

April 14, 1981

Michael Pertschuk's Statement  
in the Used Car Rule

Like many a used car, this proceeding has traveled a rock-strewn, spring-jarring path. Following evidentiary hearings, it took a mandatory inspection route, turned right toward an optional inspection rule, and now is accelerating in reverse.

For the sake of making the used car market work better for consumers, I will listen seriously to alternatives to an inspection-oriented rule if the staff proposal is defeated today. But before that, I want to explain why I believe an inspection/check-off approach should be approved.

Two and a half years ago, this Commission had before it a staff proposal grounded upon years of intensive hearings and investigation, which disclosed a widespread pattern of flagrant oral misrepresentations and deceptions by used car dealers in misrepresenting the condition of the cars they sell. Patterned after the successful experience of Wisconsin, staff proposed that the Commission foreclose the established pattern of deception by mandating an inspection by the dealer of each used car -- a practice which the record shows most dealers already utilize for their own purposes -- and a written check-off disclosing the basic condition of the car.

I was prepared then to vote for a mandatory inspection rule not only because it was aimed directly at the root of deception in the used car market but also because, as experience in Wisconsin shows, it works. It is rare that the Commission has the benefit of knowing how a particular remedy has worked in actual practice before adopting a rule. It has been argued that mandatory inspection and check-off is complicated and heavy-handed -- overregulation in the current vernacular. Well, the record shows that in Wisconsin it affords honest information and fair pricing to those who turn in this time of inflation-stressed incomes to a used car, sparing consumers the ruinous added costs of expensive, hidden defect repairs and -- at a reasonable cost to the used car dealers operating under that system.

But Congress has made it clear that in mandating this used car rule, it did not intend to permit the Commission to mandate, even indirectly, warranties for used cars. I believe that was poor public policy, but it was the will of Congress.

Despite the basis in the record for a mandatory inspection rule, we now have before us the staff's altered proposal, one which has enjoyed the full support of the FTC's Bureau of Economics as cost-effective and one which would invoke the strength of marketplace incentives rather than government mandate to stimulate inspection of used cars and clear, comprehensible written disclosures of the vehicle's condition. It is the so-called optional inspection rule. I too favor

reliance on marketplace incentives whenever feasible. And because the record indicates that effective marketplace incentives would be at work here, I can in good faith support the less direct method of optional inspection to combat oral misrepresentations by used car dealers.

For the most part, used car dealers appear to oppose an optional inspection rule because they fear it will work. They are afraid that enough informed consumers will demand the written security of a check-off -- "OK" or "Not OK" -- In other words, they fear that competition -- not government rule -- will force more and more dealers to inspect and disclose used car defects.

I am sensitive to the assertion of some consumer groups that optional inspection will favor least the most economically disadvantaged, the least sophisticated consumers. However, if the better remedy for all, mandatory inspection, is entirely out of the question, then I favor the remedy that is best for most -- optional inspection. More than any other presently available remedy, it will give consumers the informational and legal tools with which to deal on an equal footing with the used car dealer, and thereby avoid the chronic deceit and misrepresentation which many of them now suffer.

I understand that there may be a risk of legislative veto of the optional inspection rule by Congress. In this regulatory climate, what effective rule does not run that risk? If Congress in fact disagrees with the optional inspection approach, it may express its will in the manner

envisioned for Magnuson-Moss rules in the FTC Act of 1980 -- the legislative veto. Congress is accountable to the electorate for its actions. Despite the possibility of a veto, I believe that most members of Congress will realize, once they know the facts, that the optional inspection rule is a reasonable, restrained, market-oriented response to a very serious consumer problem.

The optional rule gives the dealer the absolute legal freedom not to inspect his vehicles, not to warrant the working condition of the components, but to indicate simply "No Rating." In all of the debates on regulatory reform, one area of near consensus emerges. That is that whenever workable, the best regulations are those which do not command and control but which establish simple and fair rules of competition to unleash market forces and incentives to cure failures in the marketplace. The optional inspection rule is precisely such a set of rules.

This morning's Wall Street Journal speculates that the Commission will not support the optional inspection rule because of fear of the Congressional veto. I don't believe that. I know that Commissioners have had and continue to have honest doubts about the efficacy of the proposed rule. But I'm convinced they're wrong.