 503.

114/ FTC, Proposed Program for FTC in the Petroleum Industry (1949).

115/ Senate Small Business Committee, 82nd Cong., 2d Sess., FTC, The International Petroleum Cartel, (Comm. Print 1952) [Hereinafter cited as International Petroleum Cartel].

116/ M.A. Adelman, The World Petroleum Market 82 (1972).

117/ A. Sampson, The Seven Sisters 123 (1975). [Hereinafter cited as Sampson] The seven companies were 1) Anglo-Iranian Oil Co. (British Petroleum), 2) Royal Dutch Shell Co., 3) Standard Oil Co. of New Jersey, (Exxon) 4) Standard Oil Co. of California (Socal), 5) the Texas Co., 6) Socony-Vacuum Oil Co., (Mobil) and 7) Gulf Oil Co.

The corporate complex of jointly owned subsidiaries and affiliated companies was exposed, revealing greater concentration in the international petroleum industry than in any other industry. Five American firms and two foreign companies controlled most of the world's oil production, transportation, refining and marketing. In other words, "control of the oil from the well to the ultimate consumer [was] retained in one corporate family or group of families." 118/

National Security Considerations: Releasing the Report. Until 1951 the Anglo-Iranian Oil Co. had held exclusive concessionary rights over almost all of Iran's oil producing areas. 119/ That year, however, the Iranian government seized the oil fields for nationalization purposes. By this time the U.S. government realized the strategic importance of guarding middle Eastern oil fields from Communist control. 120/ As the Commission completed its 900-page staff report on the oil cartel, Secretary of State Dean Acheson was seeking a solution to the Iranian situation. For national security reasons, President Truman impounded the report, classifying it as secret. 121/

In 1952, Senator Thomas Hennings requested publication of the report. The report was released to the Senate Small Business Committee to determine whether publication would be properly within the national interest. The National Security Council, the CIA, and the Department of Defense all argued against public release on the ground that it would further Soviet propaganda and goals. 122/ However, Senator Hennings, aided by vice presidential candidate, Senator John Sparkman,

118/ FTC, Annual Report 19 (1952).

119/ Subcommittee on Multinational Corporations, Senate Foreign Relations Committee, 93d Cong., 2d Sess., The International Petroleum Cartel, The Iranian Consortium and U.S. National Security v-viii (Comm. Print 1974) [hereinafter cited as Report on Iranian Consortium].

120/ See id.; Subcommittee on Multinational Corporations, Senate Foreign Relations Committee, 93d Cong., 2d Sess., Multinational Oil Corporations and U.S. Foreign Policy 60-73 (Comm. Print 1975) [hereinafter cited as Report on Multinationals].

121/ Newsweek, September 1, 1952, at 49. See Report on Multinationals, supra note 120, at 57.

122/ Kaufman, The Oil Cartel Case: A Documentary Study of Antitrust Activity in the Cold War Era 29-30 (1978).

persisted in seeking publication of the report. 123/ In August, a 378-page edited version of the report was finally released to the public by the Senate Committee. Material pertaining to issues thought to be particularly sensitive was deleted. 124/

The oil industry responded to release of the FTC report by publicly criticizing the Commission. The corporations predicted that the allegations in the report would lead to nationalization in other countries. 125/ The California Texas Oil Co. distributed to 67 countries a booklet comprised of newspaper and magazine articles criticizing the report 126/ which was portrayed as ammunition for the Russian propaganda efforts in the third world. 127/ The oil companies defended their actions on grounds of patriotism and national security. 128/ As they pointed out, a key factor in winning World War II was extensive control of oil outside the U.S. and the Soviet Union. 129/

123/ Numerous mail requests for an investigation of the international oil industry were received by the Senate Committee. Id. at 30. See 98 Cong. Rec. 4246-47, A4845-49 (1952). See Engler, The Politics of Oil 212 (1961).

124/ See Engler, supra note 123, at 212.

125/ Kaufman, supra note 122, at 40.

126/ Hearings before the Subcommittee of the Committee on Appropriations, 83d Cong., 1st Sess. 667 (1953). [Hereinafter cited as 1953 Appropriation Hearings]; FTC Annual Report 18 (1952).

127/ Engler, supra note 123, at 214-215.

128/ Apparently one oil company feared that the USSR would take over in Iran and then "dump" the Iranian oil on the international market. See Report on Multinationals, supra note 120 at 67. See also Engler, supra note 123, at 209.

129/ Business Week, August 2, 1952, at 33.

In response to industry concerns, Steven Spingarn, acting Chairman of the Commission, called for hearings regarding the fairness of the report and pointed out that there was proof of only one minor error in the report. 130/ Although the oil corporations consistently denied any wrongdoing, they declined suggestions to appear at hearings and did little to refute the charges. 131/

The Grand Jury Investigation. In June 1952, President Truman directed the Justice Department to commence a grand jury investigation of the cartel. 132/ At about the same time, Acheson sought the aid of the major oil companies and requested that they take part in an international oil consortium to contract with the Iranian government for the concession previously maintained by the British Anglo-Iranian Oil Co. 133/ Simultaneously, he and the Departments of Defense and Interior argued for termination of the grand jury investigation on the ground that "American oil operations [were] instruments of our foreign policy." 134/ The Departments recommended that a civil suit be initiated in place of the grand jury investigation.

Meanwhile, the Attorney General's office vigorously defended continuance of the suit. 135/ The Justice Department believed a violation of the U.S. antitrust laws was contrary to U.S. national interest. 136/

130/ Kaufman, supra note 122, at 40-41.

131/ Business Week, August 30, 1952, at 29; Engler, supra note 123, at 322-23.

132/ This action was recommended by Attorney General McGanery on the basis of the FTC report, which had not yet been publicly released. See Report on Multinationals, supra note 121, at 57.

133/ Report on Iranian Consortium, supra note 119, at v-viii; Report on Multinationals, supra note 120, at 60-73.

134/ Report on Multinationals, supra note 120, at 61-63; Sampson, supra note 117, at 124.

135/ Id. "[A] decision at this time to terminate the pending investigation would be regarded by the world as a confession that our abhorrence of monopoly and restrictive cartel activities does not extend to the world's most important single industry." Sampson, supra note 117, at 125.

136/ Report on Multinationals, supra note 120, at 63.

President Truman was faced with an incongruous situation -- a solution to the Iranian problem appeared possible by enlisting the aid of U.S. oil companies; these same companies, however, were subject to criminal prosecution. Truman made his decision in his last few days in office: the grand jury investigation was terminated. The U.S. major oil companies agreed to participate in the international petroleum consortium with the Iranian government for oil production and refining. 137/

The Eisenhower administration took office in 1953 and directed that:

the enforcement of the antitrust laws of the United States against the Western oil companies operating in the Near East may be deemed secondary to the national security interest to be served by:

(1) Assuring the continued availability to the free world of the sources of petroleum in the Near East, and

(2) Assuring continued friendly relationships between the oil producing nations of the Near East and the nations of the free world. 138/

Primary responsibility for the case was transferred from the Justice Department to the Department of State. In April 1953, a civil complaint was filed against the five American oil companies 139/ and finally, in 1961, the statement of claims was submitted. Consent decrees were eventually agreed to by Exxon, Texaco and Gulf. Charges against Mobil and Socal were later dismissed.

Conclusion. Certainly it can be said that the oil cartel report was the major impetus for the grand jury investigation of the major petroleum companies. The Department of Justice had suspended its own inquiry into the matter in anticipation of the report. 140/ Once completed, the report provided much of the evidence necessary to go forward with criminal legal charges. As one case attorney stated, "the FTC report's carefully researched 378 pages provided a most exquisite blueprint for the Justice Department staff; indeed, it became our bible in the preparation of the oil cartel case." 141/

137/ Report on Iranian Consortium, supra note 119.

138/ Report on Multinationals, supra note 120, at 65-66.  
See Blair, The Control of Oil 73 (1976).

139/ The Dutch and British companies were beyond the government's jurisdiction.

140/ See Report on Multinationals, supra note 120, at 57.

141/ Blair, note 138, at 406 n. 42.

### Other Reports

In 1951, the House published an FTC report on interlocking relationships existing in 1946 among the directors of the 1000 largest manufacturing corporations. 142/

At the request of the Subcommittee on Monopoly of the Senate Select Committee on Small Business, the FTC studied the effects of certain monopolistic practices on small business in 1952. 143/ In 1954, the FTC submitted to Congress a detailed report on coffee prices. 144/ The report recommended legislation to correct market imperfections such as (1) the narrowness of the futures contract; (2) the inadequacies of basic marketing information; and (3) trading irregularities.

### Appropriation Restrictions of 1953

Congress deleted funds earmarked in the Commission's budget for a specific investigation for the first time in FY 1953. The 1953 appropriations bill included the following: "Provided, that no part of the forgoing appropriation shall be available for a statistical analysis of the consumer's dollar." 145/

142/ Report of the Federal Trade Commission on Interlocking Directorates, H.R. Doc. No. 652, 81st Cong., 1st Sess. (1951).

143/ Senate Select Committee on Small Business, 82d Cong., 2d Sess. FTC, Monopolistic Practices and Small Business, (Comm. Print 1952).

144/ FTC, Economic Report of the Investigation of Coffee Prices (1954).

145/ Independent Office Appropriation Act for 1954, Pub. L. No. 176, 67 Stat. 301 (1953).

The previous fall, President Truman had directed the FTC to investigate the reasons behind the rising prices by giving "a breakdown of the consumer's dollar." 146/ For the remainder of that year, the Commission diverted funds and staff from other projects in order to start the study. It requested \$186,000 to complete it in 1954.

It appears that the primary reason for withholding the funds was uncertainty over which agency was best equipped to conduct the study. At that time, the Departments of Agriculture and Labor, and two Senate committees were all investigating aspects of the problem. The Bureau of the Budget was the first to indicate this doubt by striking the FTC's request. Although Congress expressed desire to have such a report written, it questioned the appropriateness of delegating the task to the FTC.

The late 1950's saw a substantial decrease in the number of reports prepared by the FTC. The FTC released a report on corporate mergers and acquisitions in 1955, revealing that they had increased to three times the 1949 rate. This report was followed by the 1956 release of a final tabulation of 1955's corporate mergers. In 1958, the Commission issued a lengthy report on the antibiotics industry.

146/ Boyle, supra note 2, at 501.

Summary: 1940-1960

Highlights of this period are: (1) the major contribution the FTC made toward the work of the Temporary National Economic Committee; (2) the numerous reports prepared for the war effort; (3) the shift in report emphasis in the late 1940's to basic structural conditions, merger activity, and international cartels; (4) the enactment -- after 25 years of FTC recommendations -- of the Celler-Kefauver Act of 1950, limiting mergers through acquisition of assets; (5) the 1952 report on the International Petroleum Cartel; (6) the first Congressional prohibition of a specific report requested by President Truman in 1952 -- the statistical analysis of the consumer dollar; (7) the decrease in the percentage of reports that were initiated by Congress and the President, after numerous executive branch requests during World War II.

Introduction

The 1960-1980 period saw two additional Congressional restrictions on the FTC's Section 6 authority, as well as new report forms, some of which were initiated in response to the Magnuson-Moss Act. Economic report activity picked up again in the early 1960's. Stanley Boyle attributes this increase to organizational changes initiated during fiscal year 1962. 147/

Reports on the food industry were highlights of the early part of this period. 148/ The 1968 and 1970 reports on automobile warranties contributed to the passage of the Magnuson-Moss Act of 1974. After the passage of this legislation, the FTC used its traditional economic report writing function to complement rulemaking proceedings. Several reports written during these two decades were directed at recommending public policies and legislation to Congress or to the states.

Appropriations Restriction of 1964

In late 1962, the Commission planned to undertake a large scale economic investigation of the 1000 largest

147/ Boyle, supra note 2, at 504.

148/ A 1960 report explored economic concentration and integration in the retail sale of food, and a 1963 report examined the frozen fruit, juice, and vegetable industry.

manufacturing corporations to gain information on major products, merger activity, relationships with other corporations, and other significant economic factors. The last time this had been done was in the 1950 merger reports, and the FTC recognized a need to strengthen its economic reporting. The information was needed by the FTC for its antitrust litigation and investigations of individual firms.

The FTC's request for \$145,000 to conduct this study was refused. The fiscal year 1964 appropriation contained the following prohibition: "That no part of the foregoing appropriation shall be used for an economic questionnaire or financial study of intercorporate relations." 149/

In arguing for the study, Chairman Dixon told Congress that it would provide essential information for the government at large regarding what was happening to our nation's largest industries. He pointed out its usefulness in the FTC's day to day problems in the merger field. Dixon said:

I want to tell you it is pretty hard to enforce an antitrust program in a vacuum. We do not know who owns whom in the American manufacturing industries. We do not know exactly what corporation owns what. We do not know what interests they have in everybody else ... they might be breaking the law right and left. 150/

In the previous year, Congress had allocated \$50,000 to begin the project. However, objections to the study surfaced from the business community and Congress.

149/ Independent Office Appropriation Act for 1964, Pub. L. No. 88-215, 77 Stat. 431 (1963).

150/ Hearings before a Subcommittee of the House Appropriations Committee on the Independent Offices Appropriation Bill of 1964, 88th Cong., 1st Sess. 92 (1963).

Those objecting claimed that the questionnaire would be too time consuming and that some of the questions would be extremely difficult to answer.

It also appeared to the committee that similar statistics were collected by other government agencies. Although Chairman Dixon stated at the outset that the information needed for antitrust and antimerger cases was not available from any other agency, and that the Bureau of the Budget was in agreement, Congress remained skeptical. With Commerce asking about capital investment, the Bureau of the Budget about profits, and the SEC about affiliated companies, the Committee concluded that the FTC's report would duplicate these efforts. The restriction, which was also included in the 1965 bill, permanently stopped action on the report.

Case Study: Report on Cigarette Advertising and Output

The first time a Bureau of Economics report was prepared in conjunction with a trade regulation rule proceeding was in 1964. 151/ The Staff Report on Cigarette Advertising and Output was placed on the public record in April 1964, and proved instrumental in the promulgation of the Commission's trade regulation rule for cigarette advertising and labeling. 152/

151/ Boyle, supra note 2, at 505.

152/ FTC Trade Regulation Rule for the Prevention of Unfair or Deceptive Advertising and Labeling of Cigarette In Relation to the Health Hazards of Smoking, 29 Fed. Reg. 8324 (July 2, 1964) (preempted by Congressional legislation, see discussion infra).

Findings of the Report. The 56-page report was a study of the role played by the cigarette industry in the United States economy; public data were utilized for this purpose. The advertising themes used by the leading cigarette brands for the preceding 15 years were presented in six volumes of ads which supplemented the report.

The report focused on cigarette consumption rates and industry advertising expenditures. Specifically, the staff found that from 1952-62, overall domestic consumption of cigarettes increased by 25.5% and per capita consumption increased 8.1%. At the same time, advertising expenditures of the six leading cigarette manufacturers in television, newspapers, and general magazines rose 213.2%. 153/ In 1962, consumer expenditures for such things as shoes, furniture, religion, private higher education and physicians were out-ranked by the \$6.8 billion spent for cigarettes. 154/

Data which identified television audience composition were also included in the report. Those programs sponsored by various tobacco companies were shown to have large audiences of children. 155/ Moreover, the Commission examined the six volumes of advertisements and found that the most prominent themes used by the companies were the relative safety of the brand and the desirability of smoking. 156/

All of these findings provided support for the Commission's trade regulation rule. Because of Congressional action, however, the rule did not become effective.

The Trade Regulation Rule. The Commission's initiation of a rulemaking proceeding responded to remarks made by the Surgeon General. On January 11, 1964, the Surgeon General's Advisory Committee had released its report on the health hazards of cigarette smoking. At that time, the Surgeon General stated the committee's conclusion that remedial action was warranted by the significant health hazards involved. 157/

153/ FTC, Staff Report on Cigarette Advertising and Output 5 (1964).

154/ Id. at 11.

155/ Id., app. B at 224-29.

156/ Statement of Basis and Purpose of Trade Regulation Rule for the Prevention of Unfair or Deceptive Advertising and Labeling of Cigarettes in Relation to the Health Hazards of Smoking 52 (1964) [Hereinafter cited as Statement of Basis and Purpose].

157/ Id. at 2.

Seven days later remedial action was begun by the Commission with the commencement of rulemaking under Sections 5(a) & 6(g) of the FTC Act. 158/ A Notice of Rulemaking was issued and a proposed trade regulation rule was published for comment on January 22, 1964. 159/ The Report on Cigarette Advertising and Output was placed on the public record for comment on April 10, 1964.

The Commission promulgated its rule in June 1964 after finding that the means of selling cigarettes to the public, through labeling and advertising, were deceptive. 160/ The rule required that all cigarette advertisements and labels contain a warning of the potential health hazards associated with smoking. Before the rule could go into effect, however, the Committee on Interstate and Foreign Commerce requested a postponement of the effective date until July 1, 1965, to allow time for Congressional consideration of the matter.

Thereafter, Congress passed a much milder law requiring that cigarette packages contain the warning: "Caution: Cigarette Smoking May Be Hazardous To Your Health". 161/ In addition, the Act provided that the Commission transmit a report to Congress within 18 months of the Act's effective date and annually thereafter regarding: "(a) the effectiveness of cigarette labeling, (b) current practices and methods of cigarette advertising and promotion, and (c) such recommendations for legislation as [the Commission] may deem appropriate." The Commission still provides these annual reports to Congress.

158/ 15 U.S.C. §45(a) & §46(g).

159/ 29 Fed. Reg. 530-32 (Jan. 22, 1964); Statement of Basis & Purpose, supra note 156, at 3 and app. C.

160/ Statement of Basis and Purpose, supra note 156, at 106. See S. Rep. No. 195, 89th Cong., 1st Sess. 16-17 (1965) (letter from Chairman Dixon to Warren Magnuson, Chairman, Committee on Commerce).

161/ Federal Cigarette Labeling and Advertising Act, 79 Stat. 282, 15 U.S.C. §1331 (1965). The Public Health Cigarette Smoking Act of 1970 strengthened the caution language to: "Warning: The Surgeon General Has Determined That Cigarette Smoking is Dangerous To Your Health." In addition, the 1970 act banned cigarette advertising from radio and television, effective Jan. 2, 1971.

Another provision in the Act specifically precluded the Commission from requiring any health warnings in all cigarette advertising. 162/ Ironically, the Bureau of Economics report had shown that the principal means of promoting the sale of cigarettes was advertising rather than labeling. Indeed, this evidence had been instrumental in convincing the Commission of the need for the rule. 163/ On May 28, 1965 the Commission withdrew the rule in accordance with the Congressional mandate.

### Case Study: Automobile Warranties Reports

Introduction. Two reports on automobile warranties were issued by the Commission. In 1968, the Staff Report on Automobile Warranties was published. Shortly thereafter, Commission hearings were held and subsequently, the Commission's Report on Automobile Warranties with recommendations to Congress was issued in 1970.

Despite some differences, both reports can be categorized as successful when measured against various indicia of effectiveness. The reports contributed not only to passage of the Magnuson-Moss legislation but also to recognition of Commission expertise, and to improved consumer information.

The Investigation and The 1968 Staff Report. The Commission directed the Bureau of Deceptive Practices to undertake a field investigation of automobile warranties on July 20, 1965. Numerous complaints had been received from consumers relating their inability to obtain satisfactory service on warranty repairs. In fact, by January 1968, the Commission was in receipt of over 3,000 complaints. 164/ On November 4, 1966, Section 6(b) orders 165/ were dispatched to

162/ However, the Commission's authority with respect to false and misleading advertising and other unfair or deceptive acts or practices was retained. H.R. Rep. No. 449, 89th Cong., 1st Sess. (1965).

163/ See Cigarette Labeling and Advertising: Hearings before the Committee on Commerce, 89th Cong., 1st Sess. 410, 413 (1965) (Statement of Chairman Dixon).

164/ FTC, Staff Report on Automobile Warranties 66 (1968) [hereinafter 1968 Staff Report]; FTC Annual Report 18 (1967). The "rising tide of complaints" began in the late 1950's and was received by Congresspersons and other agencies as well as the Commission. H.R. Rep. No. 93-1107, 93d. Cong., 2d Sess. 25 (1974).

165/ 15 U.S.C. §46(b).

the four domestic automobile manufacturers requiring that special reports be filed regarding warranty performance. During the course of the investigation in late 1967, Senators Magnuson and Hayden introduced legislation on automobile and appliance warranties. 166/ Thereafter, the Commission requested a comprehensive staff report on the results of the investigation for Congressional committee use in hearings on the proposed legislation. 167/

While the report was being completed, President Johnson established the Task Force on Appliance Warranties and Service in his address on consumer interests on February 6, 1968. 168/ Its purposes were to encourage industry to improve quality and service and to recommend any necessary legislation. The Chairman of the FTC served on the Task Force along with the Secretaries of Commerce and Labor and the Special Assistant to the President for Consumer Affairs.

In June 1968, industry members received drafts of the report with requests for written analyses of various sections. 169/ Meetings were held between industry and the Commission to obtain improvements in warranty service and quality standards. Before a final report was published, Ralph Nader obtained a copy and disclosed it to the public in early November 1968. In urging public release of the report, Nader and consumer groups criticized the Commission for only circulating copies to industry members. 170/

On November 18, 1968, the staff report was formally released. The Commission confirmed its role in circulating draft reports to automobile manufacturers as well as holding

166/ See S. Rep. No. 93-151, 93d Cong., 1st Sess. 4 (1973).

167/ 1968 Staff Report, supra note 164, at viii-ix.

168/ See H.R. Rep. No. 93-1107, supra note 164, at 24; S. Rep. No. 93-151, supra note 166, at 4.

169/ See New York Times, Nov. 18, 1968, at 18, col. 1; Statement of General Motors Corporation in Response to Federal Trade Commission Staff Report Issued November 18, 1968 (Feb. 7, 1969).

170/ Id.; New York Times, Nov. 3, 1968, at 49, Col. 1.

informal meetings with industry; 171/ as a result of these actions, manufacturers had made efforts to ameliorate the problems. 172/ Major problems still existed, however, and the Commission planned hearings in January 1969, to obtain further information.

Findings of the Staff Report. The report contained a historical overview of warranties and the problems associated with them. Information gathered from the section 6(b) questionnaires provided the basis for an evaluation of costs manufacturer performance under warranties. The staff also utilized outside data in arriving at its findings and conclusions.

Generally, the report concluded that manufacturer warranties represented to consumers that their automobiles were defect-free. New car purchasers, however, failed to obtain substantially defect-free automobiles due to low manufacturer quality control and insufficient allowances to dealers to make inspections prior to delivery to consumers. Moreover, performance on warranty repairs did not meet the level implied by the warranty thereby resulting in consumer inconvenience and expense. The staff recommended that the Commission extend its study with the objective of recommending legislation to Congress or taking formal Commission action.

Reaction to The Staff Report. The four domestic manufacturers reacted substantially in concert. All agreed on one conclusion -- that car warranties weren't pleasing anyone. 173/ Manufacturers defended themselves, however, by citing various improvement efforts undertaken and by harshly criticizing the report as "extremely misleading," 174/ and

171/ Wall Street Journal, Nov. 18, 1968, at 2, cols. 3-4.

172/ Id.; FTC, Annual Report (1968).

173/ As one newspaper article noted, "Customers complain that dealers give them the run-around on warranty work, dealers say factories don't provide adequate compensation for correcting manufacturing defects, the car companies are unhappy because warranty claims and the resulting paper work cost millions of dollars annually, and the U.A.W. maintains that assembly lines move so fast that workers don't have time to assemble cars properly." New York Times, Apr. 6, 1969, SXII, at 22, col. 1.

174/ See e.g., New York Times, Jan. 9, 1969, at 28, col. 7.

based on irrelevant outdated and unreliable data. 175/ However, Senator Hart announced that his staff had substantiated the information contained in the report. 176/

The 1970 Report. The Commission held eight days of hearings during January and February of 1969. Subsequently, more field investigations were conducted and the Commission held discussions with industry and consumer groups to resolve the problems. Consumer complaint letters were received by the Commission, politicians, and other agencies and organizations; significantly, the aggrieved constituency was comprised not merely of purchasers of lower cost and average-priced automobiles, but also of the more affluent buyers. 177/ As the Wall Street Journal reported, "The letter-writers make it clear that they aren't average-income people accustomed or resigned to such treatment." 178/ Those advocating reform were indeed drawn from a broad economic spectrum.

President Nixon delivered his Consumer Message of October 30, 1969, outlining the "Buyer's Bill of Rights" and calling for revitalization of the FTC with broader powers for effective consumer protection. 179/ Warranty legislation was introduced in the Senate in January 1970, and Congressional hearings were begun. 180/ On February 19, 1970, the Report on Automobile Warranties was submitted to Congress with unanimous Commission approval.

175/ Statement of General Motors Corporation, supra note 169 at 4, 11. The G.M. statement analyzes and disputes the staff report section-by-section.

176/ New York Times, Nov. 18, 1968 at 18, col. 1.

177/ Both Ralph Nader and a Senate Commerce subcommittee kept "elite lemon" files of complaints received from the \$5,000-plus automobile owners. Wall Street Journal, Feb. 10, 1970, at 1. See Hearings on S. 3074 before the Consumer Subcommittee of the Senate Committee on Commerce, 91st Cong., 2d Sess. 171-72 (1970) (statement of Chairman Weinberger).

178/ Wall Street Journal, Feb. 10, 1970, at 1. One letter related the embarrassment experienced by an owner when the leather door handle of his 1969 Cadillac Sedan de Ville broke off when closing the door for guests. Another owner complained that the roof of his Corvette leaked dripping water on his "Brook Brothers suit". Id.

179/ President's Message to Congress Outlining his Legislative Program of October 30, 1969 (published in 5 Weekly Compilation of Presidential Documents 1516 (Nov. 3, 1969)).

180/ S. Rep. No. 93-151, supra note 166, at 5.

The findings of the 1970 report to Congress were based on the Commission's public hearings, field investigations, and the 1968 report. The Commission found that manufacturers failed to make improvements in the quality of their 1969 and 1970 models although the earlier staff report and other studies adequately detailed the problems. <sup>181/</sup> The Commission concluded that quality control was unsatisfactory, warranty coverage was inadequate, and actions taken by manufacturers to resolve the problems were insufficient to protect the public. Breaches of warranty promises of defect-free cars were found to be widespread resulting in a standard of quality below that which a buyer had a right to expect. A second breach of warranty occurred when repairs of defects were unsatisfactorily performed.

The Commission believed that many of the practices involved were unfair under Section 5 of the FTC Act. Unfortunately, it lacked the physical and technical capabilities to establish an industry-wide program to deal with the quality control problem. Therefore, it recommended that Congress pass legislation to correct the problems. Specifically, the report called for an Automobile Quality Control Act which would require manufacturer compliance with minimum quality standards to be established after public hearings and further study. <sup>182/</sup> A statutory obligation would exist for repair of defects which did not conform to the standards.

181/ Tests conducted by Consumers Union actually disclosed more defects per car in the 1969 models than discovered in the 1967 models. FTC, Report on Automobile Warranties 56 (1970).

182/ The Commission stated in the report, "It has long been accepted that certain public utility industries must, in the public interest, meet legal standards of minimum performance .... The Commission believes it is clear that, in present-day America, the automobile industry is no less a public utility industry than the other transportation industries." FTC, Report on Automobile Warranties 124 (1970). Unfortunately, use of the term "public utility" resulted in misunderstandings by manufacturers, Congresspersons and the press. Chairman Weinberger explained that the Commission was referring to quality and safety standards and the reasonable expectations of buyers, rather than the establishment of a public utility commission with price setting powers. See, Hearings on S. 3074 before the Consumer Subcommittee of the Senate Committee on Commerce, 91st Cong., 2d Sess. 166-168 & 174, 190-192 (1970) (Statements of Chairman Weinberger; John J. Nevin, V. Pres., Marketing, Ford Motor Co.); New York Times, Feb. 22, 1970, at 30, col. 1.

Subsequent to the issuance of the Commission's 1970 Report, several bills aimed at improving quality control and performance standards were introduced in Congress. 183/ President Nixon delivered another Congressional Message on March 1, 1971, proposing broader Commission powers in the warranty area. 184/ After more years of hearings and deliberations, the Magnuson-Moss Warranty - Federal Trade Commission Improvements Act was signed into law by President Ford on January 4, 1975. 185/

The Effectiveness of The Report. Measuring overall effectiveness and impact of a report is generally a difficult task. It should be noted that the report has some crucial deficiencies when evaluated from the perspective of the 1980's. One major weakness is its failure to fully assess the costs of regulation. A second flaw is its recommendation for licensing of automobile mechanics at the state and local level. Today the Commission would, most likely not make this recommendation.

Despite these shortcomings, the report did lead to several positive developments. The automobile warranties report contributed to passage of the Magnuson-Moss Warranty legislation ultimately resulting in increased consumer information. Although the Commission's Quality Control Act was viewed by some as the "most drastic remedy" proposed, it may have guaranteed the passage of consumer legislation in the warranty area, albeit less protective: "While the outlook for such far-reaching Federal regulation of a private manufacturing industry was uncertain the Commission's action promised at least to spur consideration of less drastic remedies." 186/ Moreover, the Commission's expertise in the warranty area gained recognition as evidenced by, among other things, the enlarged powers conferred on it by the Magnuson-Moss Act and the extensive Commission testimony given at Congressional hearings.

It can also be said that the Commission's reports and meetings with industry members encouraged manufacturers' efforts to eliminate problems. Although these efforts did not prove satisfactory, they were a starting point for change.

183/ FTC Annual Report 11 (1970).

184/ H.R. Rep. No. 93-1107, supra note 164, at 25.

185/ Pub. L. No. 93-637, 88 Stat. 2183-2203 (Jan. 4, 1975) [hereinafter cited as Magnuson-Moss Act].

186/ New York Times, Feb. 21, 1970, at 21, col. 5.

### Other Reports

In 1968, the Commission released a report called Webb-Pomerene Associations: A 50 Year Review. As noted above, an earlier FTC report had been instrumental in bringing about the Webb-Pomerene Act in 1918 for the purpose of making exporting easier for U.S. companies. The FTC staff report of 1968 concluded that the law had not raised total U.S. exports to any substantial extent.

Traditional economic reporting has continued, including both reports on structural issues and in-depth analyses of specific industries. The FTC issued Larger Mergers in Manufacturing and Mining, 1948-1969 and Current Trends in Merger Activity 1969 in 1970. The Bureau of Economics continued to focus attention on the food industry releasing a major study, The Influence of Market Structure on the Profit Performance of Food Manufacturing Companies, in 1970.

In addition, considerable resources have been devoted to the energy sector. In 1972, the FTC released Interfuel Substitutability in the Electric Utility Sector of the U.S. Economy and in 1974, issued Concentration Levels and Trends in the Energy Sector of the U.S. Economy. A report on the government's mandatory petroleum allocation program was also released in 1974. The report was produced by an agency-wide task force under the direction of the Executive Director and was required under the Emergency Petroleum Allocation Act of 1973. Between

1973 and 1980, seven energy reports were released (mostly by the Bureau of Competition and the Bureau of Economics) in response to specific legislation which directed the FTC to report on the structure, conduct, and economic performance of America's energy markets. 187/

During the 1970's, the FTC's report-writing activity accelerated. While traditional economic reporting continued, new report forms including staff reports for trade regulation rules, economic working papers, policy planning issues papers, and impact evaluation studies have emerged.

#### Line of Business Program

The Line of Business Program (LB) was initiated in 1973 in order to provide better data on industry profitability and certain categories of expenses. Data from other sources were considered inadequate for the task of evaluating the performance of specific industries. This is because data from other sources are highly contaminated by the necessity of categorizing a whole company in one SIC code even though much of its business may be outside of the category. Data provided through the LB program are better for analysis of a whole range of industrial organization issues. The FTC collects the data under its Section 6(b) authority.

187/ House Conference Report on H.R. 619, P.L. 93-135, H.R. Rep. No. 93-520, 93rd Cong., 1st Sess. 24 (1973).

The LB sample includes about 475 of the largest manufacturing firms and the largest firms for many lines of business. The sample is designed to include at least four firms from each category including the largest firm. The LB data from individual firms are confidential and are not available to anyone other than personnel to the Division of Financial Statistics, the organization which administers the LB program. Individual firm data are aggregated to provide a single set of statistics for each line of business. For example, there are profitability, advertising, and research and development numbers for cutlery and 227 other lines of business. These statistics will be published in the Annual Line of Business report.

Publication of aggregated LB data has been delayed because of litigation over the FTC's authority to collect the data. Firms strongly resisted efforts to initiate the program. More than 100 out of 345 companies surveyed filed suit to enjoin the collection of the 1973 data, and the litigation continued from 1975 to 1978. The Commission later withdrew orders to file 1973 LB reports in order to concentrate on enforcement of the 1974 orders. Litigation over the 1974 LB reports continued from 1976 to 1978, when the Commission secured final enforcement. The 1973 LB Report, which contains limited data for those firms which complied voluntarily with the 1973 orders, was published in March 1979. Publication of the 1974 report has been delayed in order to consider objections to publication, and is the subject of at least one injunction suit.

The LB data will have wide application in FTC analysis of U.S. markets. In addition, outside researchers can arrange to use the aggregated data for their own policy studies.

Case Study: The Prescription Drug Study (1977)

In 1977, the Commission released a Bureau of Economics report entitled Sales, Promotion, and Product Differentiation in Two Prescription Drug Markets. Because public source material was inadequate, the Commission's Section 6(b) authority was used to gather data directly from drug manufacturers.

Originally, the study was developed to explore the issue of intensive advertising and promotion of prescription drugs. Classes of therapeutic drugs were selected for study the market structure was distinctly different. Unanticipated and exciting findings of instructional value concerning the nature of product differentiation and sales promotion and its potential payoff emerged from the data analysis. In brief, the report found that:

[T]he first firm to offer and promote a new type of product received a substantial and enduring sales advantage. Moreover, although the promotional dollars spent by the first firms were absolutely large, the first firms, nonetheless, devoted a smaller percentage of their sales dollars to promotion than did their competitors ... Qualitative characteristics such as the timing of entry and therapeutic novelty appear to determine both the profit maximizing level of promotion and the sales associated with that promotion ... when other things are equal, physicians appear to prefer the brands of existing sellers to those of new sellers. 188/

The report concluded that:

(1) trademarked brand names, such as Hydrodiuril and Lasix, appeared to be a basis of monopoly power, and could potentially extend the market power granted by patent protection beyond the life of the patent.

188/ FTC Bureau of Economics, Sales, Promotion, and Product Differentiation in Two Prescription Drug Markets (1977).

(2) drug antisubstitution laws, under which substitute products may not be dispensed in place of trademarked brands prescribed, represented an impediment to competition. The study offered support for an investigation and repeal or modification of these laws.

The findings and the industry expertise gathered by staff have been useful in (1) analyzing and commenting upon draft legislation affecting the pharmaceutical industry, e.g., the FDA Drug Regulation and Reform Act; (2) evaluating and providing comment upon an HEW proposal to contain costs on drugs reimbursed under the Federal Government's Medicare and Medicaid Systems -- a proposal known as the Maximum Allowable Cost plan (MAC); (3) providing background information and support for the above-mentioned investigation of so-called state drug antisubstitution laws, 189/ and contributing to successful court challenges to state antisubstitution laws; and (4) supporting the investigation which led to the Staff Report on Drug Price Disclosure (1975). This report in turn assisted the Supreme Court in reaching a decision to overturn restrictions against retail drug price disclosure. 190/

#### Steel Report

In 1978, the FTC released The United States Steel Industry and Its International Rivals: Trends and Factors Determining International Competitiveness. Steel imports into the U.S. have periodically reached high levels, and many rival explanations have been proposed for this phenomenon. The

189/ This investigation resulted in the Staff Report on Drug Product Selection (1979) and included a section on state antisubstitution laws and an estimate of the benefits from the repeal of these laws. The implications of the benefit analysis for the mandate of the Commission were obvious and were highly publicized. At a maximum, the savings to consumers were estimated to range from \$400 million to \$500 million dollars annually given the most favorable market conditions. The FTC staff proposed a model law which would help generate these savings, and states in the process of modifying existing laws received considerable support from the Commission's work. The state of Maryland, for example, adopted the FTC's model law, almost verbatim.

190/ See Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748 (1976).

FTC Steel Report is a major piece of research which has systematically evaluated these rival explanations. The study supported the theory that changes in relative costs between U.S. and foreign producers cause the changes in levels of imports. Explanations for imports which include oligopoly pricing behavior among U.S. steel firms, subsidies by foreign governments, price controls by the U.S. government, and absence of technological progressiveness on the part of U.S. firms, failed to be empirically supported. The study also reviewed the effectiveness and consumer costs of various import control approaches.

FTC staff who worked on this report presented their results to the House Subcommittee on Trade in January 1978. Staff advice has also been sought on the issue of steel import policy and technology by the Federal Reserve Board and the Office of Technology Assessment. Incorporating analysis from the steel report, FTC staff made recommendations for modifying administration of the general U.S. anti-dumping statutes in 1979.

Report on the Impact of Cigarette Health Information

The Staff Report on Consumer Response to Cigarette Health Information by the Bureau of Economics was released by the Commission on September 21, 1979. The report provided useful information to the Commission and the public, and has

stimulated further academic research in the health information disclosure area.

The study was designed to test whether cigarette health information programs reduced per capita tar and nicotine consumption after 1964. Public data utilized in the study included a data base of the smoking habit histories from the Center for Disease Control, historical statistics on per capita smoking patterns from the Department of Agriculture, and cigarette tar and nicotine statistics from the Commission's own reports.

The report concluded that, overall, cigarette health information resulted in lower per capita cigarette consumption. The data suggested, further, that television counter-commercials that aired from 1968-70 were not as effective in reducing consumption as previously thought. The report also estimated positive changes in life expectancy due to health disclosures and examined the impact of information on consumers according to age, income, and education.

One use made of the study was to provide information to the medical community. The findings of the report were presented by a member of the Bureau of Economics at the Conference on Labeling of Health Risks organized by the Banbury Center. 191/ Since then, it has been reported that further academic research has been undertaken to test some of the findings of the study.

191/ A report on the Conference proceedings can be found in Banbury Report VI: Product Labeling and Health Risks (1980).

The results are also valuable to the Commission in fashioning information disclosure remedies. Through better knowledge of the effect of information disclosures on consumer purchasing decisions, more effective remedies can be devised.

#### Optometry Study

An overview of significant reports issued by the Commission would be incomplete without mentioning the Bureau of Economics study published in September, 1980 -- Staff Report on Effects of Restrictions On Advertising and Commercial Practice In The Professions: The Case of Optometry. The report is significant not only for its findings and conclusions, but also for the utilization made of those conclusions. It was one of several reports issued relative to the investigation of information disclosure in the retail ophthalmic market.

The economic study was designed to determine how the price and quality of professional services relate to restrictions on advertising and commercial practice. It represents the most comprehensive study made, to date, of the effects that commercial practice restrictions have on consumers. 192/ The results indicated that:

192/ Report of the Staff of the FTC, State Restrictions on Vision Care Providers: The Effects on Consumers 49 (July 1980).

Prescriptions and eyeglasses are no less adequate when purchased from an advertising optometrist or chain-firm optometrist than when purchased from a nonadvertising, noncommercial optometrist in either a restrictive or nonrestrictive city. The thoroughness of the examination, however, does vary.

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Regardless of the thoroughness of the examination, prices tended to be lower in nonrestrictive cities. 193/

The findings and conclusions of the BE study provided critical empirical evidence to staff in the Bureau of Consumer Protection and the Commission for the Eyeglasses II investigation and proposals. 194/ Even more significantly, the findings of the study substantiated Commission policy toward commercial restrictions in the professions. This production of relevant data and subsequent use as evidence for staff proposals provides an excellent example of the coalescence of interest which can occur to ultimately guarantee informed Commission decision making.

#### Post Magnuson-Moss Act

The passage of the Magnuson-Moss Act in 1974 and subsequent growth of the use of trade regulation rulemaking led to the publication of a number of rulemaking-related reports. In some cases economic research was performed to complement the rulemaking effort (e.g., Staff Report on

193/ Bureau of Economics, Staff Report on Effects of Restrictions on Advertising and Commercial Practice in the Profession: The Case of Optometry (Exec. Summary) 3 (1980).

194/ The BE study is thoroughly discussed in the Eyeglasses II staff report.

Effects of Restrictions on Advertising and Commercial Practice in the Professions: The Case of Optometry). In other cases, staff reports were released as alternatives to proposing trade regulation rules. For example, Drug Product Selection and Life Insurance Cost Disclosure, both recommending model state regulation, were released in 1979. Several trade regulation rule staff reports were released in the late 70's, on subjects including the funeral industry, over-the-counter drugs, mobile homes, and food advertising.

In April 1979, the Bureau of Competition issued a staff report which proposed consideration of the Bureau's first trade regulation rule, under Section 5 and 6(g) of the FTC Act. The report, Medical Participation in Control of Blue Shield and Certain Other Open-Panel Medical Prepayment Plans, addressed the following issues: (1) implementing cost-containment measures that would promote competition between commercial insurers and Blue Shield; (2) promoting competition among health care plans such as closed panel HMOs and other systems; and (3) insuring proper use of non-physician health care providers. In November 1979, the Bureau of Economics released an econometric study of the effects of physician control of Blue Shield plans on plan performance. The study, entitled Physician Control of Blue Shield Plans, reported that for 1977, physician reimbursement ceilings were 16 percent higher where a local medical society or other organized group of physicians selected board members.

## Appropriation Restrictions of 1980

During the late 1970's, the Commission released several staff reports on insurance issues. 195/ The research was financed by funds authorized pursuant to Public Law Number 90-313 and transferred to the Commission under Contract DOT-05-A9-051. In 1978, the FTC prepared a report on Individual Retirement Accounts at the request of the Subcommittee on Oversight of the House Ways and Means Committee. The report recommended that fixed payment investment plans be excluded from receiving favorable tax treatment. Subsequently, Congress amended the Internal Revenue code to delete favorable tax treatment for fixed payment IRAs.

Also in 1978, the FTC released an issues paper exploring the abuses of private health insurance to supplement Medicare, the so-called "medigap" policies. In 1979, a report on industrial life insurance was issued. In July 1979, a major report, Life Insurance Cost Disclosure, a joint effort of the Bureaus of Consumer Protection and Economics, was released. This report found that the average rate of return to ordinary life insurance policyholders was between one and two percent in 1977. In large part because of the FTC's work, several states are considering modifying their life insurance regulations, and the National Association of Insurance Commissioners is considering changing its model regulation.

195/ In 1970, the Bureau of Economics prepared six reports on issues related to insurance availability for the hard to place driver. This work was prepared for the Department of Transportation, to aid in the debate on no-fault insurance.

As Congress had done before, it once again restricted the FTC's report-writing authority in 1980, in response to a particular report. In the 1980 FTC Improvements Act, Congress prohibited the FTC from preparing insurance reports unless specifically requested by the Senate or House Commerce Committees.

#### New Report Formats

The late 1970's brought the introduction of new types of reports by the Bureau of Consumer Protection, the Bureau of Economics, and the Office of Policy Planning. In FY 78, the Bureau of Consumer Protection initiated an impact evaluation program with the objective of determining the impact of rules and regulations issued and/or implemented by the FTC. During 1979, the FTC released a Warranties Consumer Baseline Study, an Appliance Warranties Content Analysis, and a report, Unavailability of Advertised Specials. Several additional studies are currently underway (e.g., used car rule study, insulation R-value study).

In 1977, the Bureau of Economics began to release to the public "Economic Working Papers". These are described as "preliminary materials circulated to stimulate discussion and critical comment," and use only publicly available data. In 1977, seven working papers were released, including The Effect of Market Shares and Share Distribution on Industry Performance

and Market Structure and Price Behavior in U.S. Manufacturing. Working papers released in 1978 included Crude Oil Pricing: California Gravity Differentials and The Effect of Sulfur, BTU and Ash Content on the Price of Electric Utility Coal.

In 1978, the Office of Policy Planning began releasing to the public edited versions of briefing books prepared for policy review sessions with the Commission. During 1978 and 1979, edited briefing books were released on automobiles, food and nutrition, housing, insurance, health, mergers, consumer information, drugs and medical devices, compliance and enforcement policy, media, post-purchase consumer remedies, and consumer financial services.

In addition, the Office of Policy Planning released "issues papers" on topics such as Trademarks, Consumer Information and Barriers to Competition (Jan. 1979), Private Health Insurance to Supplement Medicare, (July 1978), and Tax Policy and Competition (Feb. 1974). Like BE's working papers, the briefing books and issues papers use only publicly available data.

Summary: 1960-1980

Summing up FTC report-making during the past twenty years, some of the significant developments were: (1) a 1964 Congressional prohibition of a financial study of intercorporate relations; (2) the enactment of the Magnuson-Moss Warranty --

Federal Trade Commission Improvement Act authorizing the FTC to promulgate trade regulation rules, and generating several economic reports and consumer protection reports when rulemaking is ruled out; (3) two periods of insurance report-writing activity, the last of which led to a Congressional restriction of Section 6 insurance investigations, unless requested by the Senate or House Commerce Committee (1980); (4) an absence of formal Congressional requests for reports, i.e., concurrent resolutions, 196/ but development of less formal request routes, i.e., requests from committee chairmen; and (5) introduction of some new report formats such as Bureau of Economics working papers and Office of Policy Planning issues papers.

196/ In 1973 Congress requested that the Commission study the structure, conduct, and economic performance of America's energy markets. This was by means of specific legislation, including funding, rather than by concurrent resolution.

## VI. CONCLUSION

Over the years, the number of reports released by the Commission has cyclically risen and fallen. In the days of the Bureau of Corporations, report writing was the agency's sole function. At other times such as the late 1950's, report writing declined dramatically perhaps because of controversy generated by earlier reports. Although the Commission can avoid mistakes made in the past, e.g., provocative language in reports, history demonstrates that the agency can certainly expect controversy and opposition as inevitable reactions to future reports.

History also shows that reports have led to major Commission achievements. Reports have stimulated research, provided evidence for cases and rulemakings, influenced legislation, and improved competition in the marketplace. Surely, future reports will continue these types of contributions to the FTC's mission.