INVESTIGATION OF CONCENTRATION OF ECONOMIC POWER

HEARINGS

BEFORE THE

TEMPORARY NATIONAL ECONOMIC COMMITTEE

CONGRESS OF THE UNITED STATES

SEVENTY-SIXTH CONGRESS

SECOND SESSION

PURSUANT TO

Public Resolution No. 113

(Seventy-fifth Congress)

AUTHORIZING AND DIRECTING A SELECT COMMITTEE TO MAKE A FULL AND COMPLETE STUDY AND INVESTIGATION WITH RESPECT TO THE CONCENTRATION OF ECONOMIC POWER IN, AND FINANCIAL CONTROL OVER, PRODUCTION AND DISTRIBUTION OF GOODS AND SERVICES

PART 29

INTERSTATE TRADE BARRIERS

MARCH 18, 19, 20, 21, 22, AND 23, 1940

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(Created pursuant to Public Res. 113, 75th Cong.)

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INVESTIGATION OF CONCENTRATION OF ECONOMIC POWER

MONDAY, MARCH 18, 1940

UNITED STATES SENATE,
TEMPORARY NATIONAL ECONOMIC COMMITTEE,
Washington, D. C.

The committee met at 10:30 a. m. pursuant to adjournment on Friday, March 1, 1940, in the Caucus Room, Senate Office Building, Senator Joseph C. O'Mahoney presiding.

Present: Senators O'Mahoney (chairman) and White; Representatives Sumners (vice chairman), Reece, and Williams; Messrs. Lubin, Kades, and Pike.

Present also: James V. Hayes, Department of Justice; W. S. Whitehead, Securities and Exchange Commission; D. Haskell Donoho, associate attorney; Dr. Frederick V. Waugh, Head of Division of Market Research, Department of Agriculture; and Paul T. Truitt, Chairman, Interdepartmental Committee on Interstate Trade Barriers, Department of Commerce.

The CHAIRMAN. The committee will please come to order.

We have assembled this morning to hear a presentation by the Department of Commerce on the problem of interstate-trade barriers. This presentation will be in charge of the Department of Commerce and Mr. Donoho who has been selected by the Department to conduct the hearing. You have an opening statement to make, Mr. Donoho?

Mr. DONOHO. Yes.

The CHAIRMAN. Please proceed.

STATEMENT OF D. HASKELL DONOHO, ASSOCIATE ATTORNEY, DEPARTMENT OF AGRICULTURE

Mr. DONOHO. Mr. Chairman and members of the committee, I wish to make a statement for the purpose of indicating the background and the scope of these hearings. Although the general public has not until recently become greatly concerned over the problem of trade barriers, several years ago economists and specialists began to explore this field. In this connection, reference should be made to the pioneering work of Dr. F. Eugene Melder, now of Clark University.

In recognition of the increasing seriousness of the problem, the Council of State Governments took official cognizance of this situation by adopting a resolution relating to interstate-trade barriers at its Fourth General Assembly held in Washington, D. C., in 1938. Pursuant to that resolution, a national conference on interstate-trade barriers was held at the call of the Council of State Governments in Chicago in April 1939. At this conference, attended by State and Federal

officials, resolutions were adopted and a series of regional meetings were subsequently held. In order to facilitate the deliberations of the Council of State Governments, the Department of Agriculture and the Marketing Laws Survey made studies and reports available for the use of the conference.

Due to the widespread interest thereafter evidenced by representatives of industry, agriculture, and the public generally, the Secretary of Commerce, Harry L. Hopkins, proposed that a committee be established consisting of representatives designated by the various Federal Departments and Agencies interested in the subject, namely: The Departments of State, Justice, Agriculture, Treasury, and Labor, the Federal Works Agency, the United States Tariff Commission, and the Interstate Commerce Commission. The function of this committee is to coordinate the research of these various agencies and departments of the Federal Government and to promote a better understanding of the nature, extent, and effects of these legislative developments.

This committee is sponsoring the present hearings.

In order to delimit the scope of these hearings, a definition of the term "trade barrier" is essential. While there is some diversity of opinion as to the meaning of this term, for the purpose of these hearings, the term "trade barrier" is defined as follows: a statute, regulation or practice which operates or tends to operate to the disadvantage of persons, products, or services coming from sister States, to the advantage of local residents, products, and enterprises.

Examples of trade barriers are found widely distributed in substantial numbers among the laws, ordinances, rules, regulations, and administrative orders relating to production, distribution, and general commercial transactions.

Within the time allotted for these hearings, the purpose is to present testimony covering a comprehensive but not exhaustive treatment of important aspects of trade barrier laws. This presentation will include: the historical background of the subject, what the States themselves have done so far as to meet the problem, the legislative bases supporting trade-barrier practices, trade-barrier laws in the fields of agricultural products, motor transportation, and a concluding summary and recommendations.

As a further delimitation of the scope of these hearings, it should be understood that no effort will be made to analyze constitutional issues as applied to particular statutes or specific factual situations.

Mr. Chairman, I wish to call the first witness.

The CHAIRMAN. Before you call the witness, it may be appropriate to insert in the record at this point a letter which I received from the Secretary of Commerce on Saturday last. This letter was addressed to the Chairman of the committee and reads as follows:

MY DEAR SENATOR O'MAHONEY: Opening of hearings on interstate trade barriers by the Temporary National Economic Committee next Monday is a high spot in the long campaign conducted by local, State and Federal agencies.

Much has been said and much has been written about the economic evils of trade barriers between the States. Because I am confident that the coming hearings will draw an impressing and eye-opening picture of these restrictive measures, I am delighted that you and your committee members are delving into this subject.

During the past few years, the problem of interstate trade restrictions has grown to be a serious threat to the economic life and business well-being of

our country. It has resulted in loss of business generally and in many cases has impaired the traditional American system of free trade and enterprise.

To centralize and coordinate research on the economic effects of state trade walls, the Department of Commerce sponsored the formation of the Interdepartmental Committee on Interstate Trade Barriers. This Federal committee, composed of representatives from the Departments of Justice, State, Labor, Commerce and Agriculture, the Federal Alcohol Administration, the Interstate Commerce Commission, the United States Tariff Commission and the Federal Works Agency, a division of the Work Projects Administration, will endeavor to present the facts of the trade barrier problem.

No state is permitted, under our Constitution, to raise outright tariff barriers against the free flow of commerce coming from sister states However, many indirect and devious techniques have come into being with the same crippling effects. These spring mainly from a state's powers to raise revenue, provide for the protection of health, morals, and safety, and the taxing power. The net result of this unhealthy development has been to stunt our economic progress. A labyrinth of state laws and administrative regulations has circumscribed the millions of business transactions in interstate commerce, resulting in a slow strangulation of our trade development.

It is necessary, therefore, that the nation have before it a well-rounded record of trade barriers as they exist today in their effect on manufacturers, retailers, and consumers. I feel confident that the hearings before the Temporary National Economic Committee next week will create a better understanding of this problem.

Very sincerely yours,

(Signed) HARRY L. HOPKINS,
Secretary of Commerce.

The CHAIRMAN. If you will call the first witness.

Senator WHITE. Mr. Chairman, may I ask a question before the witness is called?

The CHAIRMAN. Certainly.

Senator WHITE. Will this study cover the extent to which the States would have uniformity of legislation, the subject matters which are covered by uniform State laws?

Mr. DONOHO. Yes, sir; that will be covered, I think, rather thoroughly.

Senator WHITE. You think that subject will be covered thoroughly so that we will have an understanding of what subjects have been the concern of the various States in their efforts to work out uniformity of law? You think that will be covered?

Mr. DONOHO. Yes, sir; I believe that at the end of the hearings we will have a comprehensive picture of the question, including that to which you refer.

Senator WHITE. Will the testimony cover also the extent to which there have been State actions?

Mr. DONOHO. In the field of motor trucks it will; yes, sir. I don't believe in other fields.

Senator WHITE. Of course that is something, State compacts, which has been one that has interested me. I have never had opportunity to study it. I have found very little on the subject, but I have always thought it was a field of great importance and that wholly inadequate attention had been given to it. That is what prompted my question, Mr. Chairman.

Mr. DONOHO. There will be general remarks which will, I think, touch upon that subject. I don't know just how specifically.

The CHAIRMAN. I am sure, Senator White, if there are any questions which suggest themselves to your mind now, you might make note of them, and we would be very glad to present them to the representative of the Department of Commerce with the request that special

attention be given to them in the remaining days of the hearing, if they have not already been heard.

Senator WHITE. I expect until this transportation legislation is out of the way this is the last meeting I will be able to attend for some days.

The CHAIRMAN. That will be our loss.

Mr. DONOHO. Mr. Bane, will you come forward, please?

The CHAIRMAN. Mr. Bane, do you solemnly swear that the testimony you shall give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BANE. I do.

The CHAIRMAN. You may be seated, Mr. Bane.

TESTIMONY OF FRANK BANE, EXECUTIVE DIRECTOR, COUNCIL OF STATE GOVERNMENTS, CHICAGO, ILL.

STATUS OF THE TRADE-BARRIER QUESTION AMONG THE SEVERAL STATES

Mr. DONOHO. Will you state your name and address, please?

Mr. BANE. Frank Bane, 1313 East Sixtieth Street, Chicago.

Mr. DONOHO. What is your official title, Mr. Bane?

Mr. BANE. Executive director of the Council of State Governments.

Mr. DONOHO. You are here representing the Council of State Governments?

Mr. BANE. Yes, sir.

Mr. DONOHO. Mr. Chairman, Mr. Bane has a statement he wishes to make.

The VICE CHAIRMAN. Mr. Bane, at this moment if you haven't something in your program with which this will interfere, state briefly what this Council of State Governments is, so we can get off at a good start.

Mr. BANE. Mr. Chairman, I have attempted to put down here in four short paragraphs what the Council of State Governments is, how it is organized, and what it attempts to do.

The Council of State Governments is a joint governmental agency serving the several States.

It is the secretariat for the Governors' Conference, the National Association of Attorneys General, the National Association of Secretaries of State, and it acts as a clearing house and research center for legislators, legislative reference bureaus, and for the above national organizations of public officials.

It is the medium through which many Federal-State and interstate problems have been resolved and a forum for the consideration of the increasing number of problems which overlap State boundaries: questions of flood control, pollution, highway safety, interstate truck regulations, conflicting taxation, interstate trade barriers, liquor control, relief, social security, and transiency. All of these matters have been the subject of conferences and reports which have been beneficial to each of the States.

The component parts of the Council of State Governments are the Commissions on Interstate Cooperation, which have been established by legislative action in 44 of the 48 States. Through these Commissions the Council has demonstrated that this method of cooperation between the several States, and between the States and the Federal Government, is necessary, valuable, practical, and conducive to the general good.

Hundreds of trade barriers are today obstructing the free flow of commerce among the States. Such measures, which in practice violate the spirit, if not the principle, underlying the commerce clause of the Constitution, are on the statute books of almost all the States. They are enforced generally under the State police and taxation powers, operate to benefit local producers and distributors, and tend to stimulate political and economic sectionalism.

A trade barrier is the counterpart on the national scene of a tariff wall in international trade. It is—

a statute, regulation, or practice which operates or tends to operate to the disadvantage of persons, products, or commodities coming from sister States, to the advantage of local residents or industries.

It usually tends to protect the domestic market from out-of-State competition by restricting imports, and by so doing restricts the market for exports.

This trade war among the States is not new in our country. It was so widespread under the Articles of Confederation that Madison wrote:

The practice of many States in restricting the commercial intercourse with other States and putting their productions and manufactures on the same footing with those of foreign nations, though not contrary to the Federal Articles, is certainly adverse to the spirit of the Union, and tends to beget retaliating regulations, not less expensive and vexatious to themselves than they are destructive of the general harmony.

The framers of the Constitution endeavored to take precautions against the recurrence of such a situation when they gave to Congress the power—

to regulate commerce * * * among the several States—

and specifically stated that—

no State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

In commenting upon these sections Chief Justice John Marshall stated:

It may be doubted, whether any of the evils proceeding from the feebleness of the Federal Government, contributed more to that great revolution which introduced the present system, than the deep and general conviction, that commerce ought to be regulated by Congress.

And many years later, Roger Taney, also Chief Justice of the Supreme Court, stated:

But further and more mature reflection has convinced me that the rule laid down by the Supreme Court is a just and safe one, and perhaps the best that could have been adopted for preserving the right of the United States on the one hand, and of the States on the other, and preventing collision between them.

The CHAIRMAN. Perhaps it might be well to interrupt at this point in order to make clear that you are dealing solely with interstate trade barriers, and reference to the tariff, arguments with respect to the effect upon the tariff contained in your statement, have, I assume, no relation whatsoever to the problem of trade with foreign nations.

Mr. BANE. None whatever, Mr. Chairman.

The CHAIRMAN. Nor with the rule with respect to tariffs upon foreign imports or imports from foreign countries.

Mr. BANE. That is entirely correct, sir.

A century and a half after the adoption of the Constitution, however, State trade barriers have again assumed ominous proportions. They are diverting our economy from the traditional policy of unhampered domestic trade, and are threatening to return us to those conditions which once played havoc with interstate harmony.

In only two articles of commerce does our Federal system *explicitly* permit the States to regulate, restrict, or embargo interstate trade—intoxicating liquors and prison-made goods. The twenty-first amendment to the Constitution provides that the transportation or importation into any State of intoxicating liquors, in violation of the laws thereof, is prohibited, and subsequent Supreme Court interpretations have left unfettered the States' powers to regulate this commodity, and to indulge in discrimination and retaliation against out-of-State products if they so desire. The Hawes-Cooper and Ashurst-Sumners Acts have accomplished somewhat the same result for prison-made goods. In this instance, Congress has, in substance, loaned its power of regulation to the States in order that these goods may not compete in interstate commerce with the products of labor.

Under our Constitution, the States have no such *exclusive* role in the regulation of other articles shipped in interstate commerce. But, by various means, they have been able to set up trade barriers without a legal sanction comparable to that given to those affecting liquor and prison-made goods. These trade barriers are so numerous and so varied that only a few examples need be presented.

The taxation power is one instrument used by the States to discriminate against a number of products. Half the States have adopted excise taxes on oleomargarine to protect local dairy industries, and high license fees are levied on the manufacture and sale of this and other butter substitutes. In some States the excise tax does not apply if local products are used in the manufacture of oleomargarine. In a similar fashion, license fees and excise taxes are levied on the importation of other agricultural products.

A number of States which have adopted the sales tax for the raising of revenue have supplemented it with a use tax in order to cover the sales of goods imported from other States. When the law fails to provide that the use tax shall not be imposed on products which have paid a sales tax in the State of origin, it is generally conceded that interstate commerce is burdened more heavily than intrasate commerce, and that a trade-barrier results.

Motor vehicles, especially trucks, are affected by cumulative taxes as they travel through two or more States, although reciprocity agreements in license fees are being entered into by an increasing number of States. Special license fees on independent truckers who travel from State to State are also frequently levied. One method of enforcing these requirements and of restricting importations is by port-of-entry laws, some of which provide that motor vehicles must stop at the State border for payment of registration fees of special mileage and gasoline taxes as a condition precedent to entering the State.

The police power, implemented to protect the public health and safety, is a second instrument for the enforcement of trade barriers.

Ports of entry, besides being tax-collection stations, are often used for checking equipment, weight, and insurance requirements of trucks, and so forth. The purpose is the very commendable one of insuring safety on the public highways or of collecting public revenues, but these statutes sometimes operate to obstruct the free flow of trade. Some of these ports of entry are established to inspect and embargo plants, fruits and vegetables, and in general to serve as quarantine stations. Quarantines are sometimes essential for the protection of public health, but they can and frequently do impose restrictions which extend beyond the minimum requirements for this objective.

Inspection requirements are also often used to control, restrict, and exclude dairy products, livestock, and horticultural and agricultural products. Sometimes these are justified in terms of public health, at other times not. For example, some States require that all milk shipped into their markets must come from dairies inspected by their agents, and then fail to provide for inspection of out-of-State dairies except in case of market shortage. Certificates testifying that livestock is pest and disease free are required in some 25 States, a tool that may upon occasion serve as a device to impose unnecessary discriminations. Many other legitimate regulations such as these have, under administrative ruling, developed into trade barriers.

Lack of uniform labeling laws constitutes one of the most troublesome restrictions to producers. Proper labels are necessary and imperative for adequate regulation, but when a specific State law calls for imprinting the State of origin and other extraneous information, then the intent may well be simply to foster a "buy at home" movement. Other States list detailed specifications for agricultural products, and six set a maximum grade for "fresh" eggs which in practice can only be met by domestic hens.

Many States give preference to resident laborers and contractors, and to domestic products used on public works. Many specify that public institutions can purchase only domestic products or supplies in certain fields, or indirectly permit the payment of higher prices for State-produced commodities.

These few examples illustrate the manner in which certain State powers are used to obstruct the free flow of interstate commerce. But it should be emphasized that their use is not subject to criticism unless the motivation is economic protection and the enforcement leads to discrimination against other States.

The CHAIRMAN. Mr. Bane, may I interrupt you at this point to ask a question? Perhaps as a preliminary I should remark that having looked over your mimeographed statement, I find that you are dealing with several subjects: First, the one which you have just concluded has been called The Situation With Respect to Interstate Trade Barriers; the second is The Effect of Interstate Trade Barriers; the third, What Has Been Done About Interstate Trade Barriers; the fourth, Results of Current Efforts to Minimize Interstate Trade Barriers; and fifth, What Can Be Done About the Present Situation?

I don't find anywhere in this paper a suggestion that you are going to deal with the causes of interstate trade barriers. It strikes me that the situation which you describe must necessarily have been brought into existence by special conditions. Has the Council of State Governments given any attention to that?

Mr. BANE. Yes, Mr. Chairman; we have gone into that to some extent and as this manuscript will indicate as we go along, we mention it by inference, but you will have another witness who will be put on by the Department of Commerce who will deal with background and causes and develop that as we go along.

Senator WHITE. May I ask a question there? Assuming the situation to be precisely as you have outlined it in this first chapter of your statement, how substantial is the body of complaint which comes from the situation? I ask that because I have served in Congress 20 years; Mr. Sumners over there has served longer than I. I don't know that in all this 20 years of time I have had a complaint about the situation. Now, is it an epidemic situation, or is it something that is giving serious concern to the business life of the Nation?

Mr. BANE. Senator, I cannot answer that accurately beyond the past 2 years, but during the past 2 years this has been a matter which has been lamented, criticized, brought to the attention of the American people, by practically all newspapers, by business interests, by chambers of commerce, by the National Association of Manufacturers, by organizations and agencies interested in business, and by publicity mediums.

Senator WHITE. I have seen a great deal of publicity and I know it has been a subject of study by economists and other students, but I still stand on the statement that I never have had, I think in 20 years, a specific complaint by anyone about it. I don't know what the experiences of other Members of Congress have been, I am sure. And I wondered whether the complaint was coming from the consumers of the country, the business interests of the country, or whether this was something that had excited the interest of governmental departments and of economists, and whether the whole subject matter that is now before us is brought before us at their initiative rather than through substantial complaints from either consumers or business.

Mr. BANE. I think there has been much substantial complaint from both consumers and business, but I think you perhaps have not heard so much about it because most of the complaints to date have gone to State capitols rather than to the National Capitol.

The CHAIRMAN. How did the Council of State Governments become interested in the subject?

Mr. BANE. The Council of State Governments first became interested in the subject when it was raised at the Governors' Conference held in Oklahoma City in 1938. That was the first item on the agenda and because of the discussion raised by that item that was practically the only item discussed at that time.

The CHAIRMAN. By whom was the question raised?

Mr. BANE. The question was raised by Governor Allred, of Texas.

The VICE CHAIRMAN. What was the complaint; do you recall?

Mr. BANE. He spoke at that conference outlining and indicating what trade barriers were doing among the various States to restrict interstate commerce.

The VICE CHAIRMAN. Do you recall any statement which he made with reference to what trade barriers were doing to Texas?

Mr. BANE. I don't recall offhand, Judge, any statement which he made, but we do have in the office a copy of his address which I will be glad to furnish you.

The VICE CHAIRMAN. I will take your memory of it.

Mr. BANE. I don't recall.

The CHAIRMAN. I am wondering if you have quite developed the manner in which the problem grew in the minds of those who belonged to the State council.

Mr. BANE. I might say that I think perhaps this manuscript will cover that.

The CHAIRMAN. You mean as you proceed?

Mr. BANE. As we proceed.

What Has Been Done About the Situation—section 3, I think, will cover that quite in detail.

The CHAIRMAN. But am I justified in drawing the conclusion from your statement that your experience is and your testimony is that the study of interstate trade barriers has been initiated in the States, and that complaints have been filed at the State capitols, and that it comes from the States to this forum?

Mr. BANE. To a very great extent; yes.

The VICE CHAIRMAN. Now, let's get that straight. My State hasn't asked for any developments of this matter as far as I know by this committee.

Mr. BANE. No, sir.

The VICE CHAIRMAN. As I understand, the development of this particular matter is initiated by the Federal Departments?

Mr. BANE. Entirely true. I was referring in answering your question, Mr. Chairman, to the comment by the Senator made as to the complaints which have arisen from producers and consumers.

The VICE CHAIRMAN. What I am trying to get clear is that this presentation of this subject matter to this committee is initiated and being developed by the Federal departments.

Mr. BANE. Entirely.

The CHAIRMAN. Proceed.

Mr. BANE. The effect on interstate commerce cannot be measured accurately in dollars and cents, but it can be established that interstate trade barriers have a decidedly restrictive influence. Some burden without completely restraining trade. Others entirely obstruct trade. The sum total of these measures create, on a national scale, a mottled pattern of regulations and taxes which, by their very absence of uniformity, cause unnecessary hardships and inconveniences to anyone engaging in interstate commerce. In line with accepted principles of economics, it is evident that restrictions on marketing limit competition, thereby tending to raise prices and lower standards of quality. The consumer inevitably pays the bill. And while one or two groups in a State may temporarily benefit, the whole citizenry ultimately suffers, and in many cases the law acts as a boomerang—injuring those whom it is designed to help

The VICE CHAIRMAN. Would it interrupt you to ask to what degree the effect upon the citizenry of a State, tends to bring about its own correction in that State? Have you been able to study that?

Mr. BANE. It tends to bring about its own correction to the extent that it levies a consumers' tax on people in the States, which every trade barrier does, by the retaliation which it engenders in other States, by trends to build up opposition perhaps to the act.

The VICE CHAIRMAN. Builds up opposition in the States where the barrier is established.

Mr. BANE. Exactly.

The VICE CHAIRMAN. And then brings about an unhappy relationship with the State that is discriminated against.

Mr. BANE. With sister States, yes.

The VICE CHAIRMAN. The point is whether or not you have studied this sufficiently, if you are not covering it further on in your statement—whether or not those results which you have enumerated tend in themselves to work a correction of the evil out of which they grow.

Mr. BANE. We think it does to a considerable extent tend to correct the evil, and in this manuscript I deal with evil after evil that has been corrected.

The VICE CHAIRMAN. I think I will wait and ask my questions after you have finished.

Mr. BANE. One trade barrier is of little importance to the national economy, but one thousand are a matter of grave concern. Of most significance, therefore, are their cumulative aspects, particularly when we find that a trade barrier, if successful in protecting a local market, may first suggest itself for adoption by other States, and secondly lead to retaliation by affected States.

This has been the history. A number of years ago a State decided to use only building material produced in the State in the construction of its public buildings. Now a score of States do likewise.

Senator WHITE. Isn't there pending in the body of which Judge Sumners belongs legislation to that very purpose now?

The VICE CHAIRMAN. You ask me about some of those ten thousand bills over on our side—I don't know.

Senator WHITE. If you don't know, I don't know anyone who would know.

Mr. BANE. In order to stimulate production and to reduce unemployment, a State decided to use in its public institutions only coal mined within its boundaries. Other States immediately followed suit. "Buy at home" as a slogan appealed to one legislature; now its connotation finds sympathetic response in many of our States. And it is well known that, increasingly, technical, and administrative talent in public service has little if any market save in its own State of residence. Trade barriers, in other words, conform on the whole to a few simple patterns which, used by one political unit in an effort to favor its own, are copied by others; and the more copied, the more restrictive the barriers become.

Direct retaliations by affected States have followed inevitably. Retaliation leads to counterretaliation, and counterretaliation to still more stringent measures. In some instances, States have been on the verge of severing relationships and engaging in general commercial warfare. Such was the case, for instance, when three States, suffering from a beer-trade barrier in another State, threatened to cease purchasing any liquors whatever from that State unless the enforcement of its law was relaxed, and to boycott any and all products which came from the State.

The VICE CHAIRMAN. Do you state the effect of that in your paper?

Mr. BANE. Yes.

The VICE CHAIRMAN. What happened?

Mr. BANE. They repealed the law.

The VICE CHAIRMAN. And you were going to say that in your paper, weren't you?

Mr. BANE. Yes.

States producing cottonseed oil are definitely retaliating against the products of States which endeavored to limit the sale of commodities made from their product. Citrus-growing States retaliate freely, the one against the other, and several States, in order to assure that their retaliation shall in all cases provide an eye for an eye and a tooth for a tooth, propose over-all omnibus bills which authorize their administrative officials to retaliate in kind against any and all States which enforce laws discriminating against any product produced within their boundaries.

Although for a number of years the problem has been recognized as a serious one by various students of economics and other persons throughout the country, it was not until recently that the general public became interested in and concerned with this development.

Some 2 years ago the National Association of Commissioners, Secretaries, and Directors of Agriculture called attention to the great increase in trade barrier laws among the States. The Governors' Conference in 1938 departed from its 25-year-old custom of not considering resolutions and authorized a statement condemning interstate trade barriers and urging their discontinuance.[1]

In January 1939 representatives of 46 States, at the General Assembly of the Council of State Governments meeting in Washington, condemned the growth of trade barriers as "detrimental to the economic welfare of the country"[2] and instructed the Council to study the problem and to call a nation-wide conference for its the public.[4]

As a preliminary step, the Council organized a committee composed of competent experts to study the subject.[3] It established a research staff to determine the extent, nature, and location of trade barrier laws and, in cooperation with the Department of Agriculture and the Marketing Laws Survey, which had already undertaken extensive research in this field, it endeavored to assemble, classify, and tabulate all available information. This material, from the Department of Agriculture, the Marketing Laws Survey, and the Council, was made available to all State officials and to all State legislatures then in session. An effective educational campaign was organized with the assistance of an excellent committee composed of a number of editors of leading daily newspapers and magazines, and by this means the assembled material was made available to the public.[4]

In April 1939 the Council of State Governments called a National Conference on Interstate Trade Barriers which met in Chicago. Two hundred and eighty-five delegates from 35 States and the Federal Government discussed, in committee and sections meetings, existing barriers and made plans for their elimination.[5]

Since the conference was held while a number of legislatures were still in session, it was possible in many instances for the conferees to return to their States in time to put many of the recommendations of the conference into effect. The 44 State Commissions on Inter-

[1] See "Exhibit No. 2346," appendix, p. 16117.
[2] See "Exhibit No. 2347," appendix, p. 16117.
[3] See "Exhibit No. 2348," appendix, p. 16118.
[4] See "Exhibit No. 2349," appendix, p. 16118.
[5] See "Exhibit No. 2350," appendix, p. 16119.

state Cooperation worked one with the other and through the Council in calling attention to trade-barrier legislation pending in the several States and in bringing about its defeat.

This National Conference has been supplemented, during 1939 and the early part of 1940, by regional conferences on particular types of barriers.

The CHAIRMAN. Mr. Bane, I have turned to the appendix to read the exhibit[1] which you offered with reference to the action of the Governor's Conference in 1938. It strikes me that it might well be incorporated in the record here, so that I shall read it:

The Governors' Conference adhered to its traditional policy of not passing resolutions but agreed that the chairman, Gov. Robert L. Cochran of Nebraska, should be authorized to announce that the group unanimously opposed the principle of State trade barriers and were of the opinion that such barriers between the States should be removed. In the words of Gov. Bibb Graves of Alabama "there was more unanimity of opinion on it than on any subject that I have heard discussed by this conference in a number of years."

Now, may I ask whether or not Governor Cochran made such an announcement?

Mr. BANE. Yes; he made such announcement; issued it to the press; that is the text there.

The CHAIRMAN. This is the text of Governor Cochran's announcement?

Mr. BANE. Yes, sir.

The CHAIRMAN. And it was issued by way of a press conference?

Mr. BANE. Exactly as stated.

The CHAIRMAN. Well, did the conference at any time then or later take any more specific action?

Mr. BANE. Not other than that, the Governors' conference, as that statement indicates, has a bylaw to the effect that it does not adopt resolutions.

The CHAIRMAN. Now, how about these other references that you have in the appendix? Do you think you would like to have them incorporated in the record here?

Mr. BANE. If possible, please, sir.

The CHAIRMAN. Or do you want to have them incorporated at the conclusion?

Mr. BANE. At the conclusion probably.

The CHAIRMAN. Of your paper?

Mr. BANE. Probably better to have them incorporated at the conclusion.

The CHAIRMAN. Very well.

Mr. BANE. Results of Current Efforts to Minimize Interstate Trade Barriers. The net result of these cooperative efforts was that practically no additional trade-barrier acts were passed by legislatures in session in 1939 and a number of States repealed existing laws. The trend toward further economic isolation among the States has been stopped for the time being.

The VICE CHAIRMAN. Mr. Bane, do you have any compilation of proposed legislation in the various States that did not receive favorable action?

Mr. BANE. We have such a compilation, and in this paper I list some dozen or 15 instances.

[1] See "Exhibit No. 2346," appendix, p. 16117.

The Oklahoma Legislature repealed its port-of-entry law, and Texas dropped her proposal to establish a similar system. At the same time New Mexico approved legislation permitting the State to enter into reciprocal agreements allowing livestock growers to use their motor vehicles in New Mexico and neighboring States by paying license fees only in their place of residence. She further lowered restrictions on trucks bringing lumber and livestock into the State, while Arizona, her neighbor, defeated a bill to prohibit the transportation of inflammable liquids in motor vehicles in quantities greater than 1,500 gallons.

The strong opposition of the New York Joint Legislative Committee on Interstate Cooperation prevented the passage of a bill requiring that all materials to be used in the construction of public buildings, which were not mined or quarried in New York State, must be fabricated and finished within the State. In Ohio, a proposal to limit the purchase of coal for State institutions to that mined in Ohio was defeated as a result of the work of the Cooperation Commission. Public purchase preference bills were defeated in Connecticut, Texas, and Kansas. New Hampshire refused to pass a bill discriminating against out-of-State salesmen.

Oregon and Vermont lawmakers defeated bills imposing an oleomargarine tax, and Iowa defeated a proposed increase of taxes on this product. Mississippi, during its current session, has repealed its oleomargarine tax. Duties or inspection fees levied on farm products of other States were defeated in Arkansas, California, Florida, and Rhode Island. The agriculture departments of the Western States are cooperating in a very effective effort to eliminate discriminatory quarantines.

Indiana repealed her liquor port-of-entry system law which had been the cause of so much ill feeling on the part of her neighbors, and almost immediately Missouri followed with the repeal of her so-called antidiscriminatory liquor statute. That was the case I referred to a few moments ago. Illinois has recently revised her administrative practices with respect to the transportation of liquor to conform to those of neighboring States.

Many other States took similar action in defeating trade-barrier legislation and in repealing existing laws.[1] Subsequent witnesses will testify much more in detail about specific statutes in specific States.

Important as are the specific trade barriers which have been turned aside this year, of possibly greater importance for the future is the spirit of cooperation which has been displayed by legislators and Governors of so many States during 1939 and the early part of 1940. A number of Governors have stated that they would veto any legislation tending to establish trade barriers. The Maryland General Assembly passed a resolution which called upon each of the States to discourage the erection of trade barriers, and Florida declared its opposition to any measure directly or indirectly establishing any trade barrier between Florida and any other State. New York and Pennsylvania at a recent meeting adopted a policy to the effect that neither State would adopt any trade-barrier practice which would in any way discriminate against out-of-State products.[2]

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[1] Referring to "Exhibit No. 2365," on file with the Committee.
[2] See page 4, "Exhibit No. 2350," appendix, p. 16119.

From the above it is apparent that a beginning, and a good beginning, has been made in our common effort to reestablish a free-trade area throughout the United States. Because of the interest and cooperation of newspapers and periodicals, the radio and newsreels, the average citizen is acquainted with the problem. Little if any new legislation of this type has been adopted during the immediately past sessions of State legislatures, and in some instances, particularly obnoxious laws have been repealed—but hundreds of statutes are still on the books in the several States, many of which, in their enforcement, tend to limit markets, tax the consumer, and undermine our general economic system.

What can be done about the present situation? Everyone agrees that interstate trade barriers should be abolished. The question is how? There are at least four lines of attack:

(*a*) Court action.
(*b*) Congressional action.
(*c*) Interstate cooperation.
(*d*) Federal-State cooperation.

The CHAIRMAN. Do you want us to take that statement literally, that everyone agrees that interstate barriers should be abolished?

Mr. BANE. Mr. Chairman, I haven't met or discussed the matter with a single person, as I recall, in this country within the past 2 years, during which time I have talked about it a great deal, that didn't agree with the statement that interstate trade barriers should be abolished. Everybody is against interstate trade barriers, just as everybody is against sin. When we become particular, however, we then find some difference of opinion.

(*a*) Court action: Experience and recent judicial pronouncements demonstrate the inefficacy of this particular type of action in combating the general problem and in reestablishing freedom of trade among the States.

Action and decision can be had in a specific, particular, limited area if and when a case reaches the Supreme Court, but all too often such cases are not of a sufficiently general nature to enable the court to pass upon the broader implications involved. In two recent decisions, Justices of the Supreme Court recognized this situation and indicated that a general solution of the problem of interstate trade barriers must rest with Congress and the several States.

(*b*) Congressional action: The Constitution clearly empowers the Congress—

to regulate commerce * * * among the several States—

and prohibits the states, without the consent of Congress, from laying—

any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws.

Whereas Congress has, upon many occasions, exercised this power to regulate interstate commerce,[1] nevertheless, as pointed out in recent opinions by Justices of the Supreme Court, Congress has not assumed comprehensive jurisdiction in this field. It may well be argued that, the extent of the country being what it is with its many

[1] See The Supreme Court and Interstate Barriers, by Robert H. Jackson, Jr., Attorney General of the U. S., in The Annals, American Academy of Political and Social Science, January 1940.

differing conditions and diverse problems, the administrative difficulties involved in an extensive national program designed to this end would be such as to defeat its general purpose. On the other hand, certainly interstate trade barriers have an immediate and detrimental effect upon the national economy and should be, therefore, a matter of direct interest and concern to the Congress.

(*c*) Interstate cooperation: With respect to interstate trade barriers, perhaps to a greater extent than in any other field, the States have demonstrated, within the past 2 years, the practicability of interstate cooperation. Working through their central organization, the Council of State Governments, and with the cooperation of many other organizations of public officials—Federal, State, and local—and also with the active assistance of many business groups, such as the Business Advisory Council of the Department of Commerce, the United States Chamber of Commerce, the American Bankers' Association, the National Association of Manufacturers, the National League of Women Voters, and various consumer and labor organizations—the State legislatures have given much time and attention to the problem, repeatedly defeating measures designed to extend the scope of interstate trade barriers, and in many instances repealing those already in effect. Commissions on Interstate Cooperation, established in 44 of the 48 States and consisting of representatives from the State Senates, State Houses of Representatives, and State Administrative Departments, have had as their No. 1 objective the elimination of interstate trade barriers. These Commissions have devoted their attention not only to the general problem but have been notably successful in eliminating specific difficulties that have existed among adjoining and neighboring States.

The Governors of the several States have taken the lead in this general effort and upon a number of occasions have vetoed, or have announced that they would veto, any legislation which would operate to impede the free flow of commerce or to the detriment of sister States.

Many difficulties have been encountered by the States, however, in this effort, not only because of the many and varied business and commercial interests involved, but also because of our complicated, sometimes inadequate, and many times conflicting tax systems—Federal, State and local. And for these reasons, it has been generally realized that a comprehensive solution of the problem requires not only Federal participation but Federal cooperation with the States and the local governments.

During the past 2 years the States have received a great deal of help from the Federal Government in their campaign against interstate trade barriers. Notable has been the work done and the assistance rendered by the State Department, the Department of Agriculture, the Department of Justice, the United States Marketing Laws Survey, the United States Public Health Service, the Federal Alcohol Administration, the National Resources Planning Board, the Department of Commerce, and the Department of Labor. All of these agencies have either conducted extensive research to determine the extent, nature, and the effects of trade barriers or have cooperated with the Council of State Governments in conferences and meetings designed to acquaint legislators, State officials, and the public generally with the problem and to develop constructive pro-

grams for action. This cooperative relationship and the results attained within a very limited period of time would seem to indicate that the extension and further development of this joint attack upon the problem itself, and also upon many related problems which have a definite bearing upon the trade barrier situation, are necessary if trade barriers among the several States are to be eliminated within a reasonable period of time. Recent opinions written by Justices of the Supreme Court emphasize not only the great need for further Federal-State cooperation in the solution of this problem but indicate also that such close cooperation is necessary, and in fact imperative, in the tax and other fields if the solution is to be just and equitable alike to the Nation and to the States. Justice Hughes, in *McGoldrick* v. *Berwind-White Coal Mining Co.*,[1] January 29, 1940, states:

> Doubtless much can be said as to the *desirability of a comprehensive system of taxation through the cooperation of the Union and the states* so as to avoid the differentiations which beset the application of the commerce clause and thus to protect both state and national governments by a just and general scheme for raising revenue. However important such a policy may be, it is not a matter for this court.[2]

And Justices Frankfurter, Black, and Douglas, in *McCarroll* v. *Dixie Greyhound Lines, Inc.*,[3] February 12, 1940, state:

Senator WHITE. Are you quoting a minority opinion now?

Mr. BANE. Both dissenting opinions, Mr. Hughes in the New York case and Mr. Frankfurter, Justice Frankfurter, Black, and Douglas in the Arkansas case.

> Judicial control of national commerce—unlike legislative regulations—must from inherent limitations of the judicial process treat the subject by the hit and miss method of deciding single local controversies upon evidence and information limited by the narrow rules of litigation. Spasmodic and unrelated instances of litigation cannot afford an adequate basis for the creation of integrated national rules which alone can afford that full protection for interstate commerce intended by the Constitution. *We would, therefore, leave the questions raised by the Arkansas tax for consideration of Congress in a nation-wide surrey of the constantly increasing barriers to trade among the states.*[4] Unconfined by the "narrow scope of judicial proceedings" Congress alone can, in the exercise of its plenary constitutional control over interstate commerce, not only consider whether such a tax as now under scrutiny is consistent with the best interests of our national economy, but can also on the basis of full exploration of the many aspects of a complicated problem *devise a national policy fair alike to the states and our union.*[5]

The VICE CHAIRMAN. Will you pardon an interruption? I don't know whether I quite caught your statement. I understood you to say, or to make reference to the constantly increasing trade barriers among the states. I don't quite harmonize that with your previous testimony that states were tending to reduce pressure barriers and were repealing existing laws.

Mr. BANE. This statement, "constantly increasing barriers to trade among the states," was a part of a quote from a Justice's opinion. Whether trade barriers have been increasing or not depends upon the period of time considered, over a period of 10 years, without a doubt, they have enormously increased; within the last year and a half or two years there has been practically no increase.

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[1] *Berwind-White Coal Mining Co.* (8 U. S. Law Week 206).
[2] Italics supplied.
[3] *McCarroll* v. *Dixie Greyhound, Inc.* (8 U. S. Law Week 299).
[4] Italics supplied.
[5] Italics supplied.

The VICE CHAIRMAN. Going the other way.

Mr. BANE. To these sentiments, the Council of State Governments subscribes. Effective solution can be had only by joint action of National and State Governments, and in order to explore this complicated problem in its many aspects and to develop "a national policy fair alike to the States and our Union," it is suggested that this Committee recommend to the Congress the establishment at its present session of a continuing Committee on Federal-State Relations.[1] Such a committee, it would seem, could very well follow the pattern of the Temporary National Economic Committee and consist of representatives from the Senate, the House of Representatives, and the Administrative Branch of the Government. This committee, if established, could work in cooperation with the organization representing the states, namely, the Council of State Governments, and could survey the entire situation in all of its ramifications with the idea of presenting to the next Congress a comprehensive plan looking toward cooperation and participation by all levels of government which, it has been clearly demonstrated, is necessary for a practical solution of the problem of interstate trade barriers.

It would be our hope that such a committee, if established, would not confine itself exclusively to this one problem, but, in cooperation with the Council of State Governments and other interested organizations, would explore other major questions of Federal-State Relationships so pertinent to the effective operation of our government—problems arising from conflicting and overlapping tax laws, grants-in-aid and their effect upon education, highways, health, and welfare, as well as general State and Federal services, the development and coordination of our various systems of transportation, and problems of personnel inherent in the Federal, State, and local cooperative government which we have developed.

Such a committee, of a continuing nature, concerning itself with the general problem of Federal-State Relationships, would constitute an agency through which difficult problems could be solved, and through which our entire Governmental machinery could be made to work more efficiently and economically for the common good.

The CHAIRMAN. You refer to this as "our hope." Am I to infer from that that this recommendation is the recommendation of the Council on State Governments?

Mr. BANE. Yes, sir.

The CHAIRMAN. Do you mean that the Council has formally made such a recommendation?

Mr. BANE. I mean that the Executive Committee of the Council of State Governments in discussing this matter has decided that it would be very effective and very helpful if there could be a continuing agency here in Washington, as indicated, through which such problems having to do with Federal and State Relations could be considered.

The CHAIRMAN. I don't know how the other members of this committee may feel, but speaking for myself I am frank to say I would view with alarm any extension of the duties and responsibilities which I have borne as Chairman of this committee.

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[1] In this connection see also letter, subsequently entered, from Henry A. Wallace, Secretary of Agriculture, to Senator O'Mahoney, infra, p. 16114.

Senator WHITE. Speaking as another member of the committee, a recent one and a very humble one, I confess that I am a good deal more concerned with what the Federal Government is doing to all the States than I am by what one State is doing to another State. That may not be pertinent.

The CHAIRMAN. I don't know that it may properly be said that the Federal Government as such is doing anything to the States, can it, Senator White?

Senator WHITE. What prompted that comment of mine was what I take to be this recommendation that the Federal Government should in some way interest itself in State and local personnel. I would hesitate a long while before I would see the Federal Government have any interest, or at least any business in the personnel employed by my State or by my local community.

The CHAIRMAN. I rather imagine, if I am not mistaken, the Senator has been voting for just that sort of supervision in the Hatch Act.

Representative WILLIAMS. I had that very thought.

Dr. LUBIN. Mr. Chairman, may I clarify this? I want to beg the witness' pardon for having come in late, but as I see it, the problem is that the Federal Government over a period of a generation, particularly through State-aid grants and otherwise, has in a sense gotten the States to do certain things that otherwise would not have been done by those States. Through the original Wagner-Peyser Act, through Social Security, for many years through highway grants, the Federal Government in a sense has been playing an active part in determining what the State governments shall do, and as I see it, it is your contention—and I wish you would correct me if I am wrong—that by doing these things, the Federal Government has stepped in——

Mr. BANE (interposing). They are in.

Dr. LUBIN (continuing). And what you want to do is to at least clarify the respective positions of these branches of government so that we can get a clear picture of what function shall be reserved for the States and which shall be reserved for the Federal Government, and at the same time eliminate so far as we can any interferences either between the States or between the State and Federal Government, is that correct?

Mr. BANE. Entirely correct.

Mr. Chairman, irrespective of what we may think of the situation, today in practically every major function of government, we have cooperative government with the Federal, the State and the local governments all doing the same thing and cooperating in the same project. Many years ago——

The VICE CHAIRMAN (interposing). And increasing the governmental personnel and increasing governmental expenses sometimes, don't they?

Mr. BANE. Quite often governmental expenses have been enormously increased.

The VICE CHAIRMAN. The result seems to be when Federal and State governments do things together, the State winds up in being the "doee" in the thing.

Mr. BANE. In highway, in welfare, and to some extent in education, Senator, and in agriculture, since 1911 we have gradually devel-

oped this cooperative government whereby all three levels participate in the same activity.

Senator WHITE. If you would call it cooperative and coercive, I would agree with you.

Mr. BANE. It occurred to us that some such arrangement as this, whereby this cooperative approach as we have developed it and as we are continuing to develop it, could be worked out somewhat more intelligently perhaps, somewhat more smoothly, certainly, with respect to all three levels of government, such an arrangement would be available.

The VICE CHAIRMAN. You could possibly, at least, come to some agreement whereby the Federal Government might back out of some of the situations into which it has gone.

Mr. BANE. That is possible. Certainly if we had some agency through which the States and Federal Government and local governments could appraise some of these developing situations initially to see what effect a certain act, if passed, would have, what the repercussions would be in a particular State, in the localities, and so on, it would seem it would be somewhat helpful.

The CHAIRMAN. It occurs to the chairman to remark again that the fundamental question to be developed at these hearings, it seems to me, is the cause of this manifestation which we all see, and I am interested to have you say that some of the witnesses who are to follow will explore that field. Personally, I have always been inclined to believe that the reason for the development of these "buy-at-home" movements and the passage of laws intended to stimulate and protect local enterprise, has been the result of the development of the means of transportation and communication, and a result of the progressive concentration and growth of economic agencies by which the control of economic life is frequently taken beyond the boundaries of particular States.

I have no doubt that in several of the western States people find themselves carrying on an economic life in competition with huge agencies which were brought into existence by other States, but which dominate a large part of our economic life, with the result that the opportunities for local development have sometimes been limited, at least in relation to the entire national picture. So that from my point of view we are here dealing with another aspect of the problem which has arisen as a result of the expansion of business enterprise.

The problem of the so-called little businessman, of small business, is accentuated, I think, by these various laws in various States.

Mr. BANE. I have in my statement confined it to the governmental aspects, leaving to future witnesses the economic aspects, since they are more competent in that field than I am.

The VICE CHAIRMAN. Mr. Chairman, I would like to ask this witness, before he leaves, a few questions.

It seems to me, Mr. Bane, it might be profitable to have in the record a little clearer statement with regard to this organization of yours, and the causes and conditions which brought it into existence. As I understand from your statement, it is a sort of congress of the States in which they meet together through some of their official personnel to consider matters of interest to the States, and those matters which they seek to remedy are to be dealt with through their State governmental machinery.

Mr. BANE. Yes, sir.

The VICE CHAIRMAN. And while it is obvious, it might be in the record, perhaps, the things that have brought these States together and into cooperation have been the things that were wrong and had to be done.

Mr. BANE. Particularly with respect to interstate matters; yes.

The VICE CHAIRMAN. Problems about which something had to be done. I will ask you whether it isn't a fact as these States meet together and as governmental units work together in the solution of matters in which they are commonly interested, is there a tendency to bring the States closer together cooperatively?

Mr. BANE. Yes, sir.

The VICE CHAIRMAN. So in a sense we are developing through this activity and through the problems in which they have a common interest, a sort of vitalized extraconstitutional confederacy of the States.

Mr. BANE. I don't know, Judge, that I would go that far. We are certainly developing an organization and agency which endeavors to do one thing, primarily, and that is to make State government more effective as a governmental agency.

The VICE CHAIRMAN. I am trying to put in the record what is in my mind, and I believe it is true, and I think it is perhaps under our present circumstances the most important governmental development in the whole governmental organization, if it is true: When these States meet with reference to these matters you have referred to, they meet as sovereigns.

Mr. BANE. Right.

The VICE CHAIRMAN. And they meet, assemble formally, represented by their agencies who have about the same authority—I don't want to get too academic about it. I would like to make this statement for the consideration of the country, that probably these States in attending to these matters in which they have a common interest are making as great a contribution to the preservation of our system of government as is being made by any organization or agency in America.

Mr. BANE. Thank you, sir.

The VICE CHAIRMAN. Because if they can preserve their sovereignty and take care of matters which, unless they do take care of them, will eventually drift here to this great Federal Government, they are making a great contribution.

Mr. BANE. Certain it is that unless the States can become effective operating units of government, people are going to look elsewhere for services, and certain it is that our job, the job to which we are devoting ourselves constantly, is the job of making the State an effective governmental unit for the purpose of fulfilling the duties and responsibilities that must be assumed by it.

The VICE CHAIRMAN. I think that is all, because I would probably try to make a speech.

The CHAIRMAN. It is true, is it not, Mr. Bane, that as the years go by, interstate commerce has tended to become constantly more and more important.

Mr. BANE. Exactly, as we have developed our national economy.

The CHAIRMAN. When the Constitution was drafted and the Union first founded, our economic life was much more local than it is now,

and with the development of the railroad and the expansion of national enterprises and national ventures, it became necessary for the people to turn in greater and greater degree to the National Legislature for rules to govern their economic life.

Mr. BANE. Yes, sir.

The CHAIRMAN. So what we are dealing with here is another phase of the effort which is constantly going on to adjust the life of the individual to the national organizations by which its economic phases are carried on.

Mr. BANE. And in order that that adjustment might be orderly, coordinated, and directed toward the greatest good, we made the suggestion which we did in this statement.

The CHAIRMAN. The purpose of all of these so-called restrictive laws, these trade barriers, has obviously been to build up and to expand local enterprise. Now, I take it it was not the intention of the Council of State Governments in any way to discredit that purpose or to break-down that objective or to prevent its attainment.

Mr. BANE. Our contention is simply that it doesn't do it.

The VICE CHAIRMAN. And if the States dealing with the more difficult problem resulting from these developments to which Senator O'Mahoney has made reference, can demonstrate their ability to deal with it, they will go very far to convince the people that the States are not outmoded in their system of government.

Mr. BANE. Certainly.

Dr. LUBIN. Mr. Bane, does your organization attempt to bring about any uniformity in the activities and laws of the various States?

Mr. BANE. Our organization works very closely with the Commission on Uniform State Laws.

Dr. LUBIN. Let's take the case of child labor as a case in point. In other words, is your organization interested in seeing to it that the states have some uniformity so industry won't move from one state to another to take advantage of the more lax child-labor laws?

Mr. BANE. Our organization is interested; yes; but our organization has not attempted to promote uniform state laws on many subjects.

Senator WHITE. You have stated it did not, or it did?

Mr. BANE. I said our organization would be interested in uniform State laws but our organization has not attempted to promote uniform State laws in many subjects yet. On some occasions we have, Senator.

Mr. DONOHO. Mr. Chairman, did you wish any further identification of the exhibits by the witness?

The CHAIRMAN. If you will be good enough to offer those that you want inserted in the record they will be received.

Mr. DONOHO. I haven't discussed this matter previously with Mr. Bane and I am not sure what he would like to have in.

Mr. BANE. Any of that material you would like.

The CHAIRMAN. Will you be good enough to indicate the exhibits which you feel should be attached?

Mr. BANE. All except perhaps the bibliography. I don't know whether you wish to attach that bibliography or not, but all the others I should think should be attached.

Mr. DONOHO. Mr. Chairman, I would like to introduce these exhibits, and I suggest each one be numbered consecutively—that is the letter from the President to Governor Cochran.

The CHAIRMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2345" and is included in the appendix on p. 16117.)

Mr. DONOHO. The next is The Thirtieth Annual Convention of the Governors' Conference, Oklahoma City, Oklahoma, September 26–28, 1938.

The CHAIRMAN. It may be received.

(The statement referred to was marked "Exhibit No. 2346" and is included in the appendix on p. 16117.)

Mr. DONOHO. The next is the resolution passed by the Fourth General Assembly of the Council of State Governments, The Mayflower, Washington, D. C., January 18–21, 1939.

The CHAIRMAN. It may be received.

(The resolution referred to was marked "Exhibit No. 2347" and is included in the appendix on p. 16117.)

Mr. DONOHO. The next is the list of names of the Special Committee on Trade Barriers.

The CHAIRMAN. It may be received.

(The list referred to was marked "Exhibit No. 2348" and is included in the appendix on p. 16118.)

Mr. DONOHO. The next is the list of names of the Trade Barriers Committee on Public Relations.

The CHAIRMAN. It may be received.

(The list referred to was marked "Exhibit No. 2349" and is included in the appendix on p. 16118.)

The CHAIRMAN. I see the next are the resolutions adopted by the National Conference on Interstate Trade Barriers. Did you define that?

Mr. BANE. Yes. That was a specific conference held on this sole topic, arranged for general nation-wide discussion on this subject, a conference held in Chicago last April.

The CHAIRMAN. The exhibit may be received.

(The resolutions referred to were marked "Exhibit No. 2350" and are included in the appendix on p. 16119.)

The CHAIRMAN. Are there any other questions to be asked of Mr. Bane?

You may be excused.

(The witness, Mr. Frank Bane, was excused.)

The CHAIRMAN. What is your desire now?

Mr. DONOHO. I would like to call Dr. Melder.

The CHAIRMAN. Do you solemnly swear the testimony you are about to give at this proceeding shall be the truth, the whole truth, and nothing but the truth, so help you God?

Dr. MELDER. I do.

TESTIMONY OF DR. F. EUGENE MELDER, ECONOMIST, CLARK UNIVERSITY, WORCESTER, MASS.

GENERAL ECONOMIC AND SOCIAL ASPECTS OF THE TRADE BARRIER QUESTION

Mr. DONOHO. State your name and address, please.

Dr. MELDER. Frederick Eugene Melder, Clark University, Worcester, Mass.

Mr. DONOHO. Dr. Melder, you are going to testify, I believe, on the historical background and the economic and social significance of trade barriers, are you not?

Dr. MELDER. Yes.

Mr. DONOHO. Will you please outline briefly for the committee your qualifications to discuss this subject.

Dr. MELDER. I received two degrees in the University of Washington toward my higher education and then worked for a doctorate at the University of Wisconsin, and in the course of my preparation for the doctor's degree, I wrote a doctor's thesis on this particular subject. That was 7 years ago, when I began to investigate the subject. I have carried on my research and I can say that I have been constantly interested in it since that time.

In the meantime, I have written a dozen or fifteen magazine articles and one book on this subject. This book was perhaps the first one that gave a general treatment of the subject that has been published. I might mention that I served as economic advisor for the National Conference on Interstate Trade Barriers which was held in Chicago last year, April 1939.

Mr. DONOHO. That was a sub-part of the Council of State Governments?

Dr. MELDER. I believe it was organized by the Council of State Governments. The States and the council put it on together.

Mr. DONOHO. Dr. Melder, would you please develop what in your opinion is the relationship between our internal trade policies and our national economic development?

Dr. MELDER. We in the United States have been more fortunate than most peoples in that we have had higher standards of living than perhaps any other country in the world. This good fortune is dependent, of course, upon very great per capita production, and that has rested on four main foundation stones. The first of these is an abundance of natural resources which this country has possessed perhaps in greater variety than almost any other country in the world.

Secondly, the industrial revolution which has been in progress since the founding of this country gave us an efficient industrial system to use these natural resources.

Thirdly, American genius, business enterprise, labor skill, and engineering skill, have developed the intelligence and the ability to run our industrial system; and last, but not least, the Constitution of the United States established legal institutions which made it possible for the economic system to develop along lines which would promote the greatest efficiency and regional specialization, namely along the lines of internal free trade.

It has been said that this internal market in the United States is the greatest market in the world that is free from trade barriers or encumbrances. That is a true statement, only relatively speaking, inasmuch as the present situation does indicate that there has been some break-down of this original free market.

This great internal market made it possible for industry to develop on broad lines almost from the beginning of the history of the country. One result, quite logically, was mass production. American industry was built on broad lines to utilize our wealth of natural resources and our labor, skilled labor and unskilled, and the intelligent leadership and engineering which we possessed.

The Vice Chairman. Would it interrupt you to explain what you mean by mass production in connection with this inquiry? You say it tended, as I understood your statement, toward the development of mass production. Would that mean that it tended toward the prevention of production by a great number of small units? What I am trying to get at is, do you use mass production as distinguished from production by many small units?

Dr. Melder. Not strictly speaking. I should say that it is possible for a small unit of enterprise to be engaged in mass production of some particular specialty, as I have in mind certain manufacturers of automobile accessories which, in regard to size of plant, are rather small, and yet because they supply a product which can be produced in relatively large numbers in a free market, we have a small plant that is engaged in mass production.

The Vice Chairman. Would you say you mean by mass production the production by a relatively small number of units of any given thing having some circulation in commerce?

Dr. Melder. I don't think I quite understand your question.

The Vice Chairman. I say, then, would you mean by mass production, production by a small unit of a large percentage of any given thing?

Dr. Melder. That would come within my definition; yes.

I would include under mass production anything which is produced, no matter what fraction of the market it supplies, under methods which enable a high degree of industrial and technological efficiency.

The Vice Chairman. Then if it is widely distributed, if it is a highly developed unit, so far as technology and efficiency are concerned, would that be mass production? What I am trying to get at is what you mean by mass production.

Dr. Melder. I suppose it is a relative term in a sense. We can say that any industry has a degree of mass production if they utilize the most efficient methods which are available to them and carry it out with a certain degree of, perhaps, specialization in the division of labor.

The Vice Chairman. Then what is not mass production?

Dr. Melder. Individual production for relatively small demand. To give you a good example, I might cite the instance of one particular branch of production which is certainly not mass production, namely hair cutting. It is produced to an individual order, and it may be run——

The Vice Chairman (interposing). That is mass reduction instead of mass production, isn't it?

Dr. Lubin. Mr. Melder, I wonder, in order to clarify the idea for myself, if it wouldn't be more clear if we talked not so much about mass production but mass consumption? In other words, as I see it, it doesn't make much difference whether you have 1,000 firms making the product or 500 firms making the product, the important thing is, could you have a market sufficiently wide and sufficiently large to make it possible to turn out a large mass of these units?

Dr. Melder. I would agree with that 100 percent, and I think you have made the point better than I have made it here. That was my intention to make that point.

Dr. LUBIN. In other words, there are certain industries that just don't lend themselves to mass production. I am thinking of a custom tailor as contrasted with Hart, Schaffner & Marx. You couldn't have Hart, Schaffner & Marx without a territory into which they could ship tailored clothes.

Dr. MELDER. That, in general, is correct, although I don't think it means production for 130,000,000 people is necessary.

Dr. LUBIN. What I am thinking of is that you have Hart, Schaffner & Marx and hundreds of other small firms that may employ 10, 15, 20, or 50 people, but the fact still remains you can have them all only because you can have a free market.

Dr. MELDER. That is correct.

The CHAIRMAN. Then the essential difference in your mind is that which exists between custom trade and standardized trade, or production for custom and production according to standards for any consumer?

Dr. MELDER. Yes, when the wants of the customer are sufficiently standardized to enable volume production, to get away from the word "mass," of that good, then we can develop an industry that will be efficient to produce for that market.

Mr. HAYES. Regardless of whether or not machinery is used necessarily, assuming that machinery has not been developed to take care of the volume production?

Dr. MELDER. That would be possible, yes.

The VICE CHAIRMAN. I am not satisfied with those answers at all. It may be I am kind of thick-headed but we got to talking about hair-cutting which gets me all bothered because it gets me rattled and self-conscious.

Dr. MELDER. I had in mind when I mentioned hair-cutting simply production for individual order. The better example would be the custom tailor which was brought up to illustrate this point.

The VICE CHAIRMAN. Let me ask you this and I won't bother you any more on this particular point. As I understood your statement, it meant that these restraints being absent, it made it possible for a great organization like one of the auto manufacturing concerns to develop a great plant because it could ship anywhere in the country and find the market, whereas if this freedom of transportation did not obtain, and there were State barriers, it would probably be true that in each of the States there would have to develop somebody to manufacture automobiles.

Dr. MELDER. I think I will take up that point a little later. I think I can organize it as well to bring it in when I mention what might exist under other conditions.

The VICE CHAIRMAN. But the trouble is I have asked the only bright question I will be able to develop, and I would like to have it answered.

Dr. LUBIN. Might I interrupt, and let's talk about the question of oil wells.

The VICE CHAIRMAN. Wait a minute and let's see if the Doctor can answer this.

Dr. MELDER. Certainly, if it were impossible or too costly to produce automobiles in order to get them into the various States over trade barriers, then the States would develop their own automobile

industries, and I have a notion that we wouldn't have cheap automobiles.

Dr. LUBIN. But that same argument applies not only to large-scale production like the automobile industry, but let's take the case of oil wells. You couldn't support the number of oil wells in Texas today if Texas couldn't sell oil outside of Texas.

Dr. MELDER. And you couldn't support the number in Texas, California, Oklahoma, or Kansas.

Dr. LUBIN. And it isn't necessarily a question of size. They may be large owners or small owners, but it is because the market is so wide that you can expand and develop and give opportunity to individual people to develop a field and get rid of their products.

Dr. MELDER. Quite true.

The VICE CHAIRMAN. Do you conclude that if there were some trade barriers that the people who don't live in States where they have gasoline wouldn't have any automobiles, and that if they had automobiles wouldn't they have to have gasoline to run them? I think I won't press the thing further.

Dr. MELDER. If you want to press it far enough——

The VICE CHAIRMAN (interposing). No; I think I will just back out of this.

The CHAIRMAN. Suppose we get the witness' answer, and then we will quit.

Dr. MELDER. As a result of this condition of a free internal market, I would state that we have developed a high degree of regional specialization, with the result that the Pacific Northwest supplies a very large proportion of our lumber, Michigan supplies a large proportion of our automobiles, and so on. As goods could move freely in this national market, it was possible for a producer or manufacturer to locate his plant wherever conditions were economically most favorable, from Maine to California, and from Florida to Washington, and thus we have a very highly developed and specialized industrial system.

The CHAIRMAN. Are you assuming that at the time this development took place, there were no trade barriers of any kind? What we are discussing here, of course, are trade barriers that have been erected or alleged to have been erected by the States through the passage of laws.

Dr. MELDER. That is right.

The CHAIRMAN. Were there not prior to that time trade barriers of a different kind imposed by commerce and industry itself? Have you considered, for example, the effect of the railroad rebating system upon the regionalization of industry?

Dr. MELDER. Exactly, and that is a very good case in point. Whenever an agency of transportation starts out, in its beginning it has been regulated. That has been the history of every great agency of transportation we have, and, in the course of its development, you get around to the point where the States have in the past stepped in to protect the shipping public. In due course of time—this has been the history of every type of transportation so far—we have found that State regulations conflicted to such an extent that it was necessary, in order to unburden interstate commerce, to regulate that industry so as to stand rdize the conditions or standardize the rates, through rebates and what not.

The CHAIRMAN. In other words, when business expanded to such a degree that the States themselves were no longer capable of regulating commerce in the public interest, because there ceased to be local commerce or State commerce and it had become interstate or foreign commerce, then the public turned naturally to the Federal Government as the only agency with sufficient power and jurisdiction to regulate interstate commerce in the public interest.

Dr. MELDER. That has been true in a number of cases.

The CHAIRMAN. But while that development was going on and the public was turning from State remedies to national remedies, were there not barriers of various kinds imposed by industry itself?

Dr. MELDER. There were barriers imposed partly by industry through, perhaps we might say, monopolistic practices in parceling out markets and regulating the sale of goods in various markets, and also the regulations of the States which were not intended to discriminate against interstate commerce became burdensome because of their lack of uniformity. That happened in the railroads in the 1870's. The Granger laws were cases in point of that type of thing. Certainly, we could never have reached our present economic development if we hadn't had this great free trade area. We would have been like central Europe or some other areas.

Mr. DONOHO. Would you develop that? What has happened in other parts of the world?

Dr. MELDER. For example, take the case of central Europe, which before the first World War was dominated by two countries, Germany and Austria. These countries were relatively prosperous at that time. As a unit they were relatively well balanced, and together they almost succeeded in winning the greatest war the world had ever seen up until that time.

However, in the final defeat, Austria was divided up into several parts and these parts became independent political entities, with the result that economic unity and prosperity in central Europe was broken down.

Competent observers believe that the major cause of the economic downfall of Europe, and democratic Europe, in the 1930's was due to the weakened economic conditions as the result of attempts to fence off one another from their various markets, and they also believe that, had there not been so much intense building of trade walls in that part of the world, it is possible that the growth of dictatorships could have been checked in time and we might have saved a lot of the trouble that has gone on since.

Instead, of course, we know very well that the world has been involved in an economic war since 1929 or 1930, and most of the nations have been striving to become more self-sufficient in order to cut themselves off from depending upon what is done in other countries for their economic prosperity. In the process of this, they have built tariffs, established trade quotas, and blocked currencies and exchange controls, and many other devices, some new and some old, by which they have endeavored to protect their home industry and to keep the unwanted goods of neighbors out of the country. In some cases they have followed these policies in order to build up industries for war-making purposes.

These economic weapons have only recently been overshadowed, of course, by the military war now going on. The reason I mentioned

this economic struggle of the past 10 years was to show how it set the stage for the war on the military front that is now going on. I don't want to pass over it.

The VICE CHAIRMAN. Doctor, may I understand you, if you please? Is it your statement that trade barriers among the small central European nations have had a direct responsibility as far as this war is concerned?

Dr. MELDER. Yes; I should be glad to cite a few examples. I wouldn't like to pass over, however, the ancient hatreds and nationalism that existed amongst those peoples as minority groups under the rule of one or another political government. They no doubt had some part in contributing to the extremes of self-sufficiency that those little nations tried to go to.

Now if you would like I should be glad to give some examples.

The VICE CHAIRMAN. I think that would take you too far afield, I guess; it is a very interesting statement; I hadn't thought that these small nations had done any fighting among themselves very much.

Mr. DONOHO. Perhaps an illustration would be helpful, Dr. Melder. I know you have some interesting ones in mind.

Dr. MELDER. Well, I am indebted to Dr. Joseph Herbert Furth, of Lincoln University, Pa.,[1] for a number of examples which he actually experienced or has records of, and I should be glad to cite some of these; for instance, before the World War the central European textile industry had been a prosperous business with its weaving mills in Bohemia—Czechoslovakia became Bohemia after the war—and its spinning mills in Austria. This division of labor seemed intolerable to the governments that were created after the war, with the result that Bohemia had to set up spinning mills and Austria had to obtain weaving mills, but the population couldn't consume the product of two sets of mills, where one had existed before.

The result was that there was a crash. Now, deeply involved in the textile industry of central Europe were several big Austrian banks, and the crisis in 1931, in the Austrian banking system, which spread from Europe throughout the world, was in part due to heavy investments in the textile industry, and the failure to realize on those investments during the post-war period.

The VICE CHAIRMAN. I see I am taking you too far afield by that question.

Dr. MELDER. I would be glad to cite one or two cases of specific industries and their development to show—I think there is really a good parallel to draw there between the central Europe——

The CHAIRMAN (interposing). I think it is evident that the witness desires to draw these parallels because it seems to me that he is developing the argument that self-sufficiency is either not desirable or not attainable, and that the attempt to develop self-sufficiency among the smaller States in Europe brought about the deplorable conditions of the present day, and I assume that you intend to draw a parallel and say that any effort by law to develop self-sufficiency among the States of the Federal Union might have very undesirable effects here?

Dr. MELDER. That is my thesis in general, Mr. Chairman.

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[1] Dr. Melder subsequently requested the committee, in this connection, to state the sources from which Dr. Furth took his figures. They are: Reports of the Austrian Institute of Business Cycle Research; additional information was received from Dr. F. Machlup and Dr. O. Morgenstern.

The CHAIRMAN. It occurs to me to suggest that the instance which you gave a moment ago about the developmen of mills in Bohemia and in Austria to duplicate the various phases of the textile industry which each of these nations separately had before the war, and your conclusion that that was an undesirable and unfortunate development, may overlook the fact that to restrict the textile trade to the facilities that existed before the war would mean only to gear production to the lower level of consumption. Does it not occur to you that the purpose of the governments, the Government of Czechoslovakia, was perhaps to increase the consuming power of the people of Czechoslovakia, and isn't it worthy of consideration at least that the continuous development of technology, increasing our power to produce constantly, makes necessary the development of consuming ability, and that without that development we are not going to get very far in the solution of our problems?

Dr. MELDER. I agree with that 100 percent, and I would only add that if we are going to get that greater consuming ability then regional specialization and efficient production must lower the cost of these goods to the point where they do become cheap enough for consumption. I might cite another case in central Europe, to show how that worked out: Hungary had been the granary of the Austro-Hungarian Empire before the World War. After the World War, of course, Hungary became a separate nation. Austria had supplied, among other industrial products, paper for the whole central European region. Hungary, after the war, decided that, in order to build up home industry and help build a self-sufficient nation, they should have paper mills, although they didn't have pulpwood supplies or cheap sources of power.

Austria found itself with a very curtailed market for paper; several paper mills were moved to Hungary and they developed new sources of power and had to use very expensive pulpwood, which was imported from outside the country. The result was that Austria began to have to use its more or less mountainous regions for trying to grew wheat instead of pulpwood, and Hungary was trying to produce paper in a country that really had no natural resources that were well adapted to producing paper, and the cost of paper went much higher and there was a smaller amount of paper produced, a good deal smaller.

The Austrian paper industry fell off to where it was only producing 11 percent of the value of paper it had produced in the prewar years. The extremes of this might be shown in another case in central Europe—namely, the oil industry. Rumania possesses the only sizable oil reserves in the central part of Europe and, naturally, became a point where the oil of eastern Europe was refined and shipped, but that, of course, was immediately seized upon by some of these other small nations as a thing that was dangerous to the welfare of the country.

They must have their own oil refineries, with the result that legislation was passed to make it difficult to import the crude oil into the other countries.

Mr. PIKE. You mean to import refined oil, don't you?

Dr. MELDER. To import refined oil; thank you. Following that, oil refineries were built in some of these other countries and in Hungary, which is more or less between Rumania and some of the

other countries that were markets for this oil. They set up refineries to produce what they called Kunstol, or artificial oil, which was neither refined nor crude. It was in between. That way they could get through these trade restrictions which prevented the shipment of refined oil.

Well, one producer, or one enterpriser, in Hungary saw the possibilities here of getting his oil into western markets on even more favorable terms than the Kunstol and so he set up a plant to turn this semirefined Kunstol back into crude oil. Rumania, I should explain, had put restrictions upon the export of unrefined oil, so, in order to meet all of these restrictions here, they were turning it into a semirefined product, turning it back into a crude product, and finally turning it back into a refined product for consumption, with very serious results.

Among other factors or reasons for the backwardness of transportation, in that part of the world, that Dr. Furth reports, are the very serious restrictions that were put on motor transportation in that part of Europe for the purpose of protecting railways. Some of them stayed on. The result was that in some cases commercial haulers who were hauling their own products couldn't afford to transport their products even short distances by motortruck. This kept the motor-trucking industry down, but it helped at least to keep the country in a state of depression so that there was really not an awful lot of goods to transport for any industry, including the railroad industry.

If I had time, I could draw some parallels in our own history, as well as in central Europe, but I should just like to draw this conclusion, that the chairman has already suggested, and that is that self-sufficiency, at least on the part of nations which don't possess most of the essential raw materials and resources for efficient production of the consumer goods of life, never works. It hasn't worked, and so far as I can see in the future, it will not work.

The CHAIRMAN. Well, the United States, of course, is a nation which does possess the necessary resources for an economy of self-sufficiency, is it not?

Dr. MELDER. We possess a great many of the resources, and come nearer to possessing all of them than perhaps any other country on earth, but we don't possess all of them, as is evidenced by our shortage of nonferrous metals, for example; also tropical products which can't be produced in the United States, and for which we haven't developed adequate substances or wouldn't be willing to accept substitutes, such as coffee, bananas, and rubber, and products of that kind. So, even the United States, I don't think, would be a successful self-sufficient economy.

The CHAIRMAN. There has been tremendous progress in the development of substitutes, particularly through the chemical industry; isn't that true?

Dr. MELDER. That is true, without any doubt, but I still think that some of the essential raw materials such as manganese in steel—as I understand it, it would be impossible for us to run our steel industry at present without this particular raw material, which is not obtainable within our borders.

The CHAIRMAN. Have you considered the reports which come from Europe now of the alleged success of the German Reich in developing

self-sufficiency, a success which has been carried to such a point that many observers believe that the task of the Allies, Great Britain and France, has become most difficult?

Dr. MELDER. That is a success from a different angle than raising a standard of living. That is a success from the angle of producing the essentials of war at all costs, or whatever the cost may be. It is true that Germany has achieved a certain degree of self-sufficiency, even for gasoline and motor oil, producing it from coal instead of from petroleum, but the difference in cost, if one begins to figure that, makes it prohibitive in cost for any but a dictatorship, where the labor can be drafted to produce.

The CHAIRMAN. And have you any information on the standard of living in Germany under this economy?

Dr. MELDER. I have to confess I don't know what the standard of living is in Germany today. Such reports as have been available I think were subject to a good deal of possible misinterpretation. My point is this, that——

Dr. LUBIN (interposing). Dr. Melder, may I interrupt at that point? Isn't some portion of Germany's self-sufficiency today not necessarily the result of her producing these things, but for having stored up, over a period of 5 years, a huge supply of things she has not yet found a substitute for—copper, manganese, and other things of that sort? In other words, she has huge resources which she bought elsewhere and set aside for just such emergency as the present.

Dr. MELDER. I think that is unquestionably true.

Mr. PIKE. In some instances, I am quite sure she has prevailed upon subsidiaries of British firms to build up for Germany their own stores of war materials. I refer particularly to smelting firms which have had to keep an increasing amount of copper and lead on hand for the last 3 or 4 years; a little painful for the British boys to have to do that.

Mr. HAYES. Dr. Melder, you said you were mentioning the parallel of central Europe to make the point that where basic resources are not readily available the building up of a self-sufficient economy is too costly. Do I state correctly the point? It seems to me there might be a further point involved, and I want to know if you have this in mind, which possibly more or less clarifies that, and that is this, that where you had an area of free trade, free from internal trade barriers, even though all of the necessary sources for self-sufficiency are not present, you do have cheaper production if those that are present are developed free from trade barriers?

Dr. MELDER. That is perfectly correct, in my opinion.

Mr. HAYES. I was wondering if that was part of your thesis as well.

Dr. MELDER. Yes; I would certainly extend it to include even those articles that you have mentioned which the country does not have as resources.

Mr. HAYES. It seemed to me there was a parallel there between the old Austro-Hungarian Empire, which was economically a unit to a degree before the nations that were born at Versailles came into being, and the United States.

Dr. MELDER. That is right.

Mr. HAYES. Thank you.

The CHAIRMAN. It is now 12:30. Would this be a convenient place to interrupt the proceedings?

Mr. DONOHO. Yes; I think it would.

The CHAIRMAN. Then, Dr. Melder, when the committee recesses it will recess until 2:30, when you may come back. Before we recess I desire to state that the Securities and Exchange Commission has called my attention to an error appearing in "Exhibit No. 2344" which was presented during the hearings on insurance.[1] This was a schedule entitled "Net cost policy surrendered end of twentieth year," introduced in connection with the testimony of Mr. Ernest Howe. A new schedule has been prepared eliminating the errors contained in the previous exhibit and this schedule is submitted at the request of the Commission in substitution for the exhibit originally introduced. This substitution will require a slight change in Mr. Howe's testimony on page 196 of the verbatim transcript for February 29, 1940, immediately under the heading "Historical net cost." The first two paragraphs of this discussion should be amended as follows:

A general impression of what the comparison reveals may be had by comparing the net cost policy surrendered end of 20th year for Whole Life Policies at age 35. This data on the 1939 scale appears on page 286 of the Exhibit. The historical net cost in the case of the Mutual is $76.50 or 57.12 per cent of the net cost derived from 1939 scale. On the historical scale the Mutual Life ranks 13th instead of 23rd on the 1939 scale.

In the case of other companies the historical net cost varies from 66.85 percent of 1939 net cost in the case of the Northwestern Mutual Life Insurance Company to 111.61 per cent for the John Hancock Life Insurance Company and 164.44 per cent for the Pacific Mutual.

(Whereupon, at 12:35 p. m. a recess was taken until 2:30 p. m. of the same day.)

AFTERNOON SESSION

The hearing was resumed at 2:30 p. m. upon the expiration of the recess, Representative Sumners, the vice chairman, presiding.

The VICE CHAIRMAN. The committee will please come to order.

Mr. DONOHO. Dr. Melder, will you come forward, please?

Dr. Melder, when we recessed this morning you were discussing the barriers to trade and the restrictions on trade in small European nations. From there the discussion went into questions of self-sufficiency of large nations, including this nation. Now, as you know, we are concerned primarily in this hearing with questions of internal restrictions on trade in the United States, and getting back to that subject, as I understand it, your thesis is that restrictions on internal trade are bad. Is that a universal proposition or are there exceptions to that proposition?

Dr. MELDER. I should say that there are exceptions, but the only exceptions that are warranted are those which protect the public health, public safety, and public morals, for example, and they are not justified because they increase the prosperity of the country. They are justified on other grounds. They don't increase the prosperity; in fact they may decrease it to some slight extent, it is conceivable. Their benefits, however, in preventing disease and injury outweigh their harm as trade barriers if they should have any harm, and all of the other barriers are the ones that I am speaking against, that

[1] See Hearings, Part 28, appendix, p. 15421.

is, all barriers to interstate or intercommunity trade which have no basis in, you might say, the public health and welfare.

Mr. DONOHO. Yet, as I understand it, you say that in recent years many States have passed many laws which go beyond these legitimate purposes.

Dr. MELDER. Yes; that is true. Up until a year ago, approximately, these statutes have been on the increase.

Mr. DONOHO. Speaking generally, Dr. Melder, how do you account for this trend?

Dr. MELDER. Well, usually this trade barrier legislation has been enacted as a reaction to the demands of those that are hard pressed, either by competition or by depression or by changes in methods of doing business. Most of these laws represent an attempt to achieve greater economic security on the part of some home groups in the face of some of these new forms of competition or changes in business conditions. Some obstructions arise from the fact of, for example, as was brought out this morning, the changes in forms of transportation and then a lag in changing of State laws so as to standardize them in order to get the benefit of this new form of transportation. I mentioned that in the case of railroads this morning.

And then we have no doubt barrier laws which are simply devices of one or another small special interest group to get protection in their home market. On the other hand, in some cases, no doubt, I think there is a tendency to call any kind of law that they don't like a barrier law. I think that that is hardly legitimate. Probably some of the propaganda about barrier laws may be simply attempts to get out from under regulation of economic activities.

I would say that that, in general, without being too specific about it, is the way these barrier laws come to be.

Mr. DONOHO. Mr. Melder, would you be more specific in describing some of these forces that you think account for this trend?

Dr. MELDER. Certainly. Three factors, or forces, have been influential in producing the main forms of internal barriers in the United States. The first, and perhaps most important of these, is the world economic crisis and depression of the past decade. This has been felt by most businesses, in a reduced volume of business or reduced income. It also has severely crippled state and local governments by reducing their revenues at the very time that their problems and functions were increasing.

A second force is represented by changes in the forms of marketing and transportation and handling of produce, or the threat of new competition due to such changes. This factor I think can be exemplified best by the growth of Nation-wide distributors, for one illustration, which use mass distribution methods, and they shortcut older marketing channels, performing, we will say, wholesaling and retailing functions all in one organization. Or they streamline the marketing services that they perform and thus reduce the costs of distribution simply by reducing the number of services in some cases. Examples of this might be direct selling or chain-store merchandising or the super markets that have only come in in the past few years.

The VICE CHAIRMAN. Doctor, pardon me; are you now discussing one of the subheads?

Dr. MELDER. I was giving an illustration just now to make my point clear as to one of the forces that have worked toward creating trade barriers. When a new form of competition comes in which short-cuts the established channels, then very often there will be an attempt on the part of people who fear this competition to try to prevent rapid spread of this new form of distribution.

The VICE CHAIRMAN. Doesn't it more or less group itself—I haven't studied it sufficiently, but it seems to me—into three heads? One would be the necessary and proper protection of food, supplied to the big communities; health, restrictions such as inspection, and so forth; and then influential groups in a state which want to hold the local market for themselves. Then legislation that is in retaliation for similar legislation which has adversely affected the citizen of the community, who is responsible for the retaliatory legislation. What other classess could there be?

Dr. MELDER. Well, those classes have been worked out and I wasn't trying to classify the type of trade barriers at this point. I think later witnesses will go into a rather thorough classification. I was answering a question as to what are some of the specific forces that cause groups to ask for protective legislation.

The VICE CHAIRMAN. Regardless of the cause they are trying to hold as much of the local market as possible for themselves.

Dr. MELDER. In this case; yes.

The VICE CHAIRMAN. In any case where the people doing business in the State are instrumental in having a trade barrier established against outside competition.

Dr. MELDER. They are trying to hold the business in their home market; yes.

The VICE CHAIRMAN. They want to hold the home market.

Dr. MELDER. But in one case we will say they are motivated because of depression.

The VICE CHAIRMAN. But if they are losing the market, the cause, if they can prevent its operation, doesn't make such difference, does it? In other words, it doesn't make very much difference if I have got a business and I think I am being pressed pretty hard by outside competition which I can prevent, as to what it is that is causing me to be in that condition, does it?

Dr. MELDER. From your standpoint I should say not; that is, if you are in the position you describe, but I was merely trying to make clear what were the conditions that would cause people to ask for protective legislation, and I have mentioned two.

Then I was going to add under new forms of competition such things as technological changes, which are not chain stores—those are in the field of marketing, but in the case of technological changes, such, for instance, as mechanical refrigeration or refrigerated tank cars. Those things have expanded the possible sources of foodstuffs in the great food markets of the country, with the result that new areas become competitive that weren't competitive before. Then that causes an extreme competition and then the people in the established market ask for protection against these new competitors who couldn't compete without a new technological contrivance that makes it possible for them to compete.

One more I might add, and this is of a little different sort, the factor that stimulated trade barrier legislation in one special field that was mentioned this morning, and will be brought out later; namely, the

field of liquor trade barriers was, of course, due to the interpretation placed upon the twenty-first amendment, which gave to the States the power to regulate the liquor industry at the time the eighteenth amendment was repealed. That was interpreted in the States and used by some local groups to get protective legislation so as to give them a favored position in the State liquor market.

The VICE CHAIRMAN. A good many people thought that the interpretation of that amendment of the Constitution was quite different from the interpretation of the fourteenth amendment, which was first construed—I don't suppose that would help us, either, so I will skip that.

Dr. MELDER. I will just summarize here by saying that it is very easy to understand how trade barriers come to be when people are pushed by these various forces, whether it be business depression or changes in marketing channels or what it be, and so I think we can explain their existence even though once in existence they tend to hamper a maximum production of goods, and perhaps full prosperity.

The VICE CHAIRMAN. Doctor, from your examination of this general question, is there any considerable support of the notion that the people in a State have a right to be protected with reference to their local market as against what is to them destructive outside competion?

Dr. MELDER. I don't understand what you mean by the people in the State. You mean special groups in the State or the people as a whole?

The VICE CHAIRMAN. I think I mean the people as a whole.

Dr. MELDER. Well, I don't think that the people as a whole generally have very much to say about the trade barriers.

The VICE CHAIRMAN. I mean then the ones that are talking

Dr. MELDER. Well, those who work for trade barriers within the State are usually groups that are directly affected through possible loss of market.

The VICE CHAIRMAN. Well, now the consuming public, do they seem to take much interest in the matter within the States?

Dr. MELDER. Up until the last year, I don't think so. I think in fact that they knew very little about these. Most of the consuming public wasn't informed. Now I think they are more informed today; they are beginning to have some opinions on the matter, and I certainly know in specific cases in the past where they have been asked to express an opinion I think they have expressed an opinion against trade barriers. If I may cite one example, the question has come up in referendum in regard to a certain type of excise tax on margarine in a number of States, and in such cases it has been—the restrictive measure has been voted down on referendum measures. That is one way of indicating.

The VICE CHAIRMAN. In the contest which has been waged heretofore until comparatively recently, then, the debate in contest has been among those interested in selling in a given market primarily, you think?

Dr. MELDER. I think so.

The VICE CHAIRMAN. Now you think that probably the people who buy are becoming interested in the subject?

Dr. MELDER. Well, whenever it is made a clear-cut issue to them, they become interested in the subject, but most of the time I don't think it has been a clear-cut issue.

The VICE CHAIRMAN. Do the differences in prices concern them?

I am afraid that isn't a good question, but I will let that rest, or do they know about the difference in prices?

Dr. MELDER. I don't think they know about the difference in prices. That is, if law is changed, for instance, a State liquor law permits protection of the home producer for liquor, I don't think the consuming public who purchases that product knows whether they are paying more or less.

Mr. PIKE. If you had a lot of shrubs come in and had to go to a control station for inspection and they didn't come to you for a week later, and were dead, that consumer would know about it. That is a fairly typical thing in some of these inspection areas, isn't it?

Dr. MELDER. Yes; that consumer would know about it, but the general public wouldn't.

Mr. PIKE. Garden clubs have a way of spreading their information, as I remember.

The VICE CHAIRMAN. I think you are now discussing the thing that is of perhaps more interest to the members of the committee, maybe. I am not at all underestimating the value of what you have been saying, the various motives and conditions that bring this question to the fore, but we are interested in what is to be done about it, and what we may hope the States will do about it.

Dr. MELDER. Yes.

The VICE CHAIRMAN. Now then, I am trying to find out for the benefit of the committee just what we may expect from this disposition or inclination or tendency of the people who are buying to become vocal and effective in determining State policy.

Dr. MELDER. I don't think that consumers have historically ever really gotten together often enough to express a very strong opinion on legislation, whether it be State or Federal. Occasionally, that has happened, but it is rare, and therefore I don't think we can wait until the consumers become really vocal about a problem. As a matter of fact, I think that most of the vocalizations will come from the excluded competitors, because they feel its effects directly right here and now, and the consumer, if he pays ten percent more for an article than he would have to otherwise, can't trace it down to a trade barrier, very likely.

The VICE CHAIRMAN. How would the excluding protect the competitor, influence the policy of the State in which he has no vote, and presumably no direct influence, and yet somebody seems to be affecting State policy.

Dr. MELDER. Well, the excluded groups can only affect a State policy by bringing public attention to their cause and trying to get support, a favorable public opinion, support for their views to defeat the legislation or to repeal it, and then again through reprisal, sometimes a State threatens a reprisal and this is a good illustration of that point: The past year, just about a year ago at this time, a California legislator introduced a bill in the Legislature of California to prohibit the State officials from buying any products of the State of Michigan, including automobiles, for State use, and it created considerable alarm in Michigan because Michigan happened to have a tax law that was offensive to the wine industry in California.

The bill was killed in California, but the threat was there, and, of course, that would bring pretty quick response, even though the

response didn't happen to be a favorable one in this case. That is, the Michigan people became alarmed, or at least the legislature became alarmed enough to debate the issue awhile but it was killed finally because the protected group, I assume, mustered enough power to keep their law.

The VICE CHAIRMAN. Your discussion this morning of what had resulted among the small nations of Central Europe, would seem to indicate that there is probably a natural law operating against the policy of state barriers among states that could otherwise have free commerce among themselves. Do you think that is true or don't you?

Dr. MELDER. I am afraid I don't quite understand what you mean by a natural law. I understand your question, but I should say if you want to consider a law of ultimate or maximum efficiency in operation, maybe there is such a law. I wouldn't think of it as being a natural law. I would think of it more or less as a general principle that the greatest volume of wealth can be produced when you have a relatively free market to enable reasonable specialization and most efficient production methods, and efficient distribution.

The VICE CHAIRMAN. I understood it was your opinion, as indicated this morning, that bad conditions, generally bad economic conditions, was the reasonable and probable result, and in that case was the actual result of that policy.

Dr. MELDER. Yes; that is quite correct.

The VICE CHAIRMAN. And, of course, that didn't happen by accident. It happened as a result of a policy.

Dr. MELDER. That is correct.

The VICE CHAIRMAN. And it is your notion, I believe, that to whatever degree the policy which you think was a mistake for Central Europe is adopted among the States, it will prove to be bad for the States generally.

Dr. MELDER. It will prove to be bad for the States generally, excepting with the public health and safety laws that I mentioned here in response to Mr. Donoho's question.

The VICE CHAIRMAN. Let's stay with this awhile. This is pretty important. Are your views pretty generally accepted by students of this problem?

Dr. MELDER. I think I can say yes. I have run across no one who didn't agree with me in 95 percent of my opinions on this problem. There may be a few exceptions where people disagree with me on perhaps 5 percent of this problem.

The VICE CHAIRMAN. If I knew how you could work that out, I would like to get it.

As a practical proposition, considering whether or not there ought to be federal legislation, of course it is important that the people are agreeing in this field, tremendously important from the standpoint of necessity or nonnecessity of national legislation. I believe public opinion is recognized as the supreme law in a country such as we have.

Dr. MELDER. Yes, sir.

The VICE CHAIRMAN. I think that develops that phase of the matter, Doctor; thank you, sir.

Dr. MELDER. I should like to make one brief addition to what I said about how these laws come into existence, in order to clarify a point in that connection. Sometimes these barriers arise not out of

any deliberate attempts on the part of a State to harm the economic activities of people outside their borders, but simply out of failures to accommodate the State's legislation to social and economic change. Let me explain how that comes about. When a State maintains a unique grading law, we will say, or a unique container law which sets up special specifications for sale of goods in that State, and we reach a condition where we have a common set of standards for that same commodity throughout most of the rest of the country, then that unique grading law by its failure to be brought in line with the other States becomes a very serious restriction on the sale of goods for that particular commodity.

The VICE CHAIRMAN. From your observation, Dr. Melder, does that provision for an unusual container result as the matter of design or from a failure to properly appreciate what would be the result?

Dr. MELDER. I think it is just a failure to consider the results very seriously. Sometimes, however, it may not be. Here I can't go into motives because I haven't talked to the people who passed the law and gotten their opinions.

Representative REECE. In your studies, Dr. Melder, have you observed any tendencies on the part of the States to undertake to adopt uniform laws or laws with respect to container and grading, and similar subjects, so as not to interfere with trade or cause inconvenience to the producers in other States?

Dr. MELDER. On this particular subject I should like to say that I think many States have standardized their laws by bringing them under, by standardizing them within a standard that has been set up as a model by the Federal Government. For instance, on many types of grades and containers we do have a Federal law that sets what is called a Federal standard, and the States have in many cases enacted legislation that sets those up as the State standards as well.

Representative REECE. That is in line with my observation, and it seemed to me as if that tendency was increasing. In a way, that is demonstrated by various types of Pure Food and Drug legislation which has been enacted by the States, where I think pretty generally, in addition to taking the certain standards that are set up by the Federal Government in its legislation, the various States have also tried to adopt the standardizing grading provisions so as to make them uniform.

Dr. MELDER. I think in general that has been true in this particular field of legislation.

And when States lag in standardizing their container acts, or other requirements, then I say that tends to be a hindrance to trade in that commodity.

Representative REECE. If the trade barriers which you have observed are existing, has it been a tendency for them to result from any effort on the part of the States to set up trade barriers, or have they arisen out of the effort of the State to protect or promote some interest within the State?

Dr. MELDER. Well, as I made the point a while ago, we have certain forces that have tended to cause the States to protect home industry through changes in marketing channels or depression conditions or things of that sort, and then we have these laws that I would say simply result from a State lagging behind in bringing its legislation up to conform to standards that are in common existence throughout

the country. Now, I don't know if I quite understand your question in relation to those two statements of mine.

Representative REECE. Well, you answered it whether you understood it or not. Thank you.

Mr. DONOHO. Dr. Melder, generally speaking you have been concerned, or your testimony this morning has been concerned, with the historical background of this whole problem. Now, before other witnesses bring out more specifically certain specific aspects of the problem, I would like for you to make, as a student of this problem, another general summary of what, in your opinion, are the main social and economic significances of the general trade-barrier problem.

Dr. MELDER. Well, if I were going to discuss this in one paragraph I would say, briefly, that it is a dangerous trend toward a state of affairs in which we might cause a break-down that would have very serious consequences for the country. Now, as a general statement I would make that, in which case, if we had a serious economic break-down such as occurred in central Europe, I would say our democratic institutions are seriously imperiled. That doesn't mean that I am predicting—in fact I would be an alarmist and just running off at the mouth here if I were to lead you to think that that is going to happen. I don't think it is going to happen. But I simply want to point out that it is really a form of what I would call economic dry rot. It is a dangerous tendency.

Now, it is too early to say that it has already reached the stage where the union is about to break up into 48 sovereign States. That is simply foolish. However, as a general statement, that would be my conclusion.

More specifically I would have to point out some other consequences.

Mr. DONOHO. Just how serious do you consider this problem, Dr. Melder? As a student of the problem, is it really serious?

Dr. MELDER. That is a matter of degree, what is really serious. As I have just pointed out, it doesn't mean that the Union is about to break up, but I would say this, that every case is a separate case, and to study the economic effects of each trade barrier is almost an impossible task, if not absolutely impossible. However, since it is impossible to measure by statistics or any other exact measurement the consequences, the cost to business and the cost to consumers of these trade barriers, I do think we are justified in making certain conclusions about them, economic conclusions, and along that line I would say it is certain that these trade barriers tend to prevent a maximum utilization of our economic resources and to prevent goods from moving freely between the producer and the consumer without any, or with the least possible, friction.

Insofar as the existing trade-barrier laws tend to prevent the maximum utilization of mass production methods and mass distribution methods, and prevent full regional specialization, they are deterrents to a maximum national prosperity as well as factors in checking a rise in the standards of living of the American people. However, their economic effects are not always uniform. Sometimes they boomerang and hurt the very groups that they are intended to help and then, instead of aiding a group temporarily, at least, it may actually hurt the group.

I might illustrate that by taking the case of a very high wine tax that was placed upon wine imported from sister States into the State

of Michigan about 4 years ago. It was intended to stimulate the wine industry in Michigan, and the result of that has been twofold as a harm to the industry. First, the industry began to expand its grape acreage and this expansion of grape acreage and also two or three good crops they had in the meantime resulted in simply forcing on the market so many wine grapes that they have to take a protected market, $55 a ton, for their wine groups, for those that went into wine, and the rest have simply been dumped on the market at about $10 or $12 a ton, so it didn't help the industry out an awful lot there.

The second thing is that the statistics of consumption as shown by the figures of the Federal Alcohol Control Administration, which cover all the States in the country, show that for Michigan there has been a decline, year by year, ever since that law was passed, in the per capita consumption of wine in Michigan, and they are apparently turning to hard liquors in Michigan, so there you can see the economic or social significance of trade barriers.

Mr. PIKE. Is that a gain or a loss?

Dr. MELDER. I don't want to pass any opinions on how people consume their wealth or what kind of wealth they consume. I should simply say that this, as a protection to a local industry, really has failed as a long-run protective law.

Mr. PIKE. One thing you didn't mention I should think seems to be fairly obvious, that this thing has generated a good deal of legislative heat from one State to another. It hasn't added to interstate friendship, particularly, as I believe when California was going to keep out Texas grapefruit and oranges the Texas boys decided they would keep out California movies, so each decided they had better call it all off. That sort of thing is no help to interstate friendship, although it is not a tangible thing.

Dr. MELDER. I would say that on this one point, the significance of these barriers is uniform, or the results, and while we can't measure the economic results in those cases, when we can measure them sometimes they help a protected group and sometimes they don't help them, even though they may think they are being helped; I think it is safe to say that whenever one of these trade barriers is discovered, you can be almost dead certain that it is not going to help interstate relations any.

Mr. PIKE. It is a distinct loss there, anyway.

Dr. MELDER. It is a distinct loss there, and on this point there was one study that was published last year; it was the result of an investigation by the Bureau of Agricultural Economics in the Department of Agriculture, and a study of the press reports for about 5 years—1932 to '37 as I recall it—gave a record there of some 13 disputes involving from 2 to 9 States over highway regulations, and one of these disputes ran throughout the whole 5 years of the period that they studied, and every year it would bob up again, and here were 5 Middle Western States stopping each other's trucks at the State line, arresting drivers, and going through all kinds of controversy in an attempt to get reciprocity or to get better treatment for their drivers than their drivers were getting, and so on.

Mr. PIKE. You are pretty safe in talking about Middle Western States this afternoon. Our two Senators from the Western States aren't here.

Mr. MELDER. I am not sure that they come from those States.

Mr. DONOHO. Thank you, Dr. Melder.

Mr. Chairman, I have no more questions to ask.

The VICE CHAIRMAN. Doctor, we understand it to be the effect of your testimony that these trade barriers have reached such proportions as not only to justify but to demand the serious consideration of the people of the country generally, first, and, second, that the trade barriers, in their total effect, are very hurtful; and, third it seems to be the effect that there is a growing consciousness among the people of the States that trade barriers are bad. Those three points seem to be pretty clear from your testimony.

Dr. MELDER. Those three points I would say are all intended, or were intended, to be made by my testimony, and I also wanted to make the point that these barriers are simply incompatible with our democratic institutions as they have existed throughout at least the period of our constitutional history.

The VICE CHAIRMAN. Yes; I think you made that very clear, too, and we are very much obliged to you, Doctor.

Representative WILLIAMS. Just one question. Do I understand from your testimony that there is a tendency away from these trade barriers, or is there a tendency to erect more of them at the time?

Dr. MELDER. I don't remember that I made a statement about that specific point, but as my opinion I would say that I think the growth of them has been checked in the past year as a result of a lot of educational publicity that grew out of the work of the Council of State Governments, and various State commissions on interstate cooperation. I think they have definitely checked the tendency for them to grow and increase, but those that are on the statute books can't be repealed very readily, and it is a whole lot harder to repeal existing legislation of that type than it is to keep any more from being put on the statute books, and the repeal movement has not borne very much fruit to date.

Representative WILLIAMS. The States have made progress along that line?

Dr. MELDER. Yes; I think so.

Representative WILLIAMS. There have been some laws repealed, and there has been a decided halt in the tendency to erect trade barriers by reason of State association. Are there any State compacts along that line?

Dr. MELDER. There are no interstate compacts that I know of in this field. They certainly have halted the tendency, as you say, to increase the legislation. As far as repeal movements go, there have been relatively few successful repeals.

Representative WILLIAMS. What is the fundamental barrier in the way of States handling this problem by themselves without the intervention of the Federal Government. Why can't they do that?

Dr. MELDER. Perhaps the fundamental barrier is that however enlightened people are about an issue, unless they have an extreme willingness to get together and submerge the interests of individuals, it is almost impossible to get anywhere constructively. In the international picture I should just mention the League of Nations as a post-war phenomenon in purpose in which the nations tried to get together to set up some kind of international machinery to assure peace, but because of the special demand of this and that small group naturally it failed.

Representative WILLIAMS. As a matter of fact, of course the States cannot regulate interstate commerce.

Dr. MELDER. They cannot regulate interstate commerce according to the decisions of the Supreme Court if that regulation is a direct burden on interstate commerce. But most of these, perhaps, are indirect burdens.

Representative WILLIAMS. And they cannot levy a duty on imports or exports between the States, under the Constitution.

Dr. MELDER. But these are what the New York Times editorially, on May 11, 1932, called the "other ways of skinning the cat."

Representative WILLIAMS. And the State can exercise its police power in the interest of health, safety, and morals.

Dr. MELDER. Yes. It is only when that police power is abused and goes beyond regulations for health, morals, and safety that we say it becomes a trade barrier.

Representative WILLIAMS. But that would be simply the failure of the State to appreciate its obligations to its citizens and to the country, if it enacted unwise health and moral legislation.

Dr. MELDER. If it deliberately enacted such laws, then I should say that I agree with you. As I have mentioned many times before, I don't think that this question of the States' rights, which is really involved here, can be simply put in a vacuum of States' rights versus Federal Government, or Federal powers, because States don't operate in vacuums, nor does anyone live in a vacuum. That is, it is always the States' right to do something that is involved, and when you get down to that, the States themselves are simply legal entities that represent the people, and it means the States' right to do something for groups of people, and really the conflict over the States' rights versus the Federal power is, I think, for the most part, a case of conflict of group interests. It has always been, as far as I can see. In essence, there is no conflict in the interest as far as the welfare of the people of the United States is concerned between the States and the Federal Government. It is always the welfare of this group against that group.

Representative WILLIAMS. Would it be your idea that because a State failed to enact police legislation which in the opinion of the Federal Government was unwise, for them to compel the enactment of legislation along Federal lines or along their ideas?

Dr. MELDER. Do I understand you to say police legislation?

Representative WILLIAMS. I mean legislation involving the police powers of the State in the interest of public health and morals, safety. Perhaps if a State enacts legislation which from the viewpoint of somebody else is unwise, would it be your idea that the Federal Government should correct that legislation?

Dr. MELDER. Well, I should say that if this use of the State's police power was such as to obviously infringe upon the commerce power and have no justification in protecting the public health, we will say, that some Federal action to limit it would be justified, and I think there is a Federal power in the Constitution which would justify it.

Mr. KADES. As I understood your definition, Dr. Melder, of the trade barrier laws, you excluded laws that were actually intended as health or safety measures, but by that did you mean that laws requiring honest description of goods and labeling might be considered trade barriers? In other words, wouldn't you want to

modify your definition of trade barrier laws to exclude those laws which require honest labeling and intelligent grading from the category of a trade barrier law?

Dr. MELDER. I wouldn't include those in trade barriers unless they operated as such because of their peculiar form. For instance, when the State of Maine sets up a peculiar dimension requirement for a standard barrel and a person complies with that law, that in itself is certainly not a barrier to commerce so long as you restrict it to the State of Maine. But when you have a standard barrel set up by common practice, we will say, in 40 States, and we have a Federal definition of a standard barrel, and then this State requires or sets up or continues to have its peculiar standard, thus preventing anyone from selling a barrel of goods within the State's borders without having to repack or have special containers for it, I would say that while the law isn't intended to harm the interstate sale of goods, it does in fact do so.

As far as honesty in labeling is concerned, there are some very fine points there and very technical points, and I think perhaps some of the other witnesses will bring out those points more fully, but if it requires merely honesty in labeling, I don't think it could be interpreted as a trade barrier, but if it goes beyond that and, we will say, requires some peculiar fact to be put on the label that has no bearing with regard to what kind of a product it is, or the purity of the product, it might tend to be a restrictive law.

The VICE CHAIRMAN. We are very much obliged to you. You have given us a very informative and interesting study. Thank you very much.

(The witness, Dr. Melder, was excused.)

Mr. DONOHO. Mr. Chairman, since quite a number of the committee were not present this morning, I wonder if it would be a good idea to read again the definition of a trade barrier, given this morning?

The VICE CHAIRMAN. I don't care to have it read.

Mr. Martin, do you solemnly swear that the testimony you are about to give in this proceeding shall be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. MARTIN. I do.

TESTIMONY OF A. H. MARTIN, JR., EXECUTIVE DIRECTOR, MARKETING LAWS SURVEY, WORK PROJECTS ADMINISTRATION, FEDERAL WORKS AGENCY, WASHINGTON, D. C.

ANALYSIS AND CLASSIFICATION OF PRESENT STATE LAWS HAVING TRADE BARRIER EFFECTS

Mr. DONOHO. Will you give your name and address, please?

Mr. MARTIN. A. H. Martin, Jr., director of the United States Marketing Laws Survey.

Mr. DONOHO. What is your purpose in presenting the testimony here?

Mr. MARTIN. As a director of the Marketing Laws Survey my purpose is to present an analysis of the results of a research study by the legal staff of the Survey of those State laws which, on their face, or in operation and effect, tend to obstruct the marketing of goods in interstate trade.

Mr. DONOHO. Mr. Martin, the trade barrier problem is only one aspect of the larger marketing problem. As a background, would you tell us the scope and objective of the Marketing Laws Survey as a whole, just what this survey is?

Mr. MARTIN. As you have stated, it is only one aspect in the entire marketing problem. Therefore I will tell you how the survey happened to be organized. The survey was organized in 1938 as a Works Progress Administration research project. Its primary purpose is to compile, review, and analyze all of the State laws in the field of marketing and the judicial decisions interpreting them.

The VICE CHAIRMAN. What are you reading now? We have a statement that purports to be your contemplated testimony, but I don't find it in this memorandum I have. Are you following this?

Mr. MARTIN. Practically entirely; yes, sir; except for questions. Evidently your statement is not complete, Mr. Chairman; from here I see it isn't.

In addition, the orders, rules, and regulations of administrative agencies in the marketing field and municipal marketing ordinances will be collected and analyzed.

Mr. DONOHO. Are there similar compilations of marketing laws in operation now available?

Mr. MARTIN. No such master volume of comparative marketing laws has ever been attempted. Yet the need for it is generally recognized. The 48 State legislatures have produced an avalanche of laws affecting marketing from the point of production to the point of consumption. These laws have steadily increased in number, scope, and variety of subjects covered.

The search for State marketing laws presents a formidable task and an analysis of the maze of laws after they are located shows that compliance with them is similar to the problem of complying with the conflicting laws of 48 foreign countries. There are about 508 volumes of State statute books, supplements, and session laws. Each year about 12,000 new State laws are passed. Through this maze the business executive, the lawyer, the government official and the research student would have to grope his way to find the marketing laws.

Mr. DONOHO. How much of this field has your staff covered?

Mr. MARTIN. The survey has completed the initial task of reading about 375,000 pages of statutory materials, from which the marketing laws were selected. We have had the services of a staff of approximately 300 relief attorneys in 3 regional offices and supervisory review attorneys in Washington. To assure the technical validity of the work——

Representative REECE. Is it necessary to read all the statutes in order to determine or ascertain what changes might have been made in the marketing laws in the States? I see here you speak about the large number of pages which the research staff has read, 375,000 of statutory materials.

Mr. MARTIN. I am covering the over-all study of the Survey, rather than just the trade barrier aspects of it, as I will indicate later on. We didn't get into the trade barrier aspects of the study until last spring, at the invitation of the Council of State Governments, and in order to locate all of the laws that affect the sale of

services, commodities, and so on, it is necessary to make that search, I am advised by my legal staff.

The VICE CHAIRMAN. Make a search of what? I am pretty interested in that myself. What did they read to find out what the marketing laws are?

Mr. MARTIN. They searched all the codes, State codes.

The VICE CHAIRMAN. You mean they read the codes from beginning to end, all of them?

Mr. MARTIN. They did not read them all, but they searched through them to find any laws that affected the marketing of goods or services.

The VICE CHAIRMAN. Wasn't there somebody in each of the States, the secretary of agriculture of the States or somebody in the States that could indicate to them what the marketing laws of the States are, without having all these people reading all the laws in all the States?

Mr. MARTIN. At the time we started the survey we were advised both by State officials and Federal officials that there was no one place or no several places that a lawyer or a Government official or student could go to locate all the laws that affected marketing in all the 48 States. To assure the technical validity of the work (I want to mention here that I, myself, am not a lawyer) I have had the assistance of an advisory council consisting of the following law professors specializing in the field of trade regulation: S. Chesterfield Oppenheim, chairman, George Washington University; Ralph F. Fuchs, Washington University; Frank E. Horack, Indiana University; Breck P. McAllister, University of Washington; James A. McLaughlin, Harvard University; Frank R. Strong, Ohio State University.

In addition to the present trade barrier study, two other studies have been completed by the survey and will be published soon—one on State Antitrust Laws and another on State Price Control Legislation. Other volumes will be published in the following additional fields: Entry into business or market; sales-promotion devices; transportation, storage, and warehousing; financing and security; marketing organization and commodity exchanges; cooperatives; government purchasing and distribution; and taxes directly affecting the marketing of goods.

Mr. DONOHO. Mr. Martin, how did the Survey get interested in the trade-barrier problem and what was the specific purpose in this connection?

Mr. MARTIN. In April 1939 the Survey was requested to prepare a compilation of trade-barrier laws for the use of the National Conference on Interstate Trade Barriers held at the call of the Council of State Governments in Chicago.

No attempt was made to present an exhaustive compilation. The statutes were assembled for the purpose of furnishing typical examples of State barrier laws. Those examples were extracted from the State statutes within the categories designated by the Council of State Governments, namely: Liquor; motor vehicles; itinerant trucker; ports of entry; margarines; dairy products; livestock, poultry and general foods; nursery stock; use taxes; and general preferences for State products and labor.

In meeting the request of the Council of State Governments, the Survey felt that it was fulfilling the primary objective for which it was established, namely, to function as a fact finder.

That same purpose governs the presentation of testimony which the Survey is now making before this committee. What to do in the face of the record of State laws is not for us to propose. The Survey hopes that the data which it has compiled and analyzed will advance cooperation and coordination between the States and the Federal Government.

Mr. DONOHO. Mr. Martin, this morning a definition of the term "trade barrier" was given which I understand is in accord with that used by your Survey. What criteria did the Survey use in arriving at that definition?

Mr. MARTIN. At the outset of its study the Survey was confronted with the problem of defining an interstate-trade barrier. The position was taken that any State statute or regulation which, on its face, or in practical effect, tended to operate to the disadvantage of persons, products, or services coming from sister States, to the advantage of local residents, products, and business, is a trade barrier. This is the realistic approach. The problem could only be viewed from the standpoint of the State's efforts to achieve the end of prohibiting or limiting the influx of persons, commodities, and services which are in competition with the domestic supply of the State. Dr. Melder elaborated upon the economic and social effects of this legislation before the committee this morning.

Mr. DONOHO. As you have described barriers, they break down into barriers on the face of statutes and regulations and barriers in practical effect. Now, do these barriers break down into further categories?

Mr. MARTIN. On the basis of this approach, our study revealed that the trade-barrier devices fall into four principal classes. In the first group are these statutes which, on their face, manifest a discriminatory or retaliatory purpose directed against out-of-State competition. Obviously, this direct and gross form of barrier statute is sharply limited in number. If the Survey had defined a trade barrier to include only legislation of this type, it would have made a superficial and unrealistic study.

A second group of statutes consists of those which are nondiscriminatory on their face but are discriminatory in operation.

Many trade barriers are found in a third category of statutes, namely, those which, on their face, are equal in application to residents and nonresidents but which, in practical operation, burden out-of-State business. It is the cumulative effect of the diversity of these laws which creates a trade barrier. Some of the objections to the discriminatory provisions do not apply to these statutes. But some of the effects of burdening or impeding interstate trade arise from the nondiscriminatory diversity of the statutory provisions in the several States. Such laws become tariff walls or embargoes in substance, regardless of their form.

Mr. DONOHO. Is it not difficult to isolate some of these barrier effects, Mr. Martin?

Mr. MARTIN. The Survey frankly concedes that the identification of some of this legislation as trade barriers is difficult. But this should not foreclose a scrutiny of the statutes in the light of their

impact upon commerce between the States. In some instances, numerous disguises are employed to give the statutes an appearance of nondiscriminatory treatment or to mask its burdensome or deterrent effect upon interstate commerce.

Mr. DONOHO. You suggest that the cumulative effect of diversity often creates a trade barrier. Isn't such diversity often essential to the welfare of the country?

Mr. MARTIN. It is important to bear in mind that the Survey was at all times extremely careful to avoid branding as a "trade barrier" the legitimate exercise of State powers for ends clearly within the sphere of State action. We recognized also that diversity of State laws is often essential to meet the varying economic conditions of particular States. What fits the needs of an agricultural State may be entirely out of place in an industrial State. Uniformity of State legislation may or may not be a desirable end and it was not the purpose of the Survey to pass judgment upon the need for uniformity and the methods of securing uniformity. Indeed, the Survey was not concerned with any of the proposed solutions in the broad field of Federal-State intergovernmental relations.

Mr. DONOHO. As I understand it, Mr. Martin, any statute or regulation may be administered in such a way as to create a trade barrier?

Mr. MARTIN. That is right. Fourth, and finally, it should be said that the source of barrier practices is frequently found in discriminatory and burdensome administration of State statutes. This is attributable to the fact that numerous administrative agencies are vested with broad discretionary authority to frame rules and regulations which permit them to employ various types of "police" regulatory legislation as instruments to restrict trade between the States. Unfortunately, the data concerning such administrative action is not readily available, and no attempt was made to include any administration not specifically set forth in the statute.

Mr. DONOHO. It was stated this morning that no effort would be made to analyze the constitutional issues as applied to specific instances or specific statutes. However, I think it is pertinent for you to discuss general constitutional issues, the general constitutional setting of the trade-barrier problem.

Representative REECE. Before you ask that question, would you permit me to ask a question, Mr. Chairman, if you please? In these studies which you and your associate have made, did you undertake to catalog the various State statutes which you felt were discriminatory and analyze the effect of the different statutes?

Mr. MARTIN. We have, and I would like to ask later on to submit for the record a copy of a book known as Comparative Charts of State Statutes,[1] illustrating barriers of trade between States. On the over-all study all of our compilations are cross-indexed by State and by type of law.

Representative REECE. So that you do have the statutes listed?

Mr. MARTIN. That is correct, up to January 1940.

Mr. DONOHO. To repeat, Mr. Martin, I said that we are interested in the general constitutional setting of the trade-barrier problem. Can you tell us under what powers the States have enacted trade-barrier laws?

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[1] "Exhibit No. 2364," on file with the committee.

Mr. MARTIN. It is evident that any discussion of trade-barrier laws must take into consideration the constitutional framework within which these laws were passed. An analysis of the compilation prepared by the Survey will disclose that these statutes have been enacted under four categories of powers traditionally delegated and reserved to the States under our constitution: First, the power of taxation; second, the State's "police" power in the protection of health and sanitation, including inspection and quarantine; third, licensing and general regulatory powers; fourth, the sovereign proprietary powers in regard to conservation of natural resources and ownership of public works and property.

Mr. DONOHO. The powers you mention, Mr. Martin, are obviously within the purview of the States. Upon what basis then have the laws enacted pursuant to these powers been challenged as trade barriers?

Mr. MARTIN. There is no intent to criticize the exertion of State powers to promote "police" ends, to produce necessary revenue, and to protect State resources and property. The dangers lie in the abuse of these powers to achieve interstate market restrictions by masquerading serious impediments to free trade in the garb of traditional powers. As Attorney General Jackson has suggested, the courts and the Federal Government are naturally disinclined to impute improper purposes to the State where the statute is apparently nondiscriminatory.[1] This is especially true when the State openly asserts that it is acting to protect an imperative local need. However, the duty of examining these statutes in their interrelations to ascertain their practical effect upon the channels of interstate commerce is one which the Survey could not with propriety evade. As was recently said in a Supreme Court opinion:[2]

> Maintenance of open channels of trade between the States was not only of paramount importance when our Constitution was framed; it remains today a complex problem calling for national vigilance and regulation.

Mr. DONOHO. Coming back to the constitutional background, Mr. Martin, did the Survey legal staff inquire into the extent to which barrier laws are constitutional, and if so would you like to explain that, please?

Mr. MARTIN. The constitutionality of particular barrier statutes is outside the bounds of the Survey's testimony.

The VICE CHAIRMAN. I think you are right about that. The fact is that we are not interested in having witnesses develop questions of constitutionality.

Mr. DONOHO. I don't think, Mr. Chairman, it is the intent to do that at all; it is a very general statement, as I understand it.

Mr. MARTIN. Indeed my legal staff advises me they have studied the decisions of the United States Supreme Court on interstate barriers. But, as this committee knows, the constitutionality of a particular law is often a matter of great doubt. Each case must be considered on its facts.

The VICE CHAIRMAN. I think you might skip the discussion of constitutional matters. I believe my colleagues agree with me.

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[1] The Supreme Court and Interstate Barriers, Annals of the American Academy of Political and Social Science, January 1940, p. 77.

[2] Dissenting opinion of Justices Black, Frankfurter, and Douglas in *McCarroll* v. *Dixie Greyhound Lines, Inc.* (U. S. Sup. Ct. decided Feb. 12, 1940).

Mr. DONOHO. The witness intended to make only a general statement with respect to the constitutionality of the problem. Of course, Mr. Chairman, it is true that the States must always bear in mind the constitutional limitations in passing laws which may or may not be trade-barrier laws.

The VICE CHAIRMAN. I think the committee will take cognizance of that fact, if you will permit me to make an observation. I am just trying to hurry, within reason.

Mr. MARTIN. My legal staff advises me that, in the absence of congressional action, most of the laws analyzed by the Survey as creating barriers to interstate trade are probably constitutional within the decisions of the United States Supreme Court. A highly technical and complicated analysis of these decisions would only serve to divert attention from the primary purpose of the testimony, namely, to present the structure of State legislation embodying techniques and devices that create or implement trade barriers as a matter of practical fact. As Mr. Donoho explained in his opening statement, other witnesses will show how these laws have actually operated by giving specific examples of what their businesses had to contend with in the everyday world of interstate commerce.

Whether the problems raised can be met by cooperation between the States or by action of the Congress is not within the province of the Survey to determine. The problem was defined from the standpoint of national policy in the dissenting opinion of the United States Supreme Court in the recent Arkansas tax case [3] where it was pointed out that the questions raised by that case are "for consideration of Congress in a nation-wide survey of the constantly increasing barriers to trade among the States." The dissenting Justices said:

> Unconfined by "the narrow scope of judicial proceedings" Congress alone can, in the exercise of its plenary constitutional control over interstate commerce, not only consider whether such a tax as now under scrutiny is consistent with the best interests of our national economy, but can also on the basis of full exploration of the many aspects of a complicated problem devise a national policy fair alike to the States and our Union. Diverse and interacting state laws may well have created avoidable hardships. See, Comparative Charts of State Statutes illustrating Barriers to Trade between States, Works Progress Administration, May 1939; Proceedings, The National Conference on Interstate Trade Barriers, The Council of State Governments, 1939. But the remedy, if any is called for, we think is within the ample reach of Congress.

Of course, constitutional limitations upon State legislation must always be considered. From what I have said it should not be inferred that the United States Supreme Court has failed to enunciate certain applicable principles or has not issued warnings to State legislatures. On the contrary, the Supreme Court has made pronouncements of general significance which can be summarized without the legal entanglements involved in analysis of specific decisions. It is recognized that generalities do not solve specific cases. Accordingly the Court's propositions for the most part pose the problems rather than furnish definite guides for particular factual situations. However, since they bear directly upon the technique of interpretation of the barrier statutes and Federal-State relationships the following constitutional principles may be of interest to this committee:

1. In the exercise of their general "police" powers in the fields of taxation and regulation the State cannot impose burdens on interstate commerce which are direct and substantial.

2. The power of Congress over interstate commerce is plenary. Until Congress occupies the field the regulation of the States might affect interstate commerce in an indirect and insubstantial manner. But once Congress has spoken the State laws must give way to the Federal legislation as being in conflict with the supreme law of the land. For example, Federal motor-vehicle legislation may occupy the field to the exclusion or diminution of regulations by individual States.

3. Where the discrimination against interstate or foreign commerce is obvious on the face of the statute, it will not be upheld, as exemplified by the recent Florida foreign cement inspection fee case.[4]

4. The courts will look into the facts of each case to determine the extent to which the statutory provision in question operates to burden interstate commerce. The courts will go behind the face of the statute to its practical operation. This is exactly what the United States Supreme Court did in the latest trade barrier decision in the Arkansas tax case where the court went into arithmetical calculations to show the mischief of the statute.

5. Nowhere are the general principles stated with greater eloquence and clarity than in the words of Mr. Justice Cardozo in *Baldwin* v. *Seelig*.[5] Among other things he said:

> What is ultimate is the principle that one State in its dealings with another may not place itself in a position of economic isolation. Formulas and catchwords are subordinate to this overmastering requirement. Neither the power to tax nor the police power may be used by the state of destination with the aim and effect of establishing an economic barrier against competition with the products of another state or the labor of its residents. Restrictions so contrived are an unreasonable clog upon the mobility of commerce. They set up what is equivalent to a rampart of customs duties designed to neutralize advantages belonging to the place of origin. They are thus hostile in conception as well as burdensome in result.

These few constitutional limitations illustrate the difficulties of approaching the trade-barrier problem from the standpoint of the refinements of constitutional law. The problem of a harmonious and integrated body of State laws, to end what Mr. Justice Cardozo characterized as neutralizing the economic consequences of free trade among the States, still remains as the basic problem. From this standpoint the statutes themselves must be analyzed.

Mr. DONOHO. Mr. Martin, you spoke of the four types of power under which the States have enacted trade-barrier legislation. The first power you mentioned was the taxing power. Would you explain how this power is used to restrict trade between the States?

Mr. MARTIN. By means of their taxing power the States have erected barriers to interstate trade. The barrier types of taxes may be divided roughly into three main groups: (1) Taxes which aim to exclude a competitive commodity in favor of the home products; (2) those which are aimed against a competitive type of merchandising; (3) those which operate as barriers because of their multiplicity, diversity, and cumulative burden on interstate commerce.

Mr. DONOHO. Go ahead and explain about the laws that exclude competitive commodities coming from other States in favor of local commodities.

Mr. MARTIN. It is in the field of margarines and liquor that we find this first type of taxation. The classic example of this group is, of course, the battle which has been waged between butter and

the margarines. In the field of liquor we have the recent avalanche of legislation which followed repeal and the Supreme Court's interpretation of the twenty-first amendment giving the States complete freedom to deal with this product.

Mr. DONOHO. Develop your thought with respect to margarines.

Mr. MARTIN. Tax legislation in the field of margarines indicates that the dairy States have sought to exclude margarine by practically taxing it out of existence, while the southern nondairy States have sought to protect their margarine industry by taxing any competitive products not made from their own home-grown crops. With the conflict between butter and margarine in the same State we are not concerned. But when a dairy State seeks to protect its butter against margarines coming from another State, the law takes on the aspects of an interstate barrier. As for the form which these taxes take, they are usually either a license or excise tax.

Mr. DONOHO. To what extent are license fees opposed in the market?

Mr. MARTIN. Sixteen States require licenses to engage in the manufacture, distribution, sale, or servicing of this product, and fees for such licenses range from $1 to $1,000 per year. Pennsylvania, Wisconsin, and Montana are in the highest bracket. North Carolina had a $1,000 license fee for manufacturers which were repealed by the 1939 legislature so that North Carolina has now joined the more or less "solid" South front in the margarine-butter war.

Mr. DONOHO. As to excise taxes, Mr. Martin, to what extent have they been imposed on marketing?

Mr. MARTIN. Twenty-three States have adopted excise taxes, ranging in scope from 5 cents a pound on uncolored margarines to 15 cents a pound on all margarines. The Cotton Belt States, except Mississippi, Oklahoma, and Tennessee, have levied a 10-cent-a-pound tax on all margarines except those containing cottonseed oil, corn oil, peanut oil, soybean oil, margarine oil, and stearine from cattle, and certain other animal fats and oils.

Representative REECE. Do you know if there is a Federal tax on oleomargarine?

Mr. MARTIN. Yes, sir.

Representative REECE. What is the purpose underlying the Federal tax, and is it different from the purpose underlying the State taxes, or do you have any opinion on that as the result of your study?

Mr. MARTIN. The Federal tax, of course, is a uniform tax throughout, as I will show as I go on with my testimony here.

Representative REECE. Yes; that is true; and in that respect it might differ from the State taxes, but was the oleomargarine tax levied by the Federal Government put on only as a revenue measure, or was there some other objective that was coupled with the revenue purpose?

Mr. MARTIN. I am not prepared to answer that definitely, but it is my understanding that the Federal tax originally was enacted purely as a revenue measure.

Representative REECE. The dairymen were very energetic, as I recall, in advocacy of this tax, and I didn't know whether their interest arose altogether out of the desire on the part of the dairymen for the Federal Government to gain additional revenue and they thought that was the easiest source through which to obtain it.

Mr. MARTIN. I am not prepared to express an opinion on that.

The VICE CHAIRMAN. I think it was purely an interest in the Federal revenue.

Mr. MARTIN. North Carolina also had a $1,000 license fee for manufacturers which was repealed by the 1939 legislature.

Mr. DONOHO. With respect to the taxing matter, Mr. Martin, you spoke about the impact of this power upon liquor, as creating barriers for liquor sales. Will you explain that, please?

Mr. MARTIN. In the field of liquor, the Marketing Laws Survey has found that several tax devices have been resorted to for the purpose of stimulating domestic products and crops used in liquor manufacturing, or to build up the State liquor industry generally. No less than 26 States have passed preference laws by levying lower license fees or excise taxes on liquor when State-grown ingredients are used. For example, Alabama taxes manufacturers of alcoholic beverages $1,000 annually for each place of manufacture, but wine makers using 75 percent or more of Alabama raw materials in their wineries pay only $25. In Oregon the regular winery license is $250, accompanied by a minimum bond of $1,000, but a farmer who makes wine from his own grown grapes or other fruits pays an annual feet of $25 and is subject to a $500 bond. Then there are the gallonage taxes.

Mr. DONOHO. These discriminatory taxes are also calculated in terms of gallons?

Mr. MARTIN. That is correct. As an example of that, in Michigan, the tax per gallon on wine made from grapes or fruit not grown in Michigan is 50 cents, but wine made in the State from products, 75 percent or more of which have been grown in the State, is taxed only 4 cents a gallon. In Arkansas, the 50-cent-per-gallon tax on wine does not apply to wine made in Arkansas from raw products produced in the State.

At this point I can best show this situation with a chart which I have prepared.

Mr. DONOHO. Will you identify the chart?

Mr. MARTIN. This is known as our chart No. 1, showing the Michigan wine tax on home-grown grape wine as compared with out-of-State grape wine. You will note the tax is only 4 cents per gallon on the Michigan wine, whereas it is 50 cents per gallon on out-of-State or California wine.

Mr. DONOHO. What is the source of the chart?

Mr. MARTIN. It is from the research studies of the Marketing Laws Survey.

Mr. DONOHO. I offer a copy of the chart.

The VICE CHAIRMAN. It may be received.

(The chart referred to was marked "Exhibit No. 2351" and is included in the appendix on p. 16121.)

Representative REECE. Would you mind saying if this law or laws similar to it have been tested in the Federal courts?

Mr. MARTIN. Not in connection with liquor, I believe. You see, the twenty-first amendment, together with the Supreme Court decision, more or less said that is a power of the sovereign States. We include liquor here because there are barriers in liquor, and as I have previously indicated, we feel perhaps 90 percent are constitutional, nevertheless they are bad from an economic standpoint.

The VICE CHAIRMAN. May I ask, is it considered by the gentlemen who made the study that this matter of discrimination under the twenty-first amendment is within the regulatory powers of the Federal Government?

Mr. MARTIN. As interpreted up to the present time by the Supreme Court?

The VICE CHAIRMAN. I am not myself familiar with the case in which the Supreme Court held, as I understand, that any State can pass legislation in regard to import duties, and so forth, on liquor. The question I am asking is whether or not this discrimination to which the witness is now referring falls within federal jurisdiction.

Mr. DONOHO. Your position, Mr. Martin, as I understand it, is that discriminatory laws in liquor may be validly imposed by the States.

Mr. MARTIN. That is correct.

Mr. DONOHO. Under the Constitution as interpreted.

Representative SUMNERS. Let's make that clear then. What is contended can be done about this matter by the Federal Government, if in fact it is understood to be an evil thing and that something ought to be done about it?

Mr. MARTIN. In view of the fact that the courts have taken the position that the power lies with the State, undoubtedly it is going to be a matter of entering into State compacts or State agreements, working it out together.

The VICE CHAIRMAN. I thought it well to make that clear in the record.

Mr. MARTIN. I would like at this time to present another chart that will give you a little more of the national picture in connection with liquor. This chart shows a small number of the States showing "Preferences in Wine Manufactured Wholly or in Part from Products Grown in State." We show in the top bar the cost of an out-of-State manufacturer's license and compare it with the small fee charged the residents of the State. In the second column we compare relative differences between the tax assessed to out-of-State product to the tax upon home-grown wine. If those figures are not plain to the committee I will read them.

The VICE CHAIRMAN. Yes, sir; we can see them.

Mr. DONOHO. What is the source of that?

Mr. MARTIN. That is also from the research study made by the Marketing Law Survey.

Mr. DONOHO. Is this the chart you describe?

Mr. MARTIN. Yes.

Mr. DONOHO. Mr. Chairman, I offer it as an exhibit.

The VICE CHAIRMAN. It may be received.

(The chart referred to was marked "Exhibit No. 2352" and is included in the appendix on p. 16122.)

Representative REECE. Would you mind my asking you if statutes of this type have been tested in the Federal court so that it has been ascertained that they are on sound legal basis?

Mr. DONOHO. Mr. Reece, I cannot speak from a first-hand knowledge of the cases, but it is my understanding, through discussion with persons who have read the decisions, that there is no federal power now to regulate the interstate movement of liquors.

Mr. MARTIN. I have the citation here on the case that I mentioned, which is the *State Board of Equalization of California* versus *Young Market*, 299 U. S. 51. There are two or three other cases I can cite.

Representative REECE. Does that decision relate only to liquors?

Mr. MARTIN. Only to liquors.

Representative REECE. It doesn't have the same relation to other products?

The VICE CHAIRMAN. It is under the twenty-first amendment.

Mr. DONOHO. As I understand, you pointed out in your early testimony that liquor has a unique status in that discriminatory action is sanctioned by the Constitution, that is discriminatory action as between one state and another.

The VICE CHAIRMAN. Proceed, Mr. Martin.

Mr. DONOHO. Have you finished explaining the chart, Mr. Martin?

Mr. MARTIN. Yes, sir.

Mr. DONOHO. You have spoken of statutes which are directed at manufacturers of products used in the manufacture of liquor. What did the Survey find as to restrictions imposed on importers of liquors?

Mr. MARTIN. We found it is more common to impose restrictions on the importers and occasionally on the foreign manufacturers than on the import itself. At least seven states charge a higher or additional fee for importing into the state than is charged for wholesaling or distributing the local product. In Nevada the wholesalers' wine, beer, and liquor license is $150, but the importer must pay $350 for the same type license.

Massachusetts charges solicitors for foreign manufacturers of alcoholic beverages a fee of $100 to $300 for their annual licenses as against $10 for state residents soliciting for domestic manufacturers. Louisiana requires that dealers who maintain a regularly established place of business in the state pay a $1,000 annual fee, but failure to maintain such place subjects the dealer to a $10,000 fee.

Mr. DONOHO. Mr. Martin, to what extent is it true that some barrier laws are passed as retaliatory laws?

Mr. MARTIN. Eight states have enacted retaliatory legislation against beverages from other States.

Typical of such liquor retaliatory measures is the Rhode Island statute which provides that the Department of Business Regulation be authorized to assess the products of any state discriminating against Rhode Island products in such amounts as would equalize the taxes and other charges. If this does not remove the discrimination, the Department may assess such additional charges as it may deem necessary to remove such discrimination against Rhode Island products. Michigan empowers the State liquor commission to establish an embargo against beer of any State levying a discriminatory tax against a Michigan-produced beer.

Mr. DONOHO. You referred to a second group of tax laws aimed against competitive types of businesses. Would you develop that, please, Mr. Martin?

Mr. MARTIN. Taxes which are aimed against a competitive type of merchandising are widely used against the so-called itinerant trucker. With the increased use of motor trucks, the old laws against transient merchants and peddlers have been revived. While most of the itinerant-peddler laws, on their face, do not discriminate

against the out-of-State vendor, the Louisiana and Wisconsin statutes are so defined as to strike directly at nonresidents. The Louisiana law declares that nonresidents importing for sale certain poultry, fruits, and vegetables in trucks, must pay a license fee of $200, and does not mention the resident trucker. The Wisconsin law defines a merchant-trucker as one who transports produce not grown in the State in a truck or other vehicle from a point within or without the State and who sells the same direct from such vehicle to retail merchants without advance order. Such trucker is required to pay a fee of $40 before he can sell his produce. It is interesting to note, however, that the Arkansas and Georgia laws specifically encourage truckers to come into their States to buy but not to sell. Arkansas provides for certain registration exemptions for truckers who come to purchase. Georgia declares that truckers hauling agricultural products grown in Georgia may take 10 free trips into the State per month, while others may make only two free trips per month.

Arizona, Montana, Nebraska, and West Virginia are some of the States which require itinerant merchants to pay license fees of a special nature.

I should like to give an example of this type of discriminatory tax operating to make impossible the sale of products from farm to farm doors. The instance comes from Arizona. Here is a situation graphically presented. The truck in this chart is traced on a route through each of the counties of the State of Arizona. Note that the total fees would amount to $4,400 in addition to the $5,000 bond.

Although the Arizona law was declared unconstitutional but a few months ago, it provided that a retail merchant-trucker pay $200 per year in every county in which he operates, plus $25 additional for each assistant. A wholesale peddler, not marketing his own products, was required to pay a license fee of $500 in each county with a population of 100,000 or more in which he operates, $300 in all other counties, and post a surety bond of $5,000 from a surety licensed within the State of Arizona.

Mr. DONOHO. What is the source of your chart, Mr. Martin?

Mr. MARTIN. That is also from the Marketing Laws Survey-Trade Barrier Study.[1]

Mr. DONOHO. I offer this, Mr. Chairman, as Exhibit No. 2353.

(The chart referred to was marked "Exhibit No. 2353" and is included in the appendix on p. 16123.)

The VICE CHAIRMAN. Mr. Donoho, when I suggested a while ago that the committee would not be interested in the discussion of the constitutional phase, I didn't mean a rejection of reading into the record the conclusions of the witness.

Mr. DONOHO. You say the Arizona law was declared unconstitutional. What is your purpose, then, in reporting it?

Mr. MARTIN. Although it it no longer in effect, I cite this statute to indicate the extent to which States have gone in exercising their taxing powers. In Montana a merchant-trucker must pay a $100 license fee for one truck and $50 for each additional truck.

Mr. DONOHO. You mentioned a third type of tax law as a trade barrier, that which is cumulative in effect. Would you develop that, please?

[1] "Exhibit No. 2364," on file with the Committee.

Mr. MARTIN. Differentiated from those which are discriminatory, the tax laws which operate as barriers because of their multiplicity, diversity, and cumulative burden on interstate commerce are found in the fields of motor vehicles and nursery stock.

Mr. DONOHO. Could you illustrate from the field of motor vehicles?

Mr. MARTIN. In the field of motor vehicles, while it is true that these laws on their face do not discriminate against out-of-State vehicles, they do operate as a cumulative burden on vehicles which must pass through several States, paying fees in each. Such burdens may be justified, perhaps, as compensation for use of the highways, but when pyramided against a single vehicle may constitute a real handicap and burden to motor transportation. There are registration fees, gross-receipts taxes, mileage taxes, and other miscellaneous taxes too many and too complicated for detailed analysis in my statement.

Each State requires motor trucks using its highways to register and pay a fee therefor. These fees are often quite heavy and usually increase sharply with the size of the truck. They vary from $30 on a 5-ton truck in Idaho to $400 in Alabama. As an example of the cost to an interstate trucker, it is interesting to note that a trucker traveling from Alabama to South Carolina, ignoring the extra fees if a trailer is involved, would be required to pay $400 in Alabama, $400 in Georgia, and $300 in South Carolina on a 5- to 6-ton truck, making a total of $1,100 from Alabama to Georgia to South Carolina.

Mr. HAYES. Are these fees that are assessed only against out-of-State trucks?

Mr. MARTIN. They are both State and out-of-State.

Mr. HAYES. There is no discrimination as to the rate?

Mr. MARTIN. No; it is merely the cumulative burden.

In Mississippi the fees for private commercial carriers range from $132 for vehicles not exceeding 5 tons to $498 for vehicles not exceeding 10 tons. As to carriers for hire, the fees range from $198 for trucks not exceeding 5 tons to $792 for trucks not exceeding 10 tons.

In North Dakota, the fees to be paid range from $400 on a 5-ton truck to $1,500 for a 10-ton truck, with a 10-percent reduction each year from the previous year's fee until it equals one-half of the original fee.

Mr. HAYES. May I ask a question there? On this reduction, is that per truck or per owner of a truck?

Mr. MARTIN. Per truck.

Mr. HAYES. It must be the same truck itself, not the same operator?

Mr. MARTIN. That is right; it is due to the depreciation of the truck.

Mr. DONOHO. Are there any reciprocal agreements in effect between the States with respect to the operation of motor vehicles?

Mr. MARTIN. Yes.

Mr. DONOHO. How effective are these agreements?

Mr. MARTIN. While it is true that reciprocity, in one form or another, is provided for in the laws of some 41 States, only 9 States grant complete reciprocity as to all fees. The laws of Nebraska present a typical example of the effect of such reciprocal arrangements. They provide that the State is to extend full reciprocity on license fees to trucks from other States provided that the States in

which such trucks are domiciled extend similar privileges to trucks from Nebraska. Similar provision is made for the "ton-mile" tax, license plates, and other special taxes.

Only 18 States are cooperating with Nebraska to such an extent that trucks from these States may pass through Nebraska without purchasing a license. As for trucks from the other 30 States, the requirements imposed by Nebraska upon such trucks vary with the requirements which each State imposes upon Nebraska trucks. Four States—Arizona, California, Mississippi, and New Mexico—require all out-of-State trucks operating for any purpose to register therein, with the result that Nebraska requires all trucks coming from these States to comply with its registration provisions. Other States—for example, Kentucky, Minnesota, Montana, Oregon, Texas, and Washington—require out-of-State trucks that operate for hire to purchase a license. Therefore, for-hire trucks from those States must purchase a license in Nebraska. Florida requires a Florida license on all trucks operating for hire except trucks transporting uncrated household goods, store and office fixtures. Nebraska, therefore, requires all Florida for-hire trucks except those transporting uncrated household goods, store, and office fixtures to comply with its licensing provisions.

The VICE CHAIRMAN. Mr. Martin, is there any claim that this charge against these trucks is in part compensation for the right of using the public highways and injury to the public highways by reason of their use?

Mr. MARTIN. As I previously indicated, I think the bulk of the legislation—the original legislation in the States—was for that purpose. However, when you cross three or four States the cumulative burden becomes enormous, particularly where a truck only makes one or two trips a year.

The VICE CHAIRMAN. Do you know whether or not competitive instrumentalities of transportation had anything to do with it?

Mr. MARTIN. I am not qualified——

The VICE CHAIRMAN (interposing). I ought not to ask that. I will withdraw the question.

Representative REECE. Do you know whether the Motor Carrier Division of the Interstate Commerce Commission has made any effort to bring about reciprocal arrangements among the States with respect to trucks?

Mr. MARTIN. The Interstate Commerce Commission controls certain classes of carriers that operate over regular routes. Insofar as I know, they have never done anything toward the individual truck owner. I am not qualified to say that they have not, but insofar as I know they have not.

Representative REECE. But these licensing provisions to which you refer would apply to the regular carrier the same as to the individual truck operator, would they not?

Mr. MARTIN. That is correct, sir, on the licensing requirements.

Mr. DONOHO. Mr. Martin, do any States permit out-of-State trucks to operate within the State without making proper registration and paying the proper fees?

Mr. MARTIN. A few States permit certain types of truck operations by out-of-State trucks for a short period of time or for a limited number of trips without payment of the regular fees or upon pay-

ment of a fraction thereof. Frequently, however, such permission is extended to only a limited type of truck operator; for example, the Arizona law, which extends the privilege of special 30-, 60-, or 90-day permits only to private truckers transporting their own property. Alabama issues special-trip permits only to carriers transporting their own property or to those transporting property for others to a destination within the State and which do not operate over regular routes.

Mr. DONOHO. Do you have an illustration of other forms of tax laws directed against the motor carriers in the several States?

Mr. MARTIN. Yes. Some 20 States have enacted mileage taxes of one form or another. These taxes are calculated either on the basis of ton-miles traveled within the State or on a graduated fee per mile for trucks of varying weights, and range from 1 mill per mile on a 5-ton truck in Michigan to 2 cents per mile on the same truck in Alabama.

In some States, for example, Colorado, Iowa, Kansas, Michigan, South Carolina, and Tennessee, the tax is levied alike on all trucks of the class subject to the tax, whether resident or nonresident. In others, such as North Dakota and Minnesota, the mileage tax is levied only upon out-of-State trucks which are permitted to pay this tax in lieu of the regular registration fees.

The VICE CHAIRMAN. At that point, would they be permitted to pay the regular registration fee instead of the tax?

Mr. MARTIN. That is correct. They have the choice of the two alternatives in that particular case, in North Dakota and in Minnesota.

Representative WILLIAMS. Well, have we States there where there is such a limitation on the size and weight of the truck, that they cannot operate at all in some adjoining State?

Mr. MARTIN. We have, and I expect to get into that in just a minute.

Representative WILLIAMS. I wondered what they did where that situation existed. Do they unload at the boundary?

Mr. MARTIN. They unload at the boundary; that is correct.

There are also gross-receipts taxes. These taxes have been enacted by some 12 States: Arizona, California, Idaho, Indiana, Louisiana, Mississippi, Montana, West Virginia, North Carolina, Oregon, Pennsylvania, and Virginia. In the case of interstate transportation, these taxes are ordinarily assessed against the gross receipts in proportions which the mileage traveled within the State bears to the total mileage traveled in interstate commerce, and range from one-half of 1 percent in Montana to 6 percent in North Carolina.

A more recent type of levy has come into being in the form of a caravan tax levied on motor caravans or motor convoys. California, Idaho, Ohio, Oklahoma, and Texas are States which have enacted such laws. The California law prohibits the transportation of any vehicle, whether originated within or without the State, for the purpose of sale, without securing a special permit for each vehicle so transported. It also provides for the payment of two license fees, one of $7.50 to reimburse the State for the expense of administering its police regulations, and the other for $7.50 for the privilege of using the highways. The Idaho law levies a fee of $5 per caravaned auto transported from without the State on its own

wheels or in tow of another vehicle into or through the State, for the purpose of sale.

Mr. DONOHO. Mr. Martin, you indicated a few minutes ago that nursery stock as well as motor transportation illustrated a cumulative type of barrier. Would you discuss the nursery stock aspect of this problem?

Mr. MARTIN. What is true of the cumulative burden on motor transportation may apply in lesser degree to the nursery-stock business. We shall deal with this subject more specifically under the inspection and quarantine powers of the State.

Mr. DONOHO. While we are still on the subject of transportation, did the survey inquire into the much-discussed "use tax," and to what extent it operates as a barrier to interstate trade?

Mr. MARTIN. Yes. Not only can States burden specific industries by means of cumulative taxation, but a new device has recently been utilized in the form of a use tax whereby States can tax all purchases of interstate products. The use tax was enacted by the States as an equalizing tax upon interstate transactions not subject to the State sales taxes levied upon intrastate transactions. When the enacting State allows a deduction for sales, use, or similar taxes in the State of origin it is called a "compensatory use tax," and the burden against business from other States may be no greater than on domestic business.

As of January 1, 1940, 15 States had enacted general-use taxes, but of these only 9 are compensatory in character. In the 6 remaining States the imposition of the use tax may operate as an import duty burdening products from sister States and resulting in preferential treatment to domestic industries. These preferences are expressly set out in certain use-tax statutes. For example, Oklahoma and Wyoming exempt products of their farms; California exempts gold bullion; and Utah and Wyoming products of their mines.

Mr. DONOHO. Following the classifications of power which you set out earlier in your testimony, would you tell us briefly about inspection and quarantine?

Mr. MARTIN. In addition to using their taxing power as a means of excluding out-of-State products, the States also invoke their power of inspection.

The fields in which these inspection laws operate are many, but they have their greatest effect as trade barriers in the dairy, nursery, livestock, and liquor industries.

Mr. DONOHO. Taking the subjects in the order named, what did the survey find in the milk and dairy industry?

Mr. MARTIN. Of foremost importance are those restrictions placed on milk and cream by numerous States.

Except in the case of an acute milk shortage, Rhode Island requires that any milk sold in the State must be produced on a dairy farm registered by the State Department of Agriculture and Conservation, and such registration is not granted until inspection has been made by the Department and the Department is satisfied that the farm meets all of the sanitary requirements and will be operated in a clean and sanitary manner. It specifically provides that milk produced out of the state must meet these requirements.

In that connection I would like to introduce a chart, and that was actually enforced. As we indicate on this chart, 5,000 quarts of milk·

coming from Bellows Falls, Vt., were actually stained red by inspectors of the State of Rhode Island under a provision in the state statutes that if any provision of the section is violated the inspector may color the milk with vegetable matter.

The same State provides that all milk to be pasteurized must be pasteurized and inspected in the State unless within the local milk shed area, and defines the "local milkshed" as that local area within which milk is being produced and delivered daily by truck to a local market.

Connecticut, Massachusetts, New Jersey, Pennsylvania, New York, Virginia, and Florida also require that milk, and in some cases cream, must be licensed or inspected by the officials of the importing State. In Connecticut, although out-of-State dairies must secure permits and submit to inspection, the Dairy and Food Commissioner is prohibited, by statute, from inspecting beyond the present milkshed area of the State except in case of a milk shortage or emergency.

Mr. DONOHO. Mr. Martin, what is the source of the chart, please, which you just described?

Mr. MARTIN. That is from the Marketing Laws Survey-Trade Barrier Study.[1]

(The chart referred to was marked "Exhibit No. 2354" and is included in the appendix on p. 16124.)

Incidentally, the Federal Trade Commission, in reporting on the sale and distribution of milk to the Seventy-fifth Congress, first session, House Document No. 95, clearly showed the extent of the cost of such duplication of health inspection through an incident involving dairies supplying a milk plant at Ardmore, Pa., operated by the Dairyman's League Cooperative Association, Inc. The farms supplying the plant are regularly inspected by inspectors of the health departments of New York and Newark, New Jersey, and by inspectors in the regular employ of the Dairymen's League. The league was advised that before the out-of-State plant could be given a permit to supply the district, all dairies serving the plant would have to be inspected by district representatives, the cost of which would be chargeable to the Dairymen's League. It was estimated that the cost of putting the out-of-State plant and its five feeders in condition to meet the Ardmore requirements would exceed $50,000.

Mr. DONOHO. In addition to the Federal regulation and the State laws on this subject, Mr. Martin, how do municipal ordinances affect the milk industry?

Mr. MARTIN. While not included in the purview of the study, it is well known that through enabling legislation, cities are frequently given the power to impose additional health restrictions. Maryland, for instance, declares it unlawful to import into that State milk not produced, handled, or shipped according to standards applicable in the State and in the municipalities into which it is shipped.

Representative WILLIAMS. In that connection, is there any kind of a standardized system between the various inspections of the States? Are they all different? I mean by that, does milk inspected in one State which goes into another and is inspected there, not pass? Is there no uniformity in the system of inspection at all?

[1] "Exhibit No. 2364," on file with the Committee.

Mr. MARTIN. In many, many instances there is not, and as I will show here a little later on, there is the widest divergence in inspection requirements. Another danger, of course, arises through the administrative agency enforcing the statute, through its issuance of bulletins, regulations, and orders.

Representative WILLIAMS. Do you mean by that that they interpret it in such a way as to actually discriminate against the foreign milk?

Mr. MARTIN. That is correct.

Mr. DONOHO. Do State regulations, Mr. Martin, affect only milk, or are they equally applicable to milk products?

Mr. MARTIN. In addition to the inspection of milk and cream, there now appears to be a movement among the States to include all dairy products within that field. Pennsylvania, Minnesota, Louisiana, and New Jersey forbid the importation of any ice-cream products unless they are registered, and the manufacturer is licensed by the State Department of Agriculture.

Mr. DONOHO. The purpose of these laws that you have been describing requiring inspections, I suppose, is that they are designed to safeguard the health of the citizen? How, then, do such laws tend to create trade barriers, Mr. Martin?

Mr. MARTIN. Well, in addition to these sanitary and health requirements, statutes have recently been enacted known as the Milk Control Acts, which regulate price and marketing practices. Today there are 21 such acts in existence.

In most of these States a milk control board is created. In several, the powers are vested in existing State departments, while four States make provision for local boards which may exercise limited jurisdiction within certain restricted areas, subject to the supervision of the State authority.

The general powers vested in these boards by all such milk-control acts are the supervision and regulation of the entire dairy industry of the State, which include production, transportation, manufacturing, processing, handling, storage, and sale.

The powers of investigation vested in such boards are sweeping. This power includes the right to subpoena and examine witnesses, take depositions, and examine books, records, and accounts of persons in the industry. It also includes the right of entry by members of the board or its employees for any and all purposes as the board may deem necessary.

The boards are also given the authority to fix prices for milk and milk products and to designate and define milkshed and marketing areas.

Although price-fixing applies generally to intrastate milk, it has a deterrent effect on interstate shipments at the instant that such product ceases to be transported in interstate commerce and becomes a subject of regulation under the "police" power of the State.

The milk boards are also empowered to issue licenses or permits to persons engaged in the milk industry which may be refused or revoked for various and diverse reasons such as participation in practices tending to demoralize the market, violation of sanitary regulations, and failure to keep the required records.

Finally, the boards, in administering these acts, are empowered to promulgate such orders, rules, and regulations as, in their discretion, are deemed necessary and essential for the protection of the industry.

In these broad discretionary powers lies the greatest danger of burdens and hindrances to interstate commerce.

Mr. DONOHO. As to your last point, Mr. Martin, is it that the interference to interstate commerce arises not so much from the laws themselves, as from the manner in which these laws are administered?

Mr. MARTIN. Yes; that is correct.

Mr. DONOHO. Mr. Martin, what about other industries, how are they affected by inspection and quarantine types of legislation? You stated that the nursery stock people were affected in this respect, I believe.

Mr. MARTIN. That is correct. The power of exclusion, through inspection, is by no means limited to dairy products. Horticultural products are almost entirely controlled, restricted, excluded, or destroyed by the importing State through this method.

Although these quarantines are very effective in preventing the spread of animal and plant diseases and of insect pests, and have prevented enormous losses to agriculture, yet, because of their direct and often drastic effect upon trade, quarantines when unnecessarily applied, can do great harm to the exchange of products between different parts of the United States.

The Survey found that 47 States have statutory inspection requirements for imported nursery stock. Twenty-eight States require state-of-origin certificates certifying to the pest-free or disease-free condition of the stock. In addition, practically all of the States require further inspections after the stock has reached its destination.

Every State gives to its department of agriculture or a similar agency, some power to declare quarantines. Many of them are also given the authority to confiscate and destroy the stock.

The great mass of regulation, however, is not in the statutory enactments, but in the regulations promulgated by the State agencies.

Only 11 plant diseases and insect pests are the subject of the Federal domestic plant quarantines, but the States, as of January 15, 1939, had in effect approximately 239 quarantines.

Representative WILLIAMS. Do these same States that require these quarantine inspections require a domestic inspection of the nursery stock? Do they require the products that are raised within their States to submit to that same inspection?

Mr. MARTIN. Sometimes they do and sometimes, I am informed, that the inspection is a retaliatory inspection.

Representative WILLIAMS. In other words, they don't require any inspection at all of their home product?

Mr. MARTIN. Oh, I didn't understand the question correctly.

Representative WILLIAMS. That was the question.

Mr. MARTIN. Both ways. In many instances they do and many instances they don't.

Representative WILLIAMS. Let's see if I understand you. Do you mean to say there are states that impose an inspection fee and the exclusion, we will say, of nursery stocks from another State, that don't require any inspection at all of the products that are raised and sold within the State?

Mr. MARTIN. I didn't understand your question. No, most of the States do. I am not sure whether all of them do, but most of them do.

Mr. DONOHO. A witness for the dairy industry will go into that matter later on.

The VICE CHAIRMAN. Of course, it may be observed that transportation of nursery stock from a distance also increases the probability of bringing in an infection, because if it is already in the State, you can't bring it in.

That is hardly an exact statement. You can't bring it in for the first time, I'll put it that way, if it is already in.

Mr. MARTIN. Of course, many people are not acquainted with State lines, and very often you find local quarantines within the State. However, in some cases they are not subject to the same taxes that an out-of-State nursery would be subject to, the cumulative taxes and inspections.

A brief survey of the State quarantine regulations from a pamphlet compiled by the New York Department of Agriculture and Markets indicated that, as of December 1938, there were only three States which had no quarantine regulations. That answers your question, Mr. Williams.

In a report by the Bureau of Agricultural Economics of the United States Department of Agriculture [1] it has been said:

> According to an analysis made by the Federal Bureau of Entomology and Plant Quarantine, on December 30, 1937, quarantines to prevent the spread of the alfalfa weevil into their respective territories had been imposed by 27 States. Of these only 8 had regulations that were uniform. Seventeen States differed among themselves as to the area quarantined against. With regard to the articles under regulation (for instance, hay, alfalfa meal, used machinery, household goods) 8 States agreed on one list of such articles, 6 on another, 2 on a third, and each of the remaining 9 States had a list of its own. The difficulties of such a situation for shippers and transportation companies are obvious.

Mr. DONOHO. Mr. Martin, as in the case of motor vehicles, are there any reciprocal arrangements between the States in this field of inspection and quarantine?

Mr. MARTIN. Yes; the Marketing Laws Survey found that only six States make provisions in their statutes for reciprocal agreements in the plant industry. But such reciprocal legislation can be double-edged, being stated in terms of retaliation. For instance, Louisiana, in 1938, enacted a provision which made it unlawful to ship into the State, sell, or handle in any manner within the State, any agricultural plant or plant product from any State, Territory, or foreign country which prohibits the shipment from Louisiana of any such agricultural or horticultural plant or plant products by reason of quarantine or embargo of any kind or nature.

Mr. DONOHO. Mr. Martin, can you sum up in a few words the difficulties which exist in the field of nursery stocks?

Mr. MARTIN. The Bureau of Agricultural Economics of the United States Department of Agriculture has summarized the flaws which exist in the field of quarantines and have a detrimental effect on the movement of agricultural products by reason of unnecessary red tape, annoyance, delay, and expense; improper definition of the quarantined areas, resulting in the restrictions upon shipments from areas where the disease or pest quarantined against does not exist; lack

[1] "Barriers to Internal Trade in Farm Products," by Taylor, Burtis, Waugh, U. S. Department of Agriculture, Bureau of Agricultural Economics, 1939, pp. 89, 90.

of a real biological basis for the quarantine; and serious nonuniformity of regulations.

Mr. DONOHO. What about the situation with respect to inspection and quarantine in the livestock field?

Mr. MARTIN. The same situation prevails in the livestock industry. Thirty-three States require health certificates showing freedom from infectious and contagious diseases; other, tuberculin test charts, permits, and notices, in advance of importation. In addition to these conditions precedent to importation, the livestock is subject to further dual inspections when it reaches the State of destination.

Mr. DONOHO. Specifically, how do these laws operate as trade barriers?

Mr. MARTIN. A specific example of a quarantine in operation will serve to show the effectiveness of such measures in creating trade barriers. On October 1, 1932, the State of New York's commissioner of agriculture and markets established a Bang's disease quarantine on dairy cattle. It forbade the shipment into the State of all cattle, even if free from Bang's disease themselves, unless they came from herds that had been certified as being completely free from the disease after three successive negative tests within a year previous to their arrival in New York. At the time the quarantine order was issued less than 1,500 herds in the United States could meet these standards and according to public sources none of these were New York herds. It practically forced milk producers to rely on up-State New York herds for their milk cows, even though such cattle might be inferior or more costly than western cows. Previous to the order, the herds of Wisconsin had been among the leading out-of-State sources of supply, having sold on an average of over 7,500 milk cows per year to New York milk producers during the preceding years. Although Wisconsin probably now has more herds—approximately 23,971—which meet New York requirements than the rest of the United States combined, the market thus lost has never been recovered.

Representative WILLIAMS. While you are on that page you have just been reading from, at the top of page 17 is a very remarkable statement, to me. I don't believe you read that, about holding healthy cattle for 60 days and not permitting them to be sold.

Mr. MARTIN. Yes, sir.

Representative WILLIAMS. Well, what kind of theory is that?

Mr. MARTIN. I can give you—I wouldn't want to go into the theory of it.

Representative WILLIAMS. I was just wondering. It seems to me there isn't any reason in that. Does that mean after the inspection, after they have been inspected and passed as healthy cattle they can still be held for 60 days?

Mr. MARTIN. Well, of course, I believe it is generally agreed that there are certain diseases that they can't get reaction from within a limited time. Now, I am not qualified to state whether it would be 30 days, 60 days, or what.

Mr. PIKE. Some diseases might be in process of incubation.

The VICE CHAIRMAN. Then the language should be changed, qualified to some degree, because that assumes that the cattle being held are healthy cattle. You mean cattle whose state of health is not known?

Mr. MARTIN. That is the supposition; yes, sir.

Mr. PIKE. Apparently healthy cattle.

Mr. MARTIN. Apparently healthy cattle.

The VICE CHAIRMAN. Cattle being held to find out whether they are healthy or not. That seems to cover all phases of the case.

Mr. MARTIN. At the time this quarantine was put into effect, which was in 1932,[1] 9,553 head of cattle were shipped from Wisconsin to New York on the basis of the United States Department of Agriculture. The average price for the year in 1932, the New York market, represented approximately $362,024 to the farmers of Wisconsin. After the quarantine was imposed in 1933 New York bought only 516 head of cattle. Taking the United States Agriculture Department's average price for the year 1933, these cattle represented only $20,634 (a loss in a single year of $340,000 to the producers in Wisconsin. The loss in the market has run around $300,000 a year ever since 1932, or a total in 6 years of about $1,800,000.

Mr. DONOHO. The source of this chart is the marketing laws survey?[2]

Mr. MARTIN. And the records of the Department of Agriculture, Bureau of Entomology, Exhibit No. 2355.

(The chart referred to was marked "Exhibit No. 2355" and is included in the appendix on p. 16125.)

Mr. DONOHO. Are there other commodities affected by the State's power to quarantine?

Mr. MARTIN. There are many. The powers of embargo are not limited to plants and animals, however. Three statutes authorize the establishment of embargoes on fruits and vegetables. Georgia, for example, provides that the Commissioner of Agriculture may declare an embargo on fruits, vegetables, and truck crops coming into the State if domestic products are sufficient for home markets. Louisiana has a retaliatory statute which forbids the sale in Louisiana of products from a State which prohibits the importation of such products from Louisiana.

The VICE CHAIRMAN. We had better stop at this point. The committee will stand in recess until 10:30 tomorrow morning.

(Whereupon at 4:40 p. m. a recess was taken until Tuesday, March 19, 1940, at 10:30 a. m.)

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[1] Quoting from "Exhibit No. 2355," appendix, p. 16125.

[2] "Exhibit No. 2364," on file with the committee.

INVESTIGATION OF CONCENTRATION OF ECONOMIC POWER

TUESDAY, MARCH 19, 1940

UNITED STATES SENATE,
TEMPORARY NATIONAL ECONOMIC COMMITTEE,
Washington, D. C.

The committee met at 10:35 a. m., pursuant to adjournment on Monday, March 18, 1940, in the Caucus Room, Senate Office Building, Senator Joseph C. O'Mahoney presiding.

Present: Senator O'Mahoney (chairman), Representatives Sumners (vice chairman), and Williams; Messrs. Pike and Kades.

Present also: W. S. Whitehead, Securities and Exchange Commission; Frank H. Elmore, Jr., Department of Justice; Dr. Ben D. Dorfman, United States Tariff Commission; D. Haskell Donoho, associate attorney; Dr. Frederick V. Waugh, head of Division of Market Research, Department of Agriculture; and Paul T. Truitt, Chairman, Interdepartmental Committee on Interstate Trade Barriers, Department of Commerce.

The CHAIRMAN. The committee will please come to order.

Mr. DONOHO. I would like to sum up what was done yesterday and what we are going to try to do today.

The VICE CHAIRMAN. Did you finish with the witness yesterday?

Mr. DONOHO. No, sir.

TESTIMONY OF A. H. MARTIN, JR., EXECUTIVE DIRECTOR, MARKETING LAWS SURVEY—Resumed

The VICE CHAIRMAN. Do you want a summation now before you proceed?

Mr. DONOHO. I thought it might be well, very briefly. Mr. Chairman and members of the committee, yesterday the testimony of witnesses was confined principally to an exposition of the general problem occasioned by barriers to trade between the States. This morning this general exposition will be continued by Mr. Martin, who is presenting a picture of the legal bases supporting trade-barrier practices.

At the conclusion of Mr. Martin's statement the character of the testimony presented before the committee will change. The trade-barrier problem will be discussed in its more specific aspects. In other words, witnesses will show how trade barriers are affecting specific industries and how they are affecting farmers and consumers in particular situations.

In this connection, witnesses today will present testimony with respect to the trade-barrier problem in the margarine and dairy-products industries. Mr. Martin, will you come forward, please?

Mr. Martin, yesterday you enumerated four types of powers under which States enact trade-barrier legislation. These you said are the power of taxation, the power of inspection and quarantine, the police power, and the power resulting to the State through its proprietary interests in its natural resources. You discussed in some detail the first two, that is, the power of taxation and the power of inspection and quarantine. Will you please tell the committee how laws enacted pursuant to the police power of the States operate to interfere with interstate commerce?

Mr. MARTIN. Regulatory laws which operate as trade barriers though enacted under the State's power to protect public morals and safety have been found in the fields of liquor, insurance, margarines, general foods (such as fruits, vegetables, and eggs), commercial fertilizer, itinerant merchants, and motor vehicles.

Mr. DONOHO. Taking them up in the order you named, what did the survey find with respect to liquor?

Mr. MARTIN. In the field of liquor, it has already been pointed out how the States, through the exercise of their powers of taxation and exclusion through inspection, have succeeded in favoring home State liquor manufacturers, wholesalers, and farmers who produce the crops used in the manufacture of wine and beer.

The same effect is achieved by laws passed in the exercise of the State's power to protect public morals. This is achieved by several different devices. At least four States, Colorado, Pennsylvania, Washington, and Wyoming, provide that licenses will be granted only to persons who are residents of the State or corporations authorized to do business in the State. Others, such as Ohio, South Dakota, Texas, and Wisconsin, will grant licenses only to persons who have resided in the State for a specified number of years. Massachusetts grants a license to import or wholesale alcoholic beverages only to individuals who are residents of the State, or to partnerships composed of such individuals, or to Massachusetts corporations, a majority of whose directors reside in the State.

Mr. DONOHO You mentioned barriers in the field of insurance, Mr. Martin. Will you please explain that?

Mr. MARTIN. In the field of insurance, except for the provisions which are generally discriminatory against foreign corporations, the restrictive aspects lie in the cumulative effects of the laws in each State requiring the deposit of bonds and other securities issued by local companies, compliance with other capital requirements, and the payment of heavy license fees and other taxes in each State.

Although, in some instances, these provisions are equally applicable to resident companies, yet the type of measure such as the "differential gross premium tax" as adopted in the State of Texas is employed to prevent foreign insurance companies from competing with local institutions.

Restrictions are also made applicable to agents of foreign corporations. The most usual requirement is that the agent must be a resident or is required to deal through a local resident of that State.

Mr. DONOHO. You mentioned barriers against margarines. How do the general regulatory powers of the State affect this?

Mr. MARTIN. In this case, the States in exercising their power to protect public morals, have enacted an amazing mass of mandatory labeling laws which operate to penalize the sale or serving of mar-

garines in competition with butter. These labeling provisions present a confusing picture. Some States require containers to be marked, branded, or labeled, top, side, and bottom; others, top only; others, top and side; and still others, two sides directly opposite each other, and so on. Then, too, there is a variation in the size of type to be used, ranging from ¼ to 1 inch, and larger; and in the style of letters to be used such as Roman, Gothic, plain, or bold face.

California requires that a retail customer be handed a statement setting out all ingredients and the percentage of each contained in such product. In Minnesota a similar statement is required, which must also state from what animal or vegetable such ingredient was extracted.

Nearly all the States have requirements concerning the serving or use of such product in hotels, restaurants, and other public eating places. They require either the bill of fare or signs posted in conspicuous places about the dining room to give the name of the substance served. The requirements as to the size, color, and type of these signs vary considerably. California requires that the patron be handed a statement similar to that which stores must hand customers and also that he be verbally informed that the product served is margarine or a butter substitute, while Missouri and Arkansas require that the plate or vessel in which margarine is served be marked indelibly as to such fact.

Approximately 20 States prohibit the use of margarine, or butter substitutes in the institutions. This will probably be covered by a later witness.

Mr. DONOHO. Mr. Martin, what barriers have been enacted with respect to general foods?

Mr. MARTIN. What the States have done under their police power in the battle between margarines and butter, they have also done in reference to general foods, especially fruits, and vegetables, and eggs.

The power of a State to set grades, require labeling of products, and prescribe standard containers, is conceded and such regulations can have great value in facilitating trade, preserving the condition of the merchandise, protecting the buyers from deception, and preventing unfair competition. But the cumulative effect of the lack of uniformity in standardization requirements of various states may constitute, in itself, a serious hindrance to interstate trading. Moreover, such grading legislation may be used to place out-of-State products at a disadvantage by setting up requirements for the highest grade or grades which can be met only by produce raised within the State.

Standards are set for some 117 or more types of fresh fruits, vegetables, and nuts throughout the United States. The United States Government sets standards for 64 such types. California forbids the sale of some two dozen kinds of fruits and vegetables unless they meet rigid grades, classifications, and standardization requirements fixed by the State authority. Colorado has similar legislation affecting a dozen agricultural products, and Montana specifically controls almost that many. South Dakota has a rigid law for potatoes; Kansas, for apples.

Further trade barriers are erected by laws controlling inferior grades of products. Montana, for instance, requires all fruits and vegetables not conforming to Montana grades to be marked "Culls"

or "Unclassified" before they can be sold in the State. California has enacted similar provisions. Although in some instances these measures are related to the "police" power, nevertheless, standards set unusually high prevent large classes of persons in the lower income brackets from buying such goods. These statutes, through operation and effect, tend to interfere with interstate commerce, especially when such laws prohibit the shipment of produce of inferior grades into a given State, but permit local producers within the same State to sell such inferior grades. When so used, these measures are strictly discriminatory in nature and become a device to close the markets of the State to outside producers.

Not only are standards and labeling requirements set out in statutes, but in 8 States the director of markets or a similar State official, is empowered by law to establish the standards. In many cases the officers are authorized to promulgate rules and regulations without public hearing or notice before the grades or revisions of grades are established and become effective.

Mr. DONOHO. Mr. Martin, you stated the Federal Government had established standards. Just how do these standards affect those prescribed by the States?

Mr. MARTIN. The Federal Government has also been active in the field of standards, but even when States accept such Federal standards they do not always accept them in toto for all products, or all grades for any one product, but maintain special grades of their own in addition thereto. Montana went so far as to refuse to admit produce from neighboring States even when accompanied by Federal certificates, until it had made its own inspection.

Mr. DONOHO. Would you care to go into detail? What did the Survey find with respect to Federal standards, with respect to weights, containers, and so forth?

Mr. MARTIN. Standard regulations of containers for fruits and vegetables are likewise in a state of confusion. The Federal Standard Barrel Act of 1912 and the Federal Standard Container Act of 1928 are based on the weights-and-measures power of Congress and therefore apply to intrastate as well as interstate transaction. As crates and boxes remain as yet undefined by Federal action there is, in this field, an amazing lack of uniformity. There are 15 different sizes of canteloupe crates and seven kinds of apple boxes. Oregon's standard berry boxes were declared illegal for the sale of berries within California.

A diversity of regulations with respect to the definitions of bushels exist in the several States. A bushel of onions is 50 pounds in Wisconsin, but it is 57 pounds in Idaho. A bushel of sweet potatoes is 50 pounds in Texas, but it is 56 pounds in Florida. A bushel of apples is 44 pounds in Maine, and 50 pounds in Minnesota. A bushel of greens (mustard, spinach, turnip tops) varies from 10 pounds in North Carolina to 30 pounds in Alabama and Tennessee. The Pennsylvania and Ohio bushel laws as well as those in other States are also in conflict, because in some States the bushel is defined in terms of dry measure and in others in terms of weight.

Mr. DONOHO. Mr. Martin, has there been any decision passed with respect to eggs, and if so, would you tell us about that too?

Mr. MARTIN. A number of interesting statutes also exist in connection with the standardization and labeling of eggs. Seven States set a maximum grade which can be met only by domestic eggs. Georgia, Florida, and Arizona provide that "fresh eggs" are only those which have been laid within the State.

Other States require that out-of-State eggs be labeled "foreign" or "shipped."

At this point I would like to introduce a chart that will tell that story graphically. The chart is entitled "Said the Georgia Hen to the Florida Hen." It is part of our study.

Mr. DONOHO. Do you want to introduce that chart into the record?

Mr. MARTIN. I would like to.

Mr. DONOHO. Is this the chart to which you refer?

Mr. MARTIN. Yes.

Mr. DONOHO. I offer this chart, Mr. Chairman.

The CHAIRMAN. The chart may be received.

(The chart referred to was marked "Exhibit No. 2356" and is included in the appendix on p. 16126.)

Mr. MARTIN. I might say at this time other States also require that out-of-State eggs be labeled "foreign" or "shipped."

Mr. DONOHO. Has the Survey found other laws dealing with general foods?

Mr. MARTIN. Yes; hundreds of others, but we have selected for our testimony before this committee some outstanding examples.

Mr. DONOHO. What about commercial fertilizers?

Mr. MARTIN. The trade barrier walls erected against the interstate shipment of commercial fertilizer are not of recent origin; the foundation was laid in the early years of this country. The purpose at the time of enactment of these acts was the prevention of fraud and the keeping of spurious products off the market. Today the lack of uniformity of State laws, and the failure to accept State-of-origin inspection and analysis is a very serious impediment to interstate shipments of this product.

The seller (resident and nonresident) must submit samples of the product for State analysis, which product must conform to the standards established by the State, and secure a permit for the sale of his product. These standards are diverse and many. As an example, Louisiana sets up two grades, "high grade" and "standard," and establishes what the percentage of ingredients must be for the product to be classified as such and be so labeled. Any product not falling within one of these classes must be marked "low grade"; these words must be printed on the container in letters of not less than 2 inches in height. The neighboring State, Mississippi, does not establish grades for this product but merely requires submission of a certificate to the State Commissioner of Agriculture by the manufacturer, setting out the ingredients and analysis prescribed by law.

The VICE CHAIRMAN. Just at that point, if you won't mind an interruption, there are two States dealing with fertilizer in a different way. Is there anything to indicate that they are dealing with fertilizer in the way in which they are dealing in it, in order to favor local producers?

Mr. MARTIN. Your State laws vary.

The VICE CHAIRMAN. I know, but I am speaking with regard to the specific instance which you have just mentioned, Louisiana and Mississippi, I believe.

Mr. MARTIN. I am not in position to give the intent. Nevertheless, if one manufacturer in Mississippi is required to ship his fertilizer into the State of Arkansas and mark it "low grade," he is put at a disadvantage, although the chemical analysis as determined upon by the officials in Mississippi state that the fertilizer is all right, but if it doesn't coincide with the analysis set up by the State of Arkansas, it does form a barrier, or it is supposed to.

The VICE CHAIRMAN. Yes; I understand that; but I don't know that Mississippi absolutely compares with the judgment of Arkansas as to what they ought to require for fertilizer in their communities, but I was wondering if there was any evidence discovered by you as to discrimination in favor of local production.

Mr. MARTIN. Well, we don't go into that phase of it.

The VICE CHAIRMAN. I thought that is what you were largely going into.

Mr. MARTIN. We are merely comparing the statutes, the rules and regulations, where we get into them, for the purpose of showing where discrimination can exist. Insofar as I know there is no particular evidence.

Mr. DONOHO. Your position, Mr. Martin, as I understand it, is that you just don't feel you can comment on the motion that occasions these laws.

The VICE CHAIRMAN. But you have commented freely on the fact; for instance certain regulations obtain with reference to domestic production and certain regulations with regard to importations, I take it. I was just wondering in this particular case whether you had any evidence of that fact.

Mr. MARTIN. No. The diversity of tolerance allowance of any ingredient is likewise confusing, since these tolerances range from one-fourth of one percent to 5 percent.

Furthermore, the interstate shipper, after ascertaining all of the statutory requirements necessary before he can enter the market in a certain State, must also ascertain what must be done under the rules and regulations promulgated by the State officer whose department administers such statutory enactment.

The VICE CHAIRMAN. Are you going to develop what the influence upon uniformity has been, as the result of Federal legislation? I am afraid I was called away at the moment you were probably developing that. Is that already in the record?

Mr. MARTIN. As I stated earlier in the statement yesterday we do not take the position that uniformity in all cases is desirable. I pointed out at that time——

The VICE CHAIRMAN (interposing). You misunderstood me. As I recall, there has been Federal legislation attempting to establish a uniform container for certain fruits in interstate commerce; probably intrastate commerce, too.

Mr. MARTIN. Yes, sir.

The VICE CHAIRMAN. Now, what I was inquiring about was as to what has been the effect of that legislation. Has it been the effect of that legislation that uniform containers are being used, complying with Federal requirement?

Mr. MARTIN. In many States it has, but, in other States, there are different requirements. You see there is only, as I understand it, certain Federal container sizes, weight sizes, and so on, that are required. The others are suggested sizes that have been worked out by the Federal Government.

The VICE CHAIRMAN. I don't know whether, Mr. Donoho, you are going to develop it or not, and I have never examined the question, but as I recall the establishment of uniform containers is under the provision of the Constitution, general provision of the Constitution.

Mr. DONOHO. Yes, sir.

The VICE CHAIRMAN. Weights and Measures. What I am trying to find out, are they binding upon the discretion of the States?

Mr. DONOHO. As I recall Mr. Martin's testimony, he stated that the Federal Government hadn't occupied the entire field.

The VICE CHAIRMAN. I am not talking about that; I am talking about what has been the effect in the field in which the Federal Government has attempted to occupy and if it hasn't resulted in the adoption of the uniform container in compliance with Federal law, why has that not resulted?

Mr. MARTIN. Well, as I understand it, there are only certain of these that are requirements.

The VICE CHAIRMAN. What I am trying to find out, how effective has been the Federal requirement? If anybody else could answer, it would be a very good idea to do it right now.

Dr. WAUGH. My understanding of it is that the standard containers on fruits and vegetables that have been adopted by the Department are in almost universal use. There is some difficulty in particular cases where States still try to enforce sale-by-weight laws, and there are certain times when you can't get into a standard bushel, as defined by the Federal Government, as many pounds as some States used to require, but I think those sale-by-weight laws are gradually going out of existence in common use. Almost everybody is actually using the standard containers which they are really required to use under the Standard Container Act.

The VICE CHAIRMAN. I thought I discovered an increase in the disposition to sell fruits by weight at retail.

Dr. WAUGH. Yes.

The VICE CHAIRMAN. Why?

Dr. WAUGH. Federal standards do not apply after the package has been broken, I understand.

The VICE CHAIRMAN. I know that, but if the trade development is in the direction of sale by weight, then it would seem probably a more workable and valuable standard; I see where I am getting into difficulty because you are getting into shipping units then.

Dr. WAUGH. I don't think the trend is toward sale by weight; I think the trend is away from that and the sale by weight becomes rather impractical on fruits and vegetables. As a matter of fact the weight of a bushel changes between the time the fruits and vegetables leave the farm until the time it is sold; very difficult to enforce.

The VICE CHAIRMAN. That is right. I can see that; thank you very much.

Representative WILLIAMS. Let me ask you this: In the field where the Federal Government has entered and within the limits pre-

scribed by it, it is binding on the States, is it not, and enforceable? They cannot violate that provision, can they?

Dr. WAUGH. Well, I am not a lawyer, but that is my understanding of it. Occasionally some State or city does attempt to enforce the old sale-by-weight law, but I think that is going out.

Representative WILLIAMS. I would think that under the Constitution, the Federal Government having the right to fix the standards, that it would be absolutely binding to that extent upon the State.

Dr. WAUGH. I think you are absolutely correct, sir.

The VICE CHAIRMAN. The only difficulty of it, if the Federal Government established a uniform box or capacity which it designated as a bushel, I suppose the enforcement of any contract compliance with the Federal requirement would be sufficient, but you say now that if, for instance, they should swing from the sale by measure to sale by weight, then the Federal standard of measurement would not be important in that situation. Maybe that is very difficult.

Dr. WAUGH. I think I meant to say only that you can't do both. That is, you must have either a standard by volume or standard by weight. Otherwise you always get into difficulty if you try to enforce the double standard.

The VICE CHAIRMAN. I think that clears up something; I think it helps at this point.

Mr. DONOHO. Mr. Martin, you were discussing the effect of regulatory laws on general products. Now with respect to merchandising, would you tell us something about the impact of these laws upon the operation of itinerant merchants?

Mr. MARTIN. The itinerant merchant, in addition to the burdens placed upon him by heavy license fees levied under the taxing power of the State is often faced with the requirement that such merchants or peddlers post bonds, a requirement imposed under the "police" power to protect growers, retailers, and consumers. Arizona, for example, requires a wholesale peddler who is not marketing products grown by himself to post a bond of $5,000 from a surety licensed within the State.

Mr. DONOHO. Will you discuss the findings of the survey, Mr. Martin, with respect to regulatory measures upon the operation of motor vehicles?

Mr. MARTIN. In the field of motor vehicles, the States, in the exercise of their "police" power, have imposed additional burdens upon commercial motor trucks operating in interstate commerce. Under the power they have subjected them to regulation by public service commissions. Aside from special license or certificate fees and special taxes collected by these agencies under the States' taxing power, are the requirements that such commercial motor carriers must post bonds and insurance, file rate schedules, and be subjected to general regulation by such commissions. Nearly all of the States impose one or more of such requirements upon commercial motor trucks. It is, however, the exercise of their power presumably to protect the public safety that has most often resulted in legislation burdensome and restrictive upon interstate trade. The trucker moving in interstate commerce finds himself faced with myriad requirements, varying from State to State as to the maximum permissible width, length, height, weight, and equipment of his vehicle.

The VICE CHAIRMAN. May I ask at that point, does the stability of the road, thickness of the base of their roads, have anything to do with the difference in the weight allowed in these States?

Mr. MARTIN. As a personal opinion, after conversation with some of the Bureau of Public Roads, Department of Agriculture, officials I think originally it did. However, the Bureau of Public Roads now has certain specifications for Federal highways, depending on whether they are secondary, farm-to-market, and so on, and at some place there is a happy medium and recommendations have been made by the Bureau of Public Roads for all these classifications of highways.

Mr. PIKE. Most of these main highways are built partly with Federal money, aren't they? Wouldn't you guess?

Mr. MARTIN. Most of them are Federal-aid highways.

Mr. PIKE. It would be pretty easy to bring these boys into line, then?

Mr. MARTIN. Yes; the Federal Government has very much of a stake in these trade barriers; they have very much of a monetary stake over and above the economic effects.

Mr. PIKE. In this one the real power, the power of withdrawal of subsidy, could be used to bring them into line pretty quickly?

Mr. MARTIN. The Federal Government has certain provisions under which it makes these Federal-aid funds available to States for the building of highways, and to my mind, I see no reason why one State with the same specification road should take advantage of funds coming from all the States through the Federal government to place embargoes, and so on.

Mr. PIKE. That is what I had in mind.

Mr. KADES. Mr. Martin, do you mean aside from barriers that have a detrimental effect on interstate commerce, as a whole there is a monetary loss sustained by the Government as a Government?

Mr. MARTIN. I think that very definitely there is a monetary loss. A better example on that is where we are engaged in construction of Federal buildings or where we are making grants to public works, the Works Progress Administration, to aid in the construction. You have such laws as preference laws that I will cover later, that permit the State to accept bids 5 percent higher when home products go into the construction of them. Of course, part of that 5 percent is whatever Federal grant is put into the construction. I think the Federal Government has a monetary stake in this.

Representative WILLIAMS. What about the power of the Interstate Commerce Commission to regulate the size, weight, length, and height of trucks engaged in interstate commerce?

Mr. MARTIN. I don't believe the Interstate Commerce Commission has that power, sir. I think their power comes in the regulations as to equipment mainly. You see, your sovereign States control that.

Representative WILLIAMS. It seems to me that they might be very easily given that power under the commerce laws. I am talking about trucks engaged in interstate commerce.

Mr. MARTIN. I think a later witness will develop that more fully, if it is permissible for me to drop it.

The VICE CHAIRMAN. Has any suggestion been made that the Federal Government attach its condition to the Federal grants, the right to control the capacity of weight and capacity of trucks on these highways?

Mr. MARTIN. Not that I know of, sir.

Mr. KADES. Mr. Chairman, it may interest you to know that the Supreme Court suggested that State regulatory power here could be made to yield to the national regulatory power in discussing a case involving some South Carolina statute regulating the width of trucks, and the weight of trucks.

The CHAIRMAN. That is very interesting. Will you put that citation in the record?

Mr. KADES. I can do that now: *South Carolina Highway Department* against *Barnwell Brothers* (303 U. S. p. 177).

Mr. MARTIN. At this point I would like to introduce a chart which I think will give you a more graphic example of what is moving in interstate trade and what it has to contend with. This chart is in two sections: The first section being a composite vehicle combination that would meet the requirements of all States as to length, gross weight, and height. I would like to point out that the trailer on this truck is not in proportion. The trailer should be about half the length that is shown on that graph.

A composite vehicle, to meet the requirements of all the States as to length, height, weight, and wheel equipment, would have to meet the following specifications as indicated by the chart: The maximum length would be determined by Kentucky which limits a single unit to 26½ feet and a tractor and trailer unit to 30 feet.

The maximum weight could not exceed a gross of 18,000 pounds in Kentucky or a net of 7,000 in Texas. The maximum height permitted in several States is 11½ feet. The wheel equipment would require a 6-wheel tractor, and a 4-wheel semitrailer. This obviously would be a strange-looking vehicle.

The amazing variations in motor laws illustrated by this vehicle at the bottom of the chart, show the largest combination permitted anywhere in the United States. Three States have no limit as to length. Rhode Island permits 120,000 pounds of weight, and there are no height limitations in the States as indicated.

Mr. DONOHO. Mr. Chairman, I offer this chart which has been identified.

(Representative Sumners assumed the Chair.)

(The chart referred to was marked "Exhibit No. 2357" and is included in the appendix on p. 16127.)

Mr. DONOHO. Mr. Martin, the source of this chart is the Marketing Laws Survey,[1] and this is the chart I have been describing?

Mr. MARTIN. That is correct.

Mr. DONOHO. Mr. Chairman, I would like to introduce another chart at this time. The title is "Single-Unit Motor Vehicles, Maximum Length 40 feet."

(The chart referred to was marked "Exhibit No. 2358" and is included in the appendix on p. 16127.)

Mr. MARTIN. This chart tells even a more dramatic story, I think. The map tells the story. The shaded areas are the 36 States in the Union which prohibit interstate commerce to single-unit motor vehicles if they are 40 feet in length.

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[1] "Exhibit No. 2364," on file with the committee.

Take Maine, for example; the owner of a 40-foot single-unit motor vehicle is locked in. He can't go south; he can't go east. The whole eastern seaboard is closed.

The entire Mississippi Valley is blocked out to the owner of a 40-foot vehicle in Minnesota. The great grain States to the West bar his passage.

The situation is not much better when you consider combination motor vehicles consisting of a tractor and semitrailer if the maximum length is 45 feet or more.

I would like to introduce another chart.

Mr. DONOHO. This is the chart to which you are referring?

Mr. MARTIN. Yes.

Mr. DONOHO. I offer this chart.

The VICE CHAIRMAN. It may be received.

(The chart referred to was marked "Exhibit No. 2359" and is included in the appendix on p. 16128.)

Mr. MARTIN. Here again the shaded States are those which prohibit such vehicles. The eastern seaboard is open except for Connecticut and Massachusetts, which form a very effective bar. Note that Michigan, Wisconsin, and Iowa are barred southward in the Mississippi Valley. That travel is closed off. The States to the west in the bread basket of America are all barred to such traffic. It is curious to note that the Mountain States, California, and the Southwest permit such length vehicles to operate around the rim of the black-out in the Wheat and Corn Belts.

I would like now to introduce two charts showing the variations in identifying and clearance lights in motor vehicles in contiguous States.

Mr. DONOHO. These are the charts to which you refer?

Mr. MARTIN. Those are the charts.

Mr. DONOHO. Mr. Chairman, I would like to offer these charts for the record.

The VICE CHAIRMAN. They may be received.

(The chart referred to was marked "Exhibit No. 2360" and is included in the appendix on p. 16129.)

(The chart referred to was marked "Exhibit No. 2361" and is included in the appendix on p. 16130.)

Mr. MARTIN. The title of these charts is "Motor Vehicle Lighting Requirements of Selected States." On this chart [1] we show the plain and fancy lighting effects required in the States of South Dakota, Iowa, Illinois, and Michigan. They are contiguous States, if you will note. The column at the left illustrates the requirements for the front of the vehicle. The column at the right pictures the identifying and clearance lights required at the rear of the vehicle.

The green front lights in South Dakota are illegal the moment the driver crosses the line into Iowa. In that State he must have white, yellow, and amber lights at the top of the vehicle. Instead of the one white clearance light required at the left front in South Dakota, a combination white, yellow, and amber light for the right front clearance and two red clearance lights on the rear are required in Iowa. If he crosses into Illinois, the driver must go back to green

[1] See "Exhibit No. 2360," appendix, p. 16129.

lights at the top of the vehicle, but in Michigan the identifying lights in front must be located over the windshield.

On this chart [2] the story of the lights on the highway is continued with respect to Arkansas and Kansas, Louisiana, and Mississippi. Clearance lights you will notice change from green to amber and back to green again. These variations continue from State to State throughout the country.

Mr. DONOHO. Mr. Martin, would you care to discuss for the committee what you consider the significance of port-of-entry laws in some of the States?

Mr. MARTIN. Some States have erected or authorized the erection of tangible barriers in the form of ports of entry at the State borders, or by means of highway checking stations.

Motor-vehicle ports of entry provisions can be classified as follows: The first class includes States having statutes which specifically authorize ports of entry. Kansas, Nebraska, Nevada, and New Mexico are of this type. California, Missouri, and Tennessee also have such specific legislation, but at present are not operating ports of entry. Delaware makes specific provision for ports of entry, but provides that the law shall not become operative until similar laws are enacted by at least two bordering States.

The second class includes those States which set up ports of entry under authority of provisions governing highway police or other enforcing agencies. These States include Colorado, Idaho, Montana, South Dakota, Texas, and Oregon.

Kansas and New Mexico are good examples of States which have actual ports of entry in operation by virtue of direct statutory authority. The Kansas law, first of such laws to be enacted, requires all trucks to enter the State on designated highways and stop at the port-of-entry stations. There they receive clearance certificates after inspection of equipment, payment of ton-mile tax levied by the State, and after meeting certain insurance requirements. The New Mexico law requires every motor carrier, common, contract, or otherwise, to register at some port of entry, to be inspected, and to secure permission before entering the State. Clearance certificates are issued only after the truck's size, weight, and equipment are approved, all taxes are paid, and evidence is given that sufficient liability insurance is carried with a registered New Mexico company.

These ports of entry and checking stations constitute a significant exercise of the State's police powers, since here and out-of-State vehicle is compelled to stop and be subjected to a rigid inspection in order to insure full compliance with the State's laws concerning registration, payment of taxes, size and weight restrictions, equipment requirements, and any other regulations that may be imposed by the State.

Important, also, is the fact that the powers of exclusion have led the States to use the established ports of entry as a method of enforcing their inspection and quarantine laws.

California provides for quarantine stations at its borders for the purpose of agricultural and personal-baggage inspections and empowers the State board of equalization to require liquor shipments in interstate commerce to be checked in and out of the State, while

[2] See "Exhibit No. 2361," appendix, p. 16130.

Kansas requires that all liquor entering the State in motor vehicles must enter and exit through an established port of entry or exit.

Mr. DONOHO. Mr. Martin, you have discussed trade barriers enacted pursuant to the taxing power of the State, the State's power to enact quarantines and inspection laws, and the State's police power. You mentioned as a fourth the proprietary power of the State to enact trade barriers. Would you please discuss the exercise of this power?

Mr. MARTIN. In connection with the exercise by the States of their proprietary powers, we find the most important interstate trade-barrier legislation to be the preferences which the State, as purchaser, extends to its residents and its products. These laws are of two kinds—those in favor of persons and those in favor of products.

A selective survey of the legislation of the 48 States produced some 113 examples of preferences by States to its citizens or its products. These include not only preferences by State officers, State departments, and State institutions, but preferences of all other political subdivisions of the State such as cities, counties, townships, irrigation districts, school districts, and all other similar authorities.

At this time I would like to introduce a chart entitled "Preference to State Residents."

Mr. DONOHO. This is the chart to which you refer, Mr. Martin?

Mr. MARTIN. That is correct.

Mr. DONOHO. Mr. Chairman, I offer this.

The VICE CHAIRMAN. It may be received.

(The chart referred to was marked "Exhibit No. 2362" and is included in the appendix on p. 16131.)

Mr. MARTIN. This chart in the main is self-explanatory, showing in graphic summary the reference to State preferences. The application of these preferences varies a great deal. Some of the laws are passed in connection with the construction of a specific bridge, highway, or building; others limit purchases for institutions; still others govern the officials of local political subdivisions.

Mr. DONOHO. Mr. Martin, you also refer to preferences as to products. Would you explain that please?

Mr. MARTIN. One group of these laws is stated in terms of preferences to persons by providing for general preferences to all bidders and specific preferences to laborers, printers, and contractors.

The statutes of Arizona, Arkansas, Florida, Illinois, Maine, Missouri, New Hampshire, North Dakota, Oregon, South Dakota, and Virginia are phrased in terms of preferences to bidders or to residents generally. The Oregon Act, passed in 1915, provides that Oregon concerns must be given contracts for public works if the contract price does not exceed a 5-percent differential. The usual type of provision is similar to that of Arkansas which provides that firms doing business in the State are preferred for furnishing supplies to State institutions. Missouri, New Hampshire, and North Dakota each direct their State purchasing agents to give preference to their respective States when the quality and price of products are approximately the same. South Dakota provides for preferences to persons having a permanent place of business in the State and to "materials, products, and supplies found or produced by persons in the State of South Dakota."

Twenty-eight States have provisions similar to the one in Delaware which provides that in the construction of all public works preference in employment of laborers, workmen, or mechanics shall be given to bona fide legal residents of Delaware. In some States a residence requirement, varying from 3 months to 2 years, must be met. South Carolina applies the citizenship restriction to only 90 percent of the laborers on highway construction. Several other States use the 80 percent.

Another special class of persons favored by these statutes are the printers. Eighteen States direct that all public printing must be done within the State. Five States—Georgia, Mississippi, North Carolina, South Dakota, and West Virginia—direct that preference shall be given to local residents. Louisiana sets out in the statute that those from whom printing is purchased must have paid taxes, must have been licensed, and must maintain plants or stores in Louisiana.

Three States consider the contractor specifically. New Mexico provides that contracts for public buildings must be awarded to New Mexico contractors except where it can be shown that the bidding firm is attempting to create a monopoly or fix prices. Texas requires that preference be given to local contractors on all public works. North Dakota provides that, for the construction of State highways, preference shall be given to bona fide State contractors.

Mr. DONOHO. Mr. Martin, you also refer to preferences as to products. Would you explain that, please?

Mr. MARTIN. The same general results are accomplished by the type of statute which is directed at products rather than persons. Twenty-three States have provisions which give preferences to local products, generally. A law in Arkansas, for instance, states that products raised, grown, or manufactured in the State are preferred for State institutions. In Colorado, the State purchasing agent must give a 5 percent differential preference to Colorado supplies and materials. In 1939 Maryland enacted a law which directs the State director of the budget and procurement to give preference to products manufactured or produced in Maryland except when, in the judgment of the director, such purchases would "operate to the disadvantage of the State." The Michigan provision states that "all things being equal" preference shall be given to Michigan products.

In addition to these general preferences at least 15 States have legislation naming specific commodities. Colorado, Illinois, Indiana, Michigan, Missouri, and North Dakota specify that State institutions must use coal mined in their respective States. In Iowa, State purchasing agents must purchase coal produced in Iowa by producers complying with the workmen's compensation and the mining laws of the State. Stationery, blank books, and office supplies, when manufactured in the State, are preferred by the States of Florida, Louisiana, Michigan, and Oregon. Other products specifically preferred are limestone in Indiana, green marble in Maryland, soft winter-wheat flour in Virginia and fuel in Washington. Missouri prefers products of its own "mines, forests, and quarries"; and Oklahoma, the materials "mined, quarried, or manufactured" in the State. Nebraska prohibits the use of margarine in State institutions and requires the use of "Nebraska-produced butter."

Retaliation sometimes results from the imposition of requirements that States, when acting as purchasers must give preference to local residents and local products. Wisconsin, in 1928, prohibited all departments from furnishing any plans for the erection of public buildings to various building exchanges in Minnesota until Minnesota repealed all of its laws discriminating against the labor and materials of Wisconsin. In 1933 Minnesota repealed such preference laws.

Mr. DONOHO. Does that conclude your statement with respect to preferences?

Mr. MARTIN. It does.

Mr. DONOHO. In conclusion, Mr. Martin, would you care to summarize the scope and variety of the barrier statutes that you have covered in your testimony?

Mr. MARTIN. I would. It will be very difficult to do in words, but I would like to offer at this time a chart which graphically pictures in summary form the field covered by the various statutes in selected categories. It is titled "Summaries of State Statute Provisions by Selected Categories."

Mr. DONOHO. It is a compilation by your Survey?

Mr. MARTIN. Yes.

Mr. DONOHO. Is that the chart to which you refer?

Mr. MARTIN. Yes.

Mr. DONOHO. I offer that chart.

The VICE CHAIRMAN. It may be received.

(The chart referred to was marked "Exhibit No. 2363" and is included in the appendix on p. 16132.)

Mr. KADES. Would you say that the summary of State statutes indicates the wisdom of the framers of the Constitution in placing interstate commerce under the plenary jurisdiction of Congress?

Mr. MARTIN. My personal feeling is that they do.

The VICE CHAIRMAN. Mr. Martin, you have a total of 301 State statutes [1] regulating motor vehicles?

Mr. MARTIN. That is correct.

The VICE CHAIRMAN. And does that mean all the internal regulations of motor vehicles determining their operation in the various communities or State laws of general State application?

Mr. MARTIN. Just State laws. It does not cover the thousands of rules and regulations issued by the various commissioners of motor vehicles or the equivalent in various States.

The VICE CHAIRMAN. Those 301 laws are the total of the laws in the 48 States?

Mr. MARTIN. Governing the operation of motor vehicles; yes, sir.

The VICE CHAIRMAN. Do you know how many of those laws have to do with the weights, structure, of these vehicles?

Mr. MARTIN. I cannot give you that information.

The VICE CHAIRMAN. Let me ask you this question then. Do you know how many of those laws affect the question of State barriers?

Mr. MARTIN. I cannot give you that information. We could tabulate it in a very short time and give it to you.

The VICE CHAIRMAN. We are talking about State barriers and then you have a big list of laws, and what I was trying to find out is how

[1] Reading from "Exhibit No. 2363," appendix, p. 16132.

many of those laws indicated by that chart have a bearing upon the subject which the committee is now examining.

Mr. MARTIN. In my statement, I have previously indicated the most, I wouldn't say vicious, but the most detrimental type of barriers, such as weight, length, height, lighting requirements, brake requirements, and so on.

The VICE CHAIRMAN. What I am trying to do is to find out why this particular chart [1] has a place in this record.

Mr. MARTIN. Those laws were determined by us as being either trade barriers or capable of being trade barriers through their administration.

The VICE CHAIRMAN. That is what I am trying to get at. Now this survey that you have made—you refer to it in your introductory statement and also in the conclusion. How long were you engaged in making the survey?

Mr. MARTIN. The original survey, which is this publication here, was made in 6 weeks from the statutory materials we had already accumulated, and was made at the request of the Council of State Governments prior to their National Conference on Interstate Trade Barriers last spring.

The VICE CHAIRMAN. Was it during that time that these 508 volumes of State statutes, laws, and so on, were examined, or was it before that time?

Mr. MARTIN. No; the State statutes have been examined and are in our place being catalogued and cross-indexed by State and type of statute. For the purpose of this study we extracted those statutes that had trade-barrier aspects.

The VICE CHAIRMAN. How long were you engaged in making the original investigation which constituted the basis for this report?

Mr. MARTIN. We are still engaged in it.

The VICE CHAIRMAN. How long have you been working on it?

Mr. MARTIN. Since August 1938. We are making a compilation of all the laws that affect marketing in any way, shape, or form, and cross-indexing it by State and by commodity.

The VICE CHAIRMAN. Will you be finished within two years from the time you began, by this next August?

Mr. MARTIN. The statutory materials have all been gathered, some of the administrative agency materials have been gathered, but the review and analysis which has to be done by a group of supervisors—it is a W. P. A. project—cannot exceed 10 percent of the total number of employees. That means that I have somewhat of a bottleneck here, and it will probably be another year before the entire compilation is completed. We have two volumes on the press at the present time.

The VICE CHAIRMAN. If you don't hurry up, a lot of the laws will be repealed before you can get them indexed.

Mr. MARTIN. It is the thought that some agency will keep them up through the issuance of supplements after they are once indexed.

The VICE CHAIRMAN. Who pays for this?

Mr. MARTIN. This is a Works Progress project.

The VICE CHAIRMAN. The whole thing?

Mr. MARTIN. The whole thing; yes.

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[1] Ibid., appendix, p. 16132.

The VICE CHAIRMAN. They had these 300 men on that project for how long?

Mr. MARTIN. It varies. They were all relief attorneys with the exception of a small supervisory staff, and it has run any place from 175 to 350; 300 is probably a good average for the 2 years.

The VICE CHAIRMAN. Three hundred men on the job for an average of 2 years—about 300 is an average for 2 years?

Mr. MARTIN. That is correct. In addition to the statutory materials we have already started drawing on the administrative agency rules and regulations in several of the states, and we are going to do something in the way of cross-indexing those and tabulating them the same way to make them available to the Federal Government, to the States, business men, and so on.

The VICE CHAIRMAN. How many volumes will you have?

Mr. MARTIN. The statutory materials we think will run some place between 12 and 15 volumes.

The VICE CHAIRMAN. The average law book size?

Mr. MARTIN. They run from 800 pages to 1,700 pages.

The VICE CHAIRMAN. What is this project going to cost?

Mr. MARTIN. The total cost to date I think runs in the neighborhood of $260,000.

The VICE CHAIRMAN. You seem to have been doing a good deal of reading: 375,000 pages.

Mr. MARTIN. It requires a great deal of reading to determine whether some of these statutes do affect the marketing of commodities.

The VICE CHAIRMAN. It seems to me that if the statute had any uncertainty about it, it wouldn't have been important enough to bother much about it.

Mr. MARTIN. A great many times it is a combination——

The VICE CHAIRMAN (interposing). I am not criticizing the work, but this is a rather interesting phase of this whole thing and I thought we might as well get it in the record now.

Mr. MARTIN. A great many times a single statute in itself apparently does not have much effect on marketing, but when you take a combination of two or three statutes, it does have considerable effect on marketing.

The VICE CHAIRMAN. Are there any further questions of Mr. Martin? You have done a very comprehensive job.

Mr. MARTIN. I would like to state at this time in connection with the administration agency work, within the last 2 weeks I received a bundle that weighed 282 pounds, which consists of nothing but the regulations from 10 administrative agencies in the State of Illinois, alone.

The VICE CHAIRMAN. You are not going to bring them in here, are you? [Laughter.]

Mr. MARTIN. In connection with any of this testimony, we have the citations for any of it, and before closing, I would like to offer, to be filed with the record, the complete compilation of the trade barriers charts.

Mr. DONOHO. I offer this for the files of the committee, not for the record.

The VICE CHAIRMAN. It may be received.

(The document referred to was marked "Exhibit No. 2364" and is on file with the committee.)

Mr. DONOHO. I believe Mr. Martin would also like to include this study as well for the files of the committee.

The VICE CHAIRMAN. It may be received.

(The document referred to was marked "Exhibit No. 2365" and is on file with the committee.)

The VICE CHAIRMAN. I have a memorandum suggesting that Mr. Herr take the stand.

Mr. DONOHO. I believe Mr. Herr has requested that Mr. Van Arnum present that testimony.

The VICE CHAIRMAN. Do you think it would be a good idea to put something in the record?

Mr. DONOHO. Yes; I think it would be a splendid idea.

Mr. Van Arnum, will you come forward, please?

The VICE CHAIRMAN. Do you solemnly swear the testimony which you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. VAN ARNUM. I do.

TESTIMONY OF JOHN R. VAN ARNUM, NATIONAL LEAGUE OF WHOLESALE FRESH FRUIT AND VEGETABLE DISTRIBUTORS, WASHINGTON, D. C.

AGRICULTURAL BARRIERS—WEIGHTS AND MEASURES IN FRESH FRUITS AND VEGETABLES [1]

Mr. DONOHO. Will you state your name and address, please?

Mr. VAN ARNUM. John R. Van Arnum, 512 F Street NW., Washington, D. C.

Mr. DONOHO. Are you connected with the National League of Wholesale Fresh Fruit and Vegetable Distributors?

Mr. VAN ARNUM. I am, as transportation chairman.

Mr. DONOHO. I believe the chairman has some questions he would like to ask with respect to standards.

The VICE CHAIRMAN. Did you hear the questions which were asked of the last witness with regard to Federal standards and the effect that those Federal standards have generally in the country?

Mr. VAN ARNUM. No, sir; I did not.

The VICE CHAIRMAN. I think we can make the questions very brief and the testimony brief. When the Federal Government standardizes a container, is that standardization respected by the States generally?

Mr. VAN ARNUM. Yes, sir; it is. The Federal Government has made standards for a certain number of containers, including among others baskets, hampers, barrels, and certain other number of minor containers. Those standards are respected by the States generally, but not necessarily, by the shippers or the railroads who use the containers and transport them.

The VICE CHAIRMAN. That is what I am talking about. The State wouldn't have much to do with it. What would the State have to do with it?

Mr. VAN ARNUM. The State would only have to do with it insofar as they policed the packing of those commodities, but so far as construction goes, the State has nothing to do with it.

The VICE CHAIRMAN. And transportation?

[1] For previous testimony on this subject, see Hearings, Part 8.

Mr. VAN ARNUM. In transportation, the Interstate Commerce Commission could probably exercise a certain amount of jurisdiction, but to date they have been unable to do it successfully, although they have recently completed a very lengthy proceeding in an effort to require the proper use of containers.

The VICE CHAIRMAN. Have the railroads successfully resisted the effort to compel the use of uniform containers?

Mr. VAN ARNUM. No, sir.

The VICE CHAIRMAN. Is the fact that they are not generally used due to a lack of government power, or lack of enforcement, or what, if you know?

Mr. VAN ARNUM. Partly to a lack of policing as to those containers which are regulated by the Federal Government, which are the baskets and hampers and barrels. The size of the container is almost universally observed, but it is in the packing of the container that the violation and the abuses occur.

The VICE CHAIRMAN. The common carrier wouldn't or couldn't have any responsibility for the details of the packing of the basket, could it?

Mr. VAN ARNUM. Yes, sir; they have responsibility for it.

The VICE CHAIRMAN. They couldn't open the container to see whether it had been packed properly, could they?

Mr. VAN ARNUM. Oh, yes. The railroads maintain two separate organizations, both under the jurisdiction of the Association of American Railroads, one the Freight Container Bureau whose duty it is to prescribe the dimensions, specifications, packing, and loading rules for all containers.

The VICE CHAIRMAN. Now, wait a minute. Is that the loading of the container insofar as its contents is concerned, or the loading of the container insofar as its arrangement in the car is concerned?

Mr. VAN ARNUM. Both.

The VICE CHAIRMAN. I don't see how they could regulate it.

Mr. VAN ARNUM. Well, they do it. The railroads have three freight tariffs in effect on file with the Interstate Commerce Commission prescribing the details of specifications and packing of the container itself, and where the abuse comes in is, for example, in the the case of the one-bushel basket which has a capacity of 2150.42 cubic inches, which is prescribed by an act of Congress; the abuse comes in in packing that basket probably 10, 15, to as much as 25 percent above the capacity. Contrary to the usual belief, there is little or no question of underpacking; it is generally a case of overpacking. That is what I meant by the abuse of the container. In other words, that Federal standard is only as to the capacity of the basket, and is very seldom observed so far as the contents of that basket are concerned.

The VICE CHAIRMAN. Now, the commodity that is packed, would it be sold just by the basket unit or be sold by weight?

Mr. VAN ARNUM. That will vary, depending on the commodity. In a great majority of cases it is my belief, from quite comprehensive study, that it would be sold by the container.

The VICE CHAIRMAN. Then why would the shipper want to put more in his basket than would be necessary to comply with the statutory requirements?

Mr. VAN ARNUM. Those are commercial considerations that influence that, Congressman.

The VICE CHAIRMAN. I thought that would be your answer.

Mr. VAN ARNUM. In other words, competition between buyers who will go to 1 packer and will offer to buy a carload or 5 carloads or 10 carloads if he will pack 4 dozen bunches of beets in a basket instead of the 3 dozen bunches that the basket normally would hold. It is a rather difficult question to answer clearly.

The VICE CHAIRMAN. I think you have done mighty well. You haven't any charts or anything; you just tell it to me. You are pretty good. What can be done about it?

Mr. VAN ARNUM. If I may take about 3 minutes I might possibly clear up the point so that you can ask further questions. We have had before the Interstate Commerce Commission during the past year a proceeding involving the estimated weights on all of the packages of every kind and description, including those that are not subject to Federal standardization, throughout the United States, with the exception of northern territory.

While it did not come up in connection with that Interstate Commerce investigation, the results of that investigation—I am not going to give you any charts.

The VICE CHAIRMAN. Just tell us.

Mr. VAN ARNUM. The results of that investigation showed that there were approximately 388 containers authorized for use by the railroads in the southern and western section of the country. In connection with that and in the course of a study which I made and presented to the Interstate Commerce Commission, we believe that probably one-half of those containers are utterly useless or uneconomical and impose a burden on the commerce and commodities which they carry, and could very easily be eliminated without any difficulty to the trade, without any hardship, and would simplify distribution at a considerable economy in cost.

The VICE CHAIRMAN. You mean would you ship in bulk?

Mr. VAN ARNUM. No; cut down the number of the containers which are used, which are now about 388 in just those two territories that I have enumerated.

The VICE CHAIRMAN. You mean cut down the number of kinds of containers?

Mr. VAN ARNUM. Containers carrying names from the profane to ridiculous; they call some "gyp," some "ponies," and by various names, and they are manufactured generally or sometimes as a sales offer to the shippers; sometimes they are manufactured by request of the shippers, but there is an entirely unnecessarily large number. Where that comes into the question of trade barriers I am not prepared to say. I am merely trying to answer your question.

Now, in that connection there is a bill before the House of Representatives, introduced by Congressman Somers, of New York, which I believe bears the title of H. R. 5530, which would accomplish that purpose in part, but I may bring in here one incident of a State trade barrier which would be corrected by this particular bill. I am talking entirely from memory.

The VICE CHAIRMAN. Keep talking that way.

Mr. VAN ARNUM. About 90 percent of the citrus fruit from Florida, Texas, and California—and I believe that is a conservative esti-

mate—I will say is shipped in a container which in Florida and Texas is 1⅗ bushels. From California that container has a capacity of approximately 1⅖ bushels. From California that container is established by law. In Texas and Florida it is established by an edict of the citrus commissions of those respective States. Under the present standard container acts governing baskets and hampers and under the proposal in H. R. 5530 which would require boxes and crates to be of the same capacities as are now provided for baskets and hampers, either one of those containers, that is the Florida, Texas standard, 1⅗, or the California, 1⅖, would conform to any present standards.

There are now nine different capacities provided by law for the basket and those different capacities under H. R. 5530 would apply to all of the boxes and crates that are presently used. Now, I don't believe I have entirely completed that. The point of that is that we have a California law and a commission edict in those three States which forces a container which is not standard by any present standards and which varies in itself.

Now, whether that could be termed a trade barrier I am not prepared to say. I can't see the significance of it being a trade barrier. That is merely a question of arbitrary prescription of a trade container by, in one case, a State legislature and, in the other case, State-accredited commissions.

The VICE CHAIRMAN. Now, getting back to the observation which you made, that transportation companies have people whose business it is to examine with regard to the contents of these containers, how would they go about determining whether or not a given container had too many carrots in it?

Mr. VAN ARNUM. They already do it.

The VICE CHAIRMAN. How do you do it?

Mr. VAN ARNUM. They first do it through the——

The VICE CHAIRMAN (interposing). In the first place, how do you know how many there ought to be in it?

Mr. VAN ARNUM. Because there are four organizations known as Weighing and Inspection Bureaus, the Southern Weighing and Inspection Bureau, the Western Weighing and Inspection Bureau, the Transcontinental Weighing and Inspection Bureau; there is the Illinois Weighing and Inspection Bureau, the Central Weighing and Inspection Bureau, all of which have, presumably, well-trained inspectors whose duty it is to visit the packing houses and systematically weigh these containers to see how much they weigh for the purpose of maintaining a record on which to base the estimated billing weights, and also to inspect to determine whether these containers are properly loaded. That is, that they are not loaded beyond capacity or that they are loaded properly so as not to increase the hazard to the railroad, which, of course, increases the railroad's liability for damage.

On the basis of their recommendations and on the basis of the studies and the field studies of representatives and agents of the freight container bureau of the American Association of Railroads, who are continually in the field, they are also continually checking on the loading methods of these containers, the way the lid is nailed down or strapped on or wired down, and they are continually changing their tariffs as to loading requirements and specifications.

The VICE CHAIRMAN. Then they find out, too, when they are looking around as to how much ought to be put in a given basket?

Mr. VAN ARNUM. That is right; yes, sir. The difficulty is that those organizations, like every one of us, are subject to practical influences having to do with the amount of business they are going to get, and it is one of the frailties of human nature that when they find certain abuses which if they undertook to correct arbitrarily would cost them some business to the trucks, they are inclined to let things ride for a while, and see if it doesn't work itself out. That is the plain explanation, as plain an explanation as I can give you.

The VICE CHAIRMAN. I don't think you could beat it.

Mr. DONOHO. Mr. Chairman, might I put one question to relate the testimony in some slight way to the trade-barrier problem. As I understand it, California will not accept boxes for berries which are in common usage in other parts of the country. Do you have any information on that?

Mr. VAN ARNUM. I don't have any information along that line.

Mr. DONOHO. On that type of thing I think it would definitely tie this in.

Mr. VAN ARNUM. California won't accept boxes for citrus fruit which are used in other sections of the country because the other sections use a different size box and California prescribes their size box.

Mr. DONOHO. That gives an illustration I was trying to point out.

The VICE CHAIRMAN. California is not awfully keen about the shipment of Texas citrus fruit into California anyway. I won't ask you that; I know myself about it.

Mr. VAN ARNUM. Mr. Chairman, just as a matter of personal interest, do you mind if I make one observation on an entirely different subject?

The VICE CHAIRMAN. Make two if you like.

Mr. VAN ARNUM. You asked the previous witness, Mr. Martin—and I am not going into this in detail because I understand the American Trucking Association is going into it in very great detail—I merely want to make an observation with respect to the perishable industry concerning the trade barriers as they relate to truck-weight laws of various kinds. I think Mr. Martin indicated that he had no specific information as to which of those 301 State laws relating to motor transportation constituted a specific obstacle to free commerce between the States.

I would like to call attention to the fact that one of the most flagrant of those and one that we meet with constantly is the State weight law of Kentucky, as an illustration, where the maximum load limit is 18,000 pounds. Just last week the Senate of Kentucky turned down a bill to increase that weight limit to 32,000 pounds. The effect of that law in Kentucky means almost the complete elimination of the economic flexible truck transportation of these commodities from States south of Kentucky into Central Freight Association territory. That is, the Central States of Ohio, Indiana, Illinois, and Michigan. Because they can't get through Kentucky on a 18,000-pound gross weight because the truck weighs about 10,000 and 8,000 pounds is not an economical load limit.

The result is that the railroads have maintained very much higher relative rates into those States of Ohio, Indiana, Illinois, and Mich-

igan than to the States to the east, where the load limits are higher and permit truck competition. Whether that is a good thing or a bad, I am not saying; I merely indicate that is a specific and definite trade barrier in the form of a maximum-weight law.

Another State is your own State of Texas, which you are probably familiar with, which has a law limiting pay loads to 7,000 pounds by truck unless the truck is going to the first direct railroad station, when they can haul 14,000 pounds. Now, I understand that that law is violated almost without exception; that is by various devices the shippers generally ignore the law, although the railroads, I understand, try to encourage and induce the State highway officials to enforce it. I merely want to mention that because many of our members have indicated to us that there would be a very substantial increase in the more economical, more flexible, and quicker truck transportation with improved truck facilities including refrigeration, if it were not for the fact that the economical gross limit of a truck is approximately 40,000 pounds.

On those long hauls where they have to have two men, the greater capacity of the truck is not reflected in the operating cost by direct ratio. We have had members who have told me that it is that Kentucky law as just an illustration. There are others but that is one of the most significant; that is constantly a direct barrier to interstate commerce. I didn't know whether the American Trucking Association people would put in that part about the fruit and vegetable industry or not.

The Vice CHAIRMAN. We will adjourn until 2:30.

(Whereupon at 12 noon the committee recessed until 2:30 p. m.)

AFTERNOON SESSION

The hearing was resumed at 2:40 p. m., upon the expiration of the recess, Senator O'Mahoney (chairman) presiding.

The CHAIRMAN. The committee will please come to order. Proceed, Mr. Donoho.

Mr. DONOHO. Thank you.

Mr. Moloney, will you come forward please?

The CHAIRMAN. Do you solemnly swear the testimony you are about to give in these proceedings shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MOLONEY. I do.

TESTIMONY OF JOHN MOLONEY, NATIONAL COTTONSEED PRODUCTS ASSOCIATION, MEMPHIS, TENN.

AGRICULTURAL BARRIERS—DOMESTIC FATS AND OILS

Mr. DONOHO. Will you state your full name and address, please?

Mr. MOLONEY. John F. Moloney, Memphis, Tenn.

Mr. DONOHO. Whom do you represent, Mr. Moloney?

Mr. MOLONEY. I am representing several organizations, namely, the American Cotton Cooperative Association, the Association of Southern Commissioners of Agriculture, the Mid-South Cotton Growers Association, the National Cotton Council, and the National Cottonseed Products Association.

Mr. DONOHO. Would you please describe briefly the nature and purposes of the organizations you are representing?

Mr. MOLONEY. Yes; the American Cotton Cooperative Association is a federation of the 16 State or regional cooperative marketing associations located throughout the South. It furnishes such services as financing, insurance, and transportation in the marketing, cooperative marketing, of cotton.

The Association of Southern Commissioners of Agriculture is, as its name implies, an organization of the commissioners or secretaries and directors of agriculture in 13 of the cotton-growing States.

The Mid-South Cotton Growers Association is a cooperative marketing association of approximately 25,000 members, covering the States of Tennessee, Missouri, and Arkansas.

The National Cotton Council is an organization composed of the five major raw-cotton interests; namely, the producer, the ginner, the crusher, the warehouseman, and the merchant.

The National Cottonseed Products Association is the trade association of the cottonseed-crushing industry, having as members approximately 80 percent by number and volume of that industry.

Mr. DONOHO. Do you hold a position with one or more of these organizations, Mr. Moloney?

Mr. MOLONEY. Yes; with one. My position is that of economist with the National Cottonseed Products Association.

Mr. DONOHO. And are you familiar with the general field of trade barriers as it relates to your industry?

Mr. MOLONEY. Yes; I feel that I am, having done work off and on in that field for the past 2 or 3 years.

Mr. DONOHO. Mr. Moloney, just what interest do the groups you represent have in the subject of trade barriers?

Mr. MOLONEY. We are interested in the restrictions which are imposed upon the manufacture and sale of oleomargarine.

Mr. DONOHO. What is the relationship between the cotton or cottonseed and oleomargarine?

Mr. MOLONEY. Margarine provides a market for cottonseed oil.

Mr. DONOHO. Just how important is this market?

Mr. MOLONEY. During recent years it has absorbed from 8 to 10 percent of the entire production of the cottonseed oil.

Mr. DONOHO. Is cottonseed oil the chief ingredient used in the manufacture of margarine?

Mr. MOLONEY. Yes; it is. In that connection I have here a table which shows the ingredients used in margarine production over the past 4 fiscal years. This table is made from data published by the Commissioner of Internal Revenue.

Mr. DONOHO. Is this the chart to which you refer, Mr. Moloney?

Mr. MOLONEY. That is correct.

Mr. DONOHO. I wish to offer this.

The CHAIRMAN. The chart may be received.

(The table referred to was marked "Exhibit No. 2366" and is included in the appendix on p. 16133.)

Mr. MOLONEY. On this table you will note all of the materials which are used in the production of margarine by the entire industry. You will note that in each of the years shown, ending with June 30, 1939, cottonseed oil is a major ingredient and in each of the last 3 years it has been the most important. Down at the lower

part of that table I have set forth the importance of cottonseed oil as a percentage of all of the oils used in this product of margarine, and also as a percentage of the total margarine produced.

The first ranges from 30 to 52 percent of all the oils used, and amounts to between 25 and 42 percent of the total margarine produced.

Mr. DONOHO. Are there other American farm products in margarine?

Mr. MOLONEY. Yes. Referring to this same table you will note such American farm products as milk, soybean oil, the beef fats, corn oil, and peanut oil.

Mr. DONOHO. Can you give the committee an idea of the composition of margarine made from cottonseed oil?

Mr. MOLONEY. Generally the formula for margarine is four parts of oil to one of milk, with salt added. A number of the margarines on the market also contain vitamins A and D.

Mr. DONOHO. Mr. Moloney, just how important is cotton oil to the cotton-growing States.

Mr. MOLONEY. Let me put it this way first. Cottonseed is the third most important cash crop in the South, exceeded only by cotton lint and by tobacco. I have here a table which shows the farm cash income from cotton and cottonseed. This table is made up of data published by the United States Department of Agriculture.

Mr. DONOHO. Is this the chart to which you refer, Mr. Moloney?

Mr. MOLONEY. That is correct.

Mr. DONOHO. Mr. Chairman, I offer this chart.

Acting Chairman PIKE. It may be admitted.

(The table referred to was marked "Exhibit No. 2367" and is included in the appendix on p. 16133.)

Mr. MOLONEY. This table to which I have just referred is broken down into four columns, showing the farm cash income from cotton lint, from cottonseed, the total, and finally the percentage of that total income which is accounted for by cottonseed, and you will note that over the past 5 or 6 years cottonseed has accounted for between 12 and 15 percent of the total income from the cotton crop.

Mr. DONOHO. In other words, Mr. Moloney, as I understand it during the last 6 years cash income from cottonseed alone has been from between 12 and 15 percent of the total farm income, from the entire cotton crop?

Mr. MOLONEY. That is correct.

Mr. DONOHO. Is oil the principal product of cottonseed?

Mr. MOLONEY. Yes; oil accounts for approximately 55 percent of the value of the seed.

Mr. DONOHO. What effect does the price of cottonseed oil have upon the farm price of cottonseed?

Mr. MOLONEY. Well, changes in the price of oil either upward or downward generally bring about similar changes in the farm price of seed. To illustrate that, I have prepared a chart. You will notice (the enlargement is on the stand there) that it shows the farm price of cottonseed and the value of oil and the value of all products per ton of seed. This chart has been drawn from data published by the United States Department of Agriculture.

Mr. DONOHO. Is this the chart to which you refer?

Mr MOLONEY. That is right.

Mr. DONOHO. Mr. Chairman, I offer this chart as an exhibit.

Acting Chairman PIKE. It may be received.

(The chart referred to was marked "Exhibit No. 2368" and is included in the appendix on p. 16134.)

Mr. MOLONEY. If you will look at this chart, you will notice the close relationship in the upward and downward swings of both oil and the farm price of seed. I might point out that, of course, the farm price is determined first of all by the value of all products, but since oil accounts for 55 percent of that total value, it naturally has a very strong influence upon the farm price.

Acting Chairman PIKE. There are two points here, Mr. Moloney. You said that the product margarine used about 8 percent of all the cottonseed oil produced?

Mr. MOLONEY. I said approximately 8 or 10 percent is used for this particular product, margarine.

Mr. DONOHO. You have shown that the price of the oil pretty well governs the farm price which the farmer gets for his seed, or the two go very closely together.

Mr. MOLONEY. Certainly, by far the major factor in determining that price.

Acting Chairman PIKE. I think you also mentioned in your memorandum that the price the farmer gets for his seed is much more to him than it would look, in that it comes to him as cash?

Mr. MOLONEY. Yes; that is correct. I referred here previously to the fact that seed accounted for say 12 to 15 percent of the total farm income from the crop, but actually seed is nearer 100 percent in importance to the actual cotton grower because of the fact that the great majority of growers during the growing season mortgage their crop in order to cover production costs. By picking time, most growers have very little equity left in the cotton lint, so that when they take their cotton to the gin, after paying ginning costs, seed money is really the major, if not the only supply of cash, which they receive.

(Senator O'MAHONEY resumed the chair.)

Mr. PIKE. And the seed is not usually included in that mortgage?

Mr. MOLONEY. The seed is not, and the importance of seed money might well be illustrated by a little cartoon which appears in a number of our southern papers, known as Hambone's Meditation, Hambone being an old darky.

This particular cartoon some time back showed Hambone leaning against a tree scratching his head and putting forth the rather homely philosophy, "I wish de white folks would hurry up and get dey lint off my seed."

Mr. PIKE. That makes the point.

Mr. DONOHO. Mr. Moloney, you have indicated the relationship between the cotton economy and margarine. What are the types of laws to which you object, which to you constitute barriers to interstate trade in margarine?

Mr. MOLONEY. I think for convenience I would divide them into tax barriers and a sort of general classification of nontax barriers. In other words, it is convenient to treat them, I believe, in those two groups.

Mr. DONOHO. Do you have available a resume of the State laws relating to taxes on margarine?

Mr. MOLONEY. Yes; I have here a table entitled "State Taxation of Oleomargarine," which has been brought up to the present date. This table is based upon several sources, principally a publication of the United States Department of Agriculture.

Mr. DONOHO. Is this the table to which you refer, Mr. Moloney?

Mr. MOLONEY. That is correct.

Mr. DONOHO. Mr. Chairman, I offer this table as an exhibit.

The CHAIRMAN. It may be received.

(The table referred to was marked "Exhibit No. 2369" and is included in the appendix on p. 16135.)

Mr. MOLONEY. You will note that in this table there are set forth by States the various taxes, and those are divided into excise taxes, that is a tax which is imposed per pound of product, and annual license taxes, which are imposed upon manufacturers, wholesalers, retailers and other agencies of distribution. Those taxes range from 5 to 15 cents a pound in the excise tax column. They range from $1 to $1,000 in the license tax column.

I might refer there just briefly to the State of Wisconsin, which has a 15 cents per pound tax on margarine and licenses ranging from $1,000 all the way down to $1. That $1 is a consumer's license. In other words, it works this way: If the consumer goes to the store and buys a product through a retail channel, she would pay 15 cents a pound. However, if the consumer is enterprising enough to order his or her margarine outside the State, and have it shipped in, in what I presume would be called interstate commerce, then he or she would have to pay a dollar license tax plus 6 cents a pound tax to the State. How they collect a tax of that sort I haven't any idea, but I think that will give you a pretty good picture of the various taxes which are imposed on this product.

Mr. DONOHO. You are referring to your chart now as giving that picture?

Mr. MOLONEY. That is right. I have, through the courtesy of the Marketing Laws Survey——

The CHAIRMAN (interposing). Does this chart give the whole picture? Does this exhibit [1] which you have just put in give the whole picture with respect to taxes?

Mr. MOLONEY. Yes, it does, and it wasn't my intention to introduce this for the purposes of the record at all, but simply that perhaps it shows a little bit better than a text would——

The CHAIRMAN (interposing). I am referring to the table just presented, which covers only ten States.

Mr. MOLONEY. I think, Senator, the table that I have just presented is numbered up in the upper right-hand corner, and it is entitled, "State Taxation of Oleomargarine," and it shows far more than——

The CHAIRMAN (interposing). Yes; I was looking at the wrong exhibit. How many States have these taxes?

Mr. MOLONEY. Altogether there are about—I haven't counted them there, nor do I have them in mind—about 25 States.

I would like at this point, however, to indicate a distinction which was brought out by some of the previous witnesses in these taxes. For example, the first State here [2] is Alabama, which has a tax of 10

[1] See "Exhibit No. 2369," appendix, p. 16135.
[2] Ibid.

cents per pound, but which exempts from that tax margarine made of domestic oils, in other words, cottonseed oils or beef fats and various other domestic products, and I would like to say right there also that in the rest of my testimony, when I am referring to taxes that are blocking our markets, I do not refer to that type of tax, but solely to the tax which applies to the product regardless of what it is made of, and we recognize that every one of these taxes—at least I feel that they are trade barriers, but there is this difference, that some of them block the market completely and others are more or less of a compromise measure which at least permit the sale of a domestic product.

The CHAIRMAN. Do you wish to be understood as saying that all of these taxes are trade barriers?

Mr. MOLONEY. I think they are, Senator, under the definition of a trade barrier, and I might say here that the reason those taxes were imposed was the fact that the movement to tax this product right out of the market—at least that is the way I look at it—was just sweeping the country.

The CHAIRMAN. Do you want to say that the taxes have no other justification?

Mr. MOLONEY. Pardon?

The CHAIRMAN. Do you wish to be understood as saying that the taxes have no other justification?

Mr. MOLONEY. I think I can bring that out; yes; a little later on in my testimony.

The CHAIRMAN. That is your contention?

Mr. MOLONEY. That is generally my position.

The CHAIRMAN. In other words, you are making a sweeping denunciation of all of these taxes?

Mr. MOLONEY. That is correct.

Mr. PIKE. You are not so much against the ones that keep coconut oil out of the market, though, are you?

Mr. MOLONEY. Our position is that, as I say——

Mr. PIKE (interposing). That would be an imported base.

Mr. MOLONEY. That's right.

Mr. PIKE. So that the Alabama law would tax coconut margarine, but that doesn't bother the cotton growers much.

Mr. MOLONEY. No. Of course in a sense it gives an advantage to cotton oil, but as I say, the real purpose behind those laws was not to give an exclusive advantage to our cotton oil or any particular oil so much as it was to prevent the taxing of all of them right off the market. One of the principal arguments advanced for the imposition of a tax on margarine in the various States was that this product is made of imported oils. Our position was this, "If you are after imported oils, certainly don't tax cottonseed oil, soy-bean oil, don't tax your beef fats, which are products of domestic farms. If you want to go ahead and tax these other things, we frankly don't think it is wise, but we are naturally not as opposed to it as we would be to taxing our own product."

Mr. DORFMAN. Mr. Moloney, do I understand that you don't even have any objection to foreign cottonseed oil entering and competing on the same basis as domestic cottonseed oil?

Mr. MOLONEY. Well, sir, foreign cottonseed oil, to enter, pays a 3 cent tariff, and I think after that we should certainly be satisfied with the situation.

Mr. DORFMAN. You wouldn't want any State to discriminate further against the imported product then, as compared with the domestic?

Mr. MOLONEY. I don't think that would be possible. I don't know, of course, not being a lawyer, but I doubt if you could write a law that could distinguish between imported or domestic oil, the same oil. It might be possible.

Mr. DORFMAN. Not the same oil, but they have in a number of instances distinguished between the class of foreign and the class of domestic. I didn't have in mind differentiating between the foreign and domestic cottonseed oil.

Mr. MOLONEY. I misunderstood you then. Once the foreign cottonseed oil pays the 3 cents a pound tax, you would have to compete on the same basis as domestic cottonseed oil. That is right.

Mr. DORFMAN. And you wouldn't have any State impose a higher tax on any imported oil, or any oil made domestically of imported material, than you could on the domestic oil?

Mr. MOLONEY. That is right, that is our position.

Mr. KADES. Do you think the tax on coconut oil coming from the Philippines or Guam, and other islands in the southern Pacific, is uneconomic?

Mr. MOLONEY. Well, I think that would take us pretty far off into another subject. I don't know what you mean, exactly, by uneconomic.

Mr. KADES. That which constitutes a trade barrier and raises the price to the consumer.

Mr. MOLONEY. I think you can say that any tariff imposed upon a product brought into a country, if that product continues to come in, the chances are you have raised your price to the consumer. Or you might even do it if you kept the thing out entirely.

Mr. KADES. I wasn't thinking of the tariff on goods coming from a foreign country, but I was thinking of goods coming from the Philippines, for example.

Mr. MOLONEY. Well, with the status of the Philippines as it now is, I am not sure whether they are an actual part of this country. Are they not in the process of becoming an independent country?

Mr. KADES. Is it your position that higher price to consumers is justified in the event that the goods are being imported from a foreign country, but that they are not justified in any other event? I am trying to get at the basis of your position. As I understood you, you opposed punitive taxes or other artificial barriers which increased price of palatable goods to the consumer. I wondered to what extent you were insisting upon that position. Is that simply your position in relation to cottonseed oil, or is that a general position?

Mr. MOLONEY. Well, I would say that is our position with respect to internal trade. I am not authorized to discuss for the various organizations the question of your tariff system, because there is a tremendous amount of difference of opinion on that.

Mr. KADES. Does the National Cottonseed Products Association take any position in relation to taxes on coconut oil?

Mr. MOLONEY. The association has supported that tax. Is that what you want? I can say that for my own association, but I couldn't for the other groups.

Mr. KADES. I didn't want you to speak for other associations.

Mr. MOLONEY. Because as I say, I am authorized to speak for them on this particular subject, but I do think that there we are getting into another subject. I may be wrong. I may not be following your question correctly.

Mr. KADES. I don't want to prolong the discussion, but it does seem to me inconsistent at least on its face to oppose a tax on cottonseed products, but to support a tax on coconut-oil products.

Mr. MOLONEY. I would like to get that straight because I didn't take that position. I didn't mean to give that impression.

Mr. PIKE. It is a very different thing, opposing internal trade barriers and opposing customs tariff.

Mr. MOLONEY. I think it is, and what I tried to say was this, that we don't feel that any of these taxes—or we feel that all of them are to an extent internal trade barriers. One group of them, that is what we know as domestic-fat laws, which exempt from the tax margarine made of certain domestic materials, were, as I said, imposed as a means of stopping, preventing, the general movement of taxing this product margarine completely off the market.

The CHAIRMAN. Well, you are dealing with the question of surpluses?

Mr. MOLONEY. Surpluses.

The CHAIRMAN. Yes; the whole problem here is one of surpluses in the last analysis, is it not?

Mr. MOLONEY. Yes; and I think a little later I hope to be able to bring that out.

The CHAIRMAN. Suppose that there were none of these taxes which you call trade barriers at all, what would be the effect?

Mr. MOLONEY. I think, as I hope to bring out later on, you would have a considerably increased trade in this particular product market. You would have a considerably increased market for cottonseed oil, and as I will bring out a little later, Senator, that has, I think, great ramifying effects in a number of fields.

The CHAIRMAN. Would that have any disadvantageous effect upon any other product?

Mr. MOLONEY. I doubt it. Very generally, it is claimed that it would, but I feel that because of numerous points which I hope to bring up later——

The CHAIRMAN (interposing). I won't interrupt you now. Proceed with your statement.

Mr. DONOHO. Mr. Moloney, I would like to get clarified for the record your position on taxes which apply to all margarine and taxes which apply to margarines made of domestic fats. Your position is that you think both are trade barriers?

Mr. MOLONEY. That is correct.

Mr. DONOHO. And you favor the latter only because you favor half an evil more than a whole evil?

Mr. MOLONEY. That is right. That is exactly the point that I was trying to make, and I don't think I succeeded in making it very well for this gentleman over here.

The CHAIRMAN. Perhaps there would be some who wouldn't use the word "evil" at all.

Mr. DONOHO. I just wanted to know if that was his position, sir.

The CHAIRMAN. Proceed.

Mr. DONOHO. Mr. Moloney, in general then you would say that tax laws on margarine may be divided into two classes, license taxes on dealers and manufacturers, and excise taxes on the product?

Mr. MOLONEY. That is right and (referring again to "Exhibit No. 2369") you will note that some States have one, some have the other type, and some have them both.

Mr. DONOHO. How do these taxes, ranging from 5 to 15 cents a pound, compare with the retail price of margarine?

Mr. MOLONEY. The retail price, of course, will vary from time to time. It will also vary from manufacturer to manufacturer, but these taxes range between 25 and 150 percent of the retail price of the product.

Mr. DONOHO. Mr. Moloney, what is the stated purpose of these excise and license taxes on margarine?

Mr. MOLONEY. The stated purpose I believe in all cases is revenue.

Mr. DONOHO. Do these taxes actually produce revenue?

Mr. MOLONEY. Very little. In some instances none. I have here a table showing the revenue obtained from margarine taxes in selected States, and this was obtained from data published by the Institute of Margarine Manufacturers, who in turn obtained it by inquiries addressed to the States in question.

Mr. DONOHO. Is this the table to which you refer?

Mr. MOLONEY. That is correct.

Mr. DONOHO. Mr. Chairman, I offer this table as an exhibit.

The CHAIRMAN. It may be received.

(The table referred to was marked "Exhibit No. 2370" and is included in the appendix on p. 16135.)

Mr. MOLONEY. You will note this table shows 3 States having an excise tax of 5 cents a pound, 4 States having a tax of 10 cents a pound, 2 States with 15 cents a pound, and 1 State with a $400 retail license tax. The final column on the right shows the total revenue collected from these taxes, and with 1 or 2 exceptions you will note that the revenue in all instances is small. Two States apparently collect nothing at all from these taxes.

If data on collection costs were available, the net revenue would, I am sure, be considerably less than the revenue shown in this table.

Mr. DONOHO. Your general conclusion is, I gather that these taxes get very little revenue?

Mr. MOLONEY. That is correct.

Mr. KADES. Does Iowa collect more than any other State, as appears from these tables?

Mr. MOLONEY. The question came up the other day and I inadvertently omitted one State here which should be on. In other words, Pennsylvania, I believe, collects the greatest amount of revenue.

Mr. DONOHO. Do you know how much that is?

Mr. MOLONEY. The last figures I saw were between three and four hundred thousand.

Mr. PIKE. That is a license revenue?

Mr. MOLONEY. That is solely from a $100 retail license tax. There is no tax per pound on the product.

I might say there that they have had that law for about forty years, which may account for the number of retailers having grown in spite of this tax. Of course, I think perhaps one point should be made here, and that is that a tax of that sort falls hardest upon the

small retailer. In other words, your larger retailer who does a big volume of business can afford to pay that license tax and cover it in his volume of business, but the small retailer just can't do it, with the result that he doesn't carry the product at all.

Mr. ELMORE. Mr. Moloney, the States listed on "Exhibit No. 2370" appear to be taken from those which do not exempt cottonseed oil in any form.

Mr. MOLONEY. That is correct, and that is what I had in mind in making up this table. In other words, these are the laws to which we are primarily opposed.

Mr. ELMORE. Do you have any figures showing the amounts of revenue produced by the taxes in the States which do exempt cottonseed oil?

Mr. MOLONEY. Yes; I have some here. I can say that in almost all instances there is no revenue. If you would like, I can check it up for you.

Mr. ELMORE. No; that answers it quite adequately. The tax then really is ineffective, is that true?

Mr. MOLONEY. Well, insofar as a producer of revenue, it is ineffective.

Mr. ELMORE. It is effective in any other way?

Mr. MOLONEY. I don't know the extent of enforcement in these States. We have no knowledge of it, but I presume that it may very well be having the effect of limiting or preventing the sale of coconut-oil margarine, let us say, in those States. At least I would assume that would be the result.

Mr. DONOHO. You stated, Mr. Moloney, that these taxes fail in their stated purpose, generally speaking. What then, would you say is the principal effect of these taxes?

Mr. MOLONEY. The actual effect has been the drastically reduced sale of margarine and a consequently reduced market for cottonseed oil, and, of course, your other domestic fats and oils would be included where I refer to cottonseed oil, but I am speaking now just simply for the cotton groups.

(Mr. Pike assumed the Chair.)

Mr. DONOHO. Have you completed that answer?

Mr. MOLONEY. Yes; I pointed out it had greatly reduced the sale of margarine and also the market for cottonseed-oil products.

Mr. DONOHO. In your opinion, has anyone benefited from these taxes, Mr. Moloney?

Mr. MOLONEY. In my opinion, no. I think it is obvious that the consumer doesn't benefit from a tax of that sort. The effect upon the consumer is either to make him pay a higher price for an article of food, or to make the price so high that it is just not available to him.

Acting Chairman PIKE. I don't know whether this is the right place to ask this question, but I would like to know—nobody has mentioned it but I think we pretty well know the dairy industry is responsible for these taxes, both their imposition and their continuance. If there is any dispute about that point, I will yield very gladly but I think that is a fairly realistic approach.

I would like to know on what basis these taxes are put in and continued. Is there any question as to whether margarine is a proper and full substitute for butter? Is there anything unwholesome about

it? Is there anything disgraceful about it? Why is it that the person who can afford to buy fat at 10 or 12 cents a pound has to have that item put up in a class with butter, where let's say he can afford to buy only half as much. Is there in your mind any sound basis rather than pure and unadulterated competition?

Mr. MOLONEY. Well, I think certainly that these laws were passed with the hope that they would aid the dairying industry, or aid in improving the price of butter, but I have seen no evidence to indicate that that has happened. Am I answering your question?

Acting Chairman PIKE. You are answering a part of it. I would be interested to know what, beside the political influence of the dairy farmer which we admit to be very substantial, what evidence was there ever offered it was inferior food or if it was or is an inferior food, in what way is it an inferior product?

Mr. MOLONEY. Well, it has frequently been stated that the product was inferior.

Acting Chairman PIKE. Any special cases given?

Mr. MOLONEY. Usually they were pretty general statements. I am not qualified to speak as an expert on nutrition, but from everything that I have been able to read, there is absolutely no basis for those statements, and whether or not the product is equal to butter, and from my own experience with it I would say that in some instances it was, and even a little better than some of the butter we get in our part of the country, I think that there is nothing to substantiate those statements.

Acting Chairman PIKE. Well, possibly some day we will get rebuttal.

Mr. MOLONEY. And I am sure that any member of, shall we say, experts on that subject—I have seen statements in fact—that the product is perfectly pure and if you, as they have now, add vitamins to it, which gives you a uniform vitamin content the year round, I would say now that I question whether there is any basis on which it could be classed as inferior.

Acting Chairman PIKE. That is your point of view. Thanks very much.

Mr. MOLONEY. That is right.

Mr. DONOHO. Mr. Moloney, I would like to just clear up one point. Is it your position that if margarine is a wholesome and pure food, whether or not it is inferior or superior to butter is immaterial with respect to its rights to move in commerce?

Mr. MOLONEY. I would say that generally that had nothing to do with the question of whether it should be permitted to move. I think that any product should sell on its merits. Whether one is better than the other I don't think makes any difference.

Mr DONOHO. Mr. Moloney, how has the imposition of these taxes which you have been describing affected the number of retail margarine dealers?

Mr. MOLONEY. It has brought about a considerable decrease in the number of dealers in the States imposing taxes and in that connection I have here a table showing the retail dealers in States taxing cottonseed oil margarine. In 2 years, 1920——

Mr. DONOHO (interposing). What is the source of this chart, please?

Mr. MOLONEY. The table was taken from the reports of the Bureau of Internal Revenue.

Mr. DONOHO. Is this the chart to which you refer?

Mr. MOLONEY. That is correct.

Mr. DONOHO. Mr. Chairman, I offer this as an exhibit.

Acting Chairman PIKE. It may be received.

(The table referred to was marked "Exhibit No. 2371" and is included in the appendix on p. 16136.)

Mr. MOLONEY. The chart shows the number of dealers in 1928 and in 1938 and '28 was chosen because it preceded the enactment of these tax laws; '38 was chosen as the most recent year, available at the time this table was prepared. It shows a 70 percent decrease in the number of retail outlets in these 14 States.

Mr. DONOHO. Mr. Moloney, what about retail dealers in States not taxing cottonseed oil margarine?

Mr. MOLONEY. There you have just the reverse situation. You have an increase in the number of retail dealers. In that connection I have here a table entitled "Retail Margarine Dealers in States Which do not Tax Cottonseed Oil Margarine," taken also from the Bureau of Internal Revenue reports.

Mr. DONOHO. Is this the chart to which you refer, Mr. Moloney?

Mr. MOLONEY. That is correct.

Mr. DONOHO. Mr. Chairman, I offer this chart as an exhibit.

Acting Chairman PIKE. It may be received.

(The table referred to was marked "Exhibit No. 2372" and is included in the appendix on p. 16136.)

Mr. MOLONEY. In this group of States the number of retail dealers over the same 10-year period has increased by about 27 or 28 percent, while the number in the States which impose these taxes was declining by 70 percent.

Mr. DOHOHO. What are the conclusions that you draw from the figures given in these two charts?

Mr. MOLONEY. Well, my conclusion would be that the taxes are responsible for a drastic decline in the number of retail outlets through which this product must be sold.

Mr. DONOHO. Have you any estimate as to how this loss of opportunity to sell has resulted in decreased sales of margarine?

Mr. MOLONEY. I have made an estimate of that, which indicates that the decrease in 14 States shown in this table [1] is between seventy-five and eighty million pounds a year, and that estimate I feel is very conservative. In other words that it did not take account of the fact that the retailers in nontaxing States had increased. It simply assumed that you had the same number of retailers in those States in the taxing States today that you had 10 years ago. In other words, it didn't allow for any growth.

Mr. DONOHO. What would this seventy-five to eighty million pounds of margarine mean in terms of cottonseed oil?

Mr. MOLONEY. Well, on the basis of cotton oil used in the margarine over the past few years it would amount to twenty-eight or thirty million pounds.

Mr. DONOHO. Just to complete the picture, what would this mean in terms of cotton and of cotton acreage?

Mr. MOLONEY. You might reduce that to about what would be the equivalent of about 200,000 bales of cotton and about 450,000 acres.

[1] "Exhibit No. 2371." See appendix, p. 16136.

Mr. DORFMAN. I wonder if I may ask a question. Do you mean to suggest that if these taxes were lifted on margarine there would be such an increase in the sale of cottonseed oil as would necessitate a larger production of cottonseed, which could be produced only by increasing cotton production?

Mr. MOLONEY. No; I wouldn't say that that would occur at all. In fact, I think we can agree that the production of cotton is not going to be increased. Certainly we have the present legislation, except insofar as the yield per acre may be increased.

Mr. DORFMAN. About all the cottonseed producer, then, would stand a chance of gaining would be an increase in price per pound of what he sold?

Mr. MOLONEY. I think that is correct. Of course, whether an increased sale of margarine increased proportionately the use of cotton oil, or whether it drew on other oils, you would still have a stimulating effect upon price.

Mr. DORFMAN. To what extent, if any, do you think that would be offset by the decline in consumption of those preparations, mayonnaise, and salad dressing, into which cottonseed oil enters?

Mr. MOLONEY. Well, that would take me pretty far into the field of prediction and while I have had some ideas along that line, I certainly wouldn't want to predict what the prices would be under certain situations, or what the demand for such products as you mention, mayonnaise and others, what effect that would have. Of course, you have in a product like mayonnaise, I believe, about 30 or 35 percent oil, if I am not mistaken, so that the effect upon the retail price of that I don't believe would be tremendous, even though there were some increase in the price of cotton oil.

Now, we are not expecting any hundred or 200 percent increase in the price of oil, although it is today extremely low. In other words, the wholesale price index last year I believe was about 77. Well, now cotton oil for the year was only 59. In other words, it is considerably below the general price level.

Mr. DORFMAN. In other words, you wouldn't expect that even the lifting of these taxes would appreciably increase the income of cotton producers?

Mr. MOLONEY. The income of what?

Mr. DORFMAN. Of cotton producers, cotton growers.

Mr. MOLONEY. Well, as I say, I wouldn't want to say how much that increase might be, or whether it would be large or small, but certainly I think this, that the opening up of a market for any product, a market which is now closed, would certainly be helpful to the price of the product, and to the producers of it.

Mr. DORFMAN. I think you suggested earlier that about 14 percent of the cotton growers' income was from the seed. Is that right?

Mr. MOLONEY. That is correct.

Mr. DORFMAN. And about half of the value of the seed is the oil?

Mr. MOLONEY. That is right.

Mr. DORFMAN. The only interest of producing more cotton, if we were permitted to, would be to get 7 percent, something more than 7 percent, of his production?

Mr. MOLONEY. I am afraid it is not quite that simple. You can, of course, make a great many calculations of that sort, but as I ex-

plained previously, this 15 percent which you mentioned is nearer equivalent to 100 percent of the growers net income.

Mr. DORFMAN. I understand that, but I think that is principally because the grower has mortgaged the crop to the hilt and that is all that remains?

Mr. MOLONEY. That is correct.

Mr. DORFMAN. Is it your impression that the per capita consumption of fats and oils in the form of lard, butter, or margarine would increase if you were to eliminate these taxes, that it would increase the consumption of margarine you would expect to follow, would result in a greater per capita consumption of fats and oils in general?

Mr. MOLONEY. It is my feeling that it would, my belief that it would.

Mr. DORFMAN. You don't think people would cut down by a certain amount their consumption of other things?

Mr. MOLONEY. No; I don't.

Mr. DONOHO. Mr. Moloney, you have previously referred to nontax barriers against the sale of margarine. Of what do such nontax barriers consist?

Mr. MOLONEY. There are several types; first, State prohibition against the use of margarine in State institutions; secondly, color prohibitions; and, finally, the labeling and packaging laws of the various States.

Mr. DONOHO. Taking your categories in the order named, what States prohibit the use of margarine in their institutions?

Mr. MOLONEY. I have a list of those States. They are California, Connecticut, Idaho, Iowa, Illinois, Kansas, Kentucky, Michigan, Minnesota, Montana, New Hampshire, Nebraska, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, Tennessee, Washington, and Wisconsin. This list was made up from publications of the United States Department of Agriculture.

Mr. KADES. Mr. Moloney, do you happen to know whether any of those States prohibit the use of other products of cottonseed oil, such as salad oil?

Mr. MOLONEY. So far as we know, not, and I think we would know about it, unless—sometimes you run across a situation where they draw the specifications for the purchasing of products so that it would exclude certain products in favor of others, and of course it might be that such arrangements exist, but I don't know of any. We have had experience with that in the past, but I don't know of any today.

Mr. DONOHO. What would you say was the principal effect of barring margarine from public institutions?

Mr. MOLONEY. I feel the principal effect is that it gives the product a bad name. It does, of course, to some extent limit the sale. How much sales to these institutions would be I don't know, but certainly if a consumer knows that a product is barred from the public institutions of her State or his State, they begin to think, well, there must be something the matter with it.

Mr. DONOHO. In other words, you think a bad name discourages sales elsewhere?

Mr. MOLONEY. Yes; I think that is the major effect of those prohibitions.

Mr. DONOHO. Mr. Moloney, you mentioned that trade barriers are found in laws prohibiting the sale of colored margarine. Do you know which States maintain such prohibition?

Mr. MOLONEY. Yes; I have a list of those States, made up also from publications of the Department of Agriculture. There are 31 such States—namely, Alabama, California, Colorado, Connecticut, Delaware, Florida, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

Mr. DONOHO. Mr. Moloney, don't these laws have a legitimate purpose behind them? After all, aren't they designed to prevent the sale of margarine as butter?

Mr. MOLONEY. That is frequently the reason given for their enactment. But I doubt whether it applies today, for the reason that you have your Federal Food and Drug Law, and I believe each of your States has a food and drug law, and if it is possible to prevent fraud in every other food produced or sold by these food and drug laws, I fail to see why it is not possible to administer those laws effectively with respect to margarine.

Mr. DONOHO. What significance do these color restrictions by the States have?

Mr. MOLONEY. Insofar as sales are concerned, I feel that their effect today is very small; that is, by themselves. It should be remembered, however, that the Federal Government places a tax of 10 cents a pound on the color; that is, on colored margarine. Well, the effect of that 10-cent tax, together with these prohibitions, is such that it practically prohibits the sale of the colored product. In other words, almost all of the product—all of the product—sold today is white.

Mr. DONOHO. You believe, however, Mr. Moloney, do you not, that were the prohibition against color margarine by the States and the tax by the Federal Government removed, that the sale of margarine would increase materially?

Mr. MOLONEY. Yes; I feel certain that it would. It is simply a case first of convenience and secondly of preference. In other words, none of us likes to go out and buy a white table fat. That in itself, I think, prejudices a person against the product. Secondly, if we don't have that color preference we just don't want to be bothered with going out and purchasing this product, taking it home and mixing in color, and then repacking it, and I think that therefore the removal of those restrictions would undoubtedly increase the sale of the product materially.

Mr. DONOHO. Have you any idea just how materially?

Mr. MOLONEY. Well, it is difficult to say but we do know that in European countries they consume far more of it than we do here. For instance, the United Kingdom consumes about 9 pounds per capita, and it runs up much higher in some of the other European countries.

Mr. DONOHO. If the per capita consumption of margarine were 9 pounds in this country, what would that mean to the producers of cottonseed oil?

Mr. MOLONEY. Well, it would approximately triple the amount of these various fats and oils now used in margarine, and consequently cottonseed oil would benefit in the opening up of this market.

Mr. DONOHO. Would you estimate the amount of the increase with respect to cottonseed oil?

Mr. MOLONEY. If cottonseed oil were used in this increased production of margarine to the same extent it is today, you might have three or four hundred million pounds' market for it.

Mr. DONOHO. Mr. Moloney, would not such an increase in the use of margarine bring about a corresponding decrease in the use of butter?

Mr. MOLONEY. I don't feel that it would, for the reason that your margarine is consumed primarily by your lower-income groups, and I think that would still hold true even if you had the color restriction removed, and there is this fact. There is room for a considerable increase in the consumption of these fats, especially among the lower-income groups, so that my feeling is that the result would be a total increase in consumption of these products, rather than an increase of one at the expense of the other.

Mr. KADES. Mr. Moloney, would it be fair to state, on the basis of your testimony, that part of the reason for the necessity of loans to producers of cotton is due to the subsidizing of dairy industries through the imposition of a tax on margarine supplies?

Mr. MOLONEY. That part of it——

Mr. KADES (interposing). In other words, the necessity for a certain form of subsidy to cotton producers is brought about by subsidies to the dairy industry through making it difficult for margarine to compete.

Mr. MOLONEY. I would like to be able to say that, possibly, but there are so many other factors that enter into this cotton situation that I think I would hesitate to say that you could directly trace the responsibility.

Acting Chairman PIKE. That is stretching it pretty thin, really.

Mr. MOLONEY. I am afraid so.

Mr. KADES. What is the conclusion that you would have us draw from your testimony?

Mr. MOLONEY. My conclusion is that the opening up of a new market, a market which is now closed to these commodities, not only to cotton oil but to other oils that might be used, is now forcing these various fats and oils into a narrow range, and that if this market in margarine which I have referred to were not restricted, we would certainly have a better opportunity to market this product at a price level which would bring some greater remuneration to the cotton grower.

Mr. DONOHO. And your position, Mr. Moloney, as I understand it, might be further stated to be that this increased outlet for your products would not in any way be detrimental to producers of the principal competing product, that is, butter?

Mr. MOLONEY. My feeling is that the danger, as it has been called, of permitting this product to be sold is not nearly as great as it has been claimed. But let's assume that it is. After all, aren't we attempting to operate this country, this economy of ours, on the idea of competition? Maybe it is an illusion, but I think that is what we are trying to do, and we have to compete. We have to compete

with all kinds of producers. Then why shouldn't everybody else compete?

Mr. KADES. All you ask is an opportunity to compete, is that correct?

Mr. MOLONEY. That is right.

Mr. DONOHO. You mentioned labeling and packaging laws as constituting barriers to margarine. Would you elaborate on this briefly?

Mr. MOLONEY. I just wanted to refer to those briefly as another instance of the cumulative restrictions which are piled onto this product to prevent it from getting to market. There are all kinds of those things with respect to the kind of package, the kind of type that you have to have on it. They required restaurants to mark the plants if the product is sold in a restaurant, and added to all these other obstacles, it practically stifles the chance of selling the product.

The chart up here will give you just briefly a sample of the different kinds and sizes of type which are required by various States. Well, let's assume that a manufacturer might be doing business in several States, he has simply got to make up practically a carton for every State he goes into.

Acting Chairman PIKE. How is he going to get that upper one on the pound package?

Mr. MOLONEY. I don't think that is meant to refer to the pound package; that probably is for the ten-pound carton.

Mr. DORFMAN. Mr. Moloney, do you happen to know whether or not national distributors of margarine frequently find it disadvantageous to use fats and oils which are taxed at very high rates in some States in producing for their national market? That is, the tax might be very low in state A, but high in state B, but since this distributor sells in both States he doesn't find it worth while to make up two batches, and therefore must comply with the most rigid requirements. Do you happen to know whether that is the case?

Mr. MOLONEY. I am sorry, but I don't have that information. The manufacturers, of course, would know it, and I understand that a witness who will follow me represents the manufacturers. Perhaps he can enlighten you on that, I can't.

Mr. DONOHO. I have only a few more questions to ask you, Mr. Moloney, and I would appreciate it if you would just answer them briefly, please.

What are the principal markets of cottonseed oil at the present time?

Mr. MOLONEY. Principally shortening, salad oil, salad dressing, and margarine.

Mr. DONOHO. If the potential market in margarine were opened up by the removal of the various restrictions, would not this simply mean transferring cottonseed oil from shortening to margarine?

Mr. MOLONEY. Very probably it would, but we believe that some such sort of a transference is going to be forced on us so far as the shortening market is concerned because of the large increase which has taken place in the production of lard during the past several years, plus the fact that with that increase in production, we have not recovered our export market. The result is that the volume of lard available for domestic consumption is increasing.

I have here a table which will show that, and shows that the volume available for domestic consumption is at a point approximately equal to that which it was at the worst of the depression in '32 and '33.

This table was made up from data published by the Bureau of the Census.

Mr. DONOHO. And it is entitled "Lard, Factory Production, Exports, and Difference."

Mr. MOLONEY. That is correct.

Mr. DONOHO. Is this the table to which you refer?

Mr. MOLONEY. That is right.

Mr. DONOHO. Mr. Chairman, I offer this table as an exhibit.

Acting Chairman PIKE. It may be received.

(The table referred to was marked "Exhibit No. 2373" and is included in the appendix on p. 16137.)

Mr. MOLONEY. Another factor is the tremendous increase which has taken place in the field of soy-bean oil. Ten years ago we produced about eleven million pounds of that commodity in this country. Last year production was 450 million pounds, an increase of about four thousand percent.

Soybean oil is being increasingly used in shortening. Thus cottonseed oil finds itself meeting with competition with soy-bean oil for the shortening market, then as much of it as does get into shortening competes with this huge volume of lard, and the result is a considerable lowering of prices as I mentioned before, to a point quite a bit below the general price level.

Mr. DONOHO. You have evidence, I believe, to show this increase in the supply of domestic edible oils.

Mr. MOLONEY. Yes; I have here a chart showing the supply of four of the more important edible oils: cottonseed, lard, soy-bean oil, and peanut oil, and an enlargement of that chart is shown up here.

You can readily see that the total supply of these commodities is constantly going up. In other words, it indicates very definitely the need for this market which I have previously referred to. This chart entitled "Domestic Supply of Principal Edible Fats" was prepared from data published by the Department of Agriculture.

Mr. DONOHO. Is this a copy of the chart that you have described?

Mr. MOLONEY. That is correct.

Mr. DONOHO. Mr. Chairman, I offer this chart for the record.

Acting Chairman PIKE. It may be received.

(The chart referred to was marked "Exhibit No. 2374" and is included in the appendix on p. 16137.)

Acting Chairman PIKE. I notice you have left out butter as one of the edible fats.

Mr. MOLONEY. I might say that was not an intentional slight. The chart would have looked practically the same had it been included, for the reason that the production of butter, or the supply of butter, has been almost constant. There has been some variation, but very little. It has ranged around 1,700,000,000.

Mr. KADES. Is it your position that the trade-barrier laws relating to margarine products hamper the national market for all the domestic oils, not only cottonseed oil?

Mr. MOLONEY. Oh, I think unquestionably that this has its effect upon the soy-bean producer, it has its effect upon the hog producer

through lard, and upon the producer of these other groups—cattle producers so far as beef fats enter into the picture. It affects practically your entire agricultural economy in these particular products.

Mr. DONOHO. With respect to the present situation among edible oils, your position is, is it not, that your present primary market is likely to deteriorate, and that a most logical and desirable market is closed to you through the imposition of discriminatory taxes and other barriers to the sale of margarine?

Mr. MOLONEY. That is correct.

Mr. DONOHO. Mr. Moloney, what significance would the removal of these restrictions have to the people of this country other than those producing and processing the materials for oleomargarine?

Mr. MOLONEY. I think, as I mentioned before, it would make available to consumers, and particularly your lower-income consumers, a pure and wholesome food. I feel, also, that the need for that has been indicated by the studies that have been made in the consumption of this type of food among various income groups. For example, one study conducted by the Bureau of Home Economics and the Bureau of Labor Statistics showed that as income went up, your consumption of these products also went up very rapidly. For instance, where the expenditure per person for food was $1.24 to $1.87 per week, those people consumed 20 pounds of butter and margarine a year, 12 pounds of butter and 8 pounds of margarine. However, when you got up to the point where your consumer expenditures were $3.75 to $4.37 those people consumed 40 pounds of butter a week. In other words, you just double the fat.

Mr. DONOHO. You mean 40 pounds a year.

Mr. MOLONEY. Yes; I beg your pardon.

In other words, your total consumption of fats was doubled. I think also that any of these barriers which can be removed, which will result in an increased volume of trade, will materially benefit all the people of this country. In other words, the thing is not confined to any particular interest. What most of us want, I think, is to see larger volume of trade, and I think that this is one of the things that could be done, perhaps small in the whole picture, but important, of course, to the groups that are affected by it, to bring about better trade conditions.

Mr. DONOHO. Mr. Chairman, I have no further questions to ask the witness.

Acting Chairman PIKE. Any further questions from the committee? If not, thank you very much, Mr. Moloney.

(Mr. Moloney was excused.)

Acting Chairman PIKE. What are your plans for the rest of the afternoon?

Mr. DONOHO. I would like to have Mr. Janssen, representing the margarine manufacturers, on the stand.

Acting Chairman PIKE. Have you any idea about time? I am under orders from the Chair to go along as far as anybody's patience will last.

Mr. DONOHO. I don't believe we can finish with Mr. Janssen this afternoon, but it might be advisable to put him on for a while.

Mr. Janssen, will you come forward, please?

Acting Chairman PIKE. Do you solemnly swear the evidence you shall give in this proceeding shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. JANSSEN. I do.

Acting Chairman PIKE. I know we interrupt largely from this side of the table, but we will try to make the best use of this time as we can and make as much progress as we can.

Mr. DONOHO. Yes, sir; and I am sure Mr. Janssen will cooperate as much as possible toward that end.

TESTIMONY OF C. H. JANSSEN, PRESIDENT, NATIONAL ASSOCIATION OF MARGARINE MANUFACTURERS, COLUMBUS, OHIO

AGRICULTURAL BARRIERS—OLEOMARGARINE AND OLEOMARGARINE TAXATION

Mr. DONOHO. Will you state your name and address, please?

Mr. JANSSEN. Charles H. Janssen, 85 East Gay Street, Columbus, Ohio.

Mr. DONOHO. What is your official title, Mr. Janssen, and whom do you represent?

Mr. JANSSEN. My official title is president of the National Association of Margarine Manufacturers.

Mr. DONOHO. Will you briefly give the salient facts regarding the nature of your organization?

Mr. JANSSEN. The National Association of Margarine Manufacturers, Mr. Chairman, is a trade association. It is a nonprofit organization organized under the laws of the State of Illinois in 1936, and it serves the margarine industry and principally its members in the ordinary capacity and function of a trade association. If you would be interested in its active members, it is a small organization, I would be very glad to give the active members of that organization.

Mr. DONOHO. Proceed.

Mr. JANSSEN. The Capital City Products Co., Columbus, Ohio; Durkee Famous Foods, Inc., Chicago, Ill.; The Churngold Corporation, Cincinnati, Ohio; J. H. Filbert, Inc., Baltimore, Md.; Miami Butterine Co., Cincinnati, Ohio; B. S. Pearsall Butter Co., Elgin, Ill.; Shedd Products Co., Detroit, Mich.; Southern States Foods, Inc., Dallas, Tex.; Standard Nut Margarine Co., Indianapolis, Ind.

Those are the 9 companies operating 12 plants.

Acting Chairman PIKE. Mr. Janssen, what percentage of United States production of margarine does this Association include, about?

Mr. JANSSEN. Approximately 53 or 54 percent.

Acting Chairman PIKE. A little over half?

Mr. JANSSEN. Yes.

Acting Chairman PIKE. Are any of these companies subsidiaries of other companies, or all of them independent?

Mr. JANSSEN. They are all independent companies, Mr. Chairman.

Mr. DONOHO. As president of this association, Mr. Janssen, are you familiar with the problem of your industry generally?

Mr. JANSSEN. I think so.

Mr. DONOHO. Including those relating to trade barriers?

Mr. JANSSEN. Yes; I believe so.

Mr. DONOHO. Mr. Janssen, what are the principal objectives of your organization?

Mr. JANSSEN. The principal objective, of course, is to serve our members in the rather complicated set-up under which we are forced to do business.

Mr. DONOHO. More generally, Mr. Janssen, what are the more general purposes and objectives of the association?

Mr. JANSSEN. We do have a general objective, sort of a long-range objective in our organization, like any trade association has, necessarily. Our long-range program is to gain for this industry and for the product this industry manufactures the same equality of opportunity which is open to every other food product manufacturing industry and to every other food product, so that the margarine manufacturer may serve the economic needs of our people, enter the avenues of commerce like any other food manufacturer does, without any of these various restrictions that are imposed on us particularly.

Mr. DONOHO. Is this the reason, Mr. Janssen, why your association is interested in the subject of trade barriers?

Mr. JANSSEN. Really that is the reason; yes.

The subject of trade barriers between States naturally takes cognizance of the laws and regulations which restrict opportunity normally open to any food product manufacturer. We cannot reconcile those laws being imposed on margarine and the margarine industry with the liberal attitude that is usually accorded to commerce in foods, and we have given formal expression to that attitude or position with respect to that particular phase of the subject in our declaration of policy. If I may quote a brief paragraph here, I would like to read that into the record. We say in our declaration of policy:

> The laying of arbitrary selective excise or license taxes on any one wholesome food product or on the privilege of handling the same, with the purpose or the effect of raising its price to the consumer or of restricting its sale or use, is a harmful and wholly unjustified use of the taxing power.
>
> No food product which, in respect to the wholesomeness and purity of its ingredients, complies with applicable state and federal food laws, should be burdened with special taxes, special licenses, or regulation, other than are strictly necessary in the public interest for the protection of the consumer.

I might say that is our statement of policy with respect to this particular situation. It is upon this that we predicate our case against those laws and regulations imposed on this industry and its product which operate as barriers against them in their legitimate right to equal opportunity in domestic commerce.

Mr. DONOHO. Mr. Janssen, as a general thing laws are enacted in response to causes and conditions. They have a reason. What in your opinion originally prompted this legislation?

Mr. JANSSEN. Mr. Chairman, I don't think many of our laws have any reason at all. You may also be of that same opinion with respect to many laws that are passed, yet nevertheless we do have those laws.

Now, oleomargarine is a distinctive food product which had its rise in the 1870's. The first of these state laws in the seventies and eighties, as those enacted subsequently but prior to the enactment of our general food control laws, met with strong and deserving public support because they were offered as measures to curb the then widespread fraudulent adulteration of foods, including but by no means confined to dairy products.

Our oleomargarine laws that we have today are a legacy of that period when adulteration, misrepresentation, and fraudulent practices in the production and sale of food products were widespread and common, and flourished in the absence of regulatory and controlling laws to prevent it. An understanding of the historic background of that type of legislation against oleomargarine is important in light of the claim that such laws no longer are necessary and no longer serve any good purpose and that the corrective and regulatory function of the original oleomargarine laws has been taken over and is more effectively performed by other laws that have been enacted since that time.

Mr. DONOHO. In other words, Mr. Janssen, it is your opinion that the early margarine laws were a part of a general attempt to combat widespread food adulteration?

Mr. JANSSEN. Exactly. Mr. Chairman, may I make clear that almost every defense of the present oleomargarine laws is based on the false assumption or assertion that they are necessary to protect the public and the dairy industry against fraud. There exists widespread belief to that effect. We don't deny that. That is true. A brief recital of the historic background of this legislation should therefore make clear, and I will make it very brief, why these olemargarine laws became commonly accepted as of that character.

It is difficult today, after more than 30 years' experience under our comprehensive Federal food-control laws, which by the way are the best in the world, and the state laws enacted in conformity therewith, to realize how general was the adulteration of food prior to the passage of these acts. There can be no doubt, however, that prior to and during the eighties and nineties the adulteration of food products was very general indeed.

I know something about that. Back in 1890 I was working in a little old grocery store in Nebraska. I have been in the grocery business all my life. The adulteration of milk and milk products, while extensive and subtle, was only a special phase of the then very prevalent adulteration of food products in general. In dairy products adulteration was comparatively simple and for obvious reasons was more glaring than in other foods.

Mr. KADES. Mr. Janssen, how do you account for the fact that margarine was singled out?

Mr. JANSSEN. I am coming to that in a minute, if you will permit me. I have a quotation here from John Mullaly, who wrote a little book on the milk trade in New York and vicinity, and he says among other things:

> The first adulteration of dairy products that assumed the proportions of a social problem in America occurred about 1840 in the production of milk for fresh consumption in cities. New York State passed laws in 1862 with amendments in '64, '65, '78 and '82 for the purpose of stopping adulteration. Yet—

he continues—

> the adulteration of milk remained a menacing evil until 1884, when the office of Dairy Commissioner was established.

A very adequate presentation of the extent of adulteration of food products in general was given by a very eminent commissioner of agriculture, Mr. H. C. Adams, in his report as dairy and food commissioner in Wisconsin in 1902. In that report, the commissioner refers to—you may get a smile out of this; it has its humorous side—

The clumsey wooden nutmeg of Connecticut, that even a policeman might detect. * * * wheat flour is adulterated with corn flour; buckwheat with wheat middlings. Vermont maple syrup is made that never saw Vermont, and is made from the sap of trees that grow in the heart of Chicago. A good portion of the strained honey of commerce never produced any strain upon the bees. Milk is robbed of its cream, filled with lard and sent all over the world to ruin the reputation of American cheese.

Further evidence on this is found in the records of the Division of Chemistry of the U. S. Department of Agriculture, which accumulated evidence on that subject long before they were given power to enforce the pure-food law. It was incorporated in a series of publications which were entitled "Extent and Character of Food and Drug Adulteration." I have a brief quotation from that. I want to make a point here. This comes right to your question.

Most of these adulterations were harmless. They were the substitution of the cheaper for dearer materials in the manufacture or preparation of such things as butter, cheese, milk, tea, coffee, cocoa, and a hundred other commodities in every day use. A. J. Wedderburn, who compiled the reports, estimated that 15 percent of the foods used in the country were adulterated.

Some of you gentlemen weren't born during those days.

Acting Chairman PIKE. I remember that most of our sardine manufacturers in Maine were Frenchmen up until 1906.

Mr. JANSSEN. He continues and says:

That adulteration is general is proved * * * as is also the fact that no kind of food, drugs, or liquors is free from the finishing touches of the manipulators. It may be therefore concluded that the practice is general and the character principally fraudulent, with but occasional criminal additions, the latter, however, too frequently causing loss of life and health.

Dairy products were the first commodities to be considered for effective control, not because adulteration was more prevalent in that group than in any other, but because dairy products, principally milk, were peculiarly essential in the diet and because organized dairy farmers saw the real threat to their industry in that condition.

I think the dairy farmers of that time, as well as the dairy farmers of today, ought to be congratulated on having such a splendid organization that takes care of their industry. However, the first of our oleomargarine unfortunately came into this world at a time when adulteration of many commercial products was considered smart practice.

"Let the Buyer Beware" was still the current maxim of business. The new product lent itself easily to fraudulent use, being an improvement on lard, which had been used extensively as an adulterant of certain dairy products.

Mr. DONOHO. Mr. Janssen, do you consider that the legitimate purpose, which, as you say, occasioned the enactment of the original oleomargarine laws, still obtains at the present time?

Mr. JANSSEN. No; I do not, Mr. Chairman; not at all.

Mr. DONOHO. Upon what do you base your opinion, Mr. Janssen?

Mr. JANSSEN. Among other provisions, Mr. Chairman, it has long been recognized that effective food control and effective food regulation in the public interest have been achieved through regulatory law and that it is not necessary to tax a product in order to prevent adulteration and fraud in its manufacture or its sale. Because of this, in the Federal field we have the Food, Drug, and Cosmetic Act, a monument to Senator Wagner and Members of the Congress at that time,

and we have the Trade Commission Act and we have other laws, and in the States we have highly effective food and trade-practice control laws. The great purpose of that body of law is to protect the consuming public from health injury and the purchasing public from economic injury.

Oleomargarine is not excluded in any way, shape, or manner from the effective jurisdiction of that body of law.

Mr. DONOHO. What, in your opinion, then, Mr. Janssen, are the reasons sustaining the enactment of the latter-type margarine laws, or supporting the intention of this type of legislation?

Mr. JANSSEN. The opposition to the repeal or modification of these special oleomargarine laws and the continued demand for new and more drastic legislation—that is, since the enactment of our general food-control laws—in my opinion must be considered an expression of an economic motive of opposing groups or interests, a motive which purposes the suppression of commerce in that product.

Now, here is a significant fact. While legislation to prevent fraud and adulteration in all other foods gradually assumed the form of general food-control law and finally shaped the Federal Food and Drug Act in 1906—that is, without excise- and license-tax features—the oleomargarine laws containing the tax features remained and have constantly increased in number and severity, and that again strongly indicates the presence of an economic motive and a planned purpose to restrict or to destroy commerce in this article of food for reasons other than the prevention of fraud or in the public interest. As I pointed out before, oleomargarine, in common with all food products, long ago became subject to Federal and State regulatory law under which fraud and deception are effectively prevented.

The assertion which is often made, frequently advanced, in support of these laws, to the effect that the retention and further strengthening of the oleomargarine laws, with their excise- and licensing-tax features and restraining regulations, as necessary to protect the dairy industry and the public against fraud and deception, is therefore no longer tenable, yet any attempt to modify or repeal these laws is vigorously opposed, and again I say that it is in this opposition that we see the economic motive and the motivating influence that supports it.

Mr. DONOHO. Do you know of any public interest or support for these laws?

Mr. JANSSEN. No; I do not. On the contrary. I think I could sustain that very well with adequate proof. The opposition to the repeal of such laws does not come from the consuming public. The consuming public invariably condemns such laws in unmistakable terms at the polls when it is given an opportunity to express itself, which in my opinion would indicate first, that there is no public demand for such laws, and second that the public favors the repeal of such laws, and the record on which I base that is just simply this:

On nine occasions restrictive laws on oleomargarine have gone to the people for decision through referendum.

The people of Oregon have four times overwhelmingly rejected such laws by their votes; in November 1920, by 119,000 against 67,000; in November 1924, by 157,000 against 91,000; in November 1932, by 200,000 against 131,000; in November 1933, by 144,000 against 66,000.

The people of Michigan repealed such a law on November 8, 1932.

California voters have twice rejected such a law through referendum, once on November 2, 1926, and again on November 3, 1936, by the overwhelming vote of 1,359,000 against 345,000.

The people of Washington rejected such a law on November 4, 1924.

Acting Chairman PIKE. That makes eight, Mr. Janssen. Do you remember the ninth?

Mr. JANSSEN. I must have missed one, Mr. Chairman. I venture to say, though, it must be there, because I couldn't have got that figure of nine without having a basis for it.

Acting Chairman PIKE. I didn't know but that once you missed one, one that got by.

Mr. JANSSEN. I know of no instance where consumer groups, welfare and social agencies, or charitable organizations have gone to the defense of such laws. On the contrary, such bodies invariably protest the enactment of such legislation.

Mr. KADES. You have given us an explanation of the presence on the statute books of the various States of the laws in question, but you have just mentioned that on November 3, 1936, California rejected such a law. What were the reasons urged for the passage of the law at this time?

Mr. JANSSEN. What are the reasons urged? They are many. The principal reason urged in California, I believe, was that it was necessary to protect the dairy industry as a whole against the competition of a producer asserted to be inferior and there were many other reasons urged. The literature used in that campaign is full of it.

Mr. KADES. Has the reason shifted from prevention of adulteration of food products to the prevention of competition?

Mr. JANSSEN. No; I wouldn't say entirely. Frankly, I am not prepared to answer that specifically, but the reasons that are being urged in behalf of such legislation are quite uniform throughout the country. It is principally an economic reason, and with that a good deal of propaganda, if I may call it that, which tries to arouse an antagonism to the product, when they say it isn't worth eating, it is unwholesome, that rats have died of it, and so on, and so forth.

Acting Chairman PIKE. Just so I can get through my head, Mr. Janssen, what the saving would be, can you give me an instance of comparative retail prices of a good grade butter and margarine in some community where there is no tax on either. I would like to know what the saving to the buyer would be.

Mr. JANSSEN. I would say, Mr. Chairman, that oleomargarine, speaking generally, runs from 40 to 50 percent of the average price of butter.

Acting Chairman PIKE. What would be an ordinary retail price?

Mr. JANSSEN. Well, if butter would be selling at 35 cents, oleomargarine would be retailing about 17 or 18 or 19 cents.

Mr. KADES. I don't understand, Mr. Janssen, why the price of oleomargarine is necessarily related to the price of butter.

Mr. JANSSEN. It is not.

Mr. KADES. I thought you said, if butter——

Mr. JANSSEN (interposing). I just cited that as an example.

Mr. KADES. Butter might be selling at 20 or 50 cents, there is no relationship.

Mr. JANSSEN. No. The economics back of that, in my opinion, are that fat prices, oil prices, usually are sympathetic to each other, and that when one oil price rises, the other rises. When butter rises, all oil fats usually rise.

Acting Chairman PIKE. They are necessarily interrelated. They can frequently be used as a matter of choice for one use or another.

Mr. JANSSEN. That is right.

Mr. ELMORE. Mr. Janssen, who are the principal proponents of legislation directed against margarine?

Mr. JANSSEN. Should I answer that?

Mr. ELMORE. I would like to know. They have appeared before State legislative committees, haven't they?

Mr. JANSSEN. Yes.

Mr. ELMORE. It is a matter of public record then?

Mr. JANSSEN. It is a matter of public record, and, if the chairman wishes, I shall be very glad to speak on that subject.

Acting Chairman PIKE. I don't know——

Mr. KADES (interposing). I suggest we might ask counsel.

Acting Chairman PIKE. If it embarrasses the witness——

Mr. JANSSEN (interposing). It wouldn't embarrass me at all.

Mr. DONOHO. Mr. Janssen is here under oath, and as an expert; I feel sure he would be willing to give his opinion.

Acting Chairman PIKE. Then I think you should answer the question.

Mr. KADES. If representatives who support this legislation are to appear before this committee, it might be more appropriate for them to answer.

Mr. ELMORE. I would be very glad to withdraw the question, if that is the case.

Acting Chairman PIKE. We all know what the answer is, I think.

Mr. JANSSEN. I have some definite proof as to who may be responsible for a great deal of this. I would rather have it come from the other side.

Acting Chairman PIKE. I will leave it to counsel whether he prefers that it should be brought up now.

Mr. DONOHO. I think Mr. Kades' suggestion is probably pertinent.

Mr. ELMORE. That is all right with me.

Acting Chairman PIKE. We will leave it to rebuttal.

Mr. DONOHO. In what way, broadly speaking, Mr. Janssen, have these restrictive laws on margarine affected the margarine user?

Mr. JANSSEN. Mr. Chairman, I think that question could be answered quite easily. What I have said heretofore indicates that the trade barrier character of these laws is clearly proven in what they have accomplished, in what they have done. Let me summarize that, and what I say is a tribute to those laws, in what I think is their intended purpose. They have effectively prevented a normal expansion of trade in oleomargarine; they have set up effective trade boundaries against this wholesome food product and destroyed market opportunities for it and, of course, for the constituent agricultural ingredients of the product. They have set up unfair discriminatory advantages for a product made of one formula as against another formula; they have brought about a highly concentrated condition in the manufacture and distribution of the product; they have proven destructive of free competitive enterprises;

they have arbitrarily closed the avenues of commerce against a legitimate industry engaged in the production and sale of a wholesome, economical food, and have exercised a restraint of trade in utter disregard of consumers' interests.

Mr. DONOHO. More specifically, Mr. Janssen, what in your opinion are the principal restrictive laws on margarine which you consider constitute trade barriers against the sale and distribution of the product?

Mr. JANSSEN. Practically every feature of the laws. That includes provisions against color, the excise-tax features, the license taxes, the prohibition against the purchase and use of this product in State institutions and private institutions which are supported wholly or in part by public funds, and then there are the conflicting and unfairly burdensome requirements with respect to labeling and arbitrary restrictive administrative regulations.

Mr. DONOHO. To what extent has the legislation you have described been enacted by the States?

Mr. JANSSEN. In connection with that answer, I would like to point to what I have in the way of an exhibit here, which shows the picture pretty well. It doesn't make a very pretty picture, but it is comprehensive. Let me point out here to you——

Acting Chairman PIKE (interposing). Perhaps we had better have that admitted as an exhibit.

Mr. DONOHO. Would you describe your chart, please?

Mr. JANSSEN. The chart is a table of State excise and license taxes on oleomargarine, showing the year of enactment of the law and exceptions to such.

Mr. DONOHO. And what is the source of this chart?

Mr. JANSSEN. The source of this chart—it is a chart compiled by my office—and the source is the document called "State and Federal Legislations and Decisions Relating to Oleomargarine," issued by the United States Department of Agriculture, Bureau of Home Economics.

Mr. DONOHO. Is this the chart to which you refer?

Mr. JANSSEN. This is the chart, Mr. Donoho; yes.

Mr. DONOHO. Mr. Chairman, I offer this chart for the record.

Acting Chairman PIKE. It may be admitted.

(The chart referred to was marked "Exhibit No. 2375" and is included in the appendix on p. 16138.)

Mr. JANSSEN. You will notice here that we have two States—for instance, there is Wisconsin and Washington, both having a tax of 15 cents a pound on the product, an excise tax of 15 cents a pound. Well, for good measure, Wisconsin puts on some additional provisions, and nearly all of these States have not been skimpy, in fact, they have been very liberal in putting taxes on this product. South Dakota, Tennessee, North Dakota, and Oklahoma have 10 cents per pound on all oleomargarine; Idaho, Iowa, and Utah have 5 cents a pound on all oleomargarine. I think there are 9 States that have 15, 10, or 5 cents a pound on all oleomargarine. Nebraska has 15 cents a pound, but with certain qualifications; that is, on oleomargarine which contains fats and oils other than those that are specifically named in the law. Louisiana has a tax of 12 cents per pound in the same type of law. That was enacted in 1934. Alabama, Arkansas, Colorado, Florida, Georgia, Kansas, Maine, Minnesota,

New Mexico, North Carolina, South Carolina, and Texas have a 10 cents per pound on all oleomargarine but exempting products made from certain types of fats and oils. In Colorado, Kansas, Minnesota, oleomargarine containing soy-bean oil is not exempted from the application of the tax, so that soy-bean oil, which originates in many of the contiguous States, doesn't find a market in margarine in those States, and these laws include, here,[1] for instance—these are the exceptions that I have just mentioned.

Then we have the various license taxes on retailers in those States, enacted in 25 States. There is only one license tax that goes back any period of years, and that is the one in Pennsylvania, which goes back to 1899. There are license taxes on wholesalers and on manufacturers, restaurants, boarding houses, and also on consumers, so we have quite a complete listing of all types of license and excise taxes on the product.

The States imposing license taxes on the sale, you can see there. Certain States have no license tax, and others have license taxes but do not have excise taxes, so that it is quite a complicated picture.

Mr. DONOHO. Mr. Janssen, do you consider restrictions against the use of color in margarine as constituting a trade barrier to your product?

Mr. JANSSEN. Well, I would answer that yes and no. Consumers generally prefer some tint of yellow in their table fat. I suppose that has good reason in historic custom and so forth. Also, for some cooking and baking purposes. Oleomargarine now is usually sold white and purchased white, but it is extensively colored in the home. The process of coloring in the light of modern food product practices is really a factory process, and with few exceptions is so recognized in all general food-control laws. There are some exceptions. For instance, in Illinois now it is prohibited to use color in vinegar, and there are a few States in which macaroni and egg noodles, and so on, may not be colored to resemble egg yolk color. There is no reason, however, in my opinion, why consumers of oleomargarine should be denied that service, providing the manufacturer conforms with Federal and State laws and properly declares the presence of coloring in his labeling.

Mr. DONOHO. How do you account for the extensive prohibition against colored margarine?

Mr. JANSSEN. That goes back to what I said a while ago. That is, in my opinion, a strictly economic motive. Now let me explain that this way. The mark or the identification of a yellow color, or the mark of a yellow color it is probably proper to say, as a distinction which is naturally acquired in a food product or added to it by artificial coloring, appears to have been vested in butter as an exclusive monopoly against any other fatty food which closely resembles it in basic ingredients or is adapted to similar use.

Mr. KADES. Mr. Janssen, is it true that it would be easier to pass off oleomargarine for butter if it were colored yellow?

Mr. JANSSEN. Well, yes; I think it might be much easier; might be resorted to. I doubt if it would be resorted to any more, though, than is the case in other food products wherein the law is being violated today.

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[1] Referring to "Exhibit No. 2375," see appendix, p. 16138.

Mr. KADES. Isn't it an easy way of enforcing the prohibition for the adulteration of butter?

Mr. JANSSEN. If you believe that the best way to enforce a law and to bring about respect for the law is to prevent and absolutely prohibit the manufacture or sale of a product; yes.

Mr. KADES. Well, I didn't go so far as that. I merely was speaking of the justification for the prohibition against coloring. I wasn't addressing myself to these other prohibitory provisions.

Mr. JANSSEN. That reminds me here, when I came into this room yesterday and again today I see three or four "No Smoking" signs. Pretty soon somebody starts smoking in one part of the room, and everybody does the same thing. It is identically the same in every other human activity, I presume; people follow their self-interest and we will have violations with respect to butter, with respect to margarine, just as we have a large number of violations now in butter alone with respect to its fat content. Thousands of condemnation procedures are on record annually with respect to butter, and so forth, and you will have the same thing with respect to oleomargarine, but we do have very efficient and very effective food administrative laws now that are general in character and specific in purpose, and which we did not have at the time when these laws apparently were deemed necessary.

Recently, for instance, the Federal Food, Drug, and Cosmetic Act (sec. 403K) expressly exempt butter from the application of the act prohibiting the use of artificial coloring or declaring its presence on its labeling. The Federal Oleomargarine Act, of March 4, 1931, places an excise tax of 10 cents per pound on the colored product and provides that:

> Oleomargarine shall be held to be yellow in color when it has a tint of shade containing more than one and six-tenths degrees of yellow, or of yellow and red collectively, but with an excess of yellow over red, measured in the terms of the Lovibond tintometer scale or its equivalent.

That tells you how much color we can put in oleomargarine.

Acting Chairman PIKE. What does it mean when you are all through?

Mr. JANSSEN. It means it has to be white. This Federal tax on colored oleomargarine practically destroyed the commercial market for colored goods—and I do think that you will grant me that the Federal oleomargarine tax is a revenue measure and ostensibly an act to produce revenue. It might have worked out, might have been responsible for considerable revenue to the Federal Government and have carried out its stated purpose, but 32 States completely prohibit the manufacture and sale of oleomargarine when so colored, thus effectively preventing manufacturers of oleomargarine from giving their product the benefit of suitable color, a privilege not denied to any other food producers.

Artificial coloring is used extensively in butter and as the butter industry assiduously fosters the idea that oleomargarine is a competitor of butter, or an imitation product, and include that assertion in their support of tax legislation against it, oleomargarine ought to be permitted the same privilege. Being denied that privilege it certainly cannot be the competitor that it is described to be, and if it is a competitor I think every fair-minded man would say it ought to be entitled to compete fairly on an even basis with its competitive article.

Now, here again I say there is the economic motive apparently behind that. Another fact is that you may not have as good reason as some other product, but the relationship between the natural color of butter and its natural vitamin A content is importantly stressed by the dairy industry as a measure of its corrective food value, confirmed by citation of scientific authority, and I do not question that, and larly if that artificial coloring apparently enhances the claimed value of that particular product. I make no exception of oleomargarine on that point because I say the same thing for any other food product, in the product placed there to accentuate its value ought to be prohibited, because it condones deception, which any effective food control should forbid in the public interest.

That applies to butter and applies to any other food product in my estimation.

Mr. KADES. Mr. Janssen, I don't entirely understand you. Do I understand that your position is not that coloring of oleomargarine should be prohibited, but that no coloring should be permitted of any food product?

Mr. JANSSEN. Oh, no; I don't mean that; but it should be declared if there is an artificial coloring added; it should be declared, particularly if that artificial coloring apparently enhances the claimed value of that particular product. I make no exception of oleomargarine on that point because I say the same thing for any other food product, but I am showing this because it tends to confirm my opinion that this whole thing, all this legislation against oleomargarine, rests on a competitive commercial motive, rather than the public good or the public health, or anything else.

Mr. DONOHO. With respect to excise taxes, Mr. Janssen, what effect have they had on your industry?

Mr. JANSSEN. There are 24 States in which excise taxes are levied on the product. The resulting effect of these excise taxes in States taxing the product without exception, that is States in which they have an excise tax on all types of the product, is seen in the diminishing sales of the product. As I say, there is a good point there; it is a graphic example of the regulatory and fraud-preventing powers of that type of legislation. It kills the product, drives it out of commerce. If that is what we need to prevent fraud there are a lot of other products we ought to get rid of. Promoted as revenue measures, they have effectively reduced commerce in the article taxed. We have another chart here I would like to submit, which shows the retail dealers which were licensed to sell uncolored oleomargarine before the State excise taxes were imposed, compared with the number continuing after the excise taxes were imposed, grouped by different types of tax and to show the percentage of decline in dealers after the enactment of the laws. This is taken from State and Federal legislation and decisions relating to oleomargarine, Bureau of Agricultural Economics, United States Department of Agriculture.

Mr. DONOHO. Is this the table to which you refer?

Mr. JANSSEN. That is it.

Mr. DONOHO. Mr. Chairman, I offer this table as an exhibit.

Acting Chairman PIKE. It may be admitted.

(The table referred to was marked "Exhibit No. 2376" and is included in the appendix on p. 16139.)

Mr. JANSSEN. Mr. Chairman, we have here, for instance, three States—Idaho, Iowa, and Utah. Prior to the enactment of the law which imposed a 5-cent-per-pound excise tax on the product there were 699 retail dealers in that product. Well, the result was that that law eliminated 99.1 percent of those dealers in Idaho. In Iowa the 5-cent excise tax eliminated 46.1 percent of all the dealers handling it on the market; Utah, after the enactment of that 5-cent tax, there were 61 percent of the dealers eliminated. With the 10-cent tax in North Dakota we eliminated 100 percent very effectively; it was a clean. South Dakota eliminated 96.8 percent. Tennessee eliminated 86.5 percent. Oklahoma eliminated 90.2 percent. Washington, where we have a 15-cent-per-pound excise tax, eliminated 99.7 percent, and in Wisconsin 99.9 percent.

So that the effect of those laws with respect to the effectiveness of what in my opinion they were intended to do, was quite remarkable.

Mr. ELMORE. Mr. Janssen, for the purposes of that chart, how did you consider chain stores?

Mr. JANSSEN. This chart, I may say, was lifted from a Government publication, the Bureau of Economics, United States Department of Agriculture, but I presume that the chain stores were all handled on an individual basis because the tax applies to the individual units; this tax applied to the pound, of course, but I imagine that it was used on that basis, individual units. I have a further chart here in a few minutes that will point to that a little bit more specifically. I carry that down to the report of the internal-revenue collector for the fiscal year ending June 30, 1939, and find that the process toward complete elimination there is even made more clear in the next exhibit.

Mr. DONOHO. Will you identify this exhibit, please, Mr. Janssen?

Mr. JANSSEN. This is a chart showing the licensed retail dealers in oleomargarine for the years 1930, 1932, 1933, 1935, and 1939, and lifted from the reports of the collector of internal revenue for the year ending June 30 of each year.

Mr. DONOHO. This is the chart to which you refer?

Mr. JANSSEN. That is the chart.

Mr. DONOHO. Mr. Chairman, I offer this chart as an exhibit.

Acting Chairman PIKE. It may be received.

(The chart referred to was marked "Exhibit No. 2377" and is included in the appendix on p. 16139.)

Mr. JANSSEN. Going a little bit further in 1939, for instance, we find that dealers were completely eliminated out of Washington and Wisconsin. There remained but one dealer in the State of North Dakota, there was complete elimination in Idaho, and in these nine States that have this excise tax on all products there were a total of 3,303 licensed retail oleomargarine dealers reported during the fiscal year of 1939, ending June 30, and in those same States the total number of retail food stores which are potential dealers in oleomargarine numbered 51,719, so that we have in those States, if we should take out Iowa, where there were still 2,302 retail dealers despite that 5-cent tax, we would have approximately only 1,000 retail dealers in oleomargarine out of something like forty-two or forty-three thousand potential dealers in that product.

Now it seems to me that any State that should pass laws, any State passing laws with respect to a wholesome—I say this advisedly—pure and economical food product, which I believe is abso-

lutely essential and necesary to a tremendously large proportion of our people who are in the lower income class, so burdensome that not a single retail food store in the State will attempt to handle the product, hardly seems in line with that concept of social responsibility which motivates so much of our legislative activity today.

Acting Chairman PIKE. You don't think, then, there is any reality behind the claim that these laws are for the purposes of revenue?

Mr. JANSSEN. I do not.

Acting Chairman PIKE. I think that is fair enough; I don't think anybody else does.

Mr. JANSSEN. May I say that sometime ago I read a statement, made by a very eminent tax commissioner of one of our States, I think it was Massachusetts, in which he spoke about the objective of taxation. He said it seemed to him that some of our tax laws, while they are ostensibly enacted for revenue purposes, tended to drive out or dry up the very commerce which they taxed. Well, I think that is the case here. Those laws were enacted to dry up the commerce taxed.

Acting Chairman PIKE. There are many laws like that. Our legal member will remember the State banknote law, which is probably the outstanding one of the 1860's.

Mr. DONOHO. Mr. Janssen, you have shown the effect of general excise taxes on all types of margarine. Would you care to discuss their effect with respect to the other types which I believe you referred to earlier in your testimony?

Mr. JANSSEN. If you will recall the first exhibit that I had there,[1] it showed that there were oleomargarine laws in a lot of the Southern States and in some of the Northern States, for instance, Alabama and Arkansas, Colorado, Florida, Georgia, Kansas, Maine, New Mexico, North Carolina, South Carolina, and Texas. Those laws are all identical and all drawn out of the same hopper, identical in principle, identical in phraseology, and I think identical in purpose.

They are referred to in the olemargarine industry as domestic fats laws. I think that designation is erroneous, it is misleading. They are not, strictly speaking, domestic fats laws. Let me read one of those laws. The Alabama law provides—an ingenious law by the way, ingenious phraseology:

> An excise tax of 10 cents per pound on all olemargarine sold, offered or exposed for sale, or exchanged in the State of Alabama, containing any fat and/or oil ingredient other than any of the following fats and/or oils: cottonseed oil, peanut oil, corn oil, soy bean oil, oleo oil from cattle, oleo stock from cattle, oleo stearine from cattle, neutral lard from hogs, or milk fat.

In Kansas, soybean oil is not among the exemptions, nor is it in Colorado or Minnesota. The Georgia law adds pecan oil to the Alabama exemptions, and Florida and New Mexico add sheep fat. I said a little while ago they were identical in phraseology. With these exceptions that is true.

The principal argument advanced for that particular legislation was that it would be prohibitive of the use of imported or foreign oils and fats in the product, and therein benefit the American farmer. Yet, these laws contain no provision that burdens imported oils and fats in the product except certain specified types which if present in

[1] Referring to "Exhibit No. 2375." See appendix, p. 16138.

the product make it liable to a 10 cents per pound tax and thereby virtually bar such imported oils from that market.

Even the Division of Statistical and Historical Research of the Bureau of Agricultural Economics of the United States Department of Agriculture in its publication, State and Federal Legislation and Decisions Relating to Oleomargarine, lists these States as "having excise taxes on oleomargarine containing imported oils," although the exempted oils are named in a footnote, but it shows to what extent this erroneous conception of these laws has gained ground.

In short, we believe that these laws were promoted to destroy commerce in oleomargarine containing coconut, babassu oil, and palm kernel oil, although these same and other foreign oils are permitted to be freely sold in these States as other food products without special legislation or regulation or restrictive tax, and this again strongly evidences the presence of an economic motive behind this type of legislation as heretofore pointed out.

Mr. DORFMAN. Do you feel the higher tax imposed on these margarines containing coconut, palm, palm kernel, and the like has seriously restricted the consumption of those fats and oils in margarines?

Mr. JANSSEN. It has in oleomargarine; yes.

Mr. DORFMAN. To the extent that it has discriminated against those in relation to domestically produced fats and oils, do you feel that the greater consumption of domestic fats and oils has been appreciable; that is, has cottonseed oil, for example, benefited from the discrimination or greater discrimination against coconut oil, palm kernel, and the like?

Mr. JANSSEN. It is doubtful, very doubtful, for this reason: Tremendous quantities of these oils are imported into the United States and they come into this market here. A good many manufacturers of oleomargarine also manufacture other food products. Some larger manufacturers of oleomargarine manufacture mayonnaise, salad dressing, and many other food products in which imported oils are used, or in which all these oils are used. Now, the total amount used in oleomargarine out of the grand total of fats and oils consumed in this country is relatively small, and what little there is, in view of the fact that they are interchangeable in use I think it would be very difficult indeed to say definitely that the prohibition against those oils in oleomargarine had definitely been a benefit to these other fats and oils which we designate as being domestic.

Mr. DORFMAN. Are they in fact interchangeable in use in view of the higher tax that applies to margarines made from some of these oils? For example, a manufacturer having a choice of coconut oil or cottonseed oil might be tempted to use the cottonseed to avoid the higher tax.

Mr. JANSSEN. That is true, but that also would lead me to a discussion of fats and oils prices which run quite uniform, maybe an eighth or a quarter or a half—sometimes as much as a half differential. But I believe I will answer your question in just a few moments if you will permit me, if I may continue.

The essence of our complaint against this type of law—I am speaking for the industry, the manufacturing industry—is that they unfairly discriminate against the margarine industry by denying to this industry the same freedom of choice in the selection of ingredients exercised and enjoyed by other food-product manufacturers.

This country annually imports hundreds of millions of pounds of many kinds of fats and oils, and I would like to offer an exhibit which shows imports of vegetable oils and oil equivalent of imported oil seeds, of the kind used by industry in the manufacture of food products—not just in the manufacture of oleomargarine but in the manufacture of food products. First I have the vegetable oils.

Mr. DONOHO. Would you identify this chart, please?

Mr. JANSSEN. This is secured from Fats and Oils Trade of the United States in 1939, Foodstuffs Division, United States Department of Commerce, February 1940.

Mr. DONOHO. Is this the chart to which you refer?

Mr. JANSSEN. That is the chart, Mr. Donoho.

Mr. DONOHO. Mr. Chairman, I offer this chart.

Acting Chairman PIKE. It may be received.

(The chart referred to was marked "Exhibit No. 2378" and is included in the appendix on p. 16140.)

Mr. JANSSEN. In connection with that, may I also offer another chart, because they support each other, which is a table chart showing factory consumption of primary animal and vegetable fats and oils in the manufacture of oleomargarine, 1930 to 1939, inclusive, compiled by ourselves, and the source is publications of the Department of Commerce, Bureau of the Census.

Mr. DONOHO. Is this the chart to which you refer?

Mr. JANSSEN. That is the chart.

Mr. DONOHO. Mr. Chairman, I offer this chart as an exhibit.

Acting Chairman PIKE. It may be received.

(The chart referred to was marked "Exhibit No. 2379" and is included in the appendix on p. 16140.)

Mr. JANSSEN. For instance, Mr. Chairman, importations of oils, oils that are used in food products, the same oils which are also used in oleomargarine, we have here [1] the average importation, the average annual importation for 5 years, from 1932 to 1937, and it includes coconut, palm, palm kernel, babassu, cottonseed, peanut, soybean, corn, sesame, olive oil, rapeseed, and other vegetable oils. The total annual for the 5-year average period was 1,499,742,421 pounds; in 1938, 1,281,151,483 pounds; in 1939 it was 1,183,638,942 pounds.

We have in addition the same for animal and marine fats and oils: [1] 87,000,000 average 5-year annual, 6,000,000 in 1938; 6,000,000 in 1939.

Those same fats and oils are not exclusively used in margarine but are also used in other food products. First let me show the oils that are used in the manufacture of oleomargarine,[2] and this shows the trend of oils that were being used, or the trend of the total used in oleomargarine. This information was obtained from the Department of Commerce, Bureau of the Census.

We have here [2] as used in oleomargarine cottonseed oil, peanut oil, coconut oil, corn oil, soybean oil, palm-kernel oil, palm oil, sesame oil, lard, edible animal stearine, oleo oil, and back in 1930 we also used some butter, I think, for experimental purposes, but in 1938 there was no rapeseed oil used, no palm oil, very little babassu oil, and those are the only three oils that were not used in 1938 and 1939.

Now may I also present at this time——

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[1] See "Exhibit No. 2378," appendix, p. 16140.
[2] See "Exhibit No. 2379," appendix, p. 16140.

Mr. DORFMAN (interposing). I wonder if I might ask a question concerning that table[1] before you take it away. I notice that the quantity of cottonseed oil which entered into the manufacture of margarine increased irregularly up through 1938 and then declined somewhat in 1939, whereas the reverse was true with respect to coconut oil. Did not the great penalty apply to the use of coconut oil when used in manufacturing margarine have some bearing on this?

Mr. JANSSEN. No; I hardly think so. I hardly think that penalty would have any bearing on that.

Mr. DORFMAN. To what do you ascribe it?

Mr. JANSSEN. Well, there are a number of factors that would have to be taken into consideration if we were to explain that, I think. May I say this also in connection with that, that the process of refining has been perfected more and more so that as new oils were being brought to that stage through the development in refining processes, they have become available for this as well as other food products. Cottonseed oil was not extensively used in oleomargarine until 1916, I think it was. It was thought impossible to make oleomargarine out of cottonseed oil. Prior to that time we used a large proportion of animal fats. However, the rise of soy-bean oil I think has had something to do with the decrease in the use of cottonseed oil, possibly also with the decrease in the use of coconut oil.

Mr. DORFMAN. I think cottonseed oil has increased except for that period 1939.

Mr. JANSSEN. In 1939 the total production of oleomargarine decreased about 90,000,000 pounds from the previous year.

Mr. DORFMAN. But you don't think that a manufacturer having the choice of cottonseed oil which would not be subject, say, to the 10- or 15-cent tax in the manufactured product, would prefer to use it rather than the coconut oil which would be subject to that high tax?

Mr. JANSSEN. Naturally, the matter of price is a determining influence.

Mr. DORFMAN. That would argue in favor of the manufacturer's avoiding the use of the higher tax oil, such as coconut oil, and using the untaxed oils or the lower taxed oils such as cottonseed oil, would it not?

Mr. JANSSEN. Yes; but the price of coconut oil and the price of cottonseed oil, the price of soybean oil, vary and run very closely together.

Mr. DORFMAN. I understand that the cost of the oils moves for the manufacturer, but the cost of the margarine to the ultimate consumer would be much higher if, say, coconut oil were used rather than cottonseed oil. Some of these States apply the higher tax to the margarine containing coconut oil but not to the margarine containing cottonseed oil.

Mr. JANSSEN. I believe I begin to see the point. The fact is, in that case the coconut-oil margarine disappears from the market.

Mr. DORFMAN. That is precisely the point I was trying to get at.

Mr. JANSSEN. The coconut-oil margarine disappears from the market when a tax is imposed on that type or that formula.

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[1] Ibid.

Mr. DORFMAN. That has this further bearing. Is it not conceivable that cotton farmers would fare worse if all of these taxes were eliminated than they now fare, because certain of these oils which have been discriminated against to the extent that coconut oil has, for example, would enter into margarine in larger quantities, and is it not conceivable that there would be a smaller aggregate of domestic cottonseed oil used with the taxes eliminated than is now consumed?

Mr. JANSSEN. It is possible that that might have some effect, but conditions have changed very materially in the last few years. I think the rise of soybean oil in this country has had a considerable influence in that respect.

Mr. DORFMAN. But if the tax of 15 cents a pound were eliminated from margarine made of coconut oil, might you not have coconut oil entering in much larger consumption than now, and even competing more seriously than now with domestic soybean oil, as well as these other domestic oils?

Mr. JANSSEN. Only—may I answer that this way—as coconut oil might come into this country so cheap that it would undersell, and that the manufacturer of coconut oil would have a price advantage.

Mr. DORFMAN. I am not considering at the moment the price which the manufacturer has to pay for the various fats and oils. Presumably these move together and are very close to one another in tax paid. I am considering only the terms on which the manufacturer could sell his finished product if the State taxes margarine made of coconut oil at 15 cents a pound, and margarine made of cottonseed oil at 10 cents a pound, and you eliminate all of these taxes; is it not conceivable that coconut oil would get a much larger proportion of the market than it now gets, and some such oil as cottonseed a smaller proportion?

Mr. JANSSEN. It is conceivable; yes.

Mr. DORFMAN. Do you think it likely?

Mr. JANSSEN. I don't think it would be likely.

Mr. DORFMAN. Why not?

Mr. JANSSEN. Because, as I have pointed out before, the refining processes and the competition of soybean oil and the improved processes of handling cottonseed oil do not make coconut oil the same effective competitor that it was some years ago.

Mr. DORFMAN. Granting that, but with a differential of 5 cents in the retail price of margarines made of, say, cottonseed oil and coconut oil, any technical disadvantage could easily be overcome by a 5-cent differential in sales price.

Mr. JANSSEN. I will grant you that, yes; but let's go a little bit deeper than that. Why should margarine be singled out for that specific treatment when there are tremendously greater quantities of food products available for consumption of that type of oil than margarine could ever hope to use?

Mr. DORFMAN. I think this committee is trying to find out why certain of these products should be singled out. I am simply asking whether, if these taxes were eliminated the domestic producers of fats and oils would get as large a share of the market as they now get, or whether they might get a smaller share.

Mr. JANSSEN. They just would not enter into a State where there was a 10-cent tax against them on a competitive article, that is, in the same general class. No manufacturer would. It couldn't be

done. He couldn't sell the goods in competition with a product, with a margarine, made of another formula of oil that did not bear that 10-cent tax. It simply eliminates it.

Mr. DORFMAN. That suggests that the untaxed domestic oils and those domestic oils taxed at lower rates than the imported oils going into margarine would be adversely affected in consequence of eliminating these taxes?

Mr. JANSSEN. It is possible; yes. It is conceivable. I wouldn't say definitely.

Mr. DORFMAN. They would operate in that direction, would they?

Mr. JANSSEN. That I cannot answer definitely either. I believe that there is more likelihood, that it is more probable with present conditions and with the experience that has been developed with respect to cottonseed oil and soybean oil that the urge to go back to coconut oil is not nearly as strong as it was some years ago, when we just could not handle it on that basis.

Mr. DORFMAN. The fact that under existing conditions both the coconut and the cottonseed oils do enter into margarine would suggest that if the taxes on the higher product were eliminated, it would have a larger share of the market than it now has.

Mr. JANSSEN. It would have a market; yes.

May I present another exhibit here, showing the factory consumption of primary animal and vegetable fats and oils in food products for the calendar year 1938, from Factory Consumption of Animal and Vegetable Fats and Oils by Classes of Products for 1938, from the Department of Commerce, Bureau of the Census, preliminary report of March 18, 1939.

Mr. DONOHO. Is this the table to which you refer?

Mr. JANSSEN. That is the table, Mr. Donoho; yes.

Mr. DONOHO. Mr. Chairman, I offer this table as an exhibit.

Acting Chairman PIKE. It may be received.

(The table referred to was marked "Exhibit No. 2380" and is included in the appendix on p. 16141.)

Mr. JANSSEN. I just want to point out, Mr. Chairman, that in factory consumption of these primary animal and vegetable fats and oils in food products, and to the extent that these oils and fats and oils are interchangeable, they are used in oleomargarine, they are largely used in shortening, and they are also used in other edible products. There are some types of oils used in shortening as well as in other edible products that have not been going into oleomargarine. I can't explain why that is, but it just shows the interchangeability of these fats and oils in oleomargarine, shortening mayonnaise, salad dressing, and so forth.

In brief, the negative effect of these laws has been to curtail, in our opinion, the freedom of the industry in its choice of material and to kill the sale of coconut oil, babassu oil, and palm-kernel oil when incorporated in oleomargarine, although the same and other foreign oils, as components of shortening, mayonnaise, salad dressing, and other edible products may be freely sold without such restriction.

The positive effect of these laws has been that the manufacturers of oleomargarine doing business in these States have gone to whatever oil was permitted to find a market in those States. These laws undoubtedly were a factor in bringing about the phenomenal rise of soybean oil as a constituent of oleomargarine. Improvements in re-

fining processes effected within the last 10 years have made this possible. But the net effect of these laws as a means of benefiting American agriculture, in behalf of which these laws were ostensibly enacted, has, in our opinion, been insignificant, even though the quantities of various oils consumed in oleomargarine have undergone marked changes.

Mr. DONOHO. Have the so-called domestic fats laws, Mr. Janssen, had any detrimental effect on your industry in discouraging sales or discouraging dealer distribution?

Mr. JANSSEN. No; they have not, Mr. Chairman. Such laws have not exerted any detrimental effect on the number of dealers, they have not exerted any detrimental effect in cutting down total tonnage sales in those States, and the product concerned in those States conforms to the law. It does not include those oils or fats which would incur a 10-cent per pound tax.

Mr. DONOHO. Mr. Janssen, would you care to discuss licensing taxes? In what manner do these taxes operate as a trade barrier?

Mr. JANSSEN. Mr. Chairman, as shown in this exhibit,[1] the State laws impose license taxes on manufacturer, wholesale dealer, retail dealer, and so forth. The effect of such laws in eliminating competition in manufacturing and concentrating production in a smaller number of manufacturing plants is shown in the fact that the number of such plants has decreased from seventy-seven in 1930 to forty in 1939.

The number of wholesale dealers in the product has also suffered a severe decline, dropping from 2,107 in 1930 to 965 in 1933, but recovering to 1,636 in 1939.

As set forth in that exhibit,[2] 9 States impose a license tax on the manufacturer; 16 States impose a license tax on the wholesale dealer; 13 on the retail dealer; 6 impose a State license tax for use and/or serving the product in restaurants or boarding houses, and 1 State, Wisconsin, exacts a license tax at the cost of $1 from the housewife who may purchase it within the State or by mail order in interstate commerce.

In addition to this tax of $1 they have also got to declare their purchase and pay a 6-cent per pound tax on any oleomargarine which may have been purchased by them in interstate commerce.

Mr. DONOHO. Can you measure the restrictive influence of these license taxes, Mr. Janssen, when combined with excise taxes?

Mr. JANSSEN. Well, it is rather difficult to measure the restrictive influence of those taxes; that is, in those States where there is an excise tax as well as a license tax. We might refer to some of the States where they only have the license tax on the dealer. It must be borne in mind, of course, that the State license tax is superimposed on the Federal tax, which in the case of the retail dealer is $6. This, of course, is uniform everywhere. The influence of such license tax is to restrict the market. It may, however, be seen in States where there is no excise tax.

Now, for instance, Connecticut has no excise tax, but does impose a $6 retail dealers' license tax. Out of the 7,193 or more total retail food outlets in the State which are potential dealers in the product, only 812 took out a license in 1939.

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[1] "Exhibit No. 2375." See appendix, p. 16138.
[2] Ibid.

Mississippi has no excise tax. It did have a license tax on the sale of all oleomargarine, effective until its modification a few weeks ago, when it was amended to a domestic base. That is, the law down there now applies only to the retail or wholesale dealers who sell only margarine made out of cottonseed oil and other named oils. It was effective all of 1939. Out of its 7,197 or more total retail food outlets which are potential dealers in the product, only 666 took out a license in 1939.

And so on down the line. We also have Montana. Montana—well, let's say Montana is a horrible example. It only takes $400 per store for a retail dealers' license to sell oleomargarine, which effectively prohibits retail dealers from handling the product, and out of its 2,057 retail food outlets, in 1935 only 18 took out a license, and in 1939 there were 32. That must mean something. I don't know exactly what it means, but it must mean, when 32 dealers can take out a license at $400 and sell oleomargarine and make it pay, that there is something of social significance present in that State which would bear study. I don't know what it is, but I would like to get into that and study it.

Mr. KADES. Is that $400 a year?

Mr. JANSSEN. Four hundred dollars a year; yes.

Pennsylvania has had a license tax since 1899. Its retail-dealer license tax is $100 per year, and out of its more than 40,401 retail food stores which are potential dealers in the product—and that eliminates the retail dairy stores, the fish markets; it eliminates the confectionery stores and other stores, but there are 40,401 retail food stores and other stores which are potential dealers in the product—only 4,332 took out a license in 1939. Out of this number, out of this 4,332, approximately 65 percent are large chain units or supermarkets. That is, they do business in sufficiently large volume to make it pay. The conclusion is obviously that, out of its more than 33,000 independent retail food stores, more than 30,000 considered this tax confiscatory of any possible profit.

I have with me here a statement from the National Association of Retail Grocers. There is no organization that in my opinion has better authority to speak for the retail grocers and food dealers of this country or to voice a protest against the license tax feature of these laws, or to say to what extent such tax discourages the handling of this product by retailers, than the National Association of Retail Grocers, and I would like to quote very briefly from the document which that association recently filed with the Treasury Department, and thereafter I want to offer this complete brief just for your files, not for inclusion in the record, but for your files. It would be a little bit burdensome to put it in the record. But they say this:

> We do not wish to be understood as complaining only against the increased price of oleomargarine necessitated by this tax. We also urge that this tax effectively prevents many thousands of retail grocers from selling this product who would otherwise do so and thereby denies to a large proportion of the consuming public the privilege of purchasing it. This condition should not be permitted to continue. Everyone will agree that fraud in the sale of oleomargarine or the use of deleterious ingredients in its manufacture should be prevented, but it should be allowed to sell on its merits. To this much the consumer is entitled. He should have the right to choose freely between butter and oleomargarine. This tax on retail dealers tends to concentrate

and promote a monopoly in the sale of oleomargarine in the super-markets and chain stores and keeps the small independent dealer out of this business.

By way of summary, we respectfully urge that the retail dealers' occupational tax on the sale of oleomargarine be repealed for the following reasons:

1. It bears no reasonable relation to the public health.
2. It is not justified as a revenue measure.
3. It is an unjustified, unnecessary and antiquated device originally designed to protect the dairy industry against competition.
4. It operates injuriously against the independent retail grocer because
   (a) it increases his overhead and diminishes his profits;
   (b) it is particularly onerous to the small merchant in that it gives a competitive advantage to the large and wealthier corporate chains.
5. It operates to the injury of the poorer class of consumers by increasing the price of an essential food item and, in many cases, even denies him the privilege of purchasing the product.

Mr. DONOHO. Is this the statement you wish introduced for the file?

Mr. JANSSEN. This statement entitled "Occupational Tax—In Re Oleomargarine," by the National Association of Retail Grocers. That is the statement. The committee may accept that for its files.

Mr. DONOHO. I offer that for the files, Mr. Chairman.

(The document referred to was marked "Exhibit No. 2381," and is on file with the committee.)

Mr. JANSSEN. So I say that on the whole, every other legitimate, wholesome food product, particularly those products in which the basic constituents of oleomargarine such as milk or skim milk and pure vegetable oils or animal fats are present, may be freely offered for sale through nearly 500,000 retail food establishments without special product restrictions such as pertain to oleomargarine, and that this same opportunity is denied oleomargarine is proof sufficient that these laws are in fact effective trade barriers.

Mr. KADES. Mr. Janssen, suppose the State laws were repealed. What effect, in your opinion, would that have on the consumption of margarine?

Mr. JANSSEN. I am inclined to think that it would increase the sale and consumption of oleomargarine. Furthermore, if I may continue, I would say that that effect would be a fine and splendid contribution to the diet of the American people.

Acting Chairman PIKE. That is your opinion.

Mr. JANSSEN. That is my opinion.

Mr. KADES. Have you any——

Mr. JANSSEN (interposing). For this reason. I don't think there are enough fats consumed in this country, when we compare our consumption with the record of fats consumed in all other countries with which we may compare ourselves with respect to the essential factors that enter into it.

Mr. KADES. Have you any estimates concerning what income groups would purchase margarine if it were available at lower prices?

Mr. JANSSEN. Yes; I think I have, and in answer to that question, and for the committee's file, not for the record but for its file, which might be helpful in answering that question, may I ask you to accept the result of a study [1] which my office made in 1937, but which was turned over to Mr. Kenneth Dameron, associate professor of business organization of the Ohio State University, who tabulated, analyzed, and interpreted signed statements from thousands of licensed retail

[1] "Exhibit No. 2382," on file with the committee.

margarine dealers. In his report thereon, which I think definitely answers your question as to just where this margarine is consumed, what type of people consume it, and so forth——

Mr. DONOHO (interposing). Would you care to summarize those findings, Mr. Janssen, very briefly?

Mr. JANSSEN. First, he says the summary definitely shows that sales of margarine are greatest to families of low income, including laborers and farmers.

Second, that grocers in small towns report substantial sales of margarine to farmers; grocers in cities report sales of margarine are heavy to laborers and other low-income groups.

Third, families using margarine are reported to buy it regularly without sales pressure. Low income cannot be the sole factor in consumption of margarine, he therefore concludes.

Fourth, that the majority of replies state that the sale of margarine does not decrease the sale of butter. The extent to which margarine may possibly affect sale and use of butter is apparently largely determined by the factor of consumer income.

Fifth, that the tax on margarine is a burden on consumers who can least afford it is reported emphatically and extensively.

Sixth, the fact that so many farmers buy margarine would seem to indicate that, if left to individual determination, they would not favor a discriminatory tax on margarine. They must recognize not only the value of the product itself but also that the margarine industry is a great consumer of farm products.

I would like to offer that for the committee.

Mr. DONOHO. I offer this for the files.

Acting Chairman PIKE. It may be received.

(The document referred to was marked "Exhibit No. 2382" and is on file with the committee.)

Mr. JANSSEN. In connection with that, as supporting material, I would like to offer also for the files of the committee——

Mr. DONOHO (interposing). Are you looking for the statement on "The Composition and Food Value of Margarine"?

Mr. JANSSEN. That is it. I thought I had retained that copy.

I would also like to offer for the files of the committee, partly as supporting the answer to your question just a moment ago, this document. The title is, "The Composition and Food Value of Margarine," by Dr. J. S. Abbott, secretary and director of research for our association.

Mr. KADES. Is it a correct inference, Mr. Janssen, from your testimony, that in the event this prohibitory legislation is removed from the statute books, oleomargarine would be available to persons in the low-income groups who perhaps now are unable to afford butter?

Mr. JANSSEN. Let me answer that. You know, it would be unfair if I just made a short answer to that, because that involves a rather complicated reply. However, I will try to answer it briefly.

Oleomargarine, like butter and like lard, is an energy food. People need fat; they need a certain amount of fat in order to keep themselves lubricated physically properly. Even the ladies, who sort of abhor the idea of eating fat because it might make them fat and put on weight, nevertheless have to have a certain amount of fat. They can't get along without it.

(The document referred to was marked "Exhibit No. 2383" and is on file with the committee.)

Mr. JANSSEN. I have here, and would like to also insert this in the files and not for the record, a table [1] from the International Labor Office, Geneva, Switzerland, a departmental activity of the League of Nations, series B (social and economic condition) No. 23, entitled "Workers' Nutrition and Social Policy," and call attention to table XIII of the publication, which classifies the need for varying amounts of calories and fats for different types of physical activities and shows that very heavy muscular work, such as that engaged in by agricultural workers, miners, quarrymen, metalworkers (heavy metal trades), tanners, porters, stonecutters, and so forth, requires a great deal more fat or a greater count of caloric intake than those of more sedentary occupations, and I think that is generally known and accepted. Oleomargarine is one of the foods that is an energy food. It is fat.

I am not qualified to speak either as a chemist, or as a nutritionist, or as a dietitian. I wish that you might hear Dr. Abbott on that, because he is qualified to do so. The time being short, let me say, if you would figure out the 38 pounds of fat, the total of fats that we consume in this country per capita per year, and figure out for yourself just how many ounces per day that is, or if you want to take butter and figure out that even with a top peak production of 2,500,000,000 pounds of butter per year in this country, that you still would have only about three-fourths of an ounce per day per capita in this country, or less than one-quarter of an ounce per meal.

Mr. DONOHO. Mr. Janssen, I believe you wanted to introduce that file for the committee.

Mr. JANSSEN. This is a publication called "An Appeal to Reason," which I would like to file with the committee.

Mr. DONOHO. A publication of your organization?

Mr. JANSSEN. A publication of our organization.

(The document referred to was marked "Exhibit No. 2384" and is on file with the committee.)

Mr. DORFMAN. Is it your view, Mr. Janssen, that the per capita consumption of fats of all varieties would increase if the taxes on oleomargarine were lifted?

Mr. JANSSEN. It is.

Mr. DORFMAN. By roughly the amount that it increased consumption of margarine?

Mr. JANSSEN. By——

Mr. DORFMAN. By, roughly, the amount of the increased consumption of margarine. That is you would sell more margarine but not less of any of the other fats in the aggregate.

Mr. JANSSEN. I believe that the natural result would be an increase in the consumption of other fats as well because people as a rule don't stick continuously to one type of fat. For instance today this family may use lard, tomorrow it may use shortening; there is an interchangeable process going on all the time, but I do believe that we can stand a greater consumption of fats and particularly table fat in this country.

Mr. DORFMAN. The shifting itself wouldn't increase the per capita consumption, would it?

Mr. JANSSEN. I don't think so; no.

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[1] Subsequently entered as part of "Exhibit No. 2384."

Mr. DORFMAN. Then it would just be the people you think would eat more fat, not only margarine, but other varieties if these taxes were lifted?

Mr. JANSSEN. Well, for instance, there is back of that a very well known commercial principle. If I can once introduce a new product into a family that has not used that product before, why temporarily at least that will increase my sales to that extent, but I have no assurance that I am going to hold that particular customer. Now tomorrow that particular customer, by reason of having been initiated into the use of a new product, may switch to something that has already been on the market a long time, and which may indeed be competitive with mine.

Mr. DORFMAN. A table which has come to my attention, taken from the National Provisioner,[1] indicates that the per capita consumption of all fats and oils in the United States, that is lard, butter, margarine, compounds, and the like, has ranged between about 40 pounds and 43 pounds since 1914, and of course we have had great variations in price of the various fats and oils during that interval. It occurred to me that there might be some explanation for that, other than what has been given here. Perhaps we just eat a certain amount of fat on the average and vary the form in which we consume it.

Mr. JANSSEN. Well, in that table you will notice that the total for 1938 is 43.2 pounds; that is per capita, including lard, butter, margarine, compounds, and vegetable fats.

Mr. DORFMAN. The lowest, I believe, is around 40.

Mr. JANSSEN. Yes. I am not in a position here to substantiate my assumption.. I think that we could very well consume in this country over 50 pounds per capita per annum.

Mr. DORFMAN. I was interested not so much in the amount consumed, as whether or not that amount varies much from year to year.

Mr. JANSSEN. Well, I am not in a position to explain the variations which occur in this table here. For instance, sometimes the decrease in lard, such as we have between 1936 and 1934, which was 11 and 12 and dropped down to 9.6 in 1935, may be due to an existing shortage, and there may be other factors that enter into the variations that occur here. Butter, we seem to have very stable anual per capita consumption, but it ranges from 16.3 or 14.8 up to 16 or 17, 18.3. There is that pound and a half and 2-pound variation there in 3 years. Still, in 1938, 16.9, is only 0.3 percent higher than it was in 1913. I am not in a position here to explain why those variations occurred.

Mr. DONOHO. Mr. Janssen, the chairman has referred to the lateness of the hour, and I think it perhaps appropriate for me at this time to request you to outline in a summary form the rest of your testimony.

Mr. JANSSEN. I will be very happy to do so. We have, of course, a matter I have not referred to—the various restrictive laws with respect to the use of oleomargarine in state institutions, but that may have been covered before.

And the effect of those, not only with respect to the loss of that business but also the indirect effect on the general regard for the prod-.

[1] Included in supplemental data. See appendix, p. 16193.

uct, is already indicated. There are, of course, a great number of restrictive and burdensome requirements to which I do not need to refer, but which have been very aptly and ably described by Mr. Oppenheim, chairman of the advisory council, Marketing Laws Survey, in his address at the National Conference on Interstate Trade Barriers, in Chicago, last April, which has also indirectly, and to some extent directly, gone into the record.

If you will give me 3 minutes, I think I can give you a sort of summary.

Mr. DONOHO. Proceed, Mr. Janssen.

Mr. JANSSEN. I have had in mind, not unless the Chair or the committee had invited me to do so, to inject into this discussion or presentation that element of commercial competition, and I tried to steer away from it and keep away from it, except as to show it as a possible motive.

Acting Chairman PIKE. It is pretty hard to stay away from it; it really bulks to fair size in the problem.

Mr. JANSSEN. I think, Mr. Chairman, and the committee, you will recognize that the historic policy of our Government has always been to invite and to encourage competition. The taxing power of our Government has more frequently been resorted to to encourage new enterprise and new products and to maintain competition rather than to destroy it. The contrary in fact is foreign to our concept of government. Nor is there any basis in our fundamental law, in reason or in common sense, on which we can condone or justify any legislative act that would close our highways of commerce to one product of American agriculture, in order to benefit another for we have believed in an ordered equality of opportunity in commerce for all.

Just one point that I would like to bring out. It is already being said that these oleomargarine laws and these taxes, and so forth, do not constitute trade barriers. An editorial recently in Hoards' Dairyman, a widely read dairy publication published in Fort Atkinson, Wis., in its issue of March 10, 1940, volume 85, No. 5, says in part:

> We hold no brief for trade barriers between states, but we do hold that the state oleo taxes do not constitute such trade barriers.

Now the editorial, which I will leave for the committee's file, justifies this inconsistency on the ground that the farmers who produce vegetable oil seeds enjoy the patronage of farmers who produce milk, or animal fat, or other commodities in greater dollar volume than that represented in oleomargarine. Now that in my opinion is just a plain attempt to camouflage the issue; the fact that Wisconsin sets up a trade barrier against one article of commerce out of many does not make that obstruction a mirage.

Mr. DONOHO. I offer this editorial.

Acting Chairman PIKE. It may be received for the file.

Mr. DONOHO. Yes; for filing with the committee.

(The editorial referred to was marked "Exhibit No. 2385" and is on file with the committee.)

Mr. JANSSEN. Such laws I think are effective trade barriers. I want to thank you, Mr. Donoho, and the chairman, and the committee, for your very kind treatment and consideration.

Acting Chairman PIKE. Thank you very much, Mr. Janssen; we regret keeping you, but it is better to have this in one piece.

We will adjourn until 10:30 tomorrow morning.

(Whereupon at 6:50 p. m. a recess was taken until Wednesday, March 20, at 10:30 a. m.)

INVESTIGATION OF CONCENTRATION OF ECONOMIC POWER

WEDNESDAY, MARCH 20, 1940

UNITED STATES SENATE,
TEMPORARY NATIONAL ECONOMIC COMMITTEE,
Washington, D. C.

The committee met at 10:45 a. m., pursuant to adjournment on Tuesday, March 19, 1940, in the Caucus Room, Senate Office Building, Senator Joseph C. O'Mahoney presiding.

Present: Senator O'Mahoney (chairman); Representatives Williams and Reece; and Mr. Pike.

Present also: Senator Tom Stewart, of Tennessee; W. S. Whitehead, Securities and Exchange Commission; Frank H. Elmore, Jr., Department of Justice; Dr. Ben D. Dorfman, United States Tariff Commission; D. Haskell Donoho, associate attorney, Department of Agriculture; and Paul T. Truitt, chairman, Interdepartmental Committee on Interstate Trade Barriers, Department of Commerce.

The CHAIRMAN. The committee will please come to order. Are you ready to proceed, Mr. Donoho?

Mr. DONOHO. Yes, sir. Mr. Chairman, yesterday this committee heard the testimony of witnesses with respect to trade-barrier restrictions in the margarine industry. Today we will continue to examine the manner in which the trade barriers are affecting specific industries. To this end representatives of the dairy industry will present testimony for the consideration of the committee.

Dr. Ruehe, will you come forward, please?

The CHAIRMAN. Do you solemnly swear that the testimony you are about to give in this proceeding shall be the truth, the whole truth, and nothing but the truth, so help you God?

Dr. RUEHE. I do.

The CHAIRMAN. You may proceed.

TESTIMONY OF DR. HARRISON A. RUEHE, HEAD OF THE DEPARTMENT OF DAIRY HUSBANDRY, UNIVERSITY OF ILLINOIS

AGRICULTURAL BARRIERS—THE DAIRY INDUSTRY [1]

Mr. DONOHO. Will you state your name and address, please?

Dr. RUEHE. My name is Harrison A. Ruehe, of Urbana, Ill.

Mr. DONOHO. What is your position, Dr. Ruehe?

Dr. RUEHE. I am at present the head of the Department of Dairy Husbandry of the University of Illinois.

[1] For general testimony on the dairy industry, see Hearings, Part 7.

Mr. DONOHO. Dr. Ruehe, will you please explain to the committee your qualifications to discuss the question of trade barriers in the dairy industry?

Dr. RUEHE. For the past 30 years I have been engaged in the teaching and research related to the production, processing, and distribution of dairy products, and since July 1, 1921, I have held the present position of head of the Department of Dairy Husbandry of the University of Illinois.

Mr. DONOHO. Just what are these trade barriers, Dr. Ruehe, in the dairy industry?

Dr. RUEHE. Trade barriers in the dairy industry are the various laws, orders, ordinances, and regulations particularly of health departments, which by their provisions or the enforcement of these provisions tend to retard the free flow of dairy products of equal quality in various trade areas. Sanitary regulations and inspection are beneficial to both the dairy industry and the public since they protect the producer and distributor of high quality, wholesome dairy products, and they protect the health of the public.

However, in some localities these sanitary regulations have been used also as a means of keeping out milk produced outside of the milkshed, county, State, or other area, even though such milk is of equal sanitary quality.

In such instances, these regulations prove to be uneconomic trade barriers since they curtail the supply of milk coming into the market and by so doing they artificially raise the price of milk and dairy products in the restricted area and the consumers within this area pay the penalty.

Mr. DONOHO. Dr. Ruehe, just how important is the dairy industry in our national economy?

Dr. RUEHE. In the aggregate, the dairy industry is one of the largest industries in the United States. It furnishes employment for more than a quarter of a million urban workers in addition to the members of over two million farm families engaged in the production of milk.

Milk provides about one-fifth of all the agricultural income of this country and it is the largest single source of farm cash in the United States.

Dairy products supply about one-fourth, by weight, of the food consumed by the people in this country.

Mr. DONOHO. In your opinion, Dr. Ruehe, are the children of the country obtaining sufficient quantities of dairy products to adequately take care of their nutritional needs?

Mr. RUEHE. Many children are, but there are literally thousands of children in the United States suffering from nutritional deficiencies, and many of those difficulties could be remedied by supplying these children with adequate amounts of milk.

Mr. DONOHO. Do these so-called trade barriers have any relationship to this deficiency to which you refer?

Dr. RUEHE. Yes; in some instances they do. Trade barriers which tend to increase cost to consumers have an influence in retarding consumption, especially in the case of low-income groups. This presentation discusses some of these trade barriers now hindering the free economic flow of high-quality milk, cream and other dairy products.

Mr. DONOHO. Dr. Ruehe, are these so-called trade barriers to which you refer attributable only to States and municipalities, or does the Federal Government have a part in setting up such trade barriers?

Dr. RUEHE. Some of these trade barriers are the result of legislation or regulation of municipalities. Some are due to regulations enforced by various counties, other are due to State legislation and in some cases they have been created by the Agricultural Marketing Act of 1937.

Mr. DONOHO. Would you care to give a specific illustration of a trade barrier created in your opinion by the Agricultural Marketing Act of 1937?

Dr. RUEHE. This act gives the Agricultural Adjustment Administration the authority to administer milk marketing orders. If a farmer now seeks to enter some of these markets operating under Federal Order, he may be subjected to discrimination by being forced to accept a reduced price for his product, even though it meets the market requirements of high quality.

The act states that in the case of milk and its products, orders may contain this provision:

> Providing that, in the case of all milk purchased by handlers from any producer who did not regularly sell milk during a period of thirty days next preceding the effective date of such order for consumption in the area covered thereby, payments to such producer, for the period beginning with the first regular delivery by such producer and continuing to the end of two full calendar months following the first day of the next succeeding calendar month, shall be made at the price for the lowest use classification specified in such order.

This, you understand, forces new producers to accept the lowest-use-classification price and is designed to operate as a trade barrier by discouraging the entrance of additional milk-producing farmers in that market. Subparagraph G definitely designates that no marketing agreement or order applicable to milk and its products in any area shall prohibit or in any manner limit, in the case of the products of milk, the marketing in that area of any milk or product thereof produced in any production area in the United States. As to milk itself, market orders may, and do, limit the marketing thereof. Thus it appears that the intent of Congress was not to place trade barriers against the entrance of new farmers within markets and also between production areas. However, this is being done except in the case of manufactured dairy products.

A further example of how the Federal Government regulation under the Agricultural Marketing Agreement Act of 1937 may operate as a trade barrier is Order No. 4, for the Boston market as amended January 19, 1940. A new amendment to the order provides that handlers having less than 10 percent of their receipts as fluid-milk sales in the marketing area shall not participate in the uniform-price-equalization provision by which farmers selling to them would secure the same price as other producers. Instead, these handlers are required to contribute to the equalization fund an amount equal to the difference between the manufactured-milk value and the fluid-milk value for the benefit of producers of other handlers in the market having more than 10-percent fluid sales. This contribution by such handler to the rest of the market in which producers selling to him do not share, has the effect of discouraging the sale of the milk in the Boston market by these farmers and thus it constitutes a trade

barrier to such farmers and to the entrance of new farmers because the price they receive is lower than that received by established producers.

Mr. DONOHO. You have discussed, Dr. Ruehe, at some length, barriers which, in your opinion, are occasioned by Federal legislation.

(Representative Clyde Williams assumed the chair.)

Acting Chairman WILLIAMS. In that connection, I wish you would just tell us in English what that means. I confess sitting here and listening to that and not being familiar with the fact, I don't know what it means. Just in a few words, how does that act operate as a barrier?

Dr. RUEHE. If a plant, for example, were purchasing milk from producers operating under the order, and less than 10 percent of the milk which he purchased went out as fluid milk, that is bottled milk, and so forth, then he could not pay his producers on the same basis as the plant that was distributing more than 10 percent as fluid milk; and yet at the same time has to pay into the pool this difference in price between class 1 and manufactured milk for that portion which he sells as fluid milk.

Mr. DONOHO. And is your point, Dr. Ruehe, that the producer who is at a distance from this plant would be the producer who normally would supply more than 90 percent of the products, not to be used as fluid milk? I just want that clarified. I don't quite get the relationship between your statement and the trade-barrier problem.

Dr. RUEHE. Well, yes; in that the handler pays a price based on how he uses the milk, but, of course, such handler might buy his milk nearby or might buy it at some distance. Ordinarily it would be at some distance.

Mr. PIKE. This barrier doesn't necessarily correspond with State lines at all?

Dr. RUEHE. No.

Mr. PIKE. It may be an interstate barrier?

Dr. RUEHE. That is right; a Federal barrier. That is true in Chicago, for instance, where they buy milk from Indiana, Wisconsin, and Michigan.

Mr. PIKE. Would it be true that there might be a barrier against some producers in Illinois and not a barrier against others under this sort of rule?

Dr. RUEHE. The producer isn't at the disadvantage that the handler is because the handler has to pay in the funds to equalize the price, but he is at this disadvantage. The producer is not taken care of the same as other producers.

Mr. PIKE. It is the handler and producer that gets it in the neck here.

Dr. RUEHE. Yes.

Mr. DONOHO. Now, would you describe some of the barriers in your industry occasioned by laws enacted by States and municipalities?

Dr. RUEHE. Of course, in the past 20 years there has been a great development in sanitary regulations, particularly by States, and this trend is really a progressive revolution of State, county, and municipal sanitary standards regulating milk and its products. No doubt this trend has been a protection and benefit to the public's health, and for that reason it has had the wholehearted support of the dairy industry. However, there has developed a misuse in the application of some

of these health measures. Today in some States and municipalities these health regulations have the effect of trade barriers in keeping out milk, cream, and other dairy products from other areas, even though the qualities of these products are equal to those produced within the restricted area.

As an illustration, may I cite Act No. 210 of the Pennsylvania General Assembly, enacted in 1935. This act contains a provision which requires all milk and cream which is sold within the State, and all dairy products used in the manufacture of ice cream and other milk products, to be subject to the regulations of the secretary of the State bureau of sanitation. The regulation provides for the inspection of dairy plants and farms supplying milk to these plants wherever they may be located.

Ice cream is given particular attention. Every product used in its manufacture is subject to inspection at source by the secretary of the State bureau of milk sanitation.

This act has all the earmarks of a health measure, but in reality it merely builds an economic wall around the State of Pennsylvania. The regulation is more political than it is protective, especially in relation to the consumer of milk and ice cream in that State. It is discriminatory against products of equal sanitary and nutritional quality produced by the Western and Southern States. For example, cream, evaporated, and dry milk from other States is shut out of Pennsylvania unless the manufacturer or the supplier goes to the expense of having Pennsylvania State inspectors duplicate inspections which have already been made by the legal authorities at the point of production.

The supplier located in Pennsylvania is not required to pay for inspection.

Mr. DONOHO. Is the cost of such inspection rather high for out-of-State producers?

Dr. RUEHE. It may be, depending upon the distance. For inspection outside of the State they may charge a per diem and expenses.

Mr. PIKE. You mean, let's say, evaporated milk cannot be shipped into the State in cans without inspection?

Dr. RUEHE. It cannot be used in the manufacture of dairy products, that is right.

Mr. PIKE. Then, let's say, Borden would have to have a Pennsylvania inspector go out to the plant in Michigan or Wisconsin to have its plants inspected by a Pennsylvania inspector?

Dr. RUEHE. Yes; that is right.

Mr. DONOHO. That is, if the evaporated milk is to be used in the manufacture of ice cream in Pennsylvania.

Dr. RUEHE. That is right.

Mr. PIKE. But not for home consumption?

Dr. RUEHE. I will touch upon that a little later. Another example is the case of a Maryland creamery, which is affected by this barrier. The products of this creamery are approved by the District of Columbia, which probably has the most rigid of sanitary standards, and thus obtains one of the finest milk supplies in the world. This Maryland plant was repeatedly refused a permit to ship into Pennsylvania and not until after the recent change in administration in Pennsylvania, when new policies were put into effect, was this plant able to receive a permit.

Another example of the arbitrary exercise of authority is the exclusion of supplies from without a State is an incident that occurred in which West Virginia milk was to be barred from Pennsylvania. However, West Virginia was able to prove that Pennsylvania shipped more milk into West Virginia than West Virginia was shipping into Pennsylvania. West Virginia then threatened to retaliate if their milk was barred from Pennsylvania, and I am told that the Pennsylvania ban on West Virginia milk was lifted immediately.

Even though the State of Pennsylvania has the stringent State sanitary law, certain cities in that State have set up their own dairy regulations. These cities will not accept inspection other than that made by their own officials. Inspection made by State inspectors and those of other cities are not accepted.

Another type of trade barrier existing in Pennsylvania is provided by law enacted in 1939. Under this, relief agencies are required to deduct from the allowances to families on relief a sufficient fund for purchasing fresh fluid milk for children and others who require the use of milk for their physical welfare. It is believed that the obvious purpose of this enactment was to displace evaporated milk used extensively by families on relief.

Although evaporated milk is produced within the State of Pennsylvania, most of this product consumed in that State originates in other States. These are but a few of examples of the way in which acts of legislation created to protect the health of the public are misused as economic trade barriers.

Mr. Donoho. Dr. Ruehe, you have testified with respect to how measures ostensibly to protect the public health may be misused. Now are these measures, generally speaking, of the various States uniform in their scope?

Dr. Ruehe. No, they are not. I think their intents or purposes were more or less uniform since these laws were enacted primarily for the purpose of protecting the health of the consumers within the State, but although they do have this uniform purpose, there are many differences in the provisions in the legislation enforced by the different States.

Many of these differences are of minor importance insofar as the main purpose of their regulations are concerned.

Mr. Donoho. May I interrupt there, Dr. Ruehe? Are many of these provisions statutory provisions, or are they administrative rulings?

Dr. Ruehe. You might say they are both, because many of these State laws give health departments the jurisdiction over these laws and they can make certain regulations which they interpret as compliance with the law. Consequently we may have a variation even though the two laws may be quite similar. The interpretations and applications may vary somewhat because of the way different health officers interpret the purpose of the law and establish their regulations.

Mr. Donoho. It just occurred to me that a good illustration of that point that you have made of the situation with respect to Maryland creameries, I believe it was, couldn't get a permit in Pennsylvania until a change of administration.

Dr. Ruehe. That is right. As a matter of fact, you might go further and say that even though a State or a district may have set

regulations which cover the compliance with the law, two different inspectors may have some different interpretations of the regulations, so it is possible for one inspector to approve a plant or a farm and another inspector employed by the same agency to disapprove certain things.

Acting Chairman WILLIAMS. Let me ask you this, is it possible or is it desirable that a uniform system of inspection throughout the entire country be established?

Dr. RUEHE. It is highly desirable, if we could have something more uniform so that farmers would not be subjected to anywhere from one to several inspections which are slightly different. For instance——

Acting Chairman WILLIAMS (interposing). In your opinion, is that possible throughout the country? Is it possible to have a standardized inspection?

Dr. RUEHE. I think that it is possible.

Acting Chairman WILLIAMS. And make it one and the same throughout the entire country, both for the States and municipalities and localities?

Dr. RUEHE. We could at least unify them much more than we have at the present time, and it seems to me that where two different districts or States have practically the same laws, and the same quality of inspection, that one market might accept the other market's inspection.

Acting Chairman WILLIAMS. Is there any general agreement as to what that standard should be throughout the country?

Dr. RUEHE. Not at the present time.

Acting Chairman WILLIAMS. Well, is there any movement in that direction?

Dr. RUEHE. Yes; the U. S. Public Health Service have been devoting considerable time to what they call the "Model Milk Sanitation Code." One of the great difficulties has been the way different localities have interpreted that code or established their laws or ordinances. For example, Chicago has its ordinance based on the U. S. Public Health Service standard milk code, and yet they only took part of the code, so that we have different municipalities that have followed basically the standard code but there are some slight differences, and there may be some difference also in the quality of inspection.

Now it is certainly true, I believe, that in some areas the inspectors are well qualified and do do an excellent job of inspection. There are some other localities where perhaps the inspections are not quite as rigid.

Acting Chairman WILLIAMS. That is a question of personnel, rather than the rules or regulations or the law?

Dr. RUEHE. That is true.

Acting Chairman WILLIAMS. That would be true everywhere, under all conditions?

Dr. RUEHE. That is true. I do believe, however, that by a series of standardized examinations that it would help to eliminate some of them.

Acting Chairman WILLIAMS. Is there any way by which we can avoid this inspection by the cities, even though the State has a proper and efficient inspection service?

Dr. RUEHE. It seems to me that each State has to set up its own system. Of course if it is interstate shipments we have the possibility of Federal control, but I question the sufficiency of Federal control only in our present set-up, because all of the industry is concerned with inspection of intrastate-interstate shipments.

Mr. PIKE. Well, Congressman Williams' question interested me very much, too, as a matter not of different State controls, but of a city within a State duplicating the inspection of that same State, and not accepting the State's inspection. I think that is true in perhaps New York and must be true, as you mention, in other cities.

Dr. RUEHE. It is true in many cities and States.

Mr. PIKE. The possibility of eliminating that might be quite important?

Dr. RUEHE. It certainly would take; for instance—San Francisco plants that satisfy the rigid inspection of San Francisco can not sell milk across the bay in Oakland. Oakland will not accept San Francisco's inspection. I think in New York, Buffalo, and Rochester close by, there are some minor differences in the requirements. I am not sure that I have them straight, but at least one of them requires the closed-top milk pail and the other requires the open-top pail.

Mr. PIKE. How about Minneapolis and St. Paul? They usually get together on all subjects, don't they? Do you happen to know about that?

Dr. RUEHE. I am not as familiar with that market as I am with some of the others.

Acting Chairman WILLIAMS. Here is what I had in mind. Take your own State of Illinois. Perhaps I don't know the situation there, but perhaps you have a different inspection in Chicago to what you have in the State.

Dr. RUEHE. Yes, indeed.

Acting Chairman WILLIAMS. Well, now that wouldn't apply to some of the smaller cities, would it?

Dr. RUEHE. In Illinois, no; there are at the present time twenty-six cities that have adopted the standard milk ordinance, most of them in toto, and the State Department of Health is attempting to standardize inspection as well as it can, but Chicago has an ordinance which is built on only part of the standard code; and St. Louis has the standard code for instance, but Chicago will not buy St. Louis milk—St. Louis inspected milk, I should say.

Acting Chairman WILLIAMS. In other words, your smaller cities in Illinois accept the State-inspected milk while Chicago doesn't?

Dr. RUEHE. That is true, on the grade A. They have their own inspectors. Of course, I am sorry to confess, I think our inspection in Illinois in many of our cities, towns, and smaller communities isn't what it should be. The only inspection they get is by the State Division of Foods and Dairies. They only have about 25 inspectors for the whole State, and I think they have some 26 or 27 laws to enforce, which includes restaurants and everything else, so the inspection isn't what it should be.

Mr. PIKE. There are some inadequacies, then, in State inspection that would give excuse to the cities, so it would be up to the State to clear its house first?

Dr. RUEHE. That is right. At the last session of the Illinois legislature the State did accept a grade. A law which requires all milk sold as grade A in Illinois meet the grade A standard. Before the enactment of that law, for instance, anyone could sell grade A milk just out of the city limits of Chicago, for example, call it grade A, even though it did not meet the grade A requirements, and there was very little that could be done about it.

Acting Chairman WILLIAMS. Then, is it your idea that there should be such an efficient State inspection as to meet the needs of the large cities as well as the small and have one uniform system throughout the States?

Dr. RUEHE. I presume that would differ some with different States. In Illinois any law or ordinance I should say, that is adopted by a city must be as rigid as the State requirements, but may be more so. Now, Chicago is more so and the Illinois State officials do accept the Chicago inspectors' reports on all inspection, food, dairy plants, and everything. There is a wide difference in the way the various States have such matters set up, but I do think that much could be done along the line of standardizing requirements and inspection. not only within individual States, but between States.

Mr. DONOHO Dr. Ruehe, we were discussing the barriers set up by municipalities; have you any specific illustrations of instances that graphically illustrate the conflict between laws of municipalities and of States?

Dr. RUEHE. Yes; there are many. Take California, for instance. The counties in California may have their own system of inspection and standards of inspection, so that milk in one county will not be accepted by another. It is also true that California inspection may differ from the inspection of neighboring States with the result that, I know in some instances, the California plants just quit trying to ship some of their product out of California.

Mr. DONOHO. Just for the record, Dr. Ruehe, we discussed at some length the fact that there was need for uniformity within a State, but it is your position, is it not, that the need for uniformity goes beyond State lines?

Dr. RUEHE. Yes, indeed. We will take for example a situation that exists in New Jersey. I am citing this because it is one of the most complicated that I have heard of. There are 10 municipalities in New Jersey that make complete inspections of certain plants that sell in New Jersey. In addition 3 of these 10 municipalities inspect all of the farms supplying these plants. If these plants sell in both New York and New Jersey there are other inspections to be made by the inspectors of the city of New York, and the New York State Department of Health, in addition to the 3 New Jersey inspections, thus making 5 inspections of farms and plants.

Obviously these are conflicting, duplicating inspections, and they discourage the entrance of additional supplies of milk from areas outside of New Jersey. There are bills pending in the New Jersey Legislature which contain provisions even more rigid; they would require all sources, all farms and plants outside of the State, to be inspected and approved by the New Jersey State Board of Health before they ld ship into that State. If these become laws there would be still

another inspection of the aforementioned plants, raising the number of types of supervision to six complete inspections.

A plant located at New Milford, Pa., sells in New Jersey and New York. If this legislation were passed this plant, and farms supplying it with milk, would have inspection from Jersey City, Newark, Montclair, New Jersey State Department of Health, New York State Department of Health, and the New York City Department of Health. If sales were made in Pennsylvania it would require a Pennsylvania State inspection also. In other words, many of these inspections are very similar but one city will not accept another city's inspection.

Here is the way some of these trade barriers affect certain farmers in Ohio: A plant shipping cream into New Jersey must have the inspection of New Jersey and this inspection is quite thorough. The same plant ships to Cleveland, and this city will not recognize the New Jersey inspection because it has one of its own. Furthermore, the local health department of the city where the plant is located will not accept the inspection of Cleveland nor New Jersey, and both of these are reported to be more rigid than the inspection of the local health department. In order to sell milk locally it would be necessary to have three different sets of inspectors bothering farmers as well as the plants. If they were to ship into Pennsylvania farmers would be required to have still another inspection.

Mr. PIKE. I get the impression that there must be some very fine inspection jobs.

Dr. RUEHE. Some of them are excellent and I am sorry to say some are not so excellent.

Mr. PIKE. At least there are a lot of jobs for inspectors built up on this system?

Dr. RUEHE. That is true, due to a lot of duplication. These conditions are rather prevalent. There are many illustrations that can be given. For instance, Boston does not accept New York City inspection and New York does not accept Boston's.

Mr. DONOHO. Is it not true that a number of cities have adopted the Model Sanitary Milk Code formulated by the United States Public Health Service as a basis for their sanitary requirements of milk?

Dr. RUEHE. That is true; as pointed out a few moments ago, some cities have adopted it in toto; others have adopted parts of it. So that even though we say cities are operating under the provision of the sanitary code of the United States Department of Health, there may be some divergence in their requirements as well as in the intensity of inspection.

Mr. DONOHO. So that milk produced under the inspection of one of these markets is not necessarily acceptable to all other cities under similar codes?

Dr. RUEHE. Well, I would say yes and no, because it is true that in some cases cities selling grade A milk will accept other cities' inspection or State inspection of grade A milk. There are some eastern markets that will accept the State Board of Health of Illinois inspection of grade A milk. On the other hand, as mentioned before, there are some cities that will not accept the inspection of other cities, even though they are operating under provisions of the standard code, and where there is a variation in the ordinance they do not, either.

A notable example of this way is that Chicago has not accepted in toto the United States Public Health code, and St. Louis has, but

Chicago will not buy St. Louis milk and St. Louis doesn't buy Chicago milk, so we have that difference.

Mr. DONOHO. What effect has this lack of uniformity in sanitary requirements had upon the milk supply of various markets?

Dr. RUEHE. Well, the lack of uniformity of standards and provisions for reciprocity in health-inspection permit systems—it makes little difference whether it is State, city, county, or what not—as clearly shown in some of the illustrations I have given you—has limited the supplies of milk and cream available for sale in many communities, and thus has encouraged the development of artificial prices which are higher than conditions in an open-market basis warrant.

(Senator O'Mahoney resumed the chair.)

Dr. RUEHE. In fact I think it can be said the only ways in which State and Federal milk-control laws and orders have been able to create artificially high prices for fluid milk, fluid cream, and in some cases cream for ice-cream manufacture, have been in making such higher prices applicable only to the milk producers marketing in accordance with the regulations of the health authorities in that or those particular markets, and by so doing they have actually limited the potential supply of milk in these markets, and therefore have artificially increased the price.

Mr. DONOHO. Has this had any effect upon the prices paid for milk in such markets?

Dr. RUEHE. Yes; it has. This situation is illustrated by the class prices in effect in the New York Milk Market under Order No. 27, as reported for January 1940, by E. M. Harmon, market administrator. The price of Class 1 milk was $2.82 per hundred pounds, and the prices of Class IIA and IIB milk were $2.05 and $2.006, respectively. The milk in these class uses—that is, fluid milk, cream, and products used for ice cream—has to be produced in accordance with New York City Board of Health requirements. The remaining six manufactured dairy products use classes for milk sold by farmers under the New York order, and which have to compete with dairy products not inspected by New York City, and, therefore, are priced in accordance with national markets, are as follows: Class IIIA, $1.606; IIIB, $1.670; IIIC, $1.270; IIID, $1.245; IVA, $1.17; IVB, $1.265. The weighted average price of the three class uses requiring New York City Board of Health inspection was $2.74 per hundredweight. The weighted average price for the remaining classes priced in relationship with United States open market quotations was $1.48 per hundredweight. Thus the difference between the prices of New York inspected milk and open market milk was $1.26 per hundredweight. This is 2.7 cents per quart, or an 85-percent higher price which has to be paid in that city because the Agricultural Adjustment Administration order milk class uses required New York City inspection.

Mr. DONOHO. Can you give a specific example, Dr. Ruehe, of differences in prices paid for cream of identical quality when sold on an open market basis as compared with prices when sold on a closed market?

Dr. RUEHE. Yes; I think perhaps the best example can be taken from the market report of the Agricultural Marketing Service dated March 4, 1940. This report states that on New York inspected cream sold in New York for March 1 and March 2, the price—that is, the

wholesale price—was from $1.85 to $1.90 per gallon. This same report states that the New York quality inspected cream in Boston was priced on an open market basis at $1.30 per gallon.

Mr. PILE. This might be from the same farm?

Dr. RUEHE. Well, the same inspection, at least; in other words, cream that is passed upon and accepted in New York, sold in New York at $1.85 to $1.90 per gallon, but if they would ship some of that cream to Boston and it is sold on the open market basis, it would be priced at $1.30 per gallon, which is a difference of 60 cents per gallon.

Mr. PIKE. Is there actually some of that cream shipped to Boston, some of the excess New York wouldn't take at the $1.90 price?

Dr. RUEHE. That is true. In fact, as will be brought out by other witnesses, I think you will find that the New York marketing order has a clause in it which makes possible shipping milk to outside areas which give some advantage to the New York producers over producers in those outside areas.

Representative WILLIAMS. Are we to infer from that that what we call an overinspection in the city of New York, such an inspection that limits the supply in such a way that the price has gone up? They have put so many restrictions upon the inspection, the inspection has been so stringent?

Dr. RUEHE. No; I wouldn't say that.

Representative WILLIAMS. What is the reason for the difference, in that the price is higher there?

Dr. RUEHE. The reason is simply this, that they can limit the cream coming into New York because the marketing order requires New York inspection. In other words, milk or cream being produced in Connecticut or Vermont that was not inspected by New York inspectors could not enter the New York market.

Representative WILLIAMS. Unless the inspection was such as to exclude that cream, what objection would there be to its coming in there, even though there was an inspection?

Dr. RUEHE. I presume the main objection would be that you would increase the supply of milk and cream which would have the tendency to lower the price, and they don't want to do that. To make the marketing order successful they want to pay a larger price.

Representative WILLIAMS. Then that comes back to the proposition submitted in the first place, it is because of the inspection that the price has raised.

Dr. RUEHE. Yes.

Representative WILLIAMS. Is that a desirable condition or not?

Dr. RUEHE. The industry feels that that is a trade barrier that is hindering the progress of their industry.

Representative WILLIAMS. And therefore they would not have any inspection.

Dr. RUEHE. No; have inspection but make it not limited. For instance, there is no reason why New York could not accept an inspection of equal quality and quantity made by some other State, but in the marketing order, they only accept New York inspected products.

Representative WILLIAMS. Unless that inspection was different, though, that product would go through at that, wouldn't it?

Dr. RUEHE. No; it would not; it must have the approval of that department.

Representative WILLIAMS. I say if that inspection turned out to be the same as the original inspection, there is no reason why it shouldn't pass that inspection and be admitted to that market.

Dr. RUEHE. If New York City had not inspected the farms it would not, again it may duplicate the inspection.

Representative WILLIAMS. It goes back to the inspection of the farms?

Dr. RUEHE. All the way through.

Representative WILLIAMS. And you have to send an agent from one State to another to inspect the source?

Dr. RUEHE. That is right.

Mr. PIKE. They can refuse to accept?

Dr. RUEHE. That is right.

Mr. PIKE. And as I recall, they sometimes do.

Dr. RUEHE. That is true. And another thing that acts in the same way as a barrier the State may furnish the inspection within the State but charge for inspection outside of the State. I think there have been instances where some small plants in Wisconsin have paid as high as $500 a year for some other State's inspection, and that, of course, is quite a burden to a small plant.

The CHAIRMAN. The point is, I take it, that you are contending that, generally speaking, the inspection laws of the State tend to exclude milk from other States.

Dr. RUEHE. That is right.

Mr. DONOHO. Do some markets exclude manufactured products through inspection?

Dr. RUEHE. That is true, through inspection of farm and plant. Take Cleveland, for example, and there are other cities but Cleveland is a good example. The evaporated milk or dried milk and sweetened condensed milk cannot be sold unless produced on farms and in plants inspected by the department of public health and welfare. No other city has this requirement. That is, in most cases, so far as cities are concerned, they will accept milk that goes into manufactured products.

The inspection is provided free. Here is a good example of what I mentioned a moment ago. The inspection is provided free within a radius of 150 miles of the city of Cleveland, but the expense of inspection must be paid by the suppliers of these products if the farms and plants producing evaporated milk lie outside this 150-mile zone.

Representative WILLIAMS. In order that I may know as a matter of information, are the inspection fees in all cases paid by the producers, distributors, or is it a public service that is rendered by the State, city, or county?

Dr. RUEHE. In most cases, the inspection, if for the city, is paid for by the city, or for the State, by the State, but they may charge if they go outside the confines of their normal territory or State.

Representative WILLIAMS. Ordinarily, then, it is simply a public service within the jurisdiction of the particular governmental agency.

Dr. RUEHE. That is right.

Representative WILLIAMS. It is a service paid for by the public.

Dr. RUEHE. Yes.

Representative WILLIAMS. The city, the State, or the Nation.

Dr. RUEHE. That is right. If on the other hand, the inspection is beyond a certain limit, then the plant that is getting into that limit has to pay the charge.

The CHAIRMAN. Of course, you are also dealing with the question of surpluses, are you not?

Dr. RUEHE. That is true.

The CHAIRMAN. And the motive in many instances, or at least one motive for the enactment of such laws, is primarily to provide a stable price or a better price for a commodity which, without that regulation, would be so cheap that the producer couldn't operate at a profit.

Dr. RUEHE. That is the purpose, and of course that is the primary purpose of a lot of these markets operating under orders, yet in some instances, at least, they have clauses allowing a diversion of their surplus into somebody else's back yard.

The CHAIRMAN. Then doesn't it come down to this in the last analysis, that this manifestation which we are studying here is primarily a result and not a cause of present economic conditions with respect to interstate trade?

Dr. RUEHE. Yes; but I would say that there are some other things that should be said before you could draw such a conclusion, and that is this: In many of these markets they have held up the price not only to the producer but also to the consumer, with the result that they have curtailed consumption. In other words, while benefitting one end they have curtailed consumption and handicapped the consumer end. After all, we could have a much larger consumption of fluid milk in most States, to the benefit of the health of individual consumers as well as the farmer who is producing the milk.

The CHAIRMAN. Yes; and, of course, that could, however, be carried to such an extent that the farmer could no longer produce, and that would curtail the supply.

Dr. RUEHE. Correct.

The CHAIRMAN. So that our problem in the last analysis is one of so stimulating consumption at a reasonable price that both the farmer upon the one hand who is the producer, and the consumer upon the other, will receive reasonable prices.

Dr. RUEHE. That is true, and I should add to that that another part of the problem is to assist farmers or educate them and direct them in ways in which they can cut their production costs. When we find production costs varying as much as 300 percent on neighboring farms, there is a chance for a vast amount of improvement.

The CHAIRMAN. It may not be out of order for me to remark at this point that the more evidence that is presented upon this and kindred subjects, the clearer it seems to me that these devices which you have been describing, and which others have been describing, are, as it were, merely poultices applied to a deep-seated economic disease which can be treated only by some more far-reaching remedy which will tend to increase the consuming power of the masses of the people.

The CHAIRMAN. Would it not be impossible to amend some of the Federal marketing orders so as to eliminate some of the difficulties which you have mentioned?

Dr. RUEHE. A number of amendments have been made during the past 2 or 3 years, but they have not eliminated the difficulties.

Dr. RUEHE. That is right. I think of it in this way, in terms of the old jingle:

Patch upon patch, hole in the middle,
Guess this riddle and I'll give you a gold fiddle.

Mr. DONOHO. From your observation, Dr. Ruehe, is the situation which you have been describing as to these trade barriers becoming more or less complicated?

Dr. RUEHE. It seems to me that trade barriers are becoming more complicated.

Mr. DONOHO. That is in the dairy industry?

Dr. RUEHE. As related to the dairy industry; yes. There is a constant threat of an increase in the number of trade barriers that will affect the dairy industry, and if I may I should like to give a few examples. Senate bill 856, New York Legislature, is an example. If this bill is enacted, it will require all dairy products used in the manufacture of ice cream in New York State to be inspected by New York State inspectors. Such legislation will result in an increase in the price of New York State cream by setting up burdensome requirements on cream from other States. This bill, if enacted, would not permit the acceptance of ice cream and ice cream mix inspected by authorities of the States of Pennsylvania, Connecticut, Massachusetts, and Vermont. All the farms and plants supplying the products would be required to be inspected by New York State inspectors.

Practically every State legislature has had before it some bill that, if passed, would add in some way or other to these various trade barriers affecting the dairy industry.

Mr. DONOHO. Dr. Ruehe, as I understand it, New York will not accept fluid cream now without inspection, but this bill will also require cream for ice cream to be inspected?

Dr. RUEHE. New York will not now accept uninspected fluid cream which is to be consumed as fluid cream, but this proposed legislation would affect the products that go into manufacture, which at the present time in many markets will exclude certain milk because it doesn't meet inspection requirements for milk that is to be sold as fluid milk or cream, but it may accept it if it goes into evaporated milk or ice cream or cheese or some other commodity.

Mr. PIKE. That would be at a very different price, wouldn't it, ordinarily?

Dr. RUEHE. Yes; they are at lower prices because they are priced on market conditions, pretty largely.

Taking another good example, the Oklahoma Legislature passed a bill which was even broader than this New York bill, but later this body reconsidered and killed this proposed legislation. The proposed Oklahoma bill would have required all farms and plants supplying dairy products of any kind to be inspected by the State dairy commissioner or his deputies before the finished dairy products could enter the State, thus giving no recognition whatever to inspection by other States, and you can see what a complicated problem that would be if applied to butter or some other commodities. Of course, they are trying to make the state self-sufficient insofar as their own dairy products are concerned. It would practically bar dairy products produced in other States.

Similarly, in 1938 the State of Louisiana considered a bill under which the Louisiana Milk Commission could have established regu-

lations against entrance of dairy products from outside the State so as to protect the farmers producing milk within the area.

Pending legislation in Kentucky affects a broader field than the dairy industry. If this proposed legislation is enacted it would require all food products shipped into the State of Kentucky, even though they would comply with the Federal Food and Drug Act, to be subject to the State inspection, for which a fee would be charged.

Mr. DONOHO. Dr. Ruehe, do you think that the industry as a whole approves rigid sanitary requirements?

Dr. RUEHE. There is no question but what the dairy industry as a whole approves some sanitary requirements of a high order so as to protect the consumers, so as to be sure the consumers will get safe, high-quality dairy products. The industry realizes that it is now on its present high plane of high quality partly because of the work of milk sanitarians and health departments. However, the dairy industry, represented by the Dairy Industry Committee, is definitely not in favor of any laws, rules, regulations, or practices that in any way tend to interfere with or obstruct the free flow of equally wholesome milk and dairy products between States and local markets in this country.

Today the dairy industry of this country is furnishing the consumers of America with high-quality dairy products. In fact, I think that it can be said that the United States leads the world in the quality of its dairy products. This is due to several factors, including the research work of the Federal and State experiment stations, the ingenuity of engineers that made possible the modern plants, the cooperation of dairy farmers and the progressiveness of the members of the industry.

Mr. DONOHO. Dr. Ruehe, you mentioned a situation in Pennsylvania which seems rather interesting. As I understand it, you stated that the farm source of evaporated or dried milk to be manufactured into ice cream must be inspected by Pennsylvania inspectors, is that true?

Dr. RUEHE. Yes; they are tending to control all products that go into the manufacture of ice cream.

Mr. DONOHO. But as I understand it, you also said that for home consumption of such dried or evaporated milk, this requirement was not imposed.

Dr. RUEHE. I didn't say that, but I did imply that because they have another act which tries to change the consumer over from evaporated milk to fresh milk, which again would mean consuming Pennsylvania-produced milk

Mr. DONOHO. But it is possible to feed one's baby on condensed milk not inspected by a Pennsylvania inspector.

Dr. RUEHE. That is correct.

Mr. DONOHO. That is the point I wanted to make. Thank you.

Mr. Chairman, I have no further questions to ask the witness. I understand, however, he has some recommendations he would like to make.

Representative WILLIAMS. I was going to ask that very question, what are we going to do about it?

Dr. RUEHE. In my opinion the solution of this complex problem of trade barriers in the dairy industry cannot be attained through Federal legislation and regulation since cities and States cannot be forced

to accept such regulations, and I am sure that the illustrations which I have presented point out very definitely that States and municipalities do not do this voluntarily. The trade barriers in dairy products raise prices to the consumer without adding any necessary protection to the public's health, and furthermore, they interfere with the free marketing of milk produced on farms and cause unnecessary expense and annoyance to farmers who are required to meet the inspection of several States and municipalities. realization of these facts is growing with consumers and farmers, and to some extent with public health officials. Eventually, this should result in reciprocal acceptance of inspection by health authorities, and then there will be a free flow of equally wholesome milk and dairy products.

The CHAIRMAN. How could that be brought about, Doctor?

Dr. RUEHE. I imagine what we will have to do is to use every effort through certain agencies to get health inspectors to come and thrash out a definite stand. I realize of course that it is difficult to get some inspectors who may have hobbies, with some inspectors their job gets to be their hobby, and somethimes it is difficult to get them to give and take.

The CHAIRMAN. Can that be done, can this objective of yours be attained by voluntary cooperation?

Dr. RUEHE. I think so if the consumers become aware of the situation and put the pressure on to make them stop, look, and listen a bit, and force them to consider a more uniform system of inspection.

The CHAIRMAN. How could consumers do that?

Dr. RUEHE. Our consumers groups are doing a great deal in becoming familiar with actual conditions, especially those which tend to increase prices, and they can retaliate by curtailing consumption a little bit more if necessary.

The CHAIRMAN. Of course there is always a long lag between the realization of the existence of a problem and the development of a remedy for it.

Dr. RUEHE. That is true, and it takes time to diagnose the problem. I do believe, however, a good starting point would be in some of these markets operating under the Federal orders. As will be brought out by other witnesses, there are certain provisions in some of these orders that operate in curtailing the supply of milk within markets.

The CHAIRMAN. The only remedy that you suggest for what you conceive to be an unfortunate situation would arise from voluntary cooperation among consumers and producers and public health officials?

Dr. RUEHE. I would say it would be educating our consuming public and farmers to the full facts which exist, and perhaps they would bear some weight in getting health officials to attempt an aggressive step to bring this thing about.

The CHAIRMAN. Do you believe that the Federal Marketing Agency for milk should be eliminated, should be repealed?

Dr. RUEHE. I think that at least there are some phases in some of these orders which should be.

Mr. PIKE. In the act, or in some of the orders coming out of the act?

Dr. RUEHE. That is right.

Mr. PIKE. Some of the orders?

Dr. RUEHE. Some of the orders and provisions. I think some of our other witnesses that will follow me will bring out very pointedly some of those points.

The CHAIRMAN. Could the State of Illinois acting alone solve the problem for the producers and consumers of Illinois?

Dr. RUEHE. It could not because it so happens that Illinois is close to Wisconsin, and within a radius of perhaps 200 miles of Chicago, for example, there is probably four or five times as much milk produced in that area, which is the potential supply of fluid milk, as is actually consumed within Chicago.

The CHAIRMAN. If the solution were to depend upon law, do you think there would be any hope of getting, let us say a uniform State law to govern local inspections?

Dr RUEHE. There might be.

The CHAIRMAN. Has any effort been made to do that?

Dr. RUEHE. The Council of State Governments and I think there is another organization called Council of State Governors—I am not certain as to the name of the latter—have some of these things under consideration. Mr. Bane, I think, reported the other day on some efforts that the Council of State Governments have under consideration to attempt to help bring such a thing about.

The CHAIRMAN. The only thing, however, is that the Federal Government probably could not effect beneficial results by additional legislation?

Dr. RUEHE. That is right.

The CHAIRMAN. And you prefer, therefore, to allow the matter to be left to the States?

Dr. RUEHE. Within the States; that is right.

The CHAIRMAN. And if that is done, do you believe that these barriers of which you speak could be removed?

Dr. RUEHE. I think they could be, and I believe there is a tendency toward that. As I mentioned, there are some eastern markets that will accept the State Department of Health of Illinois inspection of grade A milk. They take it without question. I think there are some other States and markets, especially city markets, that are doing the same thing. I believe there is a tendency in that direction. It is moving rather slowly, however.

The CHAIRMAN. And do you believe that the principles which you advocate for the dairy industry should be applied to all other industries?

Dr. RUEHE. Well, of course, I am more familiar with things applying to the dairy industry than I am with many of the others, and I am hardly qualified to pass judgment on some of those other matters.

The CHAIRMAN. Well, have you any opinion with respect to the distribution of margarine, as I understand the experts call it?

Dr. RUEHE. Well, I think that when we speak of trade barriers in margarine and trade barriers in milk we are having two vastly different things. In the first place in all of this discussion which I have presented I have been speaking about milk of equal quality, so far as its sanitary standard and nutritional qualities are concerned.

The CHAIRMAN. Of course, inspection services are intended to determine what the quality is, and you object to inspection services or at least some of the results of the inspection service.

Dr. RUEHE. I object to certain what I call finicky inspection, if you please. For instance, one market may demand that the pump that furnishes the water for cooling the milk be located within the milk house, and some others demand that it be located outside the milk house. I know of one farm in Illinois that was given a prize for being the neatest farm in the Chicago area, and yet that farmer could not ship milk into the city of Chicago because he didn't have a partition across the milk house that divided the vat where he washed the cans from the tank where he had the cooler and yet that milk house was built out of white glazed tile and it had every facility for doing a good job.

The CHAIRMAN. Now, by that last question of mine I threw you off of the discussion you were about to initiate when you said that your testimony now had to do with a commodity of equal quality.

Dr. RUEHE. Correct.

The CHAIRMAN. And then you were going to draw some inference from that with respect to margarine?

Dr. RUEHE. Equal quality and the same product, milk, or dairy products, and so forth. When we speak of oleomargarine we are not speaking of the same thing as butter. The sources of the oils that go into oleomargarine are entirely different from the source of oils that go into butter. In other words, it is a so-called substitute product for butter and it raises a different question. In the case of milk—it is trying to remove trade barriers to permit milk of equal quality to flow into a market; when we speak of oleomargarine versus butter it is a question of whether or not we are going to protect a farm dairy commodity against a substitute, not only protect the farmer but the consumer as well.

I can recall as a small boy when the oleomargarine tax law went into effect and it was not uncommon to find stores selling oleomargarine as butter, and consequently I think at that time at least the legislation was necessary in order to protect the unsuspecting consumer——

The CHAIRMAN (interposing). That, of course, was the reason for the passage of so many color laws, requiring the product to be sold under its natural color, so that the consumer would not be buying a product in the belief that it was butter?

Dr. RUEHE. That is right.

The CHAIRMAN. Of course, the attitude of Congress has been expressed over and over again in this matter and it has been entirely favorable to the dairy industry. Provisions are carried into an appropriation bill for the Veterans' Administration which limit the use of margarine in Veterans' Hospitals, and that sort of thing. So I am not concerned in these questions about the conflict between butter and margarine, as I am interested in developing the whole problem of the regulation of substitutes, and whether in your opinion laws passed by the States, or ordinances passed by the cities, which tend to prevent the sale of substitutes, or which make it more difficult to sell competing products, should be classified among the undesirable trade barriers, from your point of view.

Dr. RUEHE. In my point of view the conditions ought to be made such that the consumer knows what he is buying.

The CHAIRMAN. So that legislation which is for the protection of the consumer, even thought it may have the effect of making more

difficult the sale of a particular commodity, would, in your opinion, be perfectly defensible?

Dr. RUEHE. Yes, sir.

Mr. PIKE. I wanted to ask a question. Suppose this ideal should be approached of good uniform inspection, with perfect reciprocity between States and districts and municipalities, what do you think would be the effect on the general price level of milk and milk products?

Dr. RUEHE. Well, that is rather hard to answer.

Mr. PIKE. It is a hard question.

Dr. RUEHE. And yet if we take what is as right I think we could say that it would be from 1 to 3 cents per quart.

Mr. PIKE. Which way?

Dr. RUEHE. If we allowed the free flow of milk, perhaps it would reduce the price to the consumer from 1 to 3 cents per quart. As I pointed out, there was one difference of 2.7 cents per quart.

Mr. PIKE. To the consumer that would be an unqualified benefit, if there were no adverse effects on other elements. You would expect then a higher total use of milk and milk products?

Dr. RUEHE. Yes.

Mr. PIKE. It is one thing I am not acquainted with.

Dr. RUEHE. That is qualified also on the consumer's income, because the consumer's ability to pay has much to do with what he buys.

Mr. PIKE. With those things even, consumption of milk products is quite elastic, is it—will increase considerably with differences in price?

Dr. RUEHE. I think perhaps one of the most notable examples is—sometimes it is misinterpreted—in St. Louis; there was an increase of about 17 percent in the consumption of fluid milk in a relatively short time due to the lowering of prices.

Mr. PIKE. How much was the lowering of price—about?

Dr. RUEHE. Well, it varied a good deal because milk was made available in gallon jugs, at a price which was equivalent to a drop about 2 to 2½ cents per quart, around 10 cents a gallon.

Mr. PIKE. Where would the dairy farmers get off in this ideal condition?

Dr. RUEHE. Of course, if we can consume more milk in the form of fluid milk, I think it would result in a benefit to the producer.

Mr. PIKE. You believe in the differential in price to the farmer?

Dr. RUEHE. Yes; it costs more to meet certain rigid inspections than it does some that are less rigid, and at the present time there is very little inspection, in our State at least, of cream that goes into butter making, unless it is the surplus from the fluid-milk industry. What that differential would be would vary a good deal. I think in some of our intense dairy districts it might be anywhere from 20 to 30 cents per hundred. In some instances it might be more.

Mr. PIKE. You don't think the dairy industry, as a whole, then, would be hurt in its total earnings, let us say, right from the farmer to the distributor, if you could cut out some of these overlapping and conflicting inspections?

Dr. RUEHE. I really think they would be benefited. In other words, the dairy farmer buys his groceries with a blended price; that is what he gets, and by diverting more into the fluid-milk channels I

believe the blended price would be increased—of course that is just a conjecture, but it would take away some of the supply that is now going into butter and cheese and consequently raise the price of those products, as well.

Mr. PIKE. It is your considered opinion, then, that the farmers on the whole would be better off?

Dr. RUEHE. Yes; and the people would be better off. At the present time our consumption of milk per capita in the United States is only about half of what some of our best authorities recommend.

Mr PIKE. Of course, what I would wonder is who hires the best authorities.

Dr. RUEHE. Well, I think there are sufficient data available on certain angles of this which would make it possible to compute fairly accurately our nutritional needs.

Mr. PIKE. The only thing that worries me, if any one of us drank all the milk he ought to drink, and ate all the bread the bread people said, and the meat the meat people said, you would be pretty well stuffed.

Dr. RUEHE. I think that is one of my troubles. [Laughter.]

Representative WILLIAMS. It seems to me that from my view there is some conflict between the Federal and State authority in this matter. Do you view it in that way? In other words, it seems to me that States are entirely within their rights to place these extra inspections upon imported things, under their police powers, and in that respect there is nothing that the Government can do about it, is there?

Dr. RUEHE. Not by legislation, in my opinion.

Representative WILLIAMS. On the other hand, it seems the Federal Government might have some control over the goods that are shipped in interstate commerce.

Dr. RUEHE. They would; yes.

Representative WILLIAMS. And perhaps under the "general welfare" clause.

Dr. RUEHE. I think that might be a good place to start, as far as the Government is concerned in the goods that go interstate.

Representative WILLIAMS. Well, of course it is that very thing we are talking about, the goods that flow across State boundaries, the State barriers that are being erected on goods that are imported, milk shipped from one State into another; that is the very problem we are confronted with here, largely at least.

Dr. RUEHE. That is true, and yet I think so far the Federal activity establishing the marketing orders has added to the complexity of some of these barriers.

Representative WILLIAMS. Instead of helping?

Dr. RUEHE. Yes.

Representative WILLIAMS. And is it your opinion that the Federal Government should stay out of that field entirely and leave it to the States?

Dr. RUEHE. Well, I think they should have something to say about interstate shipments. I think they should.

Representative WILLIAMS. Well, the point is still in my mind, where you have conflict with the States as to what is a proper inspection, who has the say-so about it?

Dr. RUEHE. Of course the States do within the State and the Federal Government does interstate. That has been brought out in our own State, Mr. Williams. The Illinois State law for instance on the composition of milk requires 3 percent of fat, whereas the Federal standard was 3.25. Some milk produced in southern Illinois only contained 3 percent of fat; it was perfectly legal, but when they shipped it into St. Louis it was illegal, and there has been some conflict over that, so it is a matter, I think, that the Federal authorities should work with the State authorities and help iron out some of these difficulties.

Representative WILLIAMS. There is still the question in my mind whether or not the State itself hasn't the right under its police powers and under its inspection powers, under the Constitution, to place such restrictions upon the importation and in the inspection of products that come into its State as it sees fit, regardless of what the Federal Government says about it.

Dr. RUEHE. Absolutely, that is true.

Representative WILLIAMS. Well, then, if that is true I don't see where the Federal Government can have anything to do with it.

Dr. RUEHE. On the marketing orders they do, these orders are set up under the Agricultural Adjustment Act.

Representative WILLIAMS. Does that affect the question of inspection?

Dr. RUEHE. Yes; on certain markets at least.

Representative WILLIAMS. Has that question ever been decided by the courts, to your knowledge?

Dr. RUEHE. I don't know, but I do know that within the last month there was a hearing in New York for the purpose of changing a certain phase of the order that had to do with the diversion of milk from that market to other markets. I don't think that the thing was changed but they have been debating it but I don't have the definite outcome of that hearing.

Representative WILLIAMS. It just occurred to me that there was a conflict perhaps very vital in the authority on that particular question, on the question of inspecting goods which come from one State into another, whether or not the State has complete police power sufficient to determine the time and character of inspection which must be, and which it may impose upon articles which came into its borders from other States.

Dr. RUEHE. That is right, and that is the reason why I stated that the Federal legislation wouldn't do it and hadn't; it had to come within the State.

The CHAIRMAN. It goes beyond the police power, of course, because the right of the State to pass an inspection law is recognized in the Constitution itself.

Dr. RUEHE. Yes.

Representative WILLAIMS. I said that the constitutional provision, the very things provided for in the Constitution itself; that being true, I come back to the original question as to what the Federal Government could have to do with it.

Dr. RUEHE. Very little other than insofar as they give authority to certain marketing acts.

The CHAIRMAN. It is the opinion of the witness, as I understand him, that this problem should be solved by State action, cooperative action?

Dr. RUEHE. With other States.

The CHAIRMAN. And reciprocal arrangements among the States?

Dr. RUEHE. That is right.

The CHAIRMAN. You recognize, however, that that probably will be a rather difficult thing to develop?

Dr. RUEHE. Yes.

The CHAIRMAN. What progress has been made in the development?

Dr. RUEHE. Well, as I say, for certain markets at least some reciprocal agreements have been made, I don't think they have from the States' standpoint, but certain city markets have had some reciprocal action.

The CHAIRMAN. Are there any other questions to be asked of the witness?

Mr. DORFMAN. What is the basis of a number of the milk-consuming areas requiring a more rigid inspection for fluid milk and cream than for either ice-cream mix or ice cream?

Dr. RUEHE. Well, I presume the major contention is this, that fluid milk and cream in many cases is consumed as is, so to speak, whereas some treatments in the manufacturing processes may curtail the development of undesirable qualities. Personally, I think that much could be done toward equalizing certain inspections so that the milk that goes into manufactured products, cheese making for instance, would be wholesome and safe.

Mr. DORFMAN. Well, is there any reason why milk and cream unfit for consumption as such becomes fit when made into ice cream which might be mixed with milk in the making of a milk shake?

Dr. RUEHE. Well, I would say that would depend upon what you classify as unfitness. It would be true if we used certain inspection criteria; then that would be true. In other words, there are in certain areas milks that could not be used for fluid purposes but at the same time could be skimmed and the cream sold to a butter-making plant, and so forth.

Mr. DORFMAN. Then the inspection is not intended solely for protecting the health of the consumers?

Dr. RUEHE. That is the general contention, but I think we have overlooked certain things. Of course, that dates back to the history of inspection, when a large portion of the milk was consumed raw, and, of course, since milk was the primary source of food for infants, raw milk did have a direct bearing upon the health of a community more strongly than is true at the present time. The present pasteurization of milk has eliminated a lot of the difficulties that were present years ago. I think that is borne out pretty largely by any statistics you might have on the death rate of infants.

Mr. DORFMAN. If the intent were solely to protect the consumer's health would there be any reason for subjecting ice cream and ice cream mix to any less severe tests than the fluid milk?

Dr. RUEHE. I think not.

Mr. DORFMAN. Thank you.

(Representative Williams took the chair.)

Acting Chairman WILLIAMS. Any other questions? That is all, Doctor. Thank you; we have been very much enlightened by your information. Call your next witness.

Mr. DONOHO. Mr. Treadway, will you come forward, please?

Acting Chairman WILLIAMS. Do you solemnly swear that the testimony you are about to give in this proceeding shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. TREADWAY. I do.

TESTIMONY OF W. E. TREADWAY, COMMISSION ON INTERSTATE COOPERATION, INDIANAPOLIS, IND.

Mr. DONOHO. Will you state your name and address, please?

Mr. TREADWAY. William E. Treadway, Indianapolis, Ind.

Mr. DONOHO. What position, official, do you hold, Mr. Treadway, in Indiana?

Mr. TREADWAY. I am the Executive Secretary of the Indiana Commission on Interstate Cooperation. Would you care to have me explain what that is?

Mr. DONOHO. Please.

Mr. TREADWAY. Forty-four States at the present time have enacted legislation creating commissions on interstate cooperation. They are charged under those statutes with cooperating with the other States by affiliation through the Council of State Governments, which is the statutory connecting unit of government between those States that are so affiliated.

Mr. DONOHO. What experience has Indiana had with trade barriers affecting its commerce with other States with which your commission is familiar?

Mr. TREADWAY. This commission was created in 1938, and since that date we have been engaged almost continuously in combating trade barriers and in seeking them out and diagosing them.

Mr. DONOHO. What success have you had, Mr. Treadway?

Mr. TREADWAY. We have succeeded so far in definitely eliminating two. Perhaps the classic example, if you are interested in going into past history just briefly, was the solution of almost a state of war that had developed between Indiana and the nearby States of Michigan, Ohio, Illinois, and Missouri, with Kentucky threatening to join the outer ring. The matter was precipitated by Indiana adopting a liquor code after prohibition was ended and liquor was thrown into the laps of the States without sufficient time for them to make a study of suitable legislation.

We enacted a liquer code providing for ports of entry for out-of-State beer being brought into Indiana that carried a differential of $1,500 a year on license fees for importers of out-of-State beer. That law became the target of objection, particularly from Michigan and Missouri. Those two States enacted positive discriminatory acts to combat what they complained of in our law. The difficulty was brought to a focus through the commissions of these States, acting with the assistance of the Council of State Governments, whereby the Indiana port-of-entry law was repealed; the Missouri law, at the request of Governor Stark, was repealed, and the Michigan law remedied to the extent that it was no longer offensive

The same thing happened in Ohio. Kentucky did not enact its threatened retaliatory measure. Now, in regard to liquor, I might say in passing that I do not know of any existing trade barriers in liquor in the Middle Western area at the present time, except in wines. Indiana is not interested as a State in wine, either as a producer or consumer. It is my understanding that we consume about the least wine per capita in Indiana of any State in the Union, which may or may not indicate that we are hard drinkers.

Acting Chairman WILLIAMS. You are speaking for the whole State, are you?

Mr. TREADWAY. Yes, sir; we produce practically no wine in Indiana. For your information, if you care for any information, I could give you the situation with regard to wine in Michigan.

Mr. DONOHO. I believe that has been covered.

Mr. TREADWAY. If that has been covered, I will not attempt to duplicate anything that is in the record.

With those two exceptions, the wine laws of Michigan and Ohio, we are substantially free from trade barriers in the liquor field.

We have more recently, I would say during the last 30 days, brought about a dissolution of trade barriers that have for several years handicaped our interstate commerce due to the failure of three outstanding States to grant reciprocity to private motor carriers operating under license plates from Indiana. Wisconsin has been our worst source of grievance. Wisconsin, incidentally, has the highest truck-license fees and charges of any State in the Union, averaging somewhere around $850 per truck per year.

Mr. PIKE. What size truck would that be for?

Mr. DONOHO. That is for the average weight truck on the average mile-load carried.

Mr. PIKE. That probably means commercial, not the little half-ton, ton, and ton-and-half truck?

Mr. TREADWAY. That is based on the average collection made per truck. They operate on a quarterly collection basis with a bond posted for payment quarterly for truck license fees similar to returns for income tax.

Mr. DONOHO. Have you been successful in getting reciprocity in that situation?

Mr. TREADWAY. Yes; during the second week in February 1940, we entered into a reciprocal treaty with Wisconsin whereby they now recognize our private carrier license plates, and the third week of last month we entered into a similar agreement with the States of Tennessee and Alabama, which now give our truckers free access to those highways within a radius of what is economically sound territory for truck operation from Indiana.

Acting Chairman WILLIAMS. Did they do that regardless of the size, weight, capacity?

Mr. TREADWAY. That is true, so long as they are private carriers within the definition of private carriers, that is both the vehicle and the merchandise in the vehicle belong to the same owner.

Mr. DONOHO. Mr. Treadway, since you are appearing here, I assume your commission has not been successful in eliminating all barriers. Just what barriers are you concerned with now?

Mr. TREADWAY. That is true. We have quite a bit of unfinished business in the way of trade barriers. I would like to say in passing

that we have avoided a new barrier recently in the State of New York, in which the legislature had passed in one of its houses a bill to restrict importation of Indiana limestone to that in the rough block, and to require that any limestone or similar building materials be brought in in the rough and fabricated in New York. I am glad to say upon the request of our Commission, that particular bill failed of passage when it came up for final action on the floor.

Now, as to existing barriers that are the subject of the work of this Commission, one is relatively minor and the other is quite aggravating. The lesser I would say is the matter of local preference laws of adjoining States in the matter of purchases by the States of merchandise for consumption in State institutions. We have no such law in Indiana, but an example of such a law is found in Illinois which has a 3-percent differential in its statute favorable to bidders of Illinois over bidders from without the State for merchandise consumed in the public institutions of Illinois. That, in itself, of course, constitutes a statutory trade barrier, but in addition, the purchasing agent of Illinois goes beyond even the spirit of the statute and declines to furnish bidders lists to wholesalers outside of Illinois, which amounts to complete exclusion. We object to that for the reason, as I say, that we have no such law and during the last 3 months in checking our records, I find that Indiana purchased 20 percent of its merchandise for use in our public institutions outside of the State, of which $8,000 was spent in groceries alone in the State of Illinois.

We are most conscious of a trade barrier in Indiana at the present time handicapping us in our exportation of sweet cream for manufacturing purposes, and in our exportation also of manufactured dairy products from Indiana, and also the Middle West, into the East.

Mr. DONOHO. To what extent is Indiana engaged in the dairy business? Just how important is the dairy business to Indiana, Mr. Treadway?

Mr. TREADWAY. Our dairy business at the present time amounts to $50,000,000 in our annual State income. Of our total production, we export from 57 percent to 60 percent of our dairy production. We are definitely an exporting State.

Mr. DONOHO. In that connection, is it possible at the present time to export dairy products from Indiana to other localities without restrictions?

Mr. TREADWAY. It is not. I would limit our objection to sweet cream for manufacturing purposes, and also to the manufactured dairy products for the reason that due to the unfavorable ratio between the bulk of whole milk and the shipping charges by refrigerated express, it is not economically sound to ship whole milk from the Middle West to the East. It is due to increased value of cream.

With that limitation in our interest, we find that even so, our eastern markets have been so restricted in the past few years that we can ship cream into very few localities.

Mr. DONOHO. Will you elaborate on that and describe some of these restrictions, please?

Mr. TREADWAY. The restrictions consist mostly of public-health ordinances of municipalities, but in addition consist to a certain extent of State laws and certain Federal orders under the recent amendment to the Agricultural Act.

The barriers consist, to be specific, in inspections, laws, and regulations, in the multitude of sanitary requirements, in the lack of uniformity in inspection and sanitary requirements throughout the East, and in the refusal on the part of Eastern jurisdictions to give reciprocal recognition to inspection certificates of either our inspectors or of those sent by Eastern communities.

Mr. DONOHO. Do you believe that these inspection requirements, these sanitary inspection requirements, sometimes go further than necessary to protect the health of the consumer?

Mr. TREADWAY. They do. The inspection laws and regulations—and, of course, the inspection is based upon the sanitary requirements—operate together and separately as trade barriers, I would say. For instance, the inspection laws themselves operate as trade barriers. Certain jurisdictions limit the area within which inspections will be made by a definite radius of miles from the point of consumption, while others limit the area within which milk will be imported to an arbitrary area such as the State itself, or to certain designated counties of surrounding States. An equally effective trade barrier is afforded in inspection laws and regulations after they are once adopted by the purported or expressed inability of the States having those laws to make the inspection. They profess good faith, they insist they have the best qualified trained staff of inspectors who are acquainted with their local requirements and local laws and regulations, and in whom they have the utmost confidence; and are quite willing to make the inspection but usually they say due to lack of personnel or due to lack of funds they are unable to get their inspectors out from the East.

I would say in passing they do not find those difficulties when there is a drought or lack of supply in the East. They get out without any loss of time or other difficulties.

Mr. DONOHO. You will agree, then, with Dr. Ruehe, that some of the results of which you complain are the results of administration, sometimes bad administration?

Mr. TREADWAY. I think almost entirely it is a matter of administration. The ordinances in some respects exceed what we believe, and I believe what you gentlemen would believe, are the maximum requirements to safeguard the consumer's health, but one administrative feature you now ask about is a further trade barrier in the prohibitive charges that may be made for inspections. For example, Connecticut has never declined to make any inspection, to my knowledge, in the Middle West, but its inspection service is only good for a period of 6 months and must be renewed twice a year to permit our exporters to engage in that market. Connecticut's charge is a fee of 10 cents for each farm supplying a dairy plant, in addition to the expense reimbursement of the inspector. This additional overhead, I may point out, amounts to a trade barrier in that the producer in the Middle West cannot meet that additional overhead and remain in the Eastern market.

Mr. DONOHO. I was interested in your use of the word "exporter" Mr. Treadway, in referring to the movement of Indiana cream to the East. Does that have a sinister sound in respect to movement of cream to the Eastern States?

Mr. TREADWAY. It has a rather foreign sound, I would say, to a united nation.

Mr. DONOHO. How does the lack of uniformity in inspection and sanitary requirements in the Eastern markets amount to trade barriers? Just be specific on that point, please, Mr. Treadway.

Mr. TREADWAY. It amounts to trade barriers to the extent that any exporter, using the word again, in the Middle West, who desires to enter more than one Eastern market, must undergo added expense and effort in meeting the lack of uniform requirements of the East, and I would say that probably that is the greatest barrier within the acts and ordinances themselves, aside from the administrative problems I have pointed out.

As an example, some of the Eastern States recognize in sterilization of utensils that only steam is an efficient agent. The District of Columbia is one of those jurisdictions. On the other hand, the milk market of Newark, N. J., recognizes that only chlorination is efficient as a sterilizing agent and will not recognize steam for that purpose. There is even a division in the jurisdictions requiring steam. Some require the application of steam for a long period of time under low pressure while others require steam exposure for a shorter period of time under high pressure.

The differences in such requirements also go into the plant equipment, which is a serious handicap amounting to a trade barrier.

As to barns and milk houses and the equipment itself, an Indiana farmer, in order to meet the present requirements of various markets that might be selected throughout the East would be required to erect and maintain an equal number of different barns and an equal number of different milk houses for each of the different markets that he proposed to enter, as well as having on hand the different styles of milk pails, stools, and other milking equipment to meet the respective demands. Some require open pails, some require topped pails.

Acting Chairman WILLIAMS. Is there any real reason for that, or is that purely a trade barrier?

Mr. TREADWAY. In my opinion, sir, it is purely a trade barrier.

Acting Chairman WILLIAMS. It strikes me, in such little things as that—that is the way it would look to me—that there wasn't any real foundation for that kind of regulation. There may be; I don't know.

Mr. TREADWAY. For instance, if you want specific items pointed out, in the District of Columbia a producer having a metal milking stool is given a higher rating than one having a wooden milking stool, regardless of the cleanliness of the respective stools.

I might also point out, to meet the present requirements, this room in which we are now seated would not be acceptable to the inspectors as a milk house for the reason that the ceiling is not smooth, and in conformity with the decision which has been handed down and by which a farmer who had a ceiling of corrugated metal was ruled out as having a ceiling that was conducive to dust collection, I assume they would not be able to pass this room as suitable for a milk house for milk to be consumed in the District of Columbia.

Acting Chairman WILLIAMS. It seems to me somebody said we have the best milk-inspection rules and the best milk supply.

Mr. TREADWAY. I would agree and would say in addition you have many numerous and superfluous requirements.

Mr. PIKE. Of course, they might be right about this room.

Mr. TREADWAY. Also in the District of Columbia, if you don't mind my pointing out some local examples, inspectors are required to make an actual count of the number of towels used by milk producers; the regulations require the total number of towels in the amount of four per day per cow. A separate wet towel is required for application before milking for each cow, a separate dry towel is required for application before milking for each cow for each separate milking per day, and they must be carried in two separate buckets, one for the dry towel and one for the wet towels, with the requirement going still further, that the towels must not have any ragged edges, which would necessitate, if the committee please, that the towels probably be hemstitched.

Acting Chairman WILLIAMS. What success has your association had in doing away with these rather unreasonable requirements?

Mr. TREADWAY. Very little, so far. We are permitted to ship sweet cream into the District of Columbia at the present time only under the definite understanding that it is to be used for manufacture into ice cream only and for no other purpose, and before it leaves Indiana there must be added a chemical agent to that cream that will serve as an identifying agent upon its arrival here. I forget the name of this chemical, I am not a chemist, but that is a requirement of the District. We are permitted to ship sweet cream for the sole purpose of manufacturing into ice cream in the District.

Acting Chairman WILLIAMS. Do you think if you were permitted to ship cream into here under more liberal conditions you would be able to lower the price here in the District for some of us?

Mr. TREADWAY. I think so.

Mr. DONOHO. Mr. Treadway, how does the refusal to grant mutual recognition of certificates amount to trade barriers in the dairy industry?

Mr. TREADWAY. When requiring the local plant operators to submit to a multiplicity of overlapping inspections, usually borne at the expense of the plant, by increasing its overhead operation in proportion to the number of different Eastern markets that that producer seeks to enter, and in fact tending to exclude it from attempting to enter any considerable number of Eastern markets.

Mr. DONOHO. Is Indiana cream intended for shipment into other States produced and shipped under sanitary conditions?

Mr. TREADWAY. It is. The cream produced on our farms is under the constant supervision of the State board of health. It is handled and processed by inspected milk plants and is shipped East by fast refrigerated railway express, in refrigerated express cars attached to passenger trains, which permits delivery into the East in an overnight movement from the Middle West.

Mr. DONOHO. Mr. Chairman, I have no further questions. I understand, however, Mr. Treadway has some recommendations.

Acting Chairman WILLIAMS. Are there further questions at this time from members of the committee?

Mr. ELMORE. Yes; I have a question. Mr. Treadway, the testimony given before the committee yesterday was to the effect that Indiana imposed no taxes, excise or license, on margarine. Do you know that to be a fact?

Mr. TREADWAY. I know that to be a fact. It has been proposed before the Legislature of Indiana for the last 21 years, but never has been enacted.

Mr. ELMORE. And the testimony was further that one of the largest manufacturers of margarine was located in Indiana, and further that no member of the National Association of Margarine Manufacturers was located in a State which imposed taxes on margarine, with one exception and that was Texas. Now based on your experience in interstate cooperation, is it your opinion that these margarine manufacturers who have located in nontaxing States have done so because of the absence of taxes, or do you think that the presence of these margarine manufacturers in such States discourages the imposition of those taxes?

Mr. TREADWAY. In answer to part of your question, I do not know the relative position or importance of the oleo industry in Indiana. I understand that there is one plant manufacturing oleo, but I do not even know the name of the plant. There may be more.

Now, as to why they have located in Indiana, I wouldn't know unless it is because we do a considerable meat-packing business in Indiana, and it might afford a logical location for the manufacture of a byproduct of animal fats. There never has been suggested to me by anyone that there was any relationship between the manufacture of oleo in Indiana and the lack of any tax or requirement on its manufacture.

Mr. ELMORE. Does your knowledge extend to the other States?

Mr. TREADWAY. I know that Wisconsin has—I have discussed that with the counsel for the Board of Health in Wisconsin. I know they do have a relatively high oleo tax, and have had for a number of years, and I also know that Tennessee has a tax that seems strange to me, being in the amount it is, in an area that has a certain amount of cottonseed oil, at least, but Tennessee in addition is relatively an important dairy State.

Mr. ELMORE. You can't say, then, that there is any relationship between the presence of these manufacturers in nontaxing States and the fact that the States do not impose taxes?

Mr. TREADWAY. I know of no such relation, and I think I can say of my own observation that the bill has been defeated by Indiana sentiment in each of the last four sessions of the legislature that I have observed, rather than by any lobbying efforts on the part of oleo interests.

Mr. ELMORE. I didn't mean to imply lobbying efforts.

Mr. TREADWAY. The objection to and the defeat of oleo legislation has been brought about largely by the fact that our legislature is composed of a majority of farm members, and I don't know how typical that is of other States, but I am told that the largest consumption of oleo in Indiana is in the farming areas—that the farm producer is quite a customer.

Mr. PIKE. You mean the dairy people eat margarine.

Mr. TREADWAY. Not the dairy people; the smaller farmers; yes.

Mr. PIKE. What is the attitude of the dairy interests toward the margarine tax? You haven't apparently been very strongly for one or you might have got it over?

Mr. TREADWAY. Since I have been in Washington I asked that same question, or a similar one, of witnesses from the dairy industry

who are here before this committee and they tell me that there is a definite competition in Indiana between oleo and dairy products.

Mr. DORFMAN. What is the basis for the District permitting the use of Indiana cream here in ice cream, but not for sale as fluid cream, if you happen to know?

Mr. TREADWAY. The only reason I would know is that bottled milk in the District sells at a sufficiently high price that it affords a premium in the local area of consumption for that purpose, and thereby probably brings about a shortage of cream. In other words, there probably is a sufficient quantity of liquid whole milk, bottled milk, not whole milk but grade A bottled milk, without bringing in more, or if there isn't sufficient, it might be due to some ulterior motive, perhaps, in maintaining price by limiting the supply.

Mr. DORFMAN. The considerations, though, are unrelated to the health of the consumer?

Mr. TREADWAY. I would say they go certainly far beyond the maximum requirements of public health.

Mr. DORFMAN. Is there any reason why cream used in ice cream would injure one when it would not if he consumed it as fluid cream?

Mr. TREADWAY. I see no reason why there shouldn't be the same requirements for cream going into ice cream as in cream for any other use. The public health would be equally concerned if it was a health question.

Mr. DORFMAN. The Indiana cream which comes into the District for use in ice cream is just as good, insofar as the consumer is concerned, as the fluid cream sold here?

Mr. TREADWAY. I am certain of that fact.

Mr. DORFMAN. And it sells at a lower price, does it not, than the cream sold as fluid cream?

Mr. TREADWAY. Yes; it is a matter of market-price quotation. It carries a lower market value than cream for bottled use.

Mr. DORFMAN. Then the elimination of such restrictions would operate to reduce the price of fluid cream to the consumer?

Mr. TREADWAY. If the District removed its restriction that cream be used for manufacturing ice cream only, it should follow, as a matter of operation of economic law, that bottled-cream prices would be reduced.

Mr. DORFMAN. Without any impairment of the health of the consumer?

Mr. TREADWAY. With none whatever. The same type and quality of cream is permitted to enter other markets for bottled consumption; I think possibly even to Boston, which is considerably farther than Washington.

Acting Chairman WILLIAMS. Do you have any other suggestions, Mr. Treadway?

Mr. TREADWAY. If I may have 2 or 3 minutes, I can conclude.

The Middle Western States have taken the initiative in trying to solve this intersectional problem. The first conference on the subject was held at Chicago last October, which was a study session. The last conference was held on March 15 and 16 in Chicago, which was a technical session attended by dairy experts and by public-health experts of nine Middle Western States. The outgrowth of these sessions on the part of the Middle Western States has been a serious effort to agree among ourselves upon acceptable and reasonable standards of

inspection and sanitation, in which we were assisted by the United States Public Health Service, Dr. Haskell and his staff being made available to us for that purpose.

It is our purpose to first put the middle western milk area upon a uniform, sound basis of sanitation and inspection which the United States Public Health Bureau would recognize, for instance, as safe and sound, and that any other impartial body might view the same way. We will then invite the Eastern Seaboard States into an intersectional meeting, in which we will ask for reciprocal recognition of inspection certificates. We feel that that will be our best contribution to a solution of the problem.

Acting Chairman WILLIAMS. Have you finished your statement?

Mr. TREADWAY. Yes, sir.

Acting Chairman WILLIAMS. We thank you for your presentation. It has been very interesting and constructive.

(The witness, Mr. Treadway, was excused.)

Acting Chairman WILLIAMS. The committee will stand in recess until 2:30.

(Whereupon at 12:45 o'clock a recess was taken until 2:30 o'clock of the same day.)

AFTERNOON SESSION

The committee resumed at 2:35 p. m. upon the expiration of the recess.

Acting Chairman REECE. Are you ready to proceed, Mr. Donoho?

Mr. DONOHO. Yes. Mr. Money, will you come forward, please?

Acting Chairman REECE. Do you solemnly swear that the testimony you are about to give in this proceeding shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MONEY. I do.

TESTIMONY OF A. T. MONEY, PAGE MILK CO., SHELBYVILLE, IND.

Mr. DONOHO. Please state your name and address.

Mr. MONEY. A. T. Money, of the Page Milk Co., Shelbyville, Ind.

Mr. DONOHO. And what is your occupation, Mr. Money?

Mr. MONEY. I am General Manager of the Page Milk Co.

Mr. DONOHO. Mr. Money, please give the present daily receipts of your company and the products manufactured.

Mr. MONEY. At the present time we are receiving about 45,000 pounds of liquid milk from 1,400 producers surrounding our plant and we manufacture dry milk solids, that is powdered milk, and approximately 50 ten-gallon cans of 40 percent butter fat cream for manufacturing purposes. When I speak of a 10-gallon can I want to clarify that—or can of cream—as a 10-gallon can; it isn't a 5-gallon or 2-gallon can; it is a 40-quart, 10-gallon can. Now the butterfat, 40 percent, is for every 100 pounds of the liquid cream, contains 40 pounds of butterfat.

Mr. DONOHO. How many 10-gallon cans of cream have you manufactured since January 1, 1940?

Mr. MONEY. Approximately 4,000 cans.

Mr. DONOHO. How many cans were shipped during this period, Mr. Money?

Mr. MONEY. Approximately 1,800 cans, which is about 50 percent less than shipments made a year ago.

Mr. DONOHO. And where did the cans which you didn't ship—where did the cream go?

Mr. MONEY. Well, the 1,800 cans that were shipped came into the District.

Mr. DONOHO. Where did the 2,200 cans go?

Mr. MONEY. The 2,200 cans went into butter.

Mr. DONOHO. For what market do you now hold shipping permits?

Mr. MONEY. The District of Columbia and the State of Virginia.

Mr. DONOHO. You ship now into Virginia?

Mr. MONEY. No; not at the present time. We do, however, hold a permit.

Mr. DONOHO. Why don't you ship into Virginia?

Mr. MONEY. We lost the Virginia market.

Mr. DONOHO. Explain, please.

Mr. MONEY. As I said before, we have permits to ship into the District of Columbia, also into the State of Virginia. We have permits to ship cream for manufacturing purposes, but we do not have a permit to ship ice-cream mix or a finished product, and we shipped cream into the State of Virginia to a certain concern there. They made this cream up into ice-cream mix and offered it in the District of Columbia, and for some reason or other it was rejected in the District of Columbia; therefore, we lost the Virginia market.

Mr. DONOHO. Have you previously shipped cream for manufacturing purposes into other Eastern markets?

Mr. MONEY. Yes; we have shipped cream into several other Eastern markets, but as time goes on we gradually were eliminated and excluded from those markets.

Mr. DONOHO. Why are you eliminated and excluded from those markets?

Mr. MONEY. Because of more stringent health-department rules and regulations, and our inability to cope with the price quotations in those government-controlled markets.

Mr. DONOHO. Is the New York market open for your cream?

Mr. MONEY. At the present time, no. The New York market eliminates all inspections beyond a 500-mile radius, and since our plant is beyond the 500-mile radius, we are excluded from the New York market.

Mr. DONOHO. I wonder, Mr. Money, do you know whether this exclusion is by law or by administrative ruling?

Mr. MONEY. I think it is by administrative ruling. The market is open. At the same time they, should I say, refuse to go beyond the 500-mile limit.

Mr. DONOHO. That is your opinion.

Mr. MONEY. That is right.

Mr. DONOHO. Have you previously shipped cream to the Connecticut market?

Mr. MONEY. Yes; but we were excluded from the Connecticut market.

Mr. DONOHO. Why were you excluded from this market?

Mr. MONEY. We were excluded from that market because of our inability to meet the exorbitant inspection costs.

Mr. DONOHO. Would you please explain what you mean by "exorbitant" inspection costs?

Mr. MONEY. Well, as Mr. Treadway explained to you this morning, you must have an inspection every 6 months. Your inspection is only good for 6 months. They ask you to pay $1 per producer—that is, per inspection. That is $2 per producer per year. In addition to that, the expense of the inspection is involved. We, with 1,200 producers, which would be $2,400 per year for the producer, in addition to the inspection expense involved, would probably approximate $3,500 a year for an entry into the Connecticut market, which is exorbitant, and we cannot afford to do it.

Mr. PIKE. How much would that have run per gallon on the cream that you customarily shipped into Connecticut before this thing came on?

Mr. MONEY. I don't have those figures.

Mr. PIKE. It would probably have been out of the question; it would have been a thing that you couldn't have absorbed?

Mr. MONEY. We couldn't have absorbed it. It would have been impossible to absorb it.

Mr. DONOHO. Mr. Money, were you excluded from eastern markets because of the quality of the cream you were shipping?

Mr. MONEY. No; the quality of our cream has never been questioned. We have an improvement program on in Indiana which assists and helps us in maintaining the quality of the product. We have platform inspection; sediment-disc inspection, which determines the amount of sediment in the milk as it is received at the plant; and we have a 24-hour delivery service by fast passenger trains in refrigerated cars. We have a low bacteria count as the product is delivered into the eastern market. In other words, the bacteria count of our cream delivered into the District of Columbia at this time would not exceed, oh, ten to fifteen thousand.

Mr. PIKE. That is per cubic inch?

Mr. MONEY. No; that is bacteria per cubic centimeter, by the plate count.

Mr. PIKE. That is as delivered, when it reaches here?

Mr. MONEY. Yes; and cream, before it can become objectionable—I am not a technician; I am not going to attempt to tell you more than I know; but I am quite sure it would have to run beyond a million before it would become objectionable.

Mr. DONOHO. Mr. Money, you have described this exclusion from these markets. Just how much difference in net return to you do these exclusions amount to?

Mr. MONEY. If you will pardon me, Mr. Donoho, before you get onto that, I want to make this emphasis, and I want to leave with this committee that many of these Eastern markets place considerably more emphasis upon the farm requirements, which act as trade barriers, than they do upon the quality of the product after it is delivered and received in the market. Going on to your question, will you repeat it again?

(The reporter read the last preceding question.)

Mr. MONEY. At the present time it amounts to about 4 cents a pound butterfat, and each can containing 33 pounds of butterfat amounts to $1.32 per can, and on the 2,200 cans which have been involved in this transaction since January 1, it would amount to approximately $2,900.

Mr. DONOHO. Do you feel that these market exclusions are legitimate, Mr. Money?

Mr. MONEY. No; we do not. The Mid-Western cream shippers consider these health-department regulations which extend beyond t. public-health interests as trade barriers, and as a direct attempt or a means to an end in keeping Western cream out of Eastern markets.

Acting Chairman REECE. Is there any standard of inspection by which, if the States comply with those standards, there are reciprocal relations between the various States or municipalities or marketing areas?

Mr. MONEY. That is being worked upon at this time. Mr. Treadway gave a résumé of that meeting in Chicago last week bearing on that particular question.

Acting Chairman REECE. You need not go into it again. I was unable to be present this morning.

Anyway, there has not been much accomplished along that line so far?

Mr. MONEY. No; it is in the making.

Acting Chairman REECE. You hope?

Mr. MONEY. We hope.

Acting Chairman REECE. I do, too.

Mr. DONOHO. What effect is all this ultimately going to have upon you and upon the farmers supplying you with milk?

Mr. MONEY. It seems to me that the handwriting is on the wall that these rules and regulations which serve as trade barriers are eventually going to force the Western cream shipper and producer out of business, or at least reduce his manufacturing operations to a butterfat or a cheaper grade, a cheaper dairy product, which will mean considerably less returns to our Mid-Western farmers.

Mr. DONOHO. Mr. Chairman, I have no further questions to ask the witness.

Acting Chairman REECE. Does any member of the committee have any further questions?

(The witness, Mr. Money, was excused.)

Mr. DONOHO. Mr. Witham, will you come forward, please?

Acting Chairman REECE. Do you solemnly swear the testimony you shall give in this proceeding shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. WITHAM. I do.

TESTIMONY OF C. L. WITHAM, INDIANA CONDENSED MILK CO., INDIANAPOLIS, IND.

Mr. DONOHO. Please state your name and address.

Mr. WITHAM. My name is C. L. Witham, Indianapolis, Ind.

Mr. DONOHO. What is your business, Mr. Witham?

Mr. WITHAM. I am bulk goods sales manager for the Indiana Condensed Milk Co.

Mr. DONOHO. In what way is your business affected by so-called trade barriers, Mr. Witham?

Mr. WITHAM. Our business is further affected by trade barriers; that is aside from these sanitary regulations that have been talked about by the A. A. A. Marketing Act. Under this act there has been a number of orders set up, one of which is the New York order.

This New York order establishes a price for milk going into cream of considerably less than we pay. They in January were able to purchase their milk in New York State for cream going to Boston or so-called outside markets, at $1.25 a hundred. The February price incidentally is $1.15. The average price the condensers paid in the Central West during the month of January was $1.50 a hundred. This farmer that delivered milk to the New York plant which paid for it at $1.25 a hundred, due to this A. A. A. order, received $2.06 per hundred for his milk.

That is due to the pooling arrangement in existence under the order. As I see it, this order relieves the dealer in New York State of the responsibility previously had to his farmers. In times gone by, before the time of this order or other orders, if he had been so disposed to reduce his price to that low level we wouldn't have worried so much about it because we knew his farmers have him and he soon would either have to raise his price or go out of business.

Mr. PIKE. Where does that 81 cents come from; the differential?

Mr. WITHAM. The marketing order establishes a price of $2.82 for class-I milk. To make it a little more clear, the dealer in New York State in reality reports to the market administrator how his milk has been used. Then the market administrator, after getting reports from all dealers in New York, figures a blended price, which in January was $2.06. Then the market administrator calls this dealer back and says, "You pay your farmers $2.06." Then the No. 1 dealer, or the dealer that purchased high-priced milk, pays his farmers $2.06 and has money left.

He sends that extra money to the administrator. The administrator in turn sends that extra money to this dealer that bought the cheap milk.

Mr. PIKE. So the difference between the $1.25 and the $2.06 is made up by the people who paid the $2.80—something for the whole milk, really.

Mr. WITHAM. That is right.

Mr. PIKE. That is what I was trying to get at.

Mr. WITHAM. That is right. It is interesting to note that the New York situation has developed to the point that there is some milk at the present time being hauled by tank truck as far west as Lima, Ohio. That in January when the credits or deductions were taken off, was only some 65 cents that went into the pool.

Mr. PIKE. That is a strictly abnormal, artificial movement, isn't it?

Mr. WITHAM. It is; no one ever heard tell of such a thing before. This Boston situation—I refer to Boston primarily because it is a good big market.

Mr. DONOHO. And is the Boston market a so-called free market?

Mr. WITHAM. The Boston market is a so-called free market. However, they do have platform inspection that is pretty rigid.

Mr. DONOHO. Do you think this Federal order could be corrected so that it could stay in effect and still not injure Indiana cream shippers?

Mr. WITHAM. Yes; I do. It seems to me that the Department of Agriculture should accept the responsibility of the welfare of the farmers in the Central West to the extent that they would take an average of the prices paid to those farmers for milk going into cream, cheese, and other commodities, and use that as a basis for

establishing their price under their order in New York; thereby we as handlers would start off even.

There would be no competitive difference as there is now.

Mr. DONOHO. Just for the record, I would like to ask you to make a summary. Your complaint in essence, is it not, Mr. Witham, is that you as a manufacturer of the raw milk—that is, you, as a processor of milk, have to pay a higher price for your raw material than does the processor of milk under the artificial conditions existing in the New York milk area?

Mr. WITHAM. That is right. In addition to—we have talked here about butterfat. I would like to make this point. Butterfat is the thing that cream comes from. In addition to that the New York handler gets his skimmed milk under this order for nothing, which he is able to make into dry milk solids, and dump onto the market and wreck that market.

Mr. DONOHO. Are there any other—you have described, Mr. Witham, the New York milk order. Are there any other like orders in effect?

Mr. WITHAM. There is an order that is in effect here in Washington with some slight differences, as I understand it. Somebody got an injunction against part of it in Maryland. It is something like 90 percent in effect. I have read that order, and their method of establishing prices for milk paid to go into cream is also too low.

Mr. DONOHO. How did your company's sales of cream last year compare with other years?

Mr. WITHAM. Our sales of cream are off at least 50 percent of previous years. We are going to—the farmers in the Central West, unless these conditions are corrected, are going to have to get out of the business of shipping cream.

Mr. DONOHO. Can the Eastern farmer produce milk cheaper than the Central Western farmer?

Mr. WITHAM. In my opinion, and in the opinion of several university men, he cannot. It is a pretty conclusive fact that it takes either cream or the feed for the cows to supply the Eastern needs. In other words, one of the two things have to come from the Central West, either the food supply for these cows or the cream.

Mr. PIKE. That is a part of the food supplies, of course?

Mr. WITHAM. Yes; it takes 1,200 pounds of grain and roughage to produce approximately 1,000 pounds of milk, and it takes approximately 1,000 pounds of milk to make one can of cream. It seems to me that the Western farmer is economically in a position to do that better because it is cheaper to ship 83 pounds of cream than it is to ship 1,200 pounds of feed.

Mr. DONOHO. Do I understand you to mean, Mr. Witham, that you are objecting to the artificially low price that the Eastern processor can obtain in raw material?

Mr. WITHAM. That is right.

Mr. DONOHO. And you are also objecting, as I understand it, to the fact that you cannot—that you are excluded from shipping milk into this controlled market area, but that this controlled market area is shipping milk into your area?

Mr. WITHAM. That is right, moving west.

Representative WILLIAMS. Let me see that I understand you. Do you mean to say that the dairying interests in the East are making

no profit on their business, that they don't get as good an income as the Middle West dairymen do?

Mr. WITHAM. I mean to say that for that part of it that goes into manufactured products they are receiving less return than the Western farmer is.

Representative WILLIAMS. What part of it goes into manufactured products?

Mr. WITHAM. About 50 percent.

Representative WILLIAMS. What about the price they receive for the rest of it?

Mr. WITHAM. They are getting a higher price for it. Class I price in New York, under the order, is $2.82, as I remember it.

Representative WILLIAMS. In other words, the gross income for the various classes is as good or great in the East as it is in the West and Middle West?

Mr. WITHAM. It is at the moment. The production continues to increase due to this or it wouldn't be. That is my forecast, understand; that is not the record at the present time.

Representative WILLIAMS. Well, of course, I don't understand the situation, except as you say that part of the product they get a higher price for and part of it they don't get as high.

Mr. WITHAM. They get a much lower price. Last year under the Federal order in New York there were some 24,000,000 pounds of milk went into cream-making purposes and in January there were 35,000,000 pounds.

Representative WILLIAMS. That is the part they get low prices for?

Mr. WITHAM. That is right.

Mr. PIKE. Is that quite correct, Mr. Witham? The processor pays a low price for it but the farmer gets the blended price, isn't that true?

Mr. WITHAM. That is right.

Mr. PIKE. The farmer doesn't care whether he gets 90 cents or $1.10 for that part, as long as he gets his blended price, where, as I take it, the people who buy whole milk are penalized in order that this milk used in manufacturing is sold at very low unremunerative rate. That must be the effect of it.

Mr. WITHAM. I don't see that the farmer would object momentarily. Of course, a farmer that was looking into the future would see the picture.

Mr. PIKE. The point I think that bothered Congressman Williams was that the farmer should get such a low price as $1.15. Now he doesn't really get that low price.

Mr. WITHAM. That is the part of it that is unfair, as I see it. The farmer doesn't know; if he did know there would be nothing he could do about it. I mean to say this, if the farmer in New York State is long-thinking and got the figures and found out he was producing 200 pounds of milk a day and according to the figures he was only getting $1.15 a hundred for 75 pounds of it; even though he had arrived at that fact, if he had then decided to keep that 75 pounds at home, he still would have to share in this low price.

Mr. PIKE. He wouldn't be better off if he kept the 75 pounds. He would still be in the pool and would get the blended price

Mr. WITHAM. That is right.

Representative WILLIAMS. After all, is there any difference between the price which the producer receives in the Middle West and the East?

Mr. WITHAM. I don't quite get you.

Representative WILLIAMS. Here is a dairyman engaged in the dairy business in the East and in the West; he sells his product on the market; who gets the most for it?

Mr. WITHAM. If he is in the marketing area such as New York and he participates in the blended price, he is getting more.

Representative WILLIAMS. Getting more?

Mr. WITHAM. Yes.

Representative WILLIAMS. Than the producer in the Middle West?

Mr. WITHAM. The producer in the Middle West selling to manufacturing plants. But the dealer that buys that milk buys it for less.

Mr. DONOHO. That is in New York?

Mr. WITHAM. That is right.

Mr. DONOHO. And you as a dealer in Indiana can't compete with this dealer in New York who buys milk at an artificially low price?

Mr. WITHAM. That is right.

Representative WILLIAMS. What do you mean by a dealer?

Mr. WITHAM. A dealer as used in my statement is one who buys milk from the farmers and puts it through his plant and processes it into the product that goes to the final consumer.

Representative WILLIAMS. Would you include in that the distributor of milk?

Mr. WITHAM. The distributor of milk might be a dealer. That is, he might take part of his milk and put it into manufactured products.

Representative WILLIAMS. What I am trying to get at is whether or not the user of milk, one who used milk, not the manufactured products, the milk that is sold, for instance in New York, does that reach the consumer at a lower price than it does, say, in Indianapolis?

Mr. WITHAM. No.

Representative WILLIAMS. What is the difference?

Mr. WITHAM. The prevailing price in Indianapolis is 12 cents—you are talking about fluid milk now, are you?

Representative WILLIAMS. That is what I am talking about, milk.

Mr. WITHAM. The prevailing price in Indianapolis is 12 cents at the door and 11 cents at the grocery. I am not positive, we are not in the bottled-milk business, but I understand the New York price is 15 cents.

Representative WILLIAMS. That dealer in that city when he gets his milk and he can market that at a lower price, he certainly isn't passing that on to the consumer.

Mr. WITHAM. Well, of course, this cream that we are talking about here largely goes into ice-cream manufacture. The cream that goes into New York City has to be paid for at around $20 a can, for instance.

Representative WILLIAMS. You are talking about it from the standpoint of the fanufacture of ice cream or other products.

Mr. WITHAM. Primarily, that is right.

Representative WILLIAMS. And not from the standpoint of either the producer or the distributor or the consumer of milk—fluid milk.

Mr. WITHAM. I am trying to carry to this committee the position that the Central Western producer is placed in by this order.

Mr. DONOHO. In final analysis, your complaint is that there is an artificially high price for fluid milk which makes it possible to have an artificially low price for milk which is processed.

Mr. WITHAM. That is right.

Mr. DONOHO. I have no further questions.

Acting Chairman REECE. Does any member of the committee have any questions?

(The witness, Mr. Witham, was excused.)

Mr. DONOHO. Mr. Freeman, will you come forward, please?

Acting Chairman REECE. Do you solemnly swear the testimony you shall give in this proceeding shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. FREEMAN. I do.

TESTIMONY OF WALTER R. FREEMAN, SECRETARY, INDIANA MILK AND CREAM IMPROVEMENT ASSOCIATION, INDIANAPOLIS, IND.

Mr. DONOHO. Will you state your name and address, please?

Mr. FREEMAN. Walter R. Freeman, Indianapolis, Ind.

Mr. DONOHO. What is your occupation, Mr. Freeman?

Mr. FREEMAN. I am secretary of the Indiana Milk and Cream Improvement Association, with headquarters in Indianapolis, Ind.

Mr. DONOHO. What is the object of your association?

Mr. FREEMAN. The association membership is made up of plants in Indiana engaged in the manufacture of butter, cheese, evaporated and condensed milk, sweet cream, and dry milk solids. The association was formed to carry forward an industry program of quality improvement on milk and cream going into the manufacture of these products.

Mr. DONOHO. Mr. Freeman, Mr. Money and Mr. Witham have just been discussing this subject. Will you add to the information which they have given the committee?

Mr. FREEMAN. In this way, that trade barriers in cream and other manufactured dairy products in interstate commerce have a pretty vital financial bearing on the health of the dairy industry in Indiana, and by the industry I mean both the producers and manufacturers of the product, for this reason, that from 57 to 67 percent of our product is sent out of the State to outside markets. About 87 percent of our farmers are engaged in the sale of milk or cream as a whole or a minor part of their returns. That is about 720,000 farms.

In the past we have enjoyed a very profitable market for sweet cream, though in recent years that has been declining, we feel in part due to the various rules and regulations that have arisen around individual markets in the East to more or less protect the market there for their product. I would like to point out there that a large part of this difficulty comes from the lack of uniformity in these regulations. Indiana at times sends sweet cream to markets from Massachusetts to Florida. There is a wide range depending upon the season and the demand.

I might sum it up in this way: If a specific market, for instance, would have a use for several cars of cream, then before our cream could

get to that market, it would be necessary that an inspection of the farms and the plant be made to allow that cream to go on to that market. That would entail considerable expense, not only in equipping farms and the plant but the actual expense of having the inspection made.

Then another market requires possibly the same amount, and it means a reinspection, some difference in equipment, both of plants and of farms. When we add those all together, we find too much expense to allow us to ship the cream into those markets.

Mr. DONOHO. Do these variations in regulations affect only sweet cream?

Mr. FREEMAN. No; not altogether. There are some other trade barriers, as we call them, that affect other manufactured dairy products. I have in mind at the present time a new act passed in Connecticut which is at variance with the act carried in almost all of the other States and the Federal act. That is referring particularly to the Federal and State Food and Drug Acts, and the Federal Butter Act. In that act they allow for a certain amount of coloring to be added to the product, both of butter and cheese and ice cream, so that a uniform product throughout the year can be made. As I understand it, effective in July, Connecticut's act will require butter or cheese to be labeled "with added coloring" if that is in the product, which means special manufacturing and special labeling and cartons to take care of that particular market, and it is not always possible for plants to know when making up the product what market it is going to end up in.

Mr. DONOHO. Mr. Freeman, have you any suggestions for improving this situation?

Mr. FREEMAN. We believe that some way can be found to induce Eastern markets to adopt more uniform requirements for the production and processing of products that come into it, and inspection methods. As Mr. Treadway pointed out this morning, the Mid-Western States have got together on a voluntary basis in which they adopted some uniform standards for inspection and an agreement to accept or exchange inspection from one State with the other. Just this morning I received in the mail a report on a somewhat similar meeting that was held in Providence, R. I., containing somewhat the same features, and showing there was a tendency to get together. If more of that effort can be put forward I believe uniformity can be obtained and reciprocal inspections arranged for, which will be very helpful.

Mr. DONOHO. Have you any further comments to make, Mr. Freeeman?

Mr. FREEMAN. Only that along with uniformity of requirements I think it is essential that reciprocal inspection agreements be worked out, and again I think that is possible, because just recently Indiana and Pennsylvania have agreed to interchange inspection—that is. Indiana inspectors will inspect Indiana farms for Pennsylvania on the basis of Pennsylvania standards, which will be quite a saving in expense to Indiana farmers.

Mr. DONOHO. I have no further questions.

Representative WILLIAMS. May I ask this? Is there any fundamental difference between the standard of inspection between what you have called the Eastern and Western States?

Mr. FREEMAN. There shouldn't be. I think a more rigid series of requirements has been set up around Eastern markets than there has been in the Western markets, such as Mr. Treadway explained today, in the construction and style of farm equipment, of milking equipment, and in plants, but I don't see any reason why uniformity can't be developed along that line if confidence can be developed between the States and between municipalities as regards inspection.

Representative WILLIAMS. Is it your feeling that some of these inspections have been tightened simply as a means of preventing the importation of foreign milk and dairy products, or has it been done in an honest belief that it was necessary in the interest of the public health?

Mr. FREEMAN. It is my thought that they have gone beyond the strict needs for the protection of public health.

Representative WILLIAMS. Have the Western States followed generally the model that prevails in Indiana?

Mr. FREEMAN. I don't just understand that question, sir.

Representative WILLIAMS. You have a standard of inspection, of course, in Indiana, which is entirely satisfactory to you and the people of Indiana.

Mr. FREEMAN. No—I understand what you mean—they haven't. There are variations in some of the Western States, but there is a definite attempt now to iron out those differences and get on a solid foundation.

Representative WILLIAMS. Do you have any material importation of dairy products—I use that in the sense of local importation—from surrounding States?

Mr. FREEMAN. No; very little. There is some interchange, but very little, because we produce more than is used in Indiana.

Representative WILLIAMS. Have you an accepted city inspection in your State?

Mr. FREEMAN. Yes, sir.

Representative WILLIAMS. They don't accept your State inspection?

Mr. FREEMAN. That is true in part; yes. Some of the Indiana cities will not always accept the Indiana State Board of Health inspection.

Representative WILLIAMS. Is it your hope and the hope of your organization to bring the cities in the country in cooperation with the States in the establishment of a standardized inspection system?

Mr. FREEMAN. That will have to be done to carry it to its ultimate end; yes.

Representative WILLIAMS. Do you get very much encouragement along that line?

Mr. FREEMAN. It is pretty slow.

Acting Chairman REECE. Are there any other questions?

We thank you very much.

(The witness, Mr. Freeman, was excused.)

Mr. DONOHO. Mr. Creighton, will you come forward, please?

Acting Chairman REECE. Do you solemnly swear the testimony you shall give in this proceeding shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. CREIGHTON. I do.

TESTIMONY OF W. T. CREIGHTON, MANAGER, PRODUCERS CREAMERY CO., SPRINGFIELD, MO.

Mr. DONOHO. What is your name, please?

Mr. CREIGHTON. W. T. Creighton, Springfield, Mo.

Mr. DONOHO. What is your business?

Mr. CREIGHTON. Manager, Producers Creamery Co., Springfield, Mo.

Mr. DONOHO. Do multiple sanitary inspections mentioned by other witnesses affect your business?

Mr. CREIGHTON. Yes; I would say they do. For example, sometime ago our company considered applying for a permit to ship sweet cream into an Eastern market. It was discovered that we would have to have inspection from four municipalities, and decided this expense, estimated at four to eight thousand dollars, would be too great and would overcome the advantage of that particular market for our farmers.

Mr. DONOHO. What would be your solution?

Mr. CREIGHTON. I would say reciprocal inspections among States and municipalities; uniform methods of farm inspection; uniform requirements of quality of milk and cream; and after a State has adopted these uniform requirements that the State inspection of one State would be accepted by other States. Furthermore, that the cities within a State having such uniform requirements accept State inspection for products used.

Mr. DONOHO. Do Federal milk-marketing orders affect your Missouri dairy farmers' markets in any way?

Mr. CREIGHTON. Yes; decidedly so. As an example, condensery and other competitive prices for manufactured milk in our territory during the month of February was $1.50 per 100 pounds of 3.5-percent milk. Under the New York order, class III milk was established at $1.15 per hundred pounds of 3.5-percent milk. This was manufactured into products which were sold into adjoining markets in competition with us. When the freight rate is considered, this placed the Western manufacturer at a distinct disadvantage.

I might add that the low price for Eastern-produced surplus milk for manufacturing purposes was possible due to the extreme high price for class I milk for bottling purposes produced under the Federal order and the blended price of all classes was relatively high and attracted the Eastern producer, whereas our farmers necessarily must depend upon the market for manufactured products.

It might also be added that probably 60 percent—I will say that our dairymen, our type of farmers, represent probably 60 percent of the milk producers in the Nation.

Mr. DONOHO. What is your suggested solution, Mr. Creighton?

Mr. CREIGHTON. It would seem to me that some modification of such Federal orders whereby the class I price would be on a sound relationship to national markets for dairy products upon which our price is based would be necessary. It seems unreasonable and unnecessary to maintain the class I price as much as 3 cents per quart higher than the price for surplus milk in order to maintain a blended price that is satisfactory to the producer within that particular milkshed. I am not sure it is really clear to the committee just how these prices are blended and how they are classified. I have here the market administrator for the New York metropolitan milk-marketing area

giving utilization for all the milk that was handled under the order for the month of January, and I might give that as a matter of record, so that you may see just how it is worked out.

Mr. DONOHO. I have no further questions.

Representative WILLIAMS. You offer that for the record, I presume.

Mr. CREIGHTON. That is right.

Acting Chairman REECE. If there is no objection, it may be received.

(The chart referred to was marked "Exhibit No. 2386" and is included in the appendix on p. 16141.)

Representative WILLIAMS. In Missouri, do different cities require different inspection?

Mr. CREIGHTON. Yes; I think that is true.

Representative WILLIAMS. That is especially true of St. Louis?

Mr. CREIGHTON. Yes; I think of all the large cities of Missouri. They maintain their own inspection.

Representative WILLIAMS. Has the State an efficient inspection, as a State?

Mr. CREIGHTON. No; the State maintains no inspection.

Representative WILLIAMS. No inspection at all?

Mr. CREIGHTON. No.

Representative WILLIAMS. This matter that you complain about, the Federal order, have you brought that to the attention of the administrators of that order in the Agriculture Department?

Mr. CREIGHTON. Not directly; no, we have not.

Representative WILLIAMS. Do you know whether the complaint, which seems to be general here, has been brought to the attention of the Agriculture Department?

Mr. CREIGHTON. I think it has been called to the attention of the administrator.

Representative WILLIAMS. You haven't discussed that with him yourself?

Mr. CREIGHTON. No; I have not.

Acting Chairman REECE. Are there any other questions?

Thank you very kindly.

(The witness, Mr. Creighton, was excused.)

Call your next witness.

Mr. DONOHO. Mr. White, will you come forward, please?

Acting Chairman REECE. Do you solemnly swear the testimony you shall give in this procedure shall be the truth, the whole truth, and nothing but the truth, so help you God?

Dr. WHITE. I do.

TESTIMONY OF DR. RICHARD P. WHITE, AMERICAN ASSOCIATION OF NURSERYMEN, WASHINGTON, D. C.

AGRICULTURAL BARRIERS—THE NURSERY INDUSTRY

Acting Chairman REECE. You may proceed.

Mr. DONOHO. Will you give your name and address please?

Dr. WHITE. Richard P. White, 636 Southern Building, Washington.

Mr. DONOHO. Whom do you represent, Dr. White?

Dr. WHITE. The American Association of Nurserymen.

Mr. DONOHO. Is this association representative of the nursery trade of the country?

Dr. WHITE. We believe it is, sir. We have members in 43 of the 48 States whose acreage or annual business volume amounts to approximately 80 percent of the total volume of the nursery industry in the country.

Mr. DONOHO. Dr. White, I understand that the movement of nursery stock is regulated by Federal and State quarantines against plant pests. For the purpose of the record, can you explain briefly the purpose of these quarantines?

Dr. WHITE. These quarantines have been enacted in all States in the Union under a plant-pest law of each of the States, and these plant-pest laws are designed to do one or more of the following things. In the first place, they are designed to control and eradicate and prevent the spread of plant pests within the State. In the second place, they are designed to establish and enforce plant quarantines against other States. In the third place, they are designed to set up authority for the inspection of nurseries within that State, and in the fourth place, they are designed to enforce the rules and regulaions which the administrator of the plant-pest law finds necessary to promulgate.

Mr. DONOHO. In your opinion, Dr. White, are these objectives desirable and necessary to prevent the introduction of plant pests into the State?

Dr. WHITE. We believe they are. We believe they are an essential part of the State's authority to rid itself from invasion of pests from other States. However, our complaint is based largely upon the administrative rules and regulations which are promulgated under the quarantines of the plant-pests laws.

Mr. DONOHO. Just how do the rules and regulations hinder the interstate movement of nursery stock?

Dr. WHITE. As we will show later, in some cases it is the exorbitant costs involved in meeting—that is, the out-of-State shipper meeting the requirements and regulations promulgated by the administrator.

In other cases, and many of them, it is the nuisance value of these regulations which prevents the small shipper particularly from seeking interstate business.

Mr. DONOHO. Would you care to list those requirements which in your opinion have no relation to the legitimate function of prevention of the entry of plant pests but which do hinder interstate movement of nursery stock?

(Representative Williams assumed the chair.)

Dr. WHITE. They take many forms. Bonds are one requirement put on interstate shippers not required of intrastate shippers, registration fees, agents' fees, post-office terminal inspections, duplicate invoices, special State tags, and certain other miscellaneous things that don't come to mind right now.

Mr. DONOHO. With respect to bonds, Dr. White, would you please discuss the bonding requirements of the various States?

Dr. WHITE. There are only five States now which require the posting of a bond as a prerequisite of doing business within that State by an out-of-State nurseryman: Idaho, Mississippi, North Carolina, Montana, and Wyoming.

Mr. DONOHO. Do these States require bonds for nurserymen within the State?

Dr. WHITE. No; they do not.

Mr. DONOHO. What is the size of these bonds?

Dr. WHITE. One thousand dollars apiece, with the exception of Wyoming, which requires the posting of a bond of $500 only. In Idaho, I would like to point out, the bond is limited to out-of-State nurserymen who are selling fruit stock in Idaho, and in North Carolina the bond of $1,000 is limited to out-of-State nurserymen who are planting in North Carolina and promise to take care of the stock after it is planted.

Mr. DONOHO. Does the posting of a bond by an out-of-State shipper tend to prevent the introduction of plant pests into the receiving State, Dr. White?

Dr. WHITE. Well, if you make the assumption that all interstate shipments of nursery stock represent a danger from a plant-pest standpoint, then I think they would prevent the introduction, or retard the introduction, of plant pests, because the posting of the bond limits the amount of nursery stock entering the State, and insofar as the volume of nursery-stock shipments entering the State is reduced, it will consequently therefore reduce the danger from plant pests.

Mr. DONOHO. You mentioned inspection fees as constituting a barrier to the free movement of nursery stock. Would you please explain for the committee just what you mean by registration fees?

Dr. WHITE. Before I can answer that question directly, we must understand that all nurseries in every State, irrespective of their size and irrespective of the fact of whether they are in interstate commerce or not, are annually inspected by their own State-inspection services. These inspections are made by qualified entomologists, and if the nursery stock is found to be apparently free from dangerous plant pests, the nursery is then given a certificate from its own State indicating that the nursery stock has been inspected and has been found free of plant pests.

Mr. DONOHO. Is this inspection certificate accepted by other States generally, Dr. White?

Dr. WHITE. Many States do accept that inspection certificate as prima facie evidence that the nursery stock has been inspected and is free of pests. For example, in the following list of States, which I would like to read into the record, that is the only requirement of out-of-State shipments.

Mr. DONOHO. That is, that a duplicate receipt be filed?

Dr. WHITE. Yes, the out-of-State shipper files with the Department of Agriculture of the receiving State a duplicate of his State-inspection certificate, and in addition to that, I might say, every shipment of nursery stock entering these States will carry a facsimile of that certificate. These States are as follows: Vermont, Connecticut, Delaware, Maryland, Missouri, Rhode Island, New Jersey, Pennsylvania, Illinois, and Ohio.

Mr. DONOHO. What do the States other than those that you mentioned require in this connection, Dr. White?

Dr. WHITE. Most other States require what they call a registration fee. This fee is prerequisite to doing business within the State of destination. In addition to filing the duplicate of their own inspec-

tion certificate which they have received, and which indicates that the stock carried in the package is free of plant pests, these out-of-State nurserymen must also pay a registration fee in the State of destination.

Mr. Donoho. Is this second fee required of intrastate shippers?

Dr. White. It is not .

Mr. Donoho. Dr. White, what is the size of these fees, and in what States are they required?

Dr. White. The size of the fee varies from $1 to $25 for each registration fee. Indiana and South Dakota require only a registration fee of $1. Georgia, Kentucky, Maine, and Texas require a registration fee of out-of-State nurserymen of $5 each. New Mexico, Alabama, Oklahoma, Utah, and Virginia require a registration fee of $10. In Utah and Virginia, however, it is limited to those out-of-State nurserymen who employ agents in those States. West Virginia and Wyoming require a registration fee of $15, and Montana a registration fee of $25.

In Idaho the fee varies from $5 to $15, depending upon the volume of the man's business in that State—$5 if he does a gross business of less than two hundred per annum, and $15 if he does over $200 per annum.

Mr. Donoho. You stated, Dr. White, that these fees do not apply to intrastate shippers. Do they apply equally to interstate shippers?

Dr. White. No, they discriminate between different classes of interstate shippers in this way: An out-of-State nurseryman who receives an order, we will say, in a State requiring one of these fees, requiring a fee, we will say, of $10, might receive an order from a customer in that State which did not amount to $10, and therefore he would naturally have to refuse that order because the cost of meeting the requirements is so great that this shipper could not afford to accept the order. The registration fee applies equally to a single shipment or a nurseryman making one shipment in a State, or a nurseryman making a thousand shipments.

Mr. Donoho. What in your opinion is the relationship between these registration fees and the prevention of the introduction of plant pests within the State charging such fees?

Dr. White. We don't see any relationship. If there were a relation, it would be illogical to assume that South Dakota, for example, could prevent the introduction of plant pests by charging a registration fee of $1, while in Montana it would require to perform the same service, a fee to the State of $25.

Mr. Donoho. Mr. White, you mentioned agents' fees as constituting a barrier to your product. Will you please discuss that subject?

Dr. White. Many nursery concerns sell through agents. In other words, they make arrangements with individuals in other States, and also within their own State, to sell nursery stock for them. These agents then take the orders, the orders are sent into the headquarters nursery which fills the order, and then the orders are sent either to the agent for delivery or direct to the customer. These nurserymen who employ agents as a selling means may have already paid a registration fee, may have paid the charge in their own State for inspection service, may have posted a bond, but before they can solicit orders in these States with agents' fees they must secure a permit and pay an agent's fee to the State of destination before they can do business.

Mr. DONOHO. What in your opinion, Dr. White, is the relationship between the requirements that agents fees be paid and the danger of the introduction of plant pests into the State making such requirement?

Dr. WHITE. Here again we believe there is no direct relationship between the payment of a fee and the movement of plant pests per se. For example, the agents' fee varies, as well as the registration fee. Agents' fees in a large number of States are $1 per agent. I would like to read those into the record: Alabama, Arkansas, Georgia, Idaho, Indiana, Michigan, Nebraska, Ohio, Oklahoma, Oregon, South Dakota, Virginia, and Washington.

On the other hand, Kentucky and Maine charge $5 apiece for their agents' fees and New Mexico $10, and here again we believe that if the large number of States can keep out plant pests by charging a $1 fee, that it is illogical to assume that the same objective will be reached by New Mexico which charges $10.

Mr. DONOHO. When you were discussing bonding requirements, Dr. White, you mentioned that Mississippi had reciprocal arrangements in this respect with other States. Would you care to explain about these reciprocal arrangements?

Dr. WHITE. Yes, that is true. The Mississippi bond applies only to the other four States which require a bond. In other words, they have set up with these four States a reciprocal arrangement which is merely an arrangement between Mississippi and these four States that if the other four States will not charge Mississippi shippers their bond, then Mississippi will not require the posting of a bond by interstate shippers from these other four States.

Mr. DONOHO. What States have the local authority to enter into such reciprocal arrangements?

Dr. WHITE. A rather long list of States have the right to enter into reciprocal arrangements, brought about by the amendment of the plant-pest law in those States. The following States have the legal authority through administration of the plant-pest laws to enter into reciprocal arrangements: Iowa, Kansas, Michigan, Minnesota, Mississippi, Nebraska, North Carolina, Tennessee, Washington, Wisconsin.

I would like to point out that the reciprocal arrangement in Michigan, Nebraska, and Washington applies only to the registration fee and not to the agents' fees. In the other States it applies to both, and also the bond, if required.

Mr. DONOHO. Earlier in your testimony, Dr. White, you mentioned post-office terminal inspections as creating trade barriers. Will you briefly describe how this inspection service operates, the extent to which it is enforced, and your opinion as to its effect, deterrent or otherwise, upon the interstate movement of nursery stock?

Dr. WHITE. I would like to leave that testimony, sirs, to the witness who follows me. I would, however, like to read into the record the list of States which do require post-office terminal inspection. It is merely an arrangement between the Department of Agriculture, the postal authorities, and the State of destination whereby shipments of nursery stock traveling by parcel post can be intercepted and inspected.

Mr. DONOHO. You mean the United States Department of Agriculture?

Dr. WHITE. Yes, the United States Department of Agriculture. I have in my hand a copy of an announcement signed by Ramsey Black, Third Assistant Postmaster General, appearing in the Postal Bulletin of June 20, 1939, and entitled "Terminal Inspection of Plants and Plant Products."

It is merely the requirement of the various States for terminal inspection, and the points which they have laid down, or designated for terminal inspection, and from this I would like to put the following list of States in the record as requiring terminal post-office inspection. I would like to leave the details of how this works and how it hinders interstate movement of small parcel-post shipments to the next witness, if I may. The following States require post-office terminal inspection: Arizona, Arkansas, California, Florida, Idaho, Louisiana, Mississippi, Montana, Oklahoma, Oregon, Utah, Washington, the District of Columbia; also two of the Territories, Hawaii and Puerto Rico, but they do not concern us very much because we don't ship much to those places.

Mr. DONOHO. Dr. White, you mentioned special State tags as constituting trade barriers. Just what do you refer to when you say special State tags?

Dr. WHITE. Well, in addition to these registration fees and agents' fees and posting of bonds, many States require of the interstate shipper, not of the intrastate shipper, who is moving nursery stock into these States that every shipment of nursery stock, whether it be a parcel-post shipment or a carload, must carry attached to it a special State tag. Now, in most cases, these special State tags are purchased by the nurseryman from the State of destination at varying prices. I have mounted on this chart merely for exhibit purposes, and for the committee, samples of some of these State tags.

Mr. DONOHO. Just hold it up so the committee can see it better.

Dr. WHITE. They take various forms. For example, this State tag of Louisiana has attached to it what is called an invoice stub, and that invoice stub at the time of shipment is mailed to the State of destination. The same invoice stub appears on the special State tag of Mississippi. An interesting one here from Arkansas is merely a mimeographed affair, very small but nevertheless costing the interstate shipper 2 cents apiece.

In addition to these special State tags, of course, every shipment carries the facsimile of the State registration certificate and various other tags which we will illustrate later.

Mr. DONOHO. What is the cost of these tags?

Dr. WHITE. As I say, the cost varies. Some of these tags, if you buy them in large lots, are very reasonable in cost, $4.50 a thousand, for example. In other cases, in small lots they will run as high as 3 cents apiece in lots of less than 100. In one case, South Carolina, it is 5 cents apiece, if you want a small quantity, 5 or 10.

Mr. DONOHO. Are these special tags required of intrastate shipments?

Dr. WHITE. No; they are not, and I would like at this time, if I might, to read into the record the States requiring special State tags: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, New Mexico, South Carolina, Virginia, West Virginia, Wyoming, Texas, Oklahoma, and Connecticut.

Mr. DONOHO. In your opinion, what relation do these special State tags have to the movement of plant pests?

Dr. WHITE. Again I must answer you I believe they have no relation to the movement of plant pests. They merely are an indication that the shipper has complied with all other requirements which the State of destination requires. And by that I mean they indicate that he has paid his bond, posted his bond, and paid his registration fee, and if he employs agents, he has permits for his agents.

Mr. DONOHO. Early in your testimony, Dr. White, you mentioned the requirement of certain States for duplicate invoices for shipments entering the States. Do you mean by that that the shipper must forward to State authorities a duplicate invoice for each shipment of nursery stock shipped into the State?

Dr. WHITE. Yes, that is right. Certain States require that the shipper of nursery stock into that State must mail to the Department of Agriculture on the day the shipment is made a duplicate invoice of all the stock that may be in a carload or small parcel-post package. The large shipper, of course, who is shipping out maybe thousands of packages a day, finds it impossible to meet that requirement because just the mechanics of the thing are too great for him to meet in his office.

Mr. DONOHO. What is the relationship in your opinion, Dr. White, between the filing of a duplicate invoice in the State nursery inspector's office and the prevention of the introduction of plant pests?

Dr. WHITE. We don't see any, sir. The invoices pile up in the Department of Agriculture office of the State of destination and it merely indicates the amount of stock coming in there; whether ever used or not I wouldn't be in position to state.

Mr. PIKE. Wasn't there originally possibly a point there that if plant pests did show up in introduced plants they could go back to this duplicate invoice and spot the guilty party?

Dr. WHITE. That is true, sir, and that has been recently used. There is a pest in the Southern States of Louisiana, Alabama, Mississippi, and Florida, that appeared there a few years ago, and as a result of the duplicate invoice file in the Department's office in Florida they were able to locate all the shipments of nursery stock which came from these infested States into Florida, and then they, of course, immediately sent out their inspectors and inspected around the localities where this nursery-stock shipment was received.

Mr. PIKE. So there was to that extent a relationship between plant pests and the duplicates?

Dr. WHITE. That is true. To my knowledge, that is the first time that has ever been used.

Mr. PIKE. That was very likely the original purpose of that?

Dr. WHITE. Probably was; yes, sir.

Mr. DONOHO. Are there any other inspection fees which you have not mentioned, Dr. White, required by any of the States?

Dr. WHITE. Yes; there are two States which require so-called destination inspection fees. Those two States are Idaho and Montana. If a nurseryman shipping nursery stock into Idaho or Montana—we must remember from previous testimony that in both of those States they must pay or post a bond of $1,000 before shipping. In addition to that he pays a registration fee of $25. Then he ships into that State and there is burden upon him of a destination inspection fee,

and if he has complied with the laws of the State and done these things, then the destination inspection fee is $10 per carload, and smaller shipments in proportion. On the other hand, if he has not posted his bond or paid his registration fee, then the registration inspection fee is 10 percent of the invoice price, with a minimum fee of 50 cents.

Mr. DONOHO. This nursery stock having already been inspected in the State of its origin is declared to be free from dangerous pests?

Dr. WHITE. That is correct, and the shipment will carry of course as a matter of routine and in compliance with the law a facsimile of the certificate, showing the shipment has been inspected and found free of plant pests.

Mr. DONOHO. What is the reason for this requirement of the reinspection at destination, then?

Dr. WHITE. Well, I suppose the only reason I can conceive would be to make doubly sure that the stock was free of plant pests. I think it indicates perhaps a doubt on the part of the receiving State officials that perhaps the inspection service in some of these other States isn't as good as it should be.

Mr. DONOHO. It is your position the State has a right to require this reinspection?

Dr. WHITE. Oh, yes.

Mr. PIKE. As a practical matter, Dr. White, what do you think is the uniformity of inspection in the various States in general? Is it good enough so that other States could take it on trust, or as has been shown up in this milk situation, frequently an incompetent or insufficient inspection force so that other States might perhaps be sensible in suspecting?

Dr. WHITE. That is a very pertinent question, sir, and that has been raised before. I think perhaps it has a grain of truth in it. Certain States which are dependent entirely upon inspection fees from their own nurserymen, and perhaps the number of nurserymen in that State is very small, cannot afford to hire as adequate a trained personnel as other States, big nursery States like New York, Pennsylvania, and New Jersey.

Mr. DONOHO. Are there any other State laws which you consider constitute barriers to the free interstate movement of nursery stock?

Dr. WHITE. I would like to call your attention to an acclimation clause which is on the statute books of Minnesota, which applies to the movement of nursery stock into that State for highway development work; section 3861.1–b of the standard specifications of the Minnesota State Department of Highways reads as follows:

> All plant materials shall be from stock which has been acclimated to conditions prevailing at the project and which has been consistently grown in the area designated as follows: All of Minnesota and Wisconsin, all that part of North Dakota and South Dakota lying north and east of the Missouri River, and all that part of Iowa and Illinois lying north of latitude 42 degrees north.

We believe this is very evidently a discriminatory regulation against nurseries which might lie just south of that parallel.

Mr. DONOHO. In that connection, Dr. White, is there any basis for believing that nursery stock grown south of what is it, parallel 42?

Dr. WHITE. Yes.

Mr. DONOHO (continuing). Would not be hardy when planted north of that parallel?

Dr. WHITE. We think not. We have nurserymen in that territory in the Great Plains region which have for years been shipping nursery stock into Minnesota for highway development work with perfectly satisfactory results. Our opinion is also borne out by the opinion of two of the leading plant ecologists in the country, and I would like to read into the record, if I could, their opinions. I have a letter from Dr. J. E. Weaver, professor of plant ecology at the University of Nebraska, Lincoln, addressed to me under date of November 28, 1939. In preface to reading these letters I would like to say I addressed an inquiry to them on this very point.

DEAR MR. WHITE: In answer to your letter of November 21, let me say that the natural belts of vegetation, such as the true prairie association and the oak hickory association, extend north and south quite beyond parallel 42 degrees north latitude. Furthermore, I feel that forest trees, such as American elm, American linden, bur oak, etc., grown from seeds collected in Nebraska would probably reveal very little, if any, difference in hardiness from similar trees grown from seeds collected in southern Minnesota. The distance is quite too small and differences in seasons do not seem to be enough to make much, if any, difference in later performance of the trees.

In regard to clones produced from such trees and grown respectively in Nebraska or Minnesota, it would seem that any hereditary factor of hardiness would not be lost whether the trees were started in Nebraska or in Minnesota. Differences between southern States, such as Oklahoma and Texas, and Minnesota and Wisconsin might probably be evidenced in differences in winter hardiness, since the climates in the two places are, according to human feeling and measurements, quite different. But certainly the differences between southern Minnesota and southern Iowa or eastern Nebraska are, in my opinion, quite too small to have any practical effects in the way of differences in plant behavior.

I trust that this answers your questions satisfactorily. I have gone to the trouble to confirm my own observations and information by consultation with a forester who had worked extensively up and down the Great Plains with tree seedlings and other problems related thereto.

Sincerely yours,

J. E. WEAVER,
Professor of Plant Ecology.

This letter from Dr. Frederic E. Clemens, Carnegie Institution of Washington, division of plant biology, dated December 22, 1939, and addressed to me:

DEAR MR. WHITE: Your letter was found upon my arrival in Santa Barbara last week, following a motor journey from Washington.

As to the significance of parallel 42°, I may state that there is no warrant for such a line in the natural vegetation and hence none in climate as determined by such vegetation.

With respect to the modification of hardiness as opposed to its persistence, most of the evidence is so general and often so conflicting that it is difficult to speak up definitely. At present an actual test alone can be decisive.

I am drawing up a comprehensive plan to determine degree of fixity and rate of adaptation and fixation in species of woody and herbaceous plants employed for conservation in the Middle West. It is hoped that installations can be made at intervals of 100 miles from south to north and of 3 inches of rainfall from east to west across the Great Plains. This should provide dependable answers to your questions, as well as related ones.

Sincerely yours,

FREDERIC E. CLEMENS.

I think these opinions from these two leading ecologists bear out my statement before, that we believe there is little if any relationships between this arbitrarily drawn line of parallel 42° north, relationship between that line and the hardiness of plants.

Mr. DONOHO. Do you have any further statement to make, Dr. White?

Dr. WHITE. Only this, Many of these things which I have mentioned such as duplicate invoices, special State tags, registration fees, and so forth, no one of them could probably seriously interfere with the interstate movement of nursery stock from a large shipper. Taken together, however, they do present problems to the large shipper which tend to inhibit and retard and reduce the amount of stock going into many of these States which have all of these requirements on their books. Any one of them, however, is sufficient to discourage the small interstate shipper. As you can readily see from business in these States, the costs are excessive, the nuisance value excessive, and therefore he confines himself to a local territory within his own State.

Mr. DONOHO. Mr. Chairman, I have no further questions, but I believe the witness has some recommendations he would like to make.

Acting Chairman WILLIAMS. I would like to ask a question or two. Is it possible, you think, to establish a uniform system of inspection as applied to the nursery business from one end of this country to the other?

Dr. WHITE. Up to a certain point; yes, sir. The country is divided up in explanation of your question so it will be clear to you; the regulatory officials of the States are organized into four regional plant boards, and two members of each regional plant board constitutes what is known as a national plant board, and this manner of uniformity of inspection procedures and tolerances, and so forth, is now before them for discussion and has been for 2 or 3 years. The progress they are making is discouraging and slow, however.

Acting Chairman WILLIAMS. Plant life and plants, I take it, are entirely different in different sections of the country?

Dr. WHITE. That is true.

Acting Chairman WILLIAMS. And would necessarily require a different character of inspection, wouldn't it, depending on the locality, climatic conditions, and so on?

Dr. WHITE. The procedure might be the same; the inspector would be looking for different pests, but the procedure would be the same. The question is, Shall this inspector inspect every single plant in the nursery? Shall he go down the row and take 100 plants here and 100 plants there? It is a question of procedure. Now, whether he is looking for one kind of a bug or another kind of bug, that doesn't enter into the picture, I believe.

Acting Chairman WILLIAMS. What percentage of the nursery business is domestic and what is foreign? I mean by that within the State and outside the State.

Dr. WHITE. Well, that would depend entirely on the State, sir.

Acting Chairman WILLIAMS. I mean as a whole; what part of the business; what part of the nursery business of this country is carried on within the State of origin and what part of it is transported to some foreign country?

Dr. WHITE. I do not have any exact figures on that, but my best opinion would be that better than half of the nursery business is in interstate movement.

Acting Chairman WILLIAMS. You think over half of it would be transported from one State to another?

Dr. WHITE. Yes; the reason being, sir, that many of the smaller nurserymen doing landscape business and doing a wholly local business

buy material from the larger wholesalers. For example, in Texas we have a very concentrated section where roses are grown, and those roses probably go into every State in the Union.

In the Northwest we have a very favorable climate for fruit-stock production, and in the Ohio and Missouri River Valleys, certain sections, fruit stock; and that fruit stock goes all over the country to the smaller nurseymen, who then retail it.

Acting Chairman WILLIAMS. Do you know what burden there is on the business by reason of these barriers which you mention, all combined for the entire country?

Dr. WHITE. You mean on dollars-and-cents basis?

Acting Chairman WILLIAMS. Yes.

Dr. WHITE. The next witness will give some testimony on that.

Acting Chairman WILLIAMS. Right interesting that over half of it is foreign business and to what extent it places the burden of tariff tax.

Dr. WHITE. The next witness is a nurseryman himself and has some figures on his own business and a few other businesses.

Mr. PIKE. I have a question. This applies, I take it, only to shrubs and small bushes and trees; it doesn't apply, what you have been saying, to seeds and things like that, does it?

Dr. WHITE. No; I am not speaking about seeds; shade trees, fruit trees, nut trees, ornamental shrubs, and evergreens, such material as that, sir.

Acting Chairman WILLIAMS. Now if you have some remedies to offer here, we would be glad to hear from you.

Dr. WHITE. Well, I am afraid I have no remedies to offer. This association, however, feels that the answer does not rest in a Federal control or Federal regulation of the State inspection services. We believe that that is a function of the States and do not believe that a Federal set-up would be any more efficient or any more economical than the present system. It has been recommended, however, when you consider the set-up which has been recommended, that the control of a State inspection service be placed under the Department of Agriculture here in Washington, who would qualify on an examination basis the State inspectors; as soon as they do that then they of course must police the system, which will mean the hiring of additional supervisory inspectors over the State inspectors to be sure they are continually doing a good job.

We don't think that economical nor do we think it would lead to any better inspection services in the States.

Acting Chairman WILLIAMS. Does the Federal Government now in any way supervise or influence these State inspections?

Dr. WHITE. No; they do not.

Acting Chairman WILLIAMS. Has nothing at all to do with it?

Dr. WHITE. Not now.

Acting Chairman WILLIAMS. And it is your idea it should not?

Dr. WHITE. That is correct.

Acting Chairman WILLIAMS. That the States themselves, independent of the Federal Government, can take care of the problem?

Dr. WHITE. I think they can.

Acting Chairman WILLIAMS. Are they making progress toward that end?

Dr. WHITE. They are making some progress, yes; but again I might say it is discouragingly slow to us who are constantly con-

fronted with all of these problems. We believe that since our nursery stock is all inspected in the State of origin that the carrying of a State certificate of inspection which indicates the nursery stock has been inspected and certifies it is free of dangerous plant pests is all that should be required for the interstate movement of this material.

Now the gentleman on my left raised the question: Was there not a reasonable doubt that some of these State inspection services might be questionable? And I will have to agree with him. Therefore it becomes a problem of raising in some cases the number of State inspectors, but I think rather than numbers it is capabilities of the State inspectors, so that eventually we can have a perfect trust between the inspection service in one State and the inspection service in another state.

Acting Chairman WILLIAMS. We have laws in every State now, have we, requiring a public inspection? I mean, inspection by public officials?

Dr. WHITE. That is true.

Acting Chairman WILLIAMS. Not depending simply upon the private inspection of the individual nursery?

Dr. WHITE. Oh, no. This inspection is required by law in each and every State, and the inspection is made by State authorities.

(Representative Reece assumed the chair.)

Acting Chairman REECE. Are there any further questions?

Mr. DONOHO. Mr. Lumry, will you come forward, please?

Acting Chairman REECE. Do you solemnly swear that the testimony you are about to give in this proceeding shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. LUMRY. I do.

TESTIMONY OF CARL LUMRY, NURSERYMAN, SHENANDOAH, IOWA

Mr. DONOHO. Will you give your name and address, please?

Mr. LUMRY. Carl C. Lumry, Shenandoah, Iowa, representing the Mount Arbor Nurseries of Shenandoah.

Mr. DONOHO. What is your capacity with the Mount Arbor Nurseries?

Mr. LUMRY. I am manager of the retail mail-order department.

Mr. DONOHO. Would you explain to the committee how the mail-order department of your nursery operates, Mr. Lumry?

Mr. LUMRY. Yes. We have arrangements or contracts with three firms who publish and distribute retail mail-order catalogs. They secure the orders from the retail customers, and send the orders to us, and we make the shipment direct to the customer. The reason for this kind of an arrangement is that the physical characteristics of the plants are such that they require special storage facilities and special facilities and special types of packing material to properly pack them for shipment so they will arrive in good condition to the customer. These firms, not being technical and not being experts, do not have these facilities, and we as a wholesale nursery fill their retail orders for them.

Mr. DONOHO. To what extent is this branch of the business engaged in interstate commerce, Mr. Lumry?

Mr. LUMRY. Those figures naturally vary from year to year, depending upon how much business the catalogs secure; in our own

home State last year the percentage was 84; 84 percent of our retail mail orders went into interstate commerce.

Mr. DONOHO. Into how many States do you ship nursery stock?

Mr. LUMRY. That also varies from year to year. Last year we shipped in 44 States, but 75 percent of our business was in 26 of these 44 States.

Mr. DONOHO. Do you keep records of the number of mail-order shipments leaving your nurseries?

Mr. LUMRY. Yes.

Mr. DONOHO. Have you those figures?

Mr. LUMRY. Those are vital statistics that we keep. In 1938 we shipped 276,841 retail packages, and in 1939 we shipped 207,243 packages.

Mr. DONOHO. Over what period of time are these shipments usually made?

Mr. LUMRY. Naturally, the retail customer buys and wants to receive his plants during the planting season. That is, he has no facilities for storing the merchandise; he has to have it when the ground is wet so that he can immediately plant. Therefore our shipping season is very short. We have to handle this tremendous volume in just a matter of a few weeks. It runs from 6 to 8 weeks in the Spring and from 4 to 5 weeks in the Fall, and, in that short period, we ship about 75 percent of our business. The other 25 is in periods just before and just after the main planting period.

Mr. DONOHO. You mentioned some 200,000-odd packages shipped by your nursery in 1939. Just how much nursery stock is represented in this number of packages?

Mr. LUMRY. The number was slightly over 3,000,000 plants, and those plants were distributed, in one of our catalogs, over 1,243 different sizes and varieties and kinds of plants, so that there was not a large quantity of any one particular size or any one particular variety.

Mr. DONOHO. What was the average retail value of these shipments?

Mr. LUMRY. The average retail value is very small. In 1938 it was only $1.65 at retail, and in 1939, $1.82.

Mr. DONOHO. Dr. White testified about the fact that nursery stock must usually carry special tags going into certain States. Do these requirements obtain with respect to small shipments of $2 and such like only $1.65 at retail, and in 1939, $1.82.

Mr. LUMRY. Yes, sir; the same requirements are made of a 25-cent shipment as are made of a thousand-dollar shipment. For example, I have here a box containing five gladiolus bulbs, which is packed ready for shipment. The advertised catalog price of those five bulbs is 25 cents. On the package there is the address label, a certificate of contents, the certificate of origin (that is, the State in which the bulbs were grown), postage on the end, and on the bottom we have to put on our own certificate of inspection, because there wasn't room here.

Last year we shipped 443,000 gladiolus bulbs, so you see we had a tremendous number of small shipments.

These two packages represent one lot having a retail value for the two packages of $2.03. The nature of our stock is such that different types of packages are required for different types of plants. As you can see, these are green, living plants; they can't be tied up in an

ai-tight package like this, so we have to make the shipment in two packages. This package here, this part of the shipment, has the address label here, the postage label here, a list of contents and certificate of origin here, the special certificate on strawberries here, and the special grape certificate here, and a notice to the customer here that his package went in two shipments.

In order to put that sticker on there, our Plant Pathologist had to immerse the vines in water for 3 minutes at a temperature of 127 degrees and then personally sign the certificate and date it, and personally put it on the package.

To get this certificate here, we had to arrange with our Iowa entomologist to go to the fields last summer and inspect these strawberries in the field and then, after they had been dug and brought into our place, he had to come down and inspect them again. There is only one State out of the 48 that requires this.

This other package contains three perennials having a retail value of 49 cents, and is a part of one order. This carries the address label, list of contents, certificate of origin, postage, Iowa State inspection, and another notice that the shipment is in two packages.

Acting Chairman REECE. Altogether, how many stickers are required for the one shipment?

Mr. LUMRY. On this one order—of course it is in two packages but it is one order—there are six plus the postage on that one and four on this plus two stamps, and the total value of the order is $2.03. Our average order, as you can see, is so small that we have lots of orders that are smaller than this. We have some larger, also, of course, that strike the average.

Mr. DONOHO. That, as you said previously, is representative of your average order, around $2?

Mr. LUMRY. This is larger than the average order. The average order in 1939 was $1.82 and in 1938, $1.65.

Mr. DONOHO. Dr. White, in his testimony, indicated that many States require certain fees for out-of-State shippers of nursery stock which are not required of intrastate shipments. Can you give us, from your records, the cost to your firm of meeting the requirements of the States into which you ship?

Mr. LUMRY. Yes. This cost naturally varies from year to year, depending on the States from which we get orders. In 1939 we spent $161 for registration certificates, $102.25 for special State tags, and the cost of the extra clerical help needed to comply with the tagging requirements, duplicate invoices and so forth, amounted to $655.20, the total cost to my firm being $918.45 to comply with the laws, and that does not take into consideration. because I can't give you any accurate figures on the cost of fastening all these things on the package after the package is packed. The above are office expenses. They have nothing to do with this additional cost in the shipping departments, of which we have no record.

Mr. DONOHO. Is this figure of some $900 comparable to the costs of other interstate shippers of nursery stock?

Mr. LUMRY. Yes; the amount of fees varies, not only from year to year but with the different firms. That is, a firm doing business in a comparatively small area, if it is fortunate enough to be in an area that doesn't require these tags, would have less expense. A firm

doing business over a wide area and using house-to-house agents would have greater expense. I have a recent letter, dated March 14, 1940, from the Krider Nurseries, addressed to Mr. Richard P. White, who just finished testifying. He states that the cost of securing the registration and State tags in 13 States was $45 for fees and $41.20 for the tags. I have another letter from the R. M. Kellogg Co., of Three Rivers, Mich., dated March 13, from which I quote:

> We estimate it cost us approximately $200 for our inspections, special tags, and so forth. We conservatively estimate that for extra clerks to censor orders and attach these tags and lists of contents we had a cost in excess of $500—

Which would be a total of $700 for this particular firm.

Mr. DONOHO. Mr. Lumry, from your records what percentage of your retail mail-order packages were condemned for various causes?

Mr. LUMRY. We, under our contracts with various firms that we serve, keep very accurate records of this, because we are responsible for that. In 1938, out of 276,841 packages, 29 were condemned, which is a total of .01 of one percent. Of these 29, 16 were condemned because they didn't carry the right color label and 13 were condemned for claimed violation of quarantine or for infestations, the 13 being .005 of one percent of the packages shipped.

Of course, we have figured on the number of packages shipped, but we might have a package here with 25 plants in it and only one plant out of the 25 which would be condemned. The rest of the package in most States would be approved and forwarded to the customer, and we would be obliged to replace the one plant out of the entire shipment, so that the percentages actually are even less than that given here.

In 1939 we shipped 207,243 packages. Fifty-four were condemned, which is .03 of one percent. Thirty-two were held up because of improper labels, and 22 were condemned for infestation or violation of quarantine, which is .01 of one percent.

Mr. DONOHO. Will you explain what happens, Mr. Lumry, when a mail-order shipment is refused delivery?

Mr. LUMRY. The carrier, the post office, or the express agent notifies us that the package has been condemned. That applies in some States. In other States the State notifies us directly that the package has been condemned, that certain pieces in the package have been released and the others are being held for disposition. They give us an opportunity to send them the postage or transportation to have it come back by express collect so we can, if we care to, examine the plants afterwards.

Mr. DONOHO. Mr. Lumry, Dr. White stated you would discuss post-office terminal inspection requirements. Will you please do so?

Mr. LUMRY. Post-office terminal inspection is based on an act of Congress dated March 4, 1915. In this act authority was given the States to provide for terminal inspection of mailed shipments of plants and plant products. Under this act the States, and I quote from the act—

> shall establish and maintain at the sole expense of the State such inspection at one or more of the places therein.

Order No. 8760 of the Postmaster General, dated April 2, 1915, signed by Daniel C. Roper, Acting Postmaster General, amends the Postal Laws and Regulations, section 478, quoting verbatim from the wording of the act and stating that—

The States shall provide for terminal inspection of plants and plant products and shall establish and maintain at the sole expense of the State such inspection.

Acting Chairman REECE. What is the date of that act?

Mr. LUMRY. It is 1915—March 4. I have a transcript of it here which was supplied by the Bureau of Entomology.

If a State wishes to establish post-office terminal inspection, they must first, and I quote—

submit to the Secretary of Agriculture a list of plants and plant products and the plant pests transmitted thereby which they desire to bring under these regulations.

The Secretary of Agriculture, after approving the list, then transmits the list to the Postmaster General, who issues the necessary regulations to insure that all mail shipments of plants and plant products in the list are subject to inspection.

I would like to call your attention to two points in the act; the first, that the States requesting authority for post office terminal inspection must establish and maintain such inspection at the sole expense of the State; and second, that they must submit a list of plants and plant products and the plant pests transmitted thereby that should be subject to terminal inspection.

Mr. DONOHO. In your opinion, Mr. Lumry, are the total costs incident to post office terminal inspection borne by the States enforcing such inspection?

Mr. LUMRY. No; we don't think so. In the first place there are comparatively few of the States that maintain a resident inspector at the terminals which have been designated by the State. This means that the packages are held there until the inspector can arrive. This merchandise is highly perishable. The post office naturally has no facilities for the proper storing of this kind of merchandise, so that there is a large percent of this stock that is subject to post office terminal inspection which dies. That is, it can't stand that kind of treatment, and that cost is borne by the shipper.

Representative WILLIAMS. To what extent are those terminal post office inspections established? Is that general all over the country?

Mr. LUMRY. The list was read into the record by Mr. White, who testified just before me.

Representative WILLIAMS. He testified as to the States, I believe. Take the State, for instance, of Missouri. How many were established, assuming they established any? I don't know whether they have.

Mr. LUMRY. Missouri has no post-office terminal inspection. That depends entirely on the state authorities. I don't know on just what it is based.

Representative WILLIAMS. Take one that has.

Mr. LUMRY. The State of Mississippi, for example, lists 14 inspection points. The State of——

Representative WILLIAMS (interposing). Right in that connection, does that mean if you wanted to ship one of your products to Mississippi you would have to send it to one of these post-office terminals, regardless of the location where it is going?

Mr. LUMRY. The Post Office Department has set up two different procedures. We can address this package to the consumer, say this is going to be inspected and pass through post-office terminal inspection, and when it arrives at the post office the postmaster notifies the

customer that the package is there and informs him of the amount of additional postage that it will cost to send this package from the addressee to the designated inspection point and return. The consumer has to pay that postage back and forth.

There is another optional arrangement which has been set up. We can consign this package to the inspector at one of these inspection points, the point that we feel is closest to the customer. We can address the package, such as this, to the inspector, and he will inspect it, but before that we have to put this envelope on here which would contain a new label and would contain postage to carry the package from the designated inspection point to the customer's address.

Now that feature has some advantages over this, but there are two very decided disadvantages. In the first place, the shipper would have to go to the expense of computing the distance between the inspection point and the customer's address, and figuring the amount of postage it will take, and then putting the postage in this envelope, which would also be supplied, and tying the envelope on the package with the new label which the inspector could put on.

This has advantages over that but it does not eliminate the delay and loss caused by delay on the part of the inspector arriving at the point of inspection.

Representative WILLIAMS. When it arrives, when the inspector gets hold of it, he takes those packages apart and inspects the contents and rewraps them?

Mr. LUMRY. We will inspect this package here the same way it would be handled at the terminal. As you can see, this package, you can see the green, you can see that it is quite nicely formed. In fact, this package was packed last Friday and as far as I can see, it is still in perfect condition. The inspector has to open the package like that [demonstrating]. These plants are highly perishable.

This is a carnation. With any type of perennial, in fact a great many plants, if we get too much moisture around this part of the plant [indicating], particularly a package that is going to be carried in a mail sack, this will rot. If we don't get enough moisture around the roots, the plant will die. This particular material [indicating] is very resilient; we call it cyprus wool. It comes from Florida, and it keeps the moisture away from the crown of the plant. This particular material [indicating] is from Wisconsin; it is moss. It will hold the moisture and keep the roots alive.

When the inspector takes that out, he has to take these plants—that is, he is supposed to—and look at all the roots to be sure there are no little bugs on them, and then without any facilities at all—he has no facilities; naturally the Post Office Department can't be expected to supply the State of Arizona, or any other State, with free wrapping material or string—this inspector must take this package apart and with these materials we have shipped it in must tie it up. In the first place he doesn't know how unless he observed closely when he unpacked it; in the second place. when he gets it tied up the only string he has available is the jute that the Post Office Department has available, so that is one of the things that we complain about, that the States practically confiscate our property doing this because through carelessness and lack of proper facilities, they insist on this inspection and then don't wrap this thing up again so the customer has a chance to get anything for his money.

Representative WILLIAMS. The fact is, he doesn't do very much inspecting anyway, does he? By what means does he determine whether the plant is pest-bearing or not, whether there is some pest in it?

Mr. LUMRY. I am sorry sir, I am not an entomologist or plant pathologist.

Representative WILLIAMS. As I understand, he unwraps it and sees it has the right amount of moisture and wraps it up.

Mr. LUMRY. He is supposed to have expert knowledge where to look for the little bugs or what have you.

Acting Chairman REECE. Can you tell us how we came to pass a law like that?

Mr. LUMRY. No, sir; I am sorry, I can't.

Representative WILLIAMS. There is one other question I would like to ask you. In States where they do not have this postal terminal inspection, where they have another kind of inspection, how do they handle that?

Mr. LUMRY. The terminal inspection is the most vicious of all because it causes more loss and more damage and more unhappiness than any other thing we have to contend with.

Representative WILLIAMS. Take the ordinary case where you ship into the State where they don't have post-office inspection and do have inspection by a State official, what does he do? Where do you send it?

Mr. LUMRY. In such States they don't pretend to inspect these small, insignificant shipments, such as we have here. They accept the Iowa certificate.

Representative WILLIAMS. Do you mean that all States accept your inspection certificates?

Mr. LUMRY. No; they don't, because the States that have been mentioned that require post-office terminal inspection would also inspect the plants at the express terminals, if that is what you mean, and the freight terminals.

Representative WILLIAMS. Missouri, for instance, has no post-office inspection?

Mr. LUMRY. That is right.

Representative WILLIAMS. Do they inspect your products that you send in there?

Mr. LUMRY. No, sir.

Representative WILLIAMS. Is there any State that does, outside of the ones that have this post-office terminal inspection? What I am getting at is this: What kind of an inspection do they make of your products when they are shipped into the State?

Mr. LUMRY. Most of the States depend on the Iowa certificate.

Representative WILLIAMS. "Most of them"—but those that do not?

Mr. LUMRY. They have terminal inspection.

Representative WILLIAMS. Then that is the only kind of inspection they have?

Mr. LUMRY. Yes; either post-office terminal inspection or inspection at the express terminal or freight terminal.

Representative WILLIAMS. What kind of inspection takes place at the express or freight terminal?

Mr. LUMRY. The inspection is in some ways more thorough. We ship a lot of things by express. The express company has a certain

responsibility for delivering this merchandise to the customer, that is, if the thing is unnecessarily delayed we file a claim with the express company and try to collect our money. So that the express company does everything they can to expedite the handling by the inspector at the terminal, and they will let these inspectors go in anywhere and inspect, which is perfectly satisfactory with us. The express company, in order to avoid claims for damage, and so forth, will cooperate with the inspector by providing the necessary string, and so on. So far as I can remember, we have never had a complaint from the customer due to mishandling of express shipments that have been inspected at a terminal. They have more facilities for handling, and the shipments are larger, and I suppose that, unconsciously, the inspector pays more attention to the larger shipment than he does to the small shipment. That is the only way I can figure it out.

Representative WILLIAMS. In these States where they do not accept your certificate and you want to send a small package such as you have indicated there, by mail, are those inspected at all?

Mr. LUMRY. You mean in the States that do not have terminal inspection?

Represenative WILLIAMS. Yes.

Mr. LUMRY. No, sir.

Representative WILLIAMS. Then there is such a thing as those going through without any inspection at all, all the smaller articles.

Mr. LUMRY. Yes, sir; even the larger ones.

Representative WILLIAMS. And where they do not have the postal terminal?

Mr. LUMRY. We can ship a truckload or trainload into Missouri and it will never be inspected but in some States we can't ship 25 cents' worth without being inspected.

Representative WILLIAMS. But, of course, Missouri accepts your word.

Mr. LUMRY. That is right.

Representative WILLIAMS. Now, I am talking about the States that do not accept it.

Mr. LUMRY. They require that we go through the formula of putting on a special tag that is supposed to be a notice to their customer that we have complied with their laws. The special tags were referred to by Dr. White in his testimony. That is, we file our certificate—just for example, the State of Oklahoma then gives us authority to print the special certificate and attach it to each package, and that is this certificate here, and on an Oklahoma package, each package has four stickers, and this is supposed to be a notice to the Oklahoma inspector that we have complied with the Oklahoma law, and while he has the privilege, if he can find the package in the post office or in the freight office, there is nothing to prevent him from inspecting if he wants to. As a general rule, they don't. They will accept our certificate plus their own State certificate. The same thing applies in Wyoming and a number of other States, such as Texas, that require a special State tag in addition to our Iowa certificate.

Mr. DONOHO. With reference to this Federal statute that authorizes post-office terminal inspection, as I understand it, Mr. Lumry, it requires the State enforcing such inspection to supply to the Secre-

tary of Agriculture a list of plant and plant products that it intends to inspect. Now, are these lists specific or general in character?

Mr. LUMRY. I have here a reprint of a notice which appeared in the postal bulletin of June 20, 1939. Picking out at random most any of them, here is Mississippi, Louisiana, District of Columbia, Utah:

All florists' stock, trees, shrubs, vines, cuttings, grafts, scions, buds, fruit pits, and other seeds of fruit and ornamental trees and shrubs, and other plants and plant products in the raw or unmanufactured state except vegetable and flower seeds.

So that they have set up post-office terminal inspection on everything in the list from A to Z with the exception of flower seeds, which of course are not nursery items.

Mr. DONOHO. Would you please explain, Mr. Lumry, how these requirements influence your retail mail-order business?

Mr. LUMRY. In the first place, they put a burden of expense on the shipper, because any reputable shipper has to guarantee to the ultimate consumer that they will receive a plant that will grow. That is, if the customer sends in 25 cents or $2 or a dollar and a half, she expects to get back something she can put in the ground and that will grow, so that when the plants are subjected to post-office terminal inspection, if they don't grow then the customer naturally and properly complains to the firm from whom she bought this stock, and then we have to go ahead and make another shipment, which is subjected to the same treatment and which in a large number of cases is also dead when it gets to the customer. We have instances where the third and sometimes the fourth replacement is made before the customer finally gets a plant that she can plant and have any results.

Mr. PIKE. It is pretty late in the season by then, I should think.

Mr. LUMRY. And then it is late in the season; yes.

The other customer, who gets disgruntled and disgusted, will demand a refund of her money, so we have gone to the extent of shipping the stock, supplying it and paying the postage and all these things; and then, in the final analysis, we have to give her back her money. That is very unsatisfactory, not only from our point of view, but for the catalog company. For example, we ship a lot of orders for Montgomery, Ward & Co. The lady sends in and buys a couple of rose bushes. Naturally, it is understandable that the women like roses and they will pay more attention to a couple of little rose bushes than to something that might be worth $10 more, so they send in for these rose bushes to Montgomery Ward & Co. and we send them out. We try to give her good bushes because we want her order again next year. And she gets the bushes after they have gone through terminal inspection and they die, and she writes to Montgomery Ward & Co. and tells her story and asks for another plant, and Wards send it to her, and that keeps on indefinitely.

And while that goes on and the lady doesn't have the rose bush, in the meantime the man of the house wants to buy a tractor or wants to buy a hundred dollars' worth of fencing or a roof for the barn or something else, and he says, "Well, gosh, I don't know; giving me such bad service on these rose bushes, I don't know whether I want to buy anything there. Let's buy from their competitor." And thus it adversely affects their business as well as our business.

Mr. DONOHO. Have you finished with this explanation?

Mr. LUMRY. I believe so; yes, sir.

Representative WILLIAMS. You gave the percentage of the business that you ship out of the State?

Mr. LUMRY. That is right.

Representative WILLIAMS. That is your business?

Mr. LUMRY. That is right. That is not our business—well, yes and no. It is business that we ship for these other firms. We make the shipments. It is our business from the wholesale view, but someone else retails it.

Representative WILLIAMS. I understand it is the business that goes out of your plant and you get the money.

Mr. LUMRY. We get the wholesale value of the stock; yes.

Representative WILLIAMS. Have you any figures showing the percentage of business that is done on that line in the nurseries; I mean throughout the entire country?

Mr. LUMRY. No; I don't have any figures.

Representative WILLIAMS. Yours would be, of course, much larger, would it not, than the average?

Mr. LUMRY. Yes; we are larger than the average.

Representative WILLIAMS. I mean of that kind of business going out of the State. Interstate business in your State would be larger than the average nursery business, wouldn't it?

Mr. LUMRY. Yes; I think so.

Representative WILLIAMS. But you haven't the figures on it?

Mr. LUMRY. No.

Representative WILLIAMS. I am interested to know what part of the nursery business is carried on between the States as compared with the local consumption.

Mr. LUMRY. I have an opinion, but it is not supported by available facts. It is only an opinion that is based on observation. I heard Dr. White express an opinion that at least 50 percent was handled in interstate commerce, and I believe that the doctor was very conservative, for this reason, that in addition to the business that I am particularly interested in with our company, we are one of the larger wholesale nurseries. That is, in another department of the business we sell at wholesale in 42 or 43 States, I don't know exactly, but we distribute all over the country at wholesale, and the people we sell this merchandise to, that is all in interstate commerce, of course. The people we sell the merchandise to may be landscapers or they may be landscape architects, they may be local nurseries, but even though they are not in interstate commerce themselves, the merchandise that they are selling has largely been handled in interstate commerce before they got it, so I think that Dr. White was quite conservative in his estimate of 50 percent, because the technical knowledge required to grow nursery stock is so great that only a comparatively small number of nurseries pretend to grow their own merchandise. It is a highly technical business, so far as equipment and years of knowledge are concerned.

(Representative Williams assumed the chair.)

Mr. DONOHO. Mr. Lumry, you are doing what might be called a wholesale business?

Mr. LUMRY. Yes, sir.

Mr. DONOHO. Now with respect to your retail outlets, do any of these refuse to accept business from States requiring post-office-terminal inspection?

Mr. LUMRY. Yes, sir; I have here a Berry seed catalog of Clarinda, Iowa. That is one of the firms we have served for a good many years. On page 7 of their catalog they state:

> We do not ship strawberries or nursery stock to Arizona, California, Florida, Idaho, Nevada, Oregon, or Washington.

Other firms, the Earl E. May Seed Co., which is affiliated with our firm, endeavor to control that in two different ways. In the first place, they purge their mailing list. They don't knowingly send catalogs into these States. They destroy the names. If they run an advertisement in a national magazine and secure orders from these States, they sometimes ship them and sometimes send back the money and say, "We can't fill the order."

Mr. DONOHO. I have no further questions to ask, Mr. Chairman, but I believe the witness has some recommendations he would like to offer.

Acting Chairman WILLIAMS. We are always glad to receive these remedies for all these troubles. We would be glad to hear from you.

Mr. LUMRY. In regard to the post-office terminal inspection, which upsets us probably more than any one thing, we think it would be very desirable if some arrangement could be made whereby the lists could be confined to material which is known to be injurious to agriculture in the State to which it is being shipped.

Acting Chairman WILLIAMS. Do you think it would be a good idea to repeal the law altogether?

Mr. LUMRY. That is what we would like, sir. That would be the simplest solution, and quite effective, too.

But, if the States are going to have this post-office terminal inspection, we feel that it is no more than fair to the shipper and to the consumer, who after all is one of their own citizens, that the inspectors be provided with proper facilities and proper materials so that they can repack this material and get it back to the customer in good shape, and that there be sufficient inspectors—we have had cases where the packages were held up for 30 days waiting for this terminal inspection. Of course it was valueless when the customer finally got it.

It would seem that they could be required to inspect promptly and provide the proper facilities for efficient re-packing.

And about the duplicate invoices and special tags and this other rigmarole, it would seem that it should be sufficient for us just to put our tag on here. After all, it is not reasonable to assume that a postal clerk or an employee of the express company or railroad is going to take the time to read all this fine print. It is of no interest to anybody except the inspector in the State where the stock is consigned. All the State would have to do would be to give their inspectors a typewritten list saying that the Mount Arbor Nurseries is accredited in the State of Oklahoma, Montana, or Wyoming, and then all this fellow would have to do would be to reach in his pocket and get this little list, see that we are accredited and that would answer the same purpose as these tags we have to put on.

Mr. PIKE. Of course it is quite a problem just to find the postage stamp on there.

Mr. LUMRY. We really don't object to the postage. We get a lot of value for that. We get pretty good service out of the postage. Other than that I don't think we have any specific recommendations.

Mr. PIKE. What is the trend on this sort of nuisance stuff? Is it getting worse, do you think, or do you see any improvement in the last several years?

Mr. LUMRY. Oh, it is one of those things, you know; it changes from year to year.

Mr. PIKE. Which way?

Mr. LUMRY. Sometimes good, sometimes bad. We may have an entomologist this year that is very reasonable and everything goes along fine. Next year we have an entomologist who is obsessed with fears of hosts of this and that and the other and then he clamps down and we are in hot water again so long as he is there. But I think, in general, the trend is for closer cooperation due to the work being done by the various Plant Boards in their endeavor to iron out a lot of these things that they themselves realize.

I had a letter from a State the other day. They sell us special inspection tags. Tags are hard for us to handle because on little packages like this, we have no place to stick a tag and have to use string to get it fastened on. I asked permission to print up some labels like this at our expense. The entomologist wrote back a nice, courteous letter and said, "I agree with you perfectly; you should have that permission, but we can't give it to you on account of our archaic law." I think that was the word she used. They had been trying to change it and hadn't been able to get it changed. But there is a definite trend I think on the part of the plant boards to simplify this thing as far as they can, but unfortunately it seems to be a very slow process.

Acting Chairman WILLIAMS. Does Iowa accept the plant inspection of other States?

Mr. LUMRY. Yes.

Acting Chairman WILLIAMS. All of them?

Mr. LUMRY. Yes; if a nurseryman from another State has his license revoked or anything like that, then of course Iowa wouldn't accept his shipments, but Iowa doesn't require any special tags. The only thing Iowa requires is this certificate here from shipper's home State.

Acting Chairman WILLIAMS. That is a certificate showing his inspection?

Mr. LUMRY. That he is in good standing in his own State, that his plant material has been inspected and found apparently free from all injurious pests.

Acting Chairman WILLIAMS. Do you think that is a desirable situation for the country at large?

Mr. LUMRY. Well, we don't worry about it, and most of the Middle Western States don't worry about it because we have sufficient confidence in the entomologists. If you could see how they inspect our nursery you would feel it was sufficient. The entomologist comes in with three and four trained men and spends several weeks walking up and down the rows of nursery stock and examining the plants. Some varieties are inspected at two or more different times during the year; other varieties are inspected in the fields and then again after being placed in storage.

Acting Chairman WILLIAMS. I mean you think the inspection services throughout the country are satisfactory and sufficient to prevent the spread of plant disease and pests?

Mr. LUMRY. In general, of course, it changes. The caliber of the men changes, but I think in general they are very well qualified.

Acting Chairman WILLIAMS. That is all; thank you.

(The witness, Mr. Lumry, was excused.)

Acting Chairman WILLIAMS. The committee will stand in recess until 10:30 in the morning.

(Whereupon at 4:50 p. m. the committee recessed until the following day, Thursday, March 21, 1940, at 10:30 a. m.)

INVESTIGATION OF CONCENTRATION OF ECONOMIC POWER

THURSDAY, MARCH 21, 1940

UNITED STATES SENATE,
TEMPORARY NATIONAL ECONOMIC COMMITTEE,
Washington, D. C.

The committee met at 10:40 a. m., pursuant to adjournment, on Wednesday, March 20, 1940, in the Caucus Room, Senate Office Building, Senator Joseph C. O'Mahoney presiding.

Present: Senator O'Mahoney (chairman); Representatives Sumners (vice chairman), Reece, and Williams; Messrs. Kades, Pike, and Brackett.

Present also: W. S. Whitehead, Securities and Exchange Commission; Frank H. Elmore, Jr., Department of Justice; D. Haskell Donoho, associate attorney; Dr. Frederick V. Waugh, head of Division of Market Research, Department of Agriculture; and Paul T. Truitt, chairman, Interdepartmental Committee on Interstate Trade Barriers, Department of Commerce.

The CHAIRMAN. The committee will come to order, please.

Mr. DONOHO. Mr. Chairman and members of the committee, today witnesses will testify on the effects of trade barriers in a number of unrelated but important fields.

Mr. Carter, will you come forward, please?

The CHAIRMAN. Will you be sworn, Mr. Carter, please? Do you solemnly swear the testimony you are about to give in this proceeding shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. CARTER. I do.

TESTIMONY OF G. S. CARTER, DIRECTOR, SCHOOL, COMPENSATING AND SEVERANCE TAX DIVISIONS, NEW MEXICO BUREAU OF REVENUE, SANTA FE, N. MEX.

The CHAIRMAN. You may be seated.

Mr. DONOHO. Will you state your name and address, please?

Mr. CARTER. My name is G. S. Carter. My address is Santa Fe, N. Mex.

Mr. DONOHO. Whom do you represent, Mr. Carter?

Mr. CARTER. I represent the Honorable John E. Miles, Governor of New Mexico, and I also have served as the chairman of two meetings of the Rocky Mountain States on this subject.

Mr. DONOHO. The subject of trade barriers?

Mr. CARTER. Yes, sir.

Mr. DONOHO. Mr. Chairman, Mr. Carter has a statement he wishes to make.

The CHAIRMAN. Proceed, Mr. Carter.

TRADE BARRIERS RELATING TO STATE PROBLEMS OF FINANCE, HIGHWAY CONSTRUCTION AND MAINTENANCE, AND PUBLIC SAFETY [1]

Mr. CARTER. Attendance at, and experience with, trade-barrier conferences has taught me that enthusiasm and emotion often control the statements made by those who discuss this important subject. My testimony will differ from others who appear before this committee. Some enthusiasts will undoubtedly label my argument a defense of trade barriers. It is therefore necessary, at the outset, that I emphatically state my position by saying that there is no defense for actual discriminatory barriers to trade between the States. There is definite need, however, following the sound reasoning of Honorable Lloyd C. Stark, Governor of Missouri, who has distinguished himself in trade-barrier study, to draw the line between discriminatory barriers and necessary domestic taxation and regulation. In my opinion, there has been entirely too much emphasis upon generalities and too little realistic consideration of the specific enactments which are, in fact, barriers. Many necessary and proper State enactments have been caught in the general sweep and have been condemned as barriers to trade.

My objective is to encourage the elimination from discussion of those measures which are not trade barriers so that true emphasis may be applied to those measures which really are. Governor Stark's comments, made after he discussed the trade barrier subject in general, are worthy of the following quotation. I quote Governor Stark:

> Please do not misunderstand me. Many of these regulations are perfectly legitimate, and serve a useful purpose.
>
> The most ardent advocate of free farm trade between the States would not criticize inspection laws set up in accordance with the code devised by the United States Plant Board.
>
> There is another misconception which frequently arises in a discussion of trade barriers. It is the tendency to confuse legitimate taxation of certain kinds of common carriers with those objectional fees levied purely to increase the cost of the products being hauled across State borders.
>
> I can clarify the point by quoting from the committee reports of the National Conference on Interstate Trade Barriers held in Chicago last April. I had the honor of delivering the keynote address at that meeting.
>
> The Committee on Taxation recommended—

Governor Stark quotes—

> "That out-of-State users be taxed at no higher effective rate for the use of public highways of the taxing State than is imposed on domestic carriers of that State. A parity should be established between domestic and nonresident users of highways no matter whether gasoline tax, license, ton-mile, or combination of such taxes is utilized."
>
> That recommendation is fair enough. It presumes that domestic truckers will not have imposed upon them a trade barrier tax, and therefore out-of-State truckers taxed on the same basis will not be discriminated against.
>
> It is a mistake, too, to assume that any bonding charge placed upon merchant truckers is a form of trade barrier. The Committee on Agriculture clarified this point in its report.

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[1] This subject resumed, infra, p. 16001.

Governor Stark quotes—

"The Committee on Agriculture concluded that regulation, licensing and bonding of the occasional trucker or merchant trucker is necessary and desirable. On the other hand, excessive license fees and restrictive regulations as well as preferential treatment to local interest appears to set up unnecessary and burdensome restrictions on local and interstate commerce. The public interest demands that truckers be given a place in the market."

Governor Stark still speaks [continuing]:

I cite these findings in support of my contention that we must guard against confusing unnecessary trade barriers which hamper business with those reasonable taxes and fees which every form of private enterprise is called upon to contribute to the operations of county, state and federal government.

It should be realized that for more than 150 years the United States Supreme Court has been charged with the responsibility of interpreting and applying the commerce clause of the National Constitution. That eminent body has been conscientiously and intelligently examining various State enactments to determine which of them exert undue interference with interstate commerce, and discrimination by one State in favor of its own citizens and against those of another, or in favor of its own products and against those of another State, has been legally condemned by the Supreme Court during all this time. In all probability, the real and practical place for testing the identity of a given statute as to whether or not it actually is a barrier is in the duly and properly constituted courts of the land. Almost all of the laws referred to as examples of barrier statutes come from the exercise of the taxing power or the police power of the State in which they are found, and the principle upon which almost all of such statutes are based has been held valid and proper under the commerce clause, equal-protection clause, and due-process clause of the Constitution. If a given statute is an infringement of the commerce clause it is invalid and can be promptly nullified by orderly procedure in the proper way.

Mr. PIKE. At that point there is room for some disagreement, I think. Some of the Justices on the Court have pretty clearly stated that they didn't think that that probably ought to be used as the sole criterion of barriers. In other words, I think the statement, if I remember the substance of it, was that these could only be brought up to them in particular piecemeal ways and they felt that the real onus of either establishing or erecting barriers ought to be left to the States themselves. I can't quote the citation, possibly counsel has it.

Mr. DONOHO. The case has been given. I don't recall the exact citation. It is on the record.

Mr. CARTER. I think that is true. I think your point is well taken.

Mr. DONOHO. The case is *McCarrol* vs. *Dixie Greyhound Lines.*

Mr. PIKE. It tends in some instances to differ from this statement.

Mr. CARTER. I think all of the recent dissenting opinions have recognized the existence of various trades and have made the very point that you make here.

It must, therefore, be admitted that any statute charged with being a barrier to interstate trade is one which has for its real purpose the proper exercise of the State's reserved power and whose effect on interstate commerce is incidental to its real purpose. In other words, a statute, to be a trade barrier, must be constitutional, yet operate as an impediment to trade between the States. This is

true because the remedy to the evils complained of is purely legislative. Surely there is no need for Nation-wide agitation against statutes which are in violation of the commerce clause, because such acts are already outlawed and the remedy is plain, speedy, and adequate.

Mr. PIKE. Again, on that same point, in my State of Maine I think we have a law prohibiting the export of electric power from the State, and if my memory is at all correct, it dates back to around 1906. I don't think that law has ever been backed in the national courts. It may have been, but a quick look at it would make one think that it was almost surely constitutional, and yet in the absence of having been taken up to the Supreme Court it still is, and for the last 34 or 35 years has been, on the statute books, and operates as a distinct trade barrier, and will do so until it is decided whether that law is or is not constitutional. In other words, the effect of it, whether or not it is constitutional, is that of a strict trade barrier, and, as far as I know, there is still no movement to take it up to the Federal courts to see where it stands. There may be, and there probably are, in other States things of the sort, and there certainly must be, in some of the States, laws which between the period of their passage and their being challenged in the courts operate as trade barriers, and that period might very well be as long as 33 or 34 years, or in this case 34 or 35 years. It doesn't seem to me one can draw an exclusive distinction that only those that are constitutional can be trade barriers. In effect they certainly act as trade barriers until the thing is determined.

Mr. CARTER. What I meant to convey was that that very kind of a condition that you point out could be instantly taken to the Supreme Court and could be determined as to what that body thought of that law. Then you would get right back where we always do on these things, that it dealt with a specific point and didn't give you a general definition after all. That is the tragedy of that.

The commerce clause prohibits undue burdens on interstate commerce, yet laws which actually do burden or interfere with such commerce are valid if their real purpose is the exercise of the State's police power or taxing power or possibly the sovereign power of the State in the protection of its own property. However, under the decisions of the courts, if such statutes are to be valid, it must be clear that their real and true purpose is the exercise of such powers, for if their pretended purpose is the exercise of such power while their real purpose is to burden or prohibit commerce between the States, they are invalid under the law.

The CHAIRMAN. Wouldn't it be proper to say that laws or enactments of this character are really trade barriers, while constitutional enactments, though they may have the effect of impeding trade, are actually not trade barriers?

Mr. CARTER. I think that is true.

The CHAIRMAN. That is not what I understood you to say.

Mr. CARTER. Then, I didn't understand what you said, Senator.

The CHAIRMAN. As I followed our original statement here, you said, "In other words, a statute to be a trade barrier must be constitutional." I am asking if the reverse isn't actually the case. If a State enacts a constitutional law for a proper State power in the exercise of its reserved power, though the effect of that statute may be in-

deed to throw up some obstacle to trade, can it properly be called a trade barrier, since it is a constitutional exercise of State power for a proper purpose? While, on the other hand, the exercise of restrictive power under color of the Constitution for the purpose of actually impeding trade, whether it be on the border line or actually unconstitutional, would, it would seem to me, be more properly called a trade barrier than the other.

Mr. CARTER. My thought is, as I express it later on, that undoubtedly there are laws on the books that do act as barriers to trade in the sense that all taxation does, and the measure is whether or not the good done for the State itself or its people outweighs the harm done by the existence of the trade barrier.

The CHAIRMAN. Well, we are striving to reach a definition of what may properly be called a trade barrier. My conception of it—of course, I am just listening to the testimony here—is that a trade barrier is an enactment designed for the purposes of obstructing trade from another State coming into the State in which it is enacted, an enactment which is carried out under color of constitutional right. That, I would judge, could properly be called a trade barrier, but if a State enacts a constitutional statute for purposes of inspection in the exercise of police power or in the exercise of any other reserved power for the purpose of proper State objectives, that, it seems to me, could not properly be called a trade barrier, even though it might have the effect of obstructing trade. Of course, this is just a matter of opinion.

Mr. CARTER. I think we agree, because I know that is what goes through my mind—whatever I put on my paper, at least, that is what goes through my mind about it.

Representative WILLIAMS. Let me ask you a question also. There may be many laws passed by the State under the police power or under inspection, under the constitutional powers, which are entirely valid and constitutional, and at the same time might place a very serious restriction on interstate commerce, might it not?

Mr. CARTER. I think that is true; yes, sir.

Representative WILLIAMS. And after all, it is very difficult to tell what is an undue restriction in interstate commerce. It seems to me, as I have stated before, that there is a conflict of authority there of the Federal Government and the State authority with reference to the exercise of police powers.

Mr. CARTER. I don't think there is any doubt about that; when we read practically all court decisions on this subject there is a wide difference of opinion within the personnel of the Supreme Court on that very point, and your point is very well taken—where one sees it as a constitutional measure the other one looks on it as a violation of the spirit if not the letter of the Constitution. I think that is very true.

Mr. PIKE. There seems to be a fair-sized vacancy strip, a no-man's land, which one may occupy part of or perhaps almost all of, until the other one comes in and says, "Well, you are on my territory," and then a dispute arises.

Mr. CARTER. That is right; and at least we have observed in our own State that the result of a public discussion of this very important subject has been very helpful in correcting some of our own

State statutes and in the enactment of some new ones. I know in the last legislature we had two or three examples come up where the trade-barrier aspect presented itself and either the legislation did not pass it or it was greatly minimized. I know in the adoption of our so-called compensating tax, which is a supplement to our sales-tax law, the Governor made it a point, as a result of the information that had come to him from various avenues, to ask this question of a senatorial and house committee: "Has the trade-barrier aspect been removed from this law? If so, I will sign it."

It took them an hour to convince him, but they finally pointed out that they had given full credit for the payment of sales taxes in other States, and that generally comes within the pale of the approved kind of use tax or compensating tax law.

Mr. PIKE. Of course, beside the question of power there comes the question of just plain legislative good sense.

Mr. CARTER. That is right.

Mr. PIKE. To which one must really go back in the long run? If there are certain places where the complete exercise of the power would result in evil probably for all concerned, that must be true.

Mr. CARTER. It must be true.

Mr. DONOHO. To return to the relationship between trade barriers and constitutionality, don't you think it might be well for you to clarify your position a little better for the record? I am thinking now of the twenty-first amendment. It is undoubtedly true, I suppose, that a State could exclude all out-of-state liquors from coming into the State under that amendment, is it not?

Mr. CARTER. That is my interpretation of the twenty-first amendment; it gives the States very broad and specific powers on the control of liquor.

Mr. DONOHO. And such exclusion would unquestionably be constitutional?

Mr. CARTER. I think it would.

Mr. DONOHO. Do you think such exclusion would amount to a trade barrier?

Mr. CARTER. Yes; it would.

The CHAIRMAN. Of course, there again it depends upon what you mean by a trade barrier. I think I would like to know what counsel has in mind as a trade barrier.

Mr. DONOHO. I wanted the record to show what the witness considers as a trade barrier.

The CHAIRMAN. Am I to understand you don't want the record to show what counsel considers a trade barrier?

Mr. DONOHO. I apologize if that was the impression——

The CHAIRMAN. Of course I know that was not the case.

Mr. CARTER. May I read into the record at this point a definition of a trade barrier?

The CHAIRMAN. Fine.

Mr. CARTER. I have a kind of fatherhood of this particular definition, of which there are many, but I presented this at a meeting of the Western States Trade Barrier Conference at Denver, and it was adopted unanimously as a pretty good idea of what a trade barrier is:

A trade barrier is a State law or regulation that deliberately discriminates against the products or services of units of society of another State, it being recognized, however, that domestic taxation and regulation essential to the

maintenance of State government and public health and safety can and must be applied to interstate commerce without discrimination.

Later on I am going to ask to put into the record those resolutions adopted at Denver.

The CHAIRMAN. Mr. Carter, I am sorry that those two signals indicate that a quorum is being called in the Senate, and a question of real importance is coming up there today having to do with the treatment of sugar. That may or may not be another trade barrier that we have got to act upon immediately. I am sorry I am not going to be here to listen to the rest of your statement and participate in what I can see from your testimony so far will be a very interesting discussion.

(Representative Williams assumed the Chair.)

Mr. CARTER. Thank you very much for your courtesies extended to the Governor and myself, Senator.

Since the efforts to remove trade barriers are sincere, and would not have for their purpose remedial legislation when there is an existing remedy in the courts, we must assume that the barriers referred to are not those enactments which are, in themselves, unconstitutional. To apply the converse, since a statute complained of must be one which does interfere with interstate commerce, and to be constitutional, must have been enacted under the police, or taxing, or sovereign power of the State, the entire field of controversy or consideration is therefore narrowed down to a balancing of the public's interest between the profit or gain it may derive from the free flow of commerce, on the one hand, and the injury that it may sustain through the loss of its revenues, or the infringement of public health, morals, welfare, or sovereign property on the other hand.

In identifying a statute which is in fact an improper barrier to interstate trade it must be found:

First, that it actually does restrict or impair the free flow of commerce between the States;

Second, that it discriminates against the persons or products of a sister State and in favor of the persons or products of the home State;

Third, that it is valid under the constitution and cannot be nullified in the courts.

Mr. PIKE. On that place, I guess we would have to take those few exceptions.

Mr. CARTER. Yes, we would; and fourth, that the enactment is not really necessary for the protection of property owned by the State, for the preservation of its revenue or for the protection of the peace, health, morals, or welfare of its citizens, or that the benefit gained by such protection and preservation is outweighed by the profit or gain which would accrue to the State or its people if such protection were waived.

In my opinion, all four of these questions must be resolved in the affirmative in order to find any given enactment to be a "barrier to interstate trade," and thus a proper subject for consideration.

Mr. ELMORE. Mr. Carter, referring to these four criteria, is it your contention that certain barriers may be proper?

Mr. CARTER. We get there into what is a barrier. I subscribe to the thought that you might have barriers to trade that would be proper, but we would have to measure, then, as I point out here in

the last thing, whether or not the public harm or the public good was to be considered. I don't think there is any doubt but that we do have things that suggest a barrier to trade. I have on a suit of clothes that cost me so much money. In it are a lot of taxes down through the whole manufacturing-distribution method and it took me a little bit longer to decide to pay what I did for it than if the taxes hadn't been there. I think the barrier to trade thing is always present wherever there is a tax dollar present.

Mr. ELMORE. Would you consider an example of proper barrier legislation would lie in the burdening of interstate trade which arises from the nondiscriminatory diversity of statutory provisions of the several States?

Mr. PIKE. Perhaps you have missed some of the earlier testimony, but there are cases, let's say in motor trucking, where you might go across six States, each one having a statute that on its face seemed quite reasonable, but the poor motor trucker having gone across the six, he has had to pay out pretty nearly the cost of his motor truck, and the cumulative effect of them has been a barrier and to that fellow it seems an unreasonable barrier when perhaps none of them in themselves could be called unreasonable.

(Representative Sumners, the vice chairman, assumed the Chair.)

Mr. CARTER. That brings up the question of flat annual fees, and for the purpose of the record I might just read this in:

> Flat annual fees for the use of highways by trucks are sometimes complained of as barriers for trucks which make only occasional trips. Most states now have laws which give non-resident truckers the privilege of short period use of roads in payment of a fraction of the year's fee such as one-tenth or one-fifth of the fee, and so forth. A plan was discussed at our last conference at Santa Fe whereby interstate carriers could buy trip permits good for five days in exchange of, say, 3 per cent or 5 per cent of the annual fee, with the provision that receipts for the payment of such fees could be used as credits in payment for the full fee. In this manner, a non-resident would never be required to pay more than a resident.
>
> However, flat annual fees are assessed by the states in preference to toll charges because of the difference in administrative and collection costs. Registration fees are in the nature of stand-by charges, and as the Supreme Court held in the *Aero Mayflower* case against *Georgia*, 295, U. S. 285, if the fee is reasonable for the privilege granted the taxpayer has no cause for complaint if he does not elect to make full use of the privilege he buys.
>
> Although registration fees for the bigger trucks may appear to be large in some instances, it should be borne in mind that the state is obliged to invest substantial sums to make its roads and bridges suitable for the heavier units. The investment is there whether it is used or not. In the same manner, when you go to the theater your ticket pays for the whole show and you can't expect a discount because you only want to see one of the acts. Many of the states feel they have too much money invested in roads to adopt a "no cover charge" policy.

I am somewhat warped in talking to you as a westerner, because we have a tremendously large State with a very small population and very little tax-income sources. I wouldn't want to say that we had dried all of the sources of revenue, but we are at that point where the taxpayer feels very unhappy about it, and I think that is general in the West, and I think later on in my paper here I will develop that question of why we do some of the things we do out there because we are just simply not in a position to do otherwise.

Mr. PIKE. But it still remains that it is pretty tough for the man who may have to pay six of those things in 2 or 3 days.

Mr. Carter. It is tough. We have suggested, or it was discussed, that possibly trucks could come into a State, say within 25 miles, and then report to the county treasurer and get a sticker and keep that thing in a receipt form until he finally got his full fee paid, and I think there is a general unanimity of thought that the thing you are talking about is very cockeyed. I think that is very true.

The Rocky Mountain States, comprising New Mexico, Arizona, Texas, Oklahoma, Kansas, South Dakota, North Dakota, Wyoming, Colorado, Utah, and Nevada, have just completed their third conference, sponsored by the Colorado Chamber of Commerce, on the subject of trade barriers; and while actual results await legislative action at the next sessions of the various legislatures, probably more progress has been made by this group than by any other in actually determining whose barriers to trade are destroying what interstate business. There is woeful lack of actual evidence of existence of true barriers of the discriminatory type.

May I just make this observation to you: In this last meeting we had up for discussion the New Mexico oleomargarine law, and it developed that it was not a trade barrier. The reason it isn't a trade barrier is that that law was so written that it did not discriminate against the Texas cottonseed oil—we are a cotton State ourselves—but it did discriminate against coconut oil from Hawaii; and we devoted one-half hour as to whether or not we still were not discriminating against trade by building up that kind of a situation against one of our possessions.

Mr. Pike. You say Hawaii being a Territory it wasn't an interstate barrier. It is a little technical.

Mr. Carter. That seemed to get rid of it, but now we are on all the maps that they distribute in their trade-barrier arguments as having a trade-barrier law that does set up a barrier to trade within the States, and actually any kind of product made in the United States come in O. K. under our oleomargaine law, but we do step out and say something about coconut oil.

Most of the Western States have kept pace with the Eastern States and the Federal Government in meeting the demands of the people for governmental service, and in so doing have obligated themselves to tax programs that make necessary the actual enforcement of their various tax laws. Taxing fixed property is one thing—the ad valorem tax system takes care of that, in the main. Taxing mobile property and privileges and transactions presents an entirely different problem—one that must be handled through the imposition and collection of excise taxes. To impose an excise tax is a simple matter. To collect an excise tax from all upon whom it is imposed is a most difficult administrative function. Those who own real or fixed property located in the taxing State must pay both the ad valorem and the excise taxes or lose their real property through tax lien and sale. The nonresident operator, whose property is mobile or intangible, can pay the excise tax voluntarily or make the State tax collector chase him down.

Too many nonresident businessmen took the "chase me down" attitude, and as a result the much damned and discussed ports of entry came into existence. These ports of entry, so-called, got away to a bad start. In some instances little men, with no instruction and an exalted opinion of their personal and official importance, acted like "the dead-end kids" until the legislatures could meet and make the

necessary adjustments in the laws that created the port-of-entry system. Today's ports of entry are mere registration stations, at which trucks report for inspection and taxation purposes, and at which, in some States, all vehicles report to agricultural inspectors to prevent the spread of animal and plant diseases.

Mr. ELMORE. Mr. Carter, in this discussion of ports of entry you have stated that in some States all vehicles must report at ports of entry to agricultural inspectors for the purpose of preventing the spread of animal and plant diseases.

Mr. CARTER. Yes, sir.

Mr. ELMORE. Previously you stated there is a lack of actual evidence of true barriers of the discriminatory type in the Rocky Mountain States.

Mr. CARTER. I used the word "woeful" lack. I had that objective in there, anticipating that question.

Mr. ELMORE. Let me ask you if in this practice of inspecting to prevent the spread of animal and plant diseases there are levied any registration fees, inspection fees, license taxes, or quarantines on plants or livestock shipped into the State of New Mexico by nonresidents which are not levied on local dealers.

Mr. CARTER. We have no plant laws that I am familiar with. I am very lame on this particular point, it is out of my line, but I think that our quarantine law is set up as it applies to animals on the basis that if it has been inspected elsewhere, there is no other charge in New Mexico. During our last meeting at Sante Fe we had a wire from the sheep growers' association of our own State who were complaining that they paid a fee in New Mexico and then when they took that particular livestock into Texas there was another fee. I carried the things through by writing to the Texas commission, and so forth, and we had back an argument or a presentation from their attorney general's office, and then from their own livestock commission—I have forgotten the exact name of it—in which they set up a perfectly logical argument for this additional fee, but I certainly believe that if a State imposes any kind of a tax on any kind of a transaction or inspection or regulation, that there is some justification for, where it is strictly a fee, and a nominal one, that there ought to be some kind of a basis whereby one State can accept the other.

As the result of our last meeting in Sante Fe, very, very shortly we are to have a series of conferences with the State of Colorado on this subject.

I would like to say for this committee that it is very encouraging to those of us who are interested in the subject from either side to find that there is a tremendous and a very serious interest. We had this meeting in Sante Fe; there were 100 people there, and we had 100 percent attendance all the time, and it was strictly a desire to get it done.

Our big lack will be, as in your own instance, to determine the cause that the barrier was made, and if it is a barrier; and, third, how to get rid of it without destroying the State that did enact it in its certain power and certain regulaions.

Representative WILLIAMS. Do you find from your examination that there is a deliberate attempt on the part of the States to enact and enforce these discriminatory laws simply as a trade barrier, or is it

done in the interest of the public health, or for the purpose of obtaining the desired revenue to keep up their roads, and so on—a legitimate purpose, in other words?

Mr. CARTER. I would say that 95 percent of these things are gone into by the legislators always with an idea of protecting public health, public safety, or a revenue measure. I know out in our own part of the country that we have been so pressed for governmental income that we have adopted tax laws. Then the enforcement of those laws is becoming increasingly difficult because the taxpayer has more taxes to pay, and the desire not to pay them increases with the number of taxes that he does have to pay. It isn't a new thought to you gentlemen at all, but the multiplicity of taxes the taxpayer is faced with bothers him more than the tax-dollars he pays out, because in making up different kinds of reports, he oftentimes puts out more money in getting the reports ready than he does in the actual report he makes and the money he sends in.

Representative WILLIAMS. You don't think that these laws are inspired by the fact that other States pass certain legislation that seems to be discriminatory?

Mr. CARTER. May I say this to you—that we worked nearly 20 hours at this last meeting at Santa Fe. Every State presented its arguments against the other States, and I know, had I the transcript before me, that I could be verified by it that we had one such law discussed and admitted by the two States. Utah admitted that it adopted a retaliatory law against Colorado involving beer. Colorado said that only beer in such-and-such a size keg and one thing and another shall do this and shall do that. It simply froze out Utah. Utah went back home and said, "Well, we will adopt one now and keep out the Colorado beer," and that is the only one that we found.

Representative WILLIAMS. That is perhaps the only one that would admit it. You wouldn't expect them to openly admit it.

Mr. CARTER. I think the tone and the temper of that meeting was such that they would have; I really do.

It is important to note the difference between the so-called honor system of reporting taxes by resident and nonresident operators of mobile property and the more aggressive registration station method.

May I add to the record just this thought: The words "honor system" may not be understood, but as I was writing this up it came to my mind as a part of our Santa Fe discussion. The argument was made: Why couldn't they make reports and then have these reports checked? And it was called the honor system instead of checking at the time of entry. I mean by "honor system" the way we file our income-tax reports, and they are subject to future audit.

In every instance, without exception, the tax income derived by checking such operators as they enter the State has accounted for marked increases in the collection of the various taxes imposed by law on such residents and nonresidents.

May I say that not only ton-mile tax, not only license fees, but our sales taxes and other excise taxes that are normally difficult to collect from nonresident operators have shown increases under this more aggressive collection system.

The reporting of taxes on the so-called honor system entails the necessity for checking such reports after entry, both as to honesty

and accuracy of interpretation and remittance. There is definite necessity for checking such reports at the time of entry or thereafter.

My next sentence is subject to controversy: Experience has shown that less loss of tax revenue—there is no doubt about that—and less inconvenience for all concerned—that is the debatable point—is caused by making the check at the time of entry. There are some potent arguments on the point of theory that if a truck has to stop it causes considerable loss of time for both man and truck.

Mr. PIKE. What is the loss of time involved—if there is any such thing as an average on that.

Mr. CARTER. If the papers are in order and everything is made clear by the trucker who sends it out, it shouldn't take more than an average of, say, 5 to 10 minutes. You do have cases where eight or nine trucks hit a port at the same time.

Mr. PIKE. Within half an hour or more.

Mr. CARTER. Yes, sir.

Mr. PIKE. And then there might very well be cases where the truck man had filled in the papers properly or there might be cases where the administration might not be perfect.

Mr. CARTER. That is right.

Mr. PIKE. So really it might be an annoyance on both sides.

Mr. CARTER. Let me say this: The administrations of the ports of entry, using the language of the street, were put under such a tremendous amount of heat for a couple or 3 years that there isn't any Governor who doesn't personally go out and see that the administration is as near perfect as you can get human beings to do it, and we have a far different situation than we had in the beginning, because some of those boys did act like the dead-end kids; there's no fooling about that.

The ports of entry, or registration stations, or ports of welcome—call them what you will—came into existence as a necessary tax collection method both from a State tax income standpoint and from the viewpoint that those who were paying their taxes were entitled to an effort on the part of the State to equalize the tax load by catching their tax-evading competitors.

There was a meeting held at Salt Lake City during 1934, before we adopted our port-of-entry system, and it is interesting to note that witnesses here and others have referred to ports of entry as examples of trade barriers. I think they are trade barriers, dependent upon how they are administered and what the philosophy behind the law is and the attitude in lots of cases of the Governor of the State as to how much he insists on fair administration.

The New Mexico statute creating the ports of entry was enacted pursuant to the affirmative recommendation of the Western Truck Conference held in Salt Lake City in 1934. There were many, many truckers who were paying all these taxes, and they had lots of people in competition with them who were not paying them; and I don't say it as a defense of our action or as an argument that the truckers wanted this kind of a law, because that wouldn't be true, but there certainly were a number of men who recognized the necessity for some uniformity in the collection of these taxes, because by the time you add the ton-mile and the sales tax and the use tax and a few other taxes onto a trucker, if his competitor is not paying

those taxes he has got a very definite money advantage over the taxpayer.

Mr. PIKE. It is the old bootleg problem.

Mr. CARTER. That is the old bootleg problem, and we have increased so much of our gasoline-tax income through this system that we feel very, very friendly to it from that standpoint if from no other.

The VICE CHAIRMAN. There is probably no higher duty of government then to protect an honest individual against illegal competition.

Mr. CARTER. I think that is true. Our whole tax system—it isn't always politically popular, but we think it is sound business in New Mexico. We believe that the State owes the taxpayer all the services we can render him to have everybody pay on the same basis.

New Mexico and most Western States—and I ask your sober consideration of this thought, because to my mind here is our problem in the West—have always been obliged to tax the interstate income of its industries in order to meet their tax obligations. The intrastate income of the oil, potash, metal, coal mining, and railroad industries in New Mexico has always been less than the total amount of New Mexico, county, city, and State government taxes paid by those and other industries. One railroad that I think of, and I mention railroads only because this example comes to my mind, paid our State something like a million and a half dollars in taxes in one year, 1939. Their business within our State, intrastate, was considerably less than $900,000 for the same year.

Mr. PIKE. That is their gross business?

Mr. CARTER. Their gross intrastate business. That isn't the ticket they buy from Santa Fe to New York, but the ticket they buy from Santa Fe to Albuquerque, and all of that freight. We produce 100,000 barrels of oil in New Mexico every day. Less than 1,000 barrels are refined in New Mexico. It is all refined outside of our State, at the end of the pipe line. That means that 99 percent of oil corporations' revenue from oil production is interstate, and they pay one-fourth of all our taxes, all of our domestic taxes, and it really presents the basis of this statement.

The trade-barrier aspect has always been present, measured by the same yardstick today's trade barriers are accounted for, and yet these groups have never claimed and are not now claiming that that condition has erected barriers to their interstate trade. It is an interesting commentary that the groups who are most interested in this subject, from an economic and commercial viewpoint, can readily account for constantly increasing interstate business with and through the States under their attack.

My argument has had much to do with taxation and when the hide is pulled off the carcass, that is the heart of most trade-barrier discussion. The Western States are so situated that excise taxation is a necessity. Please consider the following tabulation of land ownership in certain States and you will readily appreciate the fact that there is not enough taxable real property available to create the income for today's governmental services.

When I say "governmental services," I mean to say that the people of New Mexico have the same viewpoint that the people of the State of New York have; they have sort of had a kind of unwritten agreement among themselves that all the people can get together and they

can afford anything as the collective whole, and they ask the Government to provide it, and then somebody has to pay the bill and that is where a tax collector comes in for a considerable amount of worry as to where to get the tax dollar with which to pay the bill to keep faith with the people who believe that the Government has advanced to the point that it can provide these services.

Mr. PIKE. Don't you suppose it might be healthier if you proved that it couldn't?

Mr. CARTER. I think it would, if you could. The tragic part about it is that we have all sort of subscribed to a belief in that, and I would like very much to lead that kind of thought if you can get somebody to listen to you.

The VICE CHAIRMAN. The notion of never opposing an appropriation and always opposing increase of taxation, unfortunately, is too popular.

Mr. CARTER. That is very true.

In Arizona, 75 percent of the land is owned by the Federal and State Governments, meaning it is not on the tax rolls; in California, 54.2; Colorado, 37; Montana, 50.8; New Mexico, 44; Nevada, 74; Oregon, 57; Washington, 39; and Wyoming, 51.

There is such a tremendous amount of our land out there that is on Indian reservation or national forests, and so forth, that when you go to tax an ad valorem tax, put an ad valorem tax on it, we simply run out of money with our present capacity for governmental services.

Mr. PIKE. Most of that land is of the sort that wouldn't stand much taxation anyway, though, isn't it?

Mr. CARTER. That is not always true.

Mr. PIKE. I realize it is not always true.

Mr. CARTER. Some of our best lands are in the Indian reservation country, and many of our national forests, if they were privately owned and they could have an income from timber, and so forth, would be taxable. I would say that in our own State, at least, we could materially increase our tax income from an ad valorem standpoint if we had it, but I am thinking of one county now. I think it is Sandoval County—yes; that is correct—which is nearly 85 percent Indian reservation, and it isn't an infrequent thing for the ad valorem taxpayers to come down and pay their taxes in advance of the time the tax is due, so that they can keep things going, because they have such a tremendous problem in their county situation.

The VICE CHAIRMAN. Is your tourist crop profitable up there by reason of these public lands, in your section?

Mr. CARTER. Very much so. I would say that if we didn't have Indian reservations and Indians we wouldn't have all the cars in Texas over there part of the months of the year. It seems that Texas kind of moves over en masse in the summertime, when it gets hot, particularly.

Mr. ELMORE. Mr. Carter, do you have any idea whether any considerable portion of these State-owned lands are owned by the State as the result of the inability of the owners of the fees to pay their taxes?

Mr. CARTER. Very, very definitely. In 1933 we were going into the real estate business so very fast in New Mexico that it was just one of those things that, if we hadn't stopped it, we would have been in the real-estate business instead of the business of State government, be-

cause it was coming in by the thousands of acres. In that connection there is a turn-over of our State lands. People are buying them. One man from New York recently came out and bought something like 375,000 acres at one lick. It was being rented for 18 cents an acre a year. I forget what he paid for it, but it is property on which you can put one cow to about 50 acres, so when you go to taxing that kind of property you still have a tax problem.

Mr. ELMORE. Would you say that most of it was unimproved property?

Mr. CARTER. I would say that it was; yes. It comes under the head of ranch property, and we have discovered oil on a great deal of it, for which the State government and everybody else is most grateful. The problem you refer to became so real that we adopted a constitutional amendment which said this, that after this becomes the law there shall never be more than 20 mills per dollar of valuation assessed on real estate in the future.

That was fine. It really stopped the slide, but that brought in the sales tax and the rest of them on down the line.

The VICE CHAIRMAN. May I ask you just one question, and I ask it seriously, with regard to these public lands. Do you have an opinion as to whether the revenue is greater leaving them public lands and open to visitors generally than it would be if they were privately owned lands and paid an ad valorem tax, or do you have an opinion?

Mr. CARTER. Well, I think that our tax income undoubtedly would be less if they were under private rules, measured as to how they are now being used, but I do believe that private ownership might build some camps and might build some facilities that are not now available to the public.

We have learned this. We have always had a very, very fine climate and very, very nice scenery out there, but until we got good roads nobody came out to see them. Now, as we open up new playgrounds and new places for the touring American to come to, our business is generally increasing, and I believe that with the turn in our economic picture, where we are coming into the tourist-trade class, which amounts to about $50,000,000 a year to us in gross income, we undoubtedly could make better use of those private lands in the years to come than they are now being made use of, both from a tax standpoint and also from the standpoint of people who might own them.

The VICE CHAIRMAN. I didn't mean to lead you too far afield, but I thought it was pretty important.

Mr. CARTER. The most potent argument offered by trade-barrier elimination enthusiasts is that nonresident truck operators should not be taxed, even on a parity basis with resident taxpayers. That presents the most dangerous aspect of this whole study, because, carried through to its conclusion, in order that equity may be established, nonresident railroads, nonresident potash companies, nonresident oil corporations, nonresident telephone companies, and all other nonresidents operating in a given State would be able to operate on a tax-free or reciprocal basis. When the Western States are deprived of their authority to tax and regulate nonresident business operators, they will lose so much of their tax income that their status as independent States will vanish.

I would say that at least 75 percent of our tax income is derived from nonresident business operations in our State.

Mr. ELMORE. Do you consider the taxation of motor vehicles operating in interstate commerce to be similar to a tax on potash, oil, and coal-mining industries carried on in interstate commerce?

Mr. CARTER. I don't see any difference between taxing one business operation as against another.

Mr. ELMORE. Isn't there a difference between an operator owning property in a State which depletes the State's natural resources and a company which merely passes trucks through the State?

Mr. CARTER. Well, of course, there are those of us who believe that there is a depletion of our roads as they are being used by trucks, and perhaps that is the reason that we tax them the ton-mile tax and the other taxes that we tax residents.

Mr. ELMORE. You consider for that purpose then a road in the same classification as a natural resource?

Mr. CARTER. Well, I couldn't tell you our present inyestment in roads in New Mexico. It would be small compared to some of the Eastern States. But I would say that our investment in roads would be comparable to some of our natural resources that are being taken away, and maintenance is a devil of a problem with us. When we get ready to build a highway in New Mexico we have a gentle rolling country and we have a plain country, and then we have a mountain taking over. The interesting thing to observe is that down here you have a very, very heavy traffic flow, and when you get here where the higher costs of the road are, you run into another problem.

I would say that the amount of potential natural resources per resource measured out in terms of what we have built into our highways, invested there, would be a very comparable figure—not in all cases, understand. Oil would be contrary, and I think potash would.

Mr. ELMORE. Close enough to justify an argument, anyway, Mr. Carter?

Mr. CARTER. I think so; yes, sir.

Mr. PIKE. I think there is another question. I don't want to do anything but just bring it up.

Mr. CARTER. That is all right.

Mr. PIKE. About what Federal interest is there in your roads there? The Federal Government pays a rather substantial portion, of course.

Mr. CARTER. Very substantial.

Mr. PIKE. And you have, perhaps, as compared with equal States, a great proportion of your highways arterial highways, rather than byways. I mean, your expensive highways are of a nature of main traffic arteries to get into the State on one side and get out of the State on the other.

Mr. CARTER. We have a vast number of roads, however, that are not Federal aid roads. As you look at a road map—this will be true of Texas, Wyoming, and all these other States—there is a tremendous investment in our so-called secondary highways.

Mr. PIKE. Yes.

Mr. CARTER. And we do appreciate, and are truly appreciative of, the attitude of the Federal Government to help us build these arterial highways, because without them we wouldn't have any roads, but we do have to go out and try to get and do get the tax dollar through our gasoline tax and other road funds with which to build up to the

point where we can ask the Federal Government for help, and that investment, even from a State standpoint, is very tremendous.

We have, I think, 122,000 square miles of land and only 454,000 people, and when you begin to measure that——

Mr. PIKE (interposing). You mean square miles of land.

Mr. CARTER. Yes; I meant to say square miles, and when you measure that out in terms of taxing, we have a devil of a problem.

Mr. PIKE. It spreads pretty thin.

Representative WILLIAMS. Have you any such thing as a reciprocal agreement with neighboring States, a condition under which you permit free licensing to their trucks in return for a similar consideration from them?

Mr. CARTER. Not at the present time, but that is the direction we are taking as a result of the meetings we have been having. Our problem there is this. For instance, we are surrounded by Texas, Colorado, and Arizona, Old Mexico being to the bottom of us. If we had a reciprocal agreement, just an out and out reciprocal agreement, with the State of Texas, for instance, we would have this problem: For every truck which we sent to Texas, there would perhaps be 1,000 trucks coming back to our own State.

I say that for this reason, that most of the oil operations in New Mexico are conducted by Texas people, and it is just an extension of the West Texas field, you see, and there is a tremendous flow of trucks there.

Then, in the State of Colorado are located Denver, Colorado Springs, and Pueblo, all large centers. They have a considerable amount of trucking business, and reciprocity for us would be kind of like poor folks trying to keep up with rich folks. We would have a problem that would be one that we would have trouble really in settling.

At our Denver conference we got into reciprocity and uniformity and what not, and frankly, we have some of our secondary roads that we have to watch very, very carefully as regards the kind of truck, size of truck and so forth, so really reciprocity is more than just "your license plate is O. K." We have to find out if we can accommodate those with whom we would arrange reciprocity.

Representative WILLIAMS. Then you don't think it is a practical proposition, on account of your peculiar condition and situation there, to enter into reciprocity with the other States along that line?

Mr. CARTER. Let me read just this resolution that dealt with the subject of size, and so on. This was adopted at the Denver conference on Western States trade barriers:

Whereas, Uniformity in state regulations as to the size and weight of motor vehicles is a desirable end, it is recognized that such uniformity in the maximum limits as to the size and weight of trucks is necessarily dependent upon substantial uniformity in the highways over which they operate; and

Whereas, There is no present uniformity in the capacity of roads and bridges in the several states and no uniformity in the ability of the people of such states to construct and maintain roads of such capacity as would be required to accommodate the trucks and trailers now permitted in many of the states;

NOW THEREFORE, Your Committee on Transportation proposes to this conference that those of us in attendance frankly admit and recognize the present impossibility of agreement and adoption of uniform regulations as to the size and weight of trucks engaged in interstate commerce and urges the conduct of studies by the respective states bearing upon scientific and proper regulations in that respect.

Our own highway department has done a lot of work since this resolution to try to find out what our bridge situation is. This problem of truck transportation has brought a lot of engineering problems and brought a lot of tax problems that really warrant any committee, from the Federal Government or from the States, sitting down to look at it as an independent subject, entirely away from the trade barrier field, because it really is of tremendous importance.

Mr. PIKE. You think bridges are usually the bottleneck on most roads, aren't they— ridge limitations?

Mr. CARTER. I think bridges would be very controlling, and in our own State we build black top because we can't afford asphalt or concrete, and there are good arguments from competent authorities that those roads are built to suit Federal accommodations, and so forth, and that they will take any kind of load. In the Santa Fe conference we had an interesting point, where one man rose and quoted a national authority on highway construction and he said that it wouldn't work. The same authority was quoted by another man on the other side of the subject and he said it would work. There is a most difficult thing, as to how much load you can carry on these smaller roads.

For instance, Illinois has all concrete highways—that is, mostly. They have a 72,000-pound limit, 40,000 on the main truck and 32,000 on the trailer. I am speaking from my memory now. That gives them a 72,000-pound limit. Our own limit is in excess of 50,000 per unit, so actually, on our roads, we allow a heavier unit per axle or per unit than the richer, better financed, better-road State of Illinois.

The VICE CHAIRMAN. It doesn't take an expert to know that you can build a concrete road, for instance, that would be all right and durable for ordinary automobile transportation, but if you put one of these trucks on it that is as big as a freight car, it would mash that road all to pieces. It just doesn't take an expert. It just takes somebody that has a little sense and some observation. It just won't stand up.

Mr. CARTER. Mr. Chairman, I would like to tell you that you are, may I say, leading with your chin when you make that statement, because there are a lot of arguments to the contrary.

The VICE CHAIRMAN. Yes; there are a lot of people not nearly as smart as I am that don't agree with me. [Laughter.]

Mr. CARTER. I was speaking from experience. I made the same statement.

The VICE CHAIRMAN. You stay by it, because you are right.

Mr. CARTER. O. K.

The words "trade barriers" constitute a slogan that has captivated the public. It is politically and socially smart today to go all the way with the trade barrier elimination enthusiasts, even to the advocacy of the elimination of all State excise taxation on the theory that that form of tax creates barriers to trade. It is unwise and dangerous, however, to ignore the real difference between the good-faith campaign to eliminate trade barriers and a new approach by special groups to eliminate taxation affecting their own specific enterprises.

The statement has been made at all trade-barrier conferences that I have attended that it the States don't correct trade-barrier evils, the Federal Government will be obliged to take the job in hand and

tell the States what they can and cannot do about taxing and regulating nonresident business operations. That is a danger.

Mr. ELMORE. Mr. Carter, in your opinion, does the Federal Government have that power?

Mr. CARTER. I don't doubt it at all. I think they have that power; yes. I think maybe a decade ago that I wouldn't have made that statement, but there has been a definite trend in decisions of the courts that has led all of us to believe there is a considerable power. For instance, looking at that from the converse, a decade ago, or even 5 years ago, none of the lawyers in this room would have believed that a use tax would have been declared constitutional, that it was out of harmony with the United States Constitution, but it has been handed down in many decisions that it is right, so I frankly wouldn't try to answer that except to say that I think they have that power.

Mr. ELMORE. You don't know, however, of any decision of the courts which would justify that at the present time, do you?

Mr. CARTER. No; I don't.

Representative WILLIAMS. Or under what section of the Constitution they would exercise that right?

Mr. CARTER. May I read this back:

> The statement has been made at all Trade Barrier Conferences that I have attended that if the states don't correct trade barrier evils, that the Federal Government will be obliged to take the job in hand.

That isn't my statement. It has been so many times pointed to by, particularly, economists who have come from the East to the West to tell us about our sins in these matters; they have been quite frank in putting emphasis on it, and it has bothered us to some extent because we don't want to force a situation where the Federal Government does have to do it. We would rather do it ourselves if we can.

The VICE CHAIRMAN. There is nothing to keep the Federal Government now from saying: "If you don't do this sort of thing in this sort of way, we won't let you have any more money to build roads."

Mr. CARTER. I think you have got something there.

The VICE CHAIRMAN. I have got plenty there.

Mr. CARTER. I think that is the best answer that we could give to your question, Mr. Elmore.

Mr. ELMORE. I agree.

Mr. CARTER. There is something more dangerous than that, however, and that is the possibility of so definitely eliminating State lines and States' rights that our future will be comparable to today's monstrosities of human control called the Union of Soviet Republics and Nazi Germany. The people of the United States have absorbed more important problems than the trade-barrier situation and have done so without destroying their ideals, their people, their commercial enterprise, and their system of government. Today's discriminatory barriers to trade have been exposed. Those that exist will be eliminated by the voluntary action of the States themselves. No new statutes of that character will be enacted. The progress is welcomed by every true American.

I can say that last part for this reason—that wherever you go the legislators, the Governors, business, chambers of commerce, Rotary Clubs, the head of the house and the housewife, John Q. Public,

everybody, has had a good bath of trade barriers, and there isn't any legislative action that I can think of that any of them would want to take that would upset this picture.

I don't mean by that there won't be a continuing enactment of domestic laws that will slow up trade. Every time you tax anything you slow it up. I know some people who were going to build a new radio station in New Mexico. They say now they are not going to build it because we have a use tax. That may be true.

Mr. PIKE. You do think, though, there is considerable room for action among and between the States?

Mr. CARTER. You bet.

Mr. PIKE. To remove discriminatory and nonuniform legislation where it is reasonably possible?

Mr. CARTER. That is very definitely true; and I might add, for your future study of this subject, that the differences between the Western States and the Eastern States on these matters are so fixed; there are a lot of things we have to do there that you all in the East could easily look upon as a trade barrier when, as a matter of fact, to us it just strictly a tax law.

Mr. PIKE. I wouldn't want you to have the impression that all the Eastern States are rich and populous.

Mr. CARTER. You wouldn't?

Mr. PIKE. No, sir.

Mr. CARTER. I am just a country boy, and I thought they were; I'll tell you that.

With the permission of the chairman, there are some exhibits which I would like to submit to this committee without reading the same at this time. The first exhibit is a paper prepared and delivered by me at a public forum at Las Cruces, N. Mex., on November 7, 1939. That paper has had wide distribution, and sufficient favorable and critical comment has been made about it to make me believe that it might be of interest to you gentlemen who are making this study. It is a more specific treatment of this same subject. It is a more detailed discussion, Mr. Chairman, than I have given here.

The VICE CHAIRMAN. You go right ahead with your testimony.

Mr. CARTER. The second exhibit is another paper prepared by me and delivered at a conference of business and government at the University of New Mexico at Albuquerque on December 9, 1939. That paper discusses in detail this same subject, particularly from the standpoint of ad valorem taxes and these other taxes which come under the trade-barrier aspects.

Mr. DONOHO. Shall it go in?

The VICE CHAIRMAN. For the record.

Mr. DONOHO. I offer these two exhibits for the record.

(The documents referred to were marked "Exhibits Nos. 2387 and 2388" and are included in the appendix on pp. 16142 and 16147.)

Mr. CARTER. The third exhibit is a file prepared and distributed by the Colorado Chamber of Commerce following a meeting of the Western States Trade Barrier Conference at Denver, September 28 and 29, 1939. In there are resolutions as adopted by those States, the names of the people who were there, and a lot of other information pertaining to this general subject, which in a measure expresses thought from the Western States in the form of resolutions adopted and other information.

Mr. DONOHO. I offer these data as an exhibit.

(The data referred to were marked "Exhibit No. 2389" and are included in the appendix on p. 16155.)

The VICE CHAIRMAN. How many more have you?

Mr. CARTER. Just two more. I will get right out of here.

The fourth exhibit consists of copies of two recently issued newspapers that are designed for distribution among juveniles. I refer to the January 15, 1940, issue of the Junior Review, and in particular to the article New War Between the States Arouses Concern, and the January 22 to 26, 1940 issue of Current Events, and in particular to the article Our Nation Is Divided Against Itself. At the most recent meeting of the Western States Trade Barrier Conference, held at Santa Fe, N. Mex., during February of this year, considerable discussion regarding the propagandizing of children on this subject was held. Even the most enthusiastic trade barrier enthusiasts felt that adult study of the question had not been completed and that it was premature to implant in the minds of school children the kind of thought generated by these two articles.

There wasn't by any means agreement. I simply submit, here is a map which shows all of this trade-barrier situation, and we don't know what it is all about ourselves, at least those who have attended the Western States conferences, and it seemed a little bit early to get it to the children.

The VICE CHAIRMAN. Haven't those maps there been introduced into the record?

Mr. DONOHO. I imagine so.

The VICE CHAIRMAN. We will receive that and see whether it is necessary to include it in the record.

Mr. DONOHO. Received for the file?

(The papers referred to were marked "Exhibit No. 2390" and are on file with the committee.)

Mr. CARTER. The fifth exhibit is a memorandum pointing out the difference in conditions in the Rocky Mountain and Western States area as compared to other parts of the country; and, frankly, what this is—it is a matter that was presented to the 1939 session of the legislature of the State of Colorado.

My own study of it gave me some information regarding a natural barrier to trade called the Rocky Mountains that might be a very good thing for you folks to have here for your study.

Mr. DONOHO. I offer this, Mr. Chairman, to be filed with the provision stated.

The VICE CHAIRMAN. It may be so received.

(The memorandum referred to was marked "Exhibit No. 2391" and is on file with the committee.)

Mr. DONOHO. Mr. Carter, do you wish to enter this? Will you describe it?

Mr. CARTER. It is a letter addressed to this Committee by the Honorable John E. Miles in which he states that I am authorized to represent him at this meeting.

Mr. DONOHO. I offer this letter in evidence.

The VICE CHAIRMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2392" and is included in the appendix on p. 16155.)

The Vice Chairman. We are very much obliged to you, Mr. Carter.

(The witness, Mr. Carter, was excused.)

Mr. Donoho. Mrs. Schalet,, will you come forward, please?

(Representative Williams assumed the chair.)

Acting Chairman Williams. Do you solemnly swear that the testimony you are about to give in this proceeding shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mrs. Schalet. I do.

TESTIMONY OF MRS. BEATRICE B. SCHALET, REPRESENTING CONSUMERS' MILK COMMITTEE OF THE DISTRICT OF COLUMBIA, WASHINGTON, D. C.

THE CONSUMERS' INTEREST IN TRADE BARRIERS [1]

Mr. Donoho. Will you state your name and address, please?

Mrs. Schalet. Beatrice B. Schalet, 3420 Prospect Avenue NW., Washington, D. C.

Mr. Donoho. Whom are you representing?

Mrs. Schalet. The Consumers' Milk Committee of the District of Columbia.

Mr. Donoho. What are the purposes of this organization?

Mrs. Schalet. Our purpose is to make it possible to increase the consumption of milk in the District of Columbia by lowering the price without sacrifice to the farmer and the laborer. To that end the committee has made an extensive study of this industry with a view toward recommending various ways of effecting economies in the distribution of this vital food.

Mr. Donoho. Who makes up this organization, Mrs. Schalet?

Mrs. Schalet. There are over 50 members, some of whom are delegates of other organizations with consumer interests, such as the Women's Trade Union League, the D. C. Cooperative League, the League of Women Shoppers, and some of whom are individual members. Most of us are housewives.

Mr. Donoho. Just why is your organization interested in trade barriers?

Mrs. Schalet. We are interested in trade barriers because of their effect on our pocketbook and on our consumption of goods, particularly fluid milk. We feel that a trade barrier exists in the District of Columbia in the form of the regulations which govern the production and distribution of fluid milk in the District market. As a result of these regulations the consumer has been penalized by prices higher than exist in markets where milk and its products are the subject of reasonable regulation.

Mr. Donoho. Would you be more specific, Mrs. Schalet? Just how do the District of Columbia regulations operate as a trade barrier?

Mrs. Schalet. Milk and cream outside an area of Maryland and Virginia, coming into this market, is kept out of this market by the application of health regulations in several ways. It is kept out first by milk regulations which are strictly local in character, and it is kept out second by the insistence of District officials that the inspection to determine if such regulations have been satisfied must be made by

[1] For general testimony on consumer problems, see Hearings, Part 8.

District inspectors; they won't accept inspection by any but their own inspectors. It is kept out third by a scoring system which places emphasis on equipment rather than product. This emphasis necessitates a very high capital investment to get into the market. It particularly protects the cream market, since a farmer who is not located in the District of Columbia and isn't close enough to the market to ship fluid milk into the market and thus get the higher fluid milk returns, can't make the investment merely for the purpose of shipping the not so highly priced cream to market.

Mr. DONOHO. Mrs. Schalet, isn't this situation which you describe unique for the District of Columbia, or does it obtain on other markets?

Mrs. SCHALET. No; I don't think it is unique only for the District of Columbia. The District isn't the only monopoly. Such a situation of course is burdensome upon consumers because we do pay more for our milk, but it does represent an entirely foolish and unnecessary situation.

Mr. DONOHO. You are not advocating that health regulations should be abolished?

Mrs. SCHALET. No; not at all; but we could abandon the strictly local character of these regulations and still have adequate health protection. We could have, for example, adequate health regulations which are uniformly set up and enforced in a uniform manner. We wouldn't consider for a minute inadequate health protection, but we don't want regulations which increase our expense unnecessarily and don't give us dollar-for-dollar value in protection.

Dr. DONOHO. Do you feel that the District of Columbia health regulations have increased the price of milk to the consumer out of all proportion to the protection offered by such regulations?

Mrs. SCHALET. Yes; I do.

Mr. DONOHO. Would you elaborate on that point, Mrs. Schalet, and explain upon what you base your opinion?

Mrs. SCHALET. In the first place, it is only natural that when you have a closed market a price advantage will be taken, but to make the case more specific, I would like to point up the difference between the Baltimore and the Washington markets. Milk for Baltimore comes from approximately the same farming area as that for Washington, and production costs should therefore be approximately the same. It comes to market from about the same distance. Any difference, then, in the producer price of such milk would be reflected only in differences in the cost of meeting health regulations, and also differences in the bargaining position of producers. Now, since 1933 the difference between comparative prices for milk of a 3.5-percent butterfat content in the Baltimore and Washington markets has ranged from 29 cents to 53 cents a hundredweight. At present, March 1940, the difference is 53 cents a hundredweight. The additional cost to the consumer is always at least one cent per quart—one cent per quart more here in Washington than in Baltimore. If it only amounted to one cent per quart this added cost would represent a charge on Washington consumers of well over a half million dollars a year, and probably nearer three-quarters of a million dollars. This estimate is based on fluid-milk sales estimated for the District, taken from Health Department reports and figures presented in hearings on a marketing agreement by the Maryland-Virginia Producers' Association, and this added cost of approximately a half to three-quarters

of a million dollars does not include the fact that we are paying 2 cents per one-half pint more for our coffee cream here in Washington than in Baltimore.

Mr. DONOHO. Mrs. Schalet, isn't it perhaps true that consumers in the District of Columbia are getting, say, three-quarters of a million dollars' worth of health protection over consumers of Baltimore?

Mrs. SCHALET. Well, we have no reason to think so. We don't think that is true. As a matter of fact, the vital statistics of the City of Baltimore show up better than those for Washington. For example, in 1939 the death rate in Baltimore was 1,210 per hundred thousand; in 1939 the death rate of the city of Washington was 1,350 per hundred thousand. Deaths in Baltimore from tuberculosis in 1939 amounted to 78.7 per hundred thousand. In Washington in 1939 the death rate from tuberculosis is 90.6 per hundred thousand. The outbreaks of milk-borne disease in Baltimore amount to zero and in Washington they are also zero.

The question remains, has the expenditure of this vast sum of money brought real value in health protection, and if so, where is it? And if we haven't been getting this extra protection, just what have we been getting? Health officials should be required to answer the question. I have never heard it contended that Baltimore was poorly or inadequately regulated, or that they were less healthy than Washingtonians, and the statistics seem to bear me out. The Baltimore market is just regulated at less cost. The Washington papers quoted the manager of the local producers' association as saying that Washingtonians were less rugged than Baltimoreans and needed a great deal more protection if they were to remain healthy. I leave that statement with the committee for what in their judgment it is worth.

Mr. DONOHO. In other words, your position is that the milk in Washington and Baltimore is good?

Mrs. SCHALET. Yes; exactly; but it is more expensive in Washington than in Baltimore, and we don't know why.

Mr. DONOHO. Is the comparison between Baltimore and Washington a fair one to make?

Mrs. SCHALET. I don't quite understand what you mean.

Mr. DONOHO. Well, is it an unusual comparison?

Mrs. SCHALET. No; I don't think it is unusual. Washington is called, in the cream trade, a closed market. The retail price reported for coffee cream for March 1940, by the Department of Agriculture, is 17 cents a half pint. In Boston, called an open cream market, the same product sells for from 11 to 12 cents. In Philadelphia, the price is quoted from 14 to 15 cents. In New York, also a closed market, the price is from 16 to 17 cents. Now, I am a housewife and not an expert, I can't take the time to cover the United States, but I haven't heard that Philadelphians and Bostonians are dying in the streets from the cream they are getting. I do know that Dr. Leslie Frank, sanitary engineer in charge of milk investigations, United States Public Health Service, reports that since 1923 not a single outbreak of milk-borne disease has been traced to any grade A pasteurized milk supply in any community which has adopted the Public Health Service ordinance. Over 2,200 cities have this ordinance by now.

Mr. DONOHO. It is your opinion that the closed-market area has no better health protection than the open-market area, is that true?

Mrs. SCHALET. I don't believe that there is any better health protection in a closed area.

Mr. DONOHO. Is it possible that the quality of the milk received in the closed-market areas is better than it is in the open-market areas?

Mrs. SCHALET. It may be that part of that extra cost might result in better milk in some particular closed markets than in others, but in addition, there is an extra cost of the controlled market as well. But is that extra quality which we're not so sure of, incidentally, worth, first, the extra cost of making the milk, plus the extra cost which closing the market entails? And why should all consumers be forced to drink fancy milk? All of us don't want and can't afford such milk.

Mr. DONOHO. Do you have any evidence on the quality question? You say you are not sure that there is any difference in quality.

Mrs. SCHALET. We do have evidence for the District of Columbia that supports our feeling that the extra amount we are spending is practically all waste. In 1937–38 the Public Health Service conducted a survey of District operations, rating the District as follows: Retail raw milk, 83 percent; raw milk sold to plants, 91.4 percent; pasteurization plants, 75.4 percent; pasteurized milk, 83 percent. The Public Health Service says that if any municipality receives a rating of 90 percent or more, consumers will have good reason to believe that distributors of grade A pasteurized milk are complying in large measure with the items of sanitation required for grade A pasteurized milk by the United States Public Health Service milk ordinance. The matter of pasteurization is particularly important, because that's really where the disease-carrying bacteria which are carried even in low-bacteria milk, are killed.

We have made our own survey of the sanitary regulations in the District of Columbia. A subcommittee of our group made comparisons between the local regulations of the United States Public Health Service Milk Code and wrote a report which we mimeographed for distribution.

Mr. DONOHO. You compared your regulations here with the Milk Code of the United States Public Health Service?

Mrs. SCHALET. That is correct.

Mr. DONOHO. What were some of the features of the regulations in the Code that you compared?

Mrs. SCHALET. For instance, the ordinance permits several alternative methods of bactericidal treatment, and the District of Columbia permits only live-steam sterilization, the most expensive method and not more foolproof than the alternatives.

Second, the regulations for dairy farm and milk house are much more rigid under the D. C. rules, and the ordinance permits alternative and less expensive methods for achieving clean, well-ventilated, well-lighted, and well-drained barns and milk houses.

Third, there are provisions which are contained in the D. C. regulations which, if not observed, reduce the farmer's score and thus penalize him in the amount of money he receives by considerable amounts.

The VICE CHAIRMAN. Would it be an interruption to ask that a brief statement of the alternative methods be put in the record?

Mr. DONOHO. No, sir.

The VICE CHAIRMAN. Does the witness propose to put them in the record?

Mrs. SCHALET. Yes; I have a copy of the report [1] and I would like to submit it to you for the record.

Mr. DONOHO. Will you describe that report, please, just who made it?

Mrs. SCHALET. This report was the result of an investigation of a subcommittee of the Milk Consumers' Committee which studied the difference between the District of Columbia health regulations and the United States Public Health Code in its application to milk, and the comparisons are set forth. The conclusion of the report is that our regulations are not better than those promulgated by the United States Public Health Service, and that those promulgated by the United States Public Health Service are less expensive and possibly more effective.

The VICE CHAIRMAN. Less expensive? How much would that amount to for a gallon of milk, have you any notion of that?

Mrs. SCHALET. I am sorry; I haven't the figures. I am not an expert.

The VICE CHAIRMAN. Of course, "less expensive" could mean something important, or something relatively not important. If you haven't the figures, all right.

Mrs. SCHALET. I don't have the figures; no..

Mr. DONOHO. Have you an opinion with respect to the importance of it? Are these differences relatively minor or do you think they are important?

Mrs. SCHALET. We think they would be major. We are told it is the expense of the local health regulations that keeps our milk up to 14 cents a quart, and so we are under the impression that if these more flexible and equally effective regulations of the United States Public Health Code were put in, our milk would come down to a figure where we could buy more milk.

Mr. PIKE. At least they would have to change their alibi.

Mrs. SCHALET. Exactly; yes.

Representative WILLIAMS. Do you think it would result in narrowing the differential between Baltimore and Washington?

Mrs. SCHALET. I think there would be better reason to expect that our milk in the District would come down to the same price at which it is being sold in Baltimore. The defense now is that our health regulations keep our milk up to 14 cents, and the health regulations in Baltimore are cheaper, and therefore their milk can be sold at a lower price.

Representative WILLIAMS. In other words, if they adopted the United States Health Service Code inspection, it would reduce the price of milk 1 cent a quart, in your opinion.

Mrs. SCHALET. At least that. We think more.

I would like to tell you what one of the silly regulations is in the D. C. Public Health Code. The requirement of one hemmed towel per teat per cow per milking is such a ridiculous requirement. It would be cheaper and more effective to require rinsing udders in a standard chlorine solution before milking and for milkers to rinse their hands in such a solution as well, as the Public Health Code sets forth.

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[1] See "Exhibit No. 2393," appendix, p. 16155.

Mr. DONOHO. That would be four hemstitched towels per cow per milking?

Mrs. SCHALET. Per milking; that is right.

Mr. DONOHO. And the Code requires rinsing of the udders?

Mrs. SCHALET. Rinsing of the udders and rinsing the worker's hands in the chlorine solution before milking.

Mr. DONOHO. Do you wish to offer that for the record?

Mrs. SCHALET. Yes; I do.

Mr. DONOHO. Mr. Chairman, I wish to offer this report which has been described by the witness for the record.

The VICE CHAIRMAN. It may be received.

(The report referred to was marked "Exhibit No. 2393" and is included in the appendix on p. 16155.)

The VICE CHAIRMAN. Does that have to do with the hemstitched towels?

Mr. DONOHO. The witness brought that out in her testimony.

Mrs. SCHALET. They do require one hemmed towel per teat per cow per milking, under the D. C. regulation.

It does cost the farmers supplying Washington more to bring milk in this area than to Baltimore. That is because our regulations are locally set up, because they must be locally enforced, and the regulations for equipment and care demand more investment and expense from the farmer. That is one of the ways to keep this market closed, and at the same time attempt to justify it.

Mr. DONOHO. So it is an additional cost to the farmer supplying this market over Baltimore?

Mr. SCHALET. Yes.

Mr. DONOHO. Has the effectiveness of the District of Columbia regulations ever been previously or publicly questioned?

Mr. SCHALET. Yes; they have. The subject of the regulations is not a new one in the District and there have been attempts to change them. Local associations of farmers almost without exception have opposed such changes. In support of that statement I refer to the record of the hearings before the committee headed by Senator King in 1935, commonly called the Seal investigation, and the hearings on the Schulte bill, held in May 1939. One of the things that confirms our belief that regulations here are designed in the interest of building a wall around the market is in the type of support they have received.

The President of the Maryland and Virginia Milk Producers' Association in his 1938 report to members said this:

> In March, 1938, Virginia passed a bill regulating the importation of cream into the State. We have been asking the District of Columbia for two years to make such a regulation, and so far we have been unable to get any satisfactory regulation to control cream imported into the District for ice cream purposes. This unlicensed cream is the worst leak that we have on the Washington market, so far as we are concerned. We feel that here we have very unfair competition, and we are hoping that the Health Department will correct this condition with suitable regulations. The Washington milk supply has been improving steadily. Our low bacteria count cannot be equalled by that in any other city. This unlicensed product absolutely should not come into competition with our licensed product.

We see no reason why this should be so. If the product measures up, it should be able to stand competition like almost all other consumer goods.

Mr. DONOHO. Mrs. Schalet, are other dairy products subject to the same strict requirements?

Mrs. SCHALET. No; there is an exception in this set of requirements. Under section 4 of the act it is specifically set out that interstate shipments of milk and cream for ice-cream purposes must not be prohibited in the District of Columbia, provided that such milk or cream is produced or handled in accordance with the specifications of an authorized medical commission or State board of health.

Ice cream, itself, under section 2 of the act, if made in Arlington or Hyattsville, or Baltimore, or Philadelphia, must be made from locally inspected cream if it is to be sold in the District, but if the ice cream is made here in the District, manufactured within our borders, it can be made out of cream coming from any other State, provided it is handled or produced in accordance with other regulations.

For instance, any product containing milk in the District of Columbia, or cream, such as caramels, if manufactured in the District of Columbia, must be made from locally inspected cream, but if made over the borders in Hyattsville, or two feet over the border of the District of Columbia, can be sold in the District. It is only the local manufacturers who must use the expensive cream and the manufacturers outside the District who can use the western and cheaper cream.

Here's a silly example of how it all works. Take a malted milk, such as boys buy at the drug store, made from malted-milk powder which is uninspected locally, ice cream, inspected or not inspected, according to where it is made, and milk. When it comes to milk, you can be positive that what you are drinking has had the local O. K., but the other parts of the malted milk may or may not have been inspected when it was produced.

All this rather loose regulation on other dairy products makes us feel these health regulations have other motives than those of health protection.

Mr. DONOHO. Have other motives than health protection, you say. Would you elaborate on that, please?

Mrs. SCHALET. If a manufactured product is unhealthy when made locally, why isn't it unhealthy when it is made outside and sold here? The reason is obviously none other than to keep the market closed and keep outside cream out. Cream for ice-cream purposes must come in, so they have a regulation which says it must be dyed with annato so as to keep it out of bottles.

Mr. DONOHO. Then, as I understand you, your position is that these local requirements have a strong commercial motive.

Mrs. SCHALET. Yes, exactly; the combination of local standards, insistence on local inspection and regulations which may be regarded as refinements. We don't believe that any of these things are necessarily or directly related to health protection.

Mr. DONOHO. Mr. Chairman, I have no further questions to ask, but I understand the witness has some recommendations she would like to make.

Mrs. Schalet, would you briefly make your recommendations, please?

Mrs. SCHALET. We would be grateful if regulations on milk were uniform, in line with other cities. By uniform regulation and uniform enforcement, milk and cream can be exchanged freely between

different areas and health can really be protected. It seems much more sensible to me to provide health regulations which help milk get to consumers, rather than to provide those which hinder it from getting to consumers by pricing it so high people can't buy it. It seems to me there's no health in that kind of health regulation. The Public Health Service offers at least the basis for uniform regulation. Perhops more legislation will be necessary, something of a Federal nature, as in meat grading by the Department of Agriculture.

The VICE CHAIRMAN. Are you through? We are very much obliged to you.

(The witness, Mrs. Schalet, was excused.)

The VICE CHAIRMAN. We will stand in recess until 2:30.

(Whereupon, at 12:25 p. m., a recess was taken until 2:30 p. m. of the same day.)

AFTERNOON SESSION

The hearing was resumed at 2:30 o'clock, upon the expiration of the recess, Representative Sumners, the vice chairman, presiding.

The VICE CHAIRMAN. Are you ready to proceed?

Mr. DONOHO. Yes, sir.

The VICE CHAIRMAN. The committee will be in order.

Mr. DONOHO. Mr. George, will you come forward, please?

The VICE CHAIRMAN. Do you solemnly swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GEORGE. I do.

TESTIMONY OF J. M. GEORGE, EXECUTIVE SECRETARY, NATIONAL ASSOCIATION OF DIRECT SELLING COMPANIES, WINONA, MINN.

TRADE BARRIERS IN RELATIONSHIP TO DIRECT SELLING

Mr. DONOHO. Will you state your name and address, please?

Mr. GEORGE. J. M. George, Winona, Minn.

Mr. DONOHO. Will you state your position, your occupation, Mr. George?

Mr. GEORGE. I am executive secretary of the National Association of Direct Selling Companies.

Mr. DONOHO. Describe your organization, please, Mr. George.

Mr. GEORGE. It is a trade organization having some 225 members. The members of this association are all engaged in what is called the direct-selling business. In other words, our merchandise reaches the consumer through personal solicitation, as distinguished from mail order or shop selling.

Mr. DONOHO. What is the volume of such business in comparison with the total retail sales in the United States through all combined sources, Mr. George?

Mr. GEORGE. There are not any known figures on it. There have been several estimates made, and we have made a mathematical survey of a portion of the field, and that, to a certain extent, constitutes an estimate. I would say that we handle between 1 and 2 percent of

all retail sales of all sources in the United States. That means on the dollar basis.

Mr. DONOHO. Mr. George, why is your group interested in the subject of trade barriers?

The VICE CHAIRMAN. Will you have Mr. George a little more definitely and somewhat in detail identify the character of his clientele? You are the representative of these organizations?

Mr. GEORGE. Yes, sir.

The VICE CHAIRMAN. Where are they located?

Mr. GEORGE. All over the United States, but the great bulk of these companies are east of the Mississippi River.

The VICE CHAIRMAN. What do they have in common that causes them to have an organization?

Mr. GEORGE. A method of distribution.

The VICE CHAIRMAN. I don't think that explains anything to me.

Mr. GEORGE. It is not a commodity organization. We are interested in all types of commodities, but we all distribute our goods to the consumer in the same manner.

The VICE CHAIRMAN. You mean you have a common agency for distribution?

Mr. GEORGE. No; a common method. They are all independent companies, but they have a common method.

The VICE CHAIRMAN. What is that?

Mr. GEORGE. For instance, the consumer is solicited by personal solicitation, salesmen, solicitors, peddlers, and upon the solicitation a delivery is made or an order is taken, and the goods are then either immediately delivered or shipped to the consumer.

The VICE CHAIRMAN. What is the reason for them having an organization? Do they assist each other?

Mr. GEORGE. The principal reason is to protect ourselves from trade barriers. My organization——

The VICE CHAIRMAN. (interposing). I assume you will explain that as you proceed.

Mr. GEORGE. I will.

The VICE CHAIRMAN. Will you indicate one or two of the organizations, or even a few more, in order to give us some notion as to what businesses are typical?

Mr. GEORGE. The type of distribution which I refer to is of such companies as Fuller Brush, Realsilk, Jewel Tea Co.

The VICE CHAIRMAN. I assume the names indicate the character of the commodities.

Mr. GEORGE. Yes; they do. Realsilk is silk products, hosiery; Fuller Brush is brushes; Jewel Tea is tea, coffee, extracts, and packaged groceries.

The VICE CHAIRMAN. That is sold by an agent calling directly on the trade?

Mr. GEORGE. Calling directly upon the consumer.

The VICE CHAIRMAN. Consumer trade, house to house?

Mr. GEORGE. Yes.

The VICE CHAIRMAN. Do you represent any concerns that do not sell house to house?

Mr. GEORGE. We do not.

The VICE CHAIRMAN. That makes is pretty clear.

Mr. DONOHO. My question, Mr. George, is, What is the interest that your group has in the subject of trade barriers?

Mr. GEORGE. We consider that trade barriers are inimical to the national economy and to the welfare of business generally, and to the interests of the consumer.

Mr. DONOHO. And the type of marketing or distribution——

The VICE CHAIRMAN (interposing). Wait a minute. That is a very altruistic attitude that you have. Are you sure you have enumerated them all?

Mr. GEORGE. Some others may occur to me while I am sitting here.

The VICE CHAIRMAN. Maybe I can assist you. Would it possibly occur to you that it is of some little concern in your own interest?

Mr. GEORGE. I have mentioned the concern in my own interest, Mr. Congressman.

The VICE CHAIRMAN. I beg your pardon; I overlooked that.

Mr. GEORGE. I will show a special interest later.

Mr. DONOHO. Would you elaborate perhaps now, Mr. George?

Mr. GEORGE. I might say that our attitude is that the consumer should be permitted to determine where the consumer gets his merchandise, and our interest in this hearing, specifically, is that trade barriers are our chief problem.

Mr. DONOHO. Could you State specifically what are the more important types of barriers that you consider interfere with your business?

Mr. GEORGE. The Green River ordinance, which is a type of ordinance directly aimed at our method of distribution; State legislation promoting such ordinances. Then, going to another classification, municipal ordinances imposing licenses, bonds, permits, health examinations, waiting periods, and other burdens of that and like character.

Mr. DONOHO. On house-to-house distribution?

Mr. GEORGE. On our type of distribution. Also State laws, principally State license laws, some of them having bonds and some merely having licenses. Then there are the so-called "gypsy truoker" bills, which are a new form of legislation which has sprung up in the last 6 or 8 years which was originally aimed at other persons, but which very promptly broadened out to such an extent that they cover all our types of distribution.

Then there are the commodity registration laws which affect us the same as they affect other manufacturers of commodities that fall into the classifications that are registered.

Mr. DONOHO. In the order in which you have named these various types of laws, will you complete for the committee the Green River ordinance.

Mr. GEORGE. It is a very brief ordinance, and I believe the proper thing to do would be to read it, with the consent of the committee. This ordinance was passed on the 16th day of November 1931. It was the first ordinance of this type which was passed that we know of in the United States. For many years trade associations representing retail concerns had been figuring out a means of distribution irrespective of any interstate commerce phases of the same, and this little town of Green River, Wyo., originated this ordinance, and litigation that has come up since then has shown that it does apply to both local and interstate commerce.

The ordinance reads:

SECTION 1. The practice of going in and upon private residences in the town of Green River, Wyoming, by solicitors, peddlers, hawkers, itinerant merchants and transient vendors of merchandise, not having been requested or invited so to do by the owner or owners, occupant or occupants of said private residences, for the purpose of soliciting orders for the sale of goods, wares and merchandise, and/or for the purpose of disposing of and/or peddling or hawking the same, is hereby declared to be a nuisance and punishable as such nuisance as a misdemeanor.

SECTION 2. The Town Marshall and Police Force of the Town of Green River are hereby required and directed to suppress the same, and to abate any such nuisance as is described in the first section of this ordinance.

SECTION 3. Any person convicted of perpetrating a nuisance as described and prohibited in the first section of this ordinance, upon conviction thereof shall be fined in a sum not less than Twenty-five ($25.00) Dollars or not more than One Hundred Dollars ($100.00), together with costs of proceedings, which said fine may be satisfied, if not paid in cash, by execution against the person of anyone convicted of committing the misdemeanor herein prohibited.

SECTION 4. All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION 5. It being deemed by the Town Council of the Town of Green River that an emergency exists, this ordinance shall be in force and effect from and after its passage and approval.

The VICE CHAIRMAN. This seemed to apply generally to the citizens of Green River as well as people that come from without.

Mr. GEORGE. It does.

The VICE CHAIRMAN. Do you complain—probably "complain" is not the right word—do you question the right of the people of Green River, if they don't want people ringing their doorbells, to pass an ordinance indicating they want them to stay out?

Mr. GEORGE. It happens that the people of Green River have nothing to do with this sort of thing. The people of other similar communities have nothing to do with it.

The VICE CHAIRMAN. I had an idea they elected the people who passed the ordinance.

Mr. GEORGE. They do that, but I have conclusive proof here of the fact that this is a barrier movement, and it has nothing to do with the fellow's welfare.

The VICE CHAIRMAN. But the point we come to is, Who is to be the judge, the people of Green River who elect the agents that passed the ordinance? That is a practical question.

Mr. GEORGE. I think, Congressman, that when my testimony develops that will be covered.

Mr. DONOHO. Have these ordinances spread rapidly since the original enactment?

Mr. GEORGE. I might add that at the present time there are approximately 600 of these ordinances in various States in the United States. West of the Mississippi River is the place where they are most prevalent, and it happens that all of the business which they have regulated by these ordinances originates east of the Mississippi, which is community discrimination.

In 1932 the validity of this ordinance was tested in an injunction action in the district court in Wyoming. That is the case of *Green River* v. *Fuller Brush Company* (60 Fed. (2d) 613), and in that case the court sustained the injunction on the grounds that this ordinance was an invalid interference with interstate commerce. The city of Green River appealed it to the circuit court out there, and, in the case of *Green River* v. *Fuller Brush* (65 Fed. (2d) 112), decided in 1933,

the circuit court held that the district court did not have jurisdiction and therefore dissolved the injunction, but gratuitously after holding that it had no jurisdiction entered a lengthy dissertation on the merits of the ordinance, and in that obiter dictum expression of opinion they concluded that it was a proper police regulation and not a violation of the commerce clause or the right of Congress to regulate commerce.

After the district court decision there was not much spread of the ordinance, but after the reversal in the circuit court of appeals there was a great spurt and the ordinance commenced drifting eastward and being passed in all of the States west of the Mississippi River and some few in the East. That happened in 1933. The Supreme Court of Wyoming then held the ordinance constitutional and a writ of certiorari was taken from the State Supreme Court to the United States Supreme Court, and during the period that it was pending there was a cessation of activity in the passage of these ordinances. The United States Supreme Court in the case of *Bunger* v. *Green River* (57 Supreme Court Reporter, 510), decided in 1937, in the spring as I recollect, held that there was no substantial Federal question involved; in other words that it didn't violate the commerce clause or the fourteenth amendment or any of those other sections of the Constitution. Immediately upon the handing down of this decision the persons interested in spreading this ordinance over the country gave out information to the effect that the Supreme Court had upheld the ordinance, which it did not do, and then we had the second spurt in the passage of this ordinance all over the United States, and up to the present time there are some 600 of these ordinances throughout the country.

Mr. DONOHO. What type of municipality has adopted this ordinance?

Mr. GEORGE. With but very few exceptions they are all small towns, towns up to 10,000; there are a few towns above 10,000, but most of them are the provincial, small town type.

Mr. DONOHO. Mr. George, I believe you have an opinion as to why these ordinances have become so widespread. Would you care to tell us about that?

Mr. GEORGE. They have been spread principally by organized propaganda, and this has been fostered and carried on by merchants and organizations representing local retail merchants. Furthermore, it became a sort of racket to promote adoption of this ordinance in communities of various northwestern States, these racketeers preying upon the cupidity and the prejudice of local merchants against anybody who they think are invading their exclusive territory for business.

Mr. DONOHO. You used a rather strong term, Mr. George. Would you please explain upon what you base your opinion that this has been a racket?

Mr. GEORGE. Well, let me say first that I made appearances in person in opposition to the passage of these ordinances in quite a few places, and invariably the sponsorship and demand for enactment has been presented and carried on by local merchants and their business bureaus and commerce associations. I have here admissions of city officials, including alderman, city attorneys, stating that the demand and pressure for enactment has come from the local retailers as a means of protecting them from so-called outside competition, and I would like to read pertinent parts of a few of these clippings of trade journals

and local newspapers which I know report the truth of the situation, if the committee will permit.

The VICE CHAIRMAN. Can you identify the journal?

Mr. GEORGE. I can.

Raton, N. Mex., the Daily Range, dated June 9, 1937 [reading]:

The Raton City Council last night passed the famous Green River ordinance as a further constructive aid for local business men.

However, in promoting the passage of these ordinances the sponsors always say that it is to save the housewife from trouble in answering the doorbell and to protect her if possible from fraud and so forth.

This paper goes on to say:

The ordinance, council members said, is designed to protect local merchants from house-to-house salesmen and peddlers.

Not a word said about the protection of the consumer if they need protection.

Then we go to the Fulton, Mo., Telegraph, May 27, 1937:

Such a law as this has been put into effect by several other Missouri towns and has been successful in protecting the local merchant from this type of competition.

I am reading just four or five of several hundred.

The Plattsmouth, Nebr. Journal of July 27, 1937 says:

Chairman Rebal of the judiciary committee asked for further time on the Green River ordinance which has been requested for adoption by a large number of the business houses of the community—

Showing the sponsorship there.

New Haven, Conn., Register, August 8, 1937:

Ordinance on solicitors may cause Bristol stir.

This is referring to Bristol, Conn.:

Undoubtedly, the new city law, which was passed by the mayor and city council after having been sponsored by the Chamber of Commerce was aimed at outside canvassers for magazines and similar business. It goes far beyond that purpose, and unless speedily rescinded will result in a flock of petitions to the City Council for its removal from the city regulations. The ordinance will go into effect 14 days after its publication.

The back-kick there from local merchants who were doing solicitation on private premises was sufficient to defeat the ordinance. It was afterwards repealed.

The National Association of Retail Druggists, which is a rather strong, large national organization, operates a journal called the "N. A. R. D. Journal." July 21, 1938, this journal in speaking for the association staff says:

Druggistss Lead Way. This—

Speaking of a decision upholding the ordinance—

was a real blow to the master peddlers due to the fact that hundreds of cities had adopted the Green River regulation. Druggists, stimulated to action by editorial compaigns carried on by the Pacific Drug Review, North Western Druggists, N. A. R. D. Journal, and other publications, have led their fellow merchants to successful passage of similar ordinances in many cities.

Here the association admits and boasts about their success in spreading this ordinance nationally.

In the North Western Druggist, June 8, 1938, among other things:

Believe us when we say that these two movements—Fair Trade—

Referring to the price-compact acts—

and the Green River Ordinance—inaugurated, perfected and made available for the promotion of your business, not only deserve, but must have your unqualified support if their success is to be progressive and final. Cooperation is a much overworked term but assuredly cooperation—complete and wholehearted—is needed now to preserve for you and your business these all-important measures. Cooperate completely and at once.

I have an article here from the Hardware Trade and Sporting Goods, which I won't read, which promotes passage.

North Western Druggist, March 1, 1938:

Repeatedly we have said that the Green River Ordinance should be passed and enforced in every community in the Northwest. We stick to that statement.

Dry Goods Journal, March 1, 1938:

Green River, Wyoming, through an ordinance that has been upheld by the courts, has put a stop—

Not regulation, "a stop"—

to house-to-house canvassing. A copy of the Green River Ordinance will be mailed to you if you clip this paragraph and mail to me—

The idea being they would use the information to procure passage in their locality.

Mr. DONOHO. Mr. George, I wonder if you yet have justified your use of the term "racketeering."

Mr. GEORGE. I will come to that. I have just a couple here, one of them very choice.

The VICE CHAIRMAN. I think the committee will probably take cognizance of the fact that the local merchants would be interested in the passage of that law.

Mr. GEORGE. May I read one more with three lines in it? This comes from the North Western Druggist of December 1934:

Thirdly—

These are instructions to druggists who read that journal—

a member or members of the community not interested financially in local retail establishments must urge the passage of the Green River Ordinance—

And the ammunition they use is protection of the public.

On the question of the racket—some of these articles refer to these—Community Builders, Inc., a publisher of retail trade association journals, started this movement called Community Builders, Inc., in Minneapolis. The project of this concern was to send field men out all over the State and adjoining Northwest States to hold mass meetings of local merchants and to promote passage of this ordinance at these mass meetings. After stirring up enthusiasm for the passage, then the proposition was to sell them road signs. These road signs were very fine enameled or raised-letter metal signs which simulated State highway signs, and on them it says: "Green River ordinance in force here. Peddlers and solicitors pass on," or some such expression. The minimum price on these signs, I think, for a community was $130, and if you had a lot of business in the city you had to buy more signs, and it was quite a lucrative proposition to sell these signs. I have been informed that by the sale of these

signs they made a profit on their enterprise to build up communities. Of course, it was all at our expense. The city clerk at Green River charged a dollar to pass out copies of the ordinance and brief instructions, I understand, as to how to procure its passage, and there was considerable business done in that.

The secretary of the Association of Commerce, at Kankakee, Ill., started circularizing communities all over the United States offering to furnish a service on how to get the Green River ordinance and charge a fee, I think, which was a dollar apiece.

Mr. DONOHO. What is the opinion of consumers with respect to these ordinances, Mr. George, if you have any information on that?

Mr. GEORGE. I have some. The consumer usually doesn't know what is going on until after it is passed, and on a few occasions action has been taken by consumers, but the ordinance was proposed at Palo Alto, Calif., and the city council decided to get a referendum vote on passage. It was placed on the ballot, and it was defeated by popular vote at the public election, by a vote of some one thousand nine hundred odd against 365. The ordinance was passed in Aberdeen, and citizens got out a petition for repeal on a referendum act and very quickly procured the qualified number of signers to the petition, and the city council then repealed the ordinance before it came to a vote on the popular ballot. I referred to a case where businessmen repealed it, supported by citizens, because of its effect on them themselves. Laramie, Wyo., repealed it after it had been passed. There have been repeals made because of retaliatory action, as, for instance, in Hastings. The largest industry in Hastings, Minn., is a manufacturer of fly-spray guns, and it happened that he was selling enormous quantities of these to companies who sold them direct to the consumer through this method of distribution. They notified him that his city had a Green River ordinance and they, as purchasers of Hastings products, should be entitled to consideration in respect to their having a chance to do some reciprocal business with consumers of Hastings, and through that line-up the ordinance was repealed.

Local sentiment has caused repeal in several instances. I don't have the exact facts.

Mr. DONOHO. Mr. George, in your opinion, what has been the economic effect of these ordinances?

Mr. GEORGE. It is aimed directly at our method of distribution and enforced directly against us, and as a consequence it has in some communities completely destroyed our business; in others, it has reduced it. It has rendered procurement of new business very difficult and often impossible. It takes away from sales persons representing our concerns in those communities their chance to make a livelihood or to augment whatever livelihood they may have. It increases the relief load wherever it takes our people out of gainful occupation and puts them on relief. It increases unemployment, not only by throwing those in the selling end out of work, but it reduces the business in our industry to the extent that people are thrown out of work.

And of course it increases local competition, and because it is in localities where usually there are only one or two stores, there is a more or less important source of buying which is removed by this ordinance, a source for the consumer to obtain merchandise. It sets up trade barriers for us, definitely.

Mr. DONOHO. Is this type of ordinance applicable on its face and in fact to interstate transactions?

Mr. GEORGE. Yes; it is.

Mr. DONOHO. Is it ordinarily applied to local concerns?

Mr. GEORGE. About 20 percent of these ordinances have a clause in them which exempts application to a sales person representing local concerns. In practically all of the other 80 percent, they have a definite policy of enforcement to exempt the representatives of local concerns because of the fact that they know that the ordinance, if it did contain a definite exemption, would be held invalid.

Mr. PIKE. You mean as a matter of administration they don't bother local people?

Mr. GEORGE. Yes; that is right. I can't definitely say whether this was South or North Dakota, but the Sheriff and Police Officers Association at a State convention in either one of those two States, discussed the policy of enforcement of this ordinance in that State as a State-wide matter, and they tacitly agreed it would not be enforced against representatives of local concerns.

Mr. DONOHO. Are these ordinances enforced against farmers?

Mr. GEORGE. About the same policy is used there. If the farmer is in the immediate trade area of the municipality having the ordinance, he is not interfered with, but if he comes from a distant point outside of the trade area, he is brought under the ordinance.

Now, I happen to know of a particular case of that kind. Rochester, Minn., has the ordinance. A farmer living in another county 45 miles away started disposing of his truckgarden produce in Rochester, and he and his two boys with him were arrested. They were convicted, and he took an appeal to the Supreme Court of Minnesota, and the supreme court reversed the conviction, not on any merits so far as the validity of the ordinance was concerned but upon a constitutional provision in Minnesota which exempts farmers from selling their own produce from regulations of that kind.

Mr. DONOHO. As I understand it, Mr. George, the ordinance requires an invitation on behalf of the purchaser before a solicitor can go on the premises of the purchaser.

Mr. GEORGE. That is right.

Mr. DONOHO. Has that operated as a practical prohibition against your solicitors?

Mr. GEORGE. It is a practical prohibition. The crux of the ordinance is that if you have to go and get an invitation, you have slowed up the processes of the type of distribution to an extent that it is very discouraging indeed. In Wyoming, the supreme court in the *Bunger case* held that you can't go onto a person's premises in order to obtain an invitation.

The VICE CHAIRMAN. Of course not. You would look foolish if you went to a house, left your stuff out on the street, and went to the door and said, "If you will invite me in, I will come in and try to sell you." You would be ringing the doorbell twice.

Mr. GEORGE. Here is an illustration: The man who was arrested in the *Bunger case* went out on a completely independent trip to get invitations, leaving his goods out of the picture, and they arrested him and convicted him.

In other towns they have attempted to arrest men who have used the telephone to get invitations. In another town, one of our companies conceived the idea of engaging Western Union boys, in uniform, on a 15-cent rate per message, to deliver a request for an invitation to the housewives in a certain community. These boys were going down the streets getting these invitations, when the merchants found it out, and they brought so much pressure to bear on the local manager of Western Union that the boys were stopped from getting invitations.

Mr. PIKE. Were any of these methods successful in getting invitations? If you hadn't been stopped, would they have been practical methods of getting invitations?

Mr. GEORGE. We didn't have a chance to find out whether the Western Union method was successful; and wherever we have tried the definite separate activity of getting invitations, it is a practical prohibition, and it is intended as such.

The VICE CHAIRMAN. Now, isn't this a situation—we have talked a good deal about it—where it is a combination of the interest of local merchants and the housewife? Certainly the interest of the local merchant is big in the picture, and they procure the passage of these ordinances, and the supreme court has held that no Federal question is involved, and the State supreme court in the State where the matter has been tested has upheld the ordinance.

Mr. GEORGE. The State of Wyoming upheld it. The States of South Carolina, Maryland, Virginia, Florida, Oklahoma, and the Appellate Court of Georgia—I refer to all supreme courts except Georgia, where it is the appellate court—have held that it is an unreasonable police regulation and void; but Colorado, Louisiana, and Wyoming have upheld it.

The point is that 88 percent of our people who are selling these goods or taking orders for these goods live in the communities where they operate, and they are citizens of those States and those cities and they are entitled to as much consideration as the merchant. In fact, they are a type of merchant themselves, and they are usually a person of low or no capital, and why a legislative body like a State or a city should undertake to set up a trade barrier against one class of citizens in favor of another I never have been able to understand.

The VICE CHAIRMAN. But coming to the practical value of this testimony, while it does bear upon the general subject insofar as information is concerned, what is the point in carrying this testimony further, putting it into the record?

Mr. DONOHO. I believe that the witness has finished testifying, or practically so, about the Green River ordinance, and I think that he wants to discuss some other types of legislation which operate as a barrier to his type of merchandise.

The VICE CHAIRMAN. Well, now, let's expedite it a little bit.

Mr. DONOHO. I am sure Mr. George will be glad to cooperate.

The VICE CHAIRMAN. The reason why I make the suggestion, it seems to me, as one member of the committee, clearly a matter that is beyond the jurisdiction of the Congress to do anything about.

Mr. DONOHO. If I might comment, Mr. Chairman——

The VICE CHAIRMAN (interposing). Would you?

Mr. DONOHO. Quite a number of things that we have discussed here are probably clearly beyond the competence of Congress to do anything about, yet it does have an educational value.

The VICE CHAIRMAN. That's right.

Mr. GEORGE. I feel that this is not beyond the jurisdiction of Congress. There is a solution of this Green River ordinance proposition, if I may respectfully differ with the Supreme Court of the United States.

The VICE CHAIRMAN. Oh, go ahead. [Laughter.]

Mr. GEORGE. I might say that they missed the ball when they said there was no substantial Federal question in the case. I think the present Court might be prone to find that there is a Federal question. In fact, we have never been able to understand why there isn't a Federal question here, because directly it prevents us from doing business in towns where we had formerly done business.

Now, they say that this is a police regulation, but I have got information here conclusively showing that this is purely a commercial controversy, and that it is a matter of preferring the interests of one method of distribution over another, and I think there is a Federal question there, and if the Court were so disposed it could not be criticized for holding that it is a direct and substantial interference with interstate commerce.

Mr. DONOHO. In your opening statement with respect to the types of legislation which you consider trade barriers to your type of merchandising you mentioned State legislation designed to augment, I believe you said, Green River ordinances. Would you briefly discuss that, please, Mr. George?

Mr. GEORGE. The proponents of this type of ordinance, not being satisfied with this legislation a little at a time, have attempted to introduce State legislation on the subject. Bills have been introduced in Colorado, Iowa, and Nebraska in which enabling legislation was provided to make the passage of these ordinances unquestionably valid in those States; since the Supreme Court took the Federal Constitution questions out, then it now becomes a question of whether or not the municipality has authority, and these proposed acts are to eliminate any question of the authority.

In a few instances they have also introduced bills which provide the whole text of this ordinance giving it a State-wide rather than a municipal application.

Mr. DONOHO. Have these bills been passed?

Mr. GEORGE. The Legislature of Nebraska passed a bill extending and enlarging the authority of cities of the first class, but put a proviso at the end of it which took all the teeth out, which said that you couldn't declare a business practice a nuisance unless it was clearly inimical to the public welfare.

Mr. DONOHO. You referred to municipal ordinances imposing licenses and bonds and permits and health examinations and that sort of thing on those selling from house to house. Will you explain that, please?

Mr. GEORGE. Well, practically every municipality in the United States has one or more ordinances imposing licenses of different grades on persons selling from house to house. The fee is ordinarily sufficiently high to be prohibitive. It runs from a few dollars a month to as high as $1,000 a year. Modern ordinances usually start out with $2 to $25 a day, and they go at a receding scale for longer periods of time.

Mr. DONOHO. What about bond ordinances?

Mr. GEORGE. Bond ordinances have been introduced in many municipalities because they feel a bond is not a violation of the commerce clause. These bonds usually run from five hundred to a thousand dollars or fifteen hundred dollars. The purpose is not regulation; it is prohibition.

Mr. DONOHO. And permit ordinances—what are they?

Mr. GEORGE. These are intended to discourage people from attempting to get a permit. Application must be made to the police department. You must be photographed and fingerprinted and must give very much detailed information concerning yourself.

Mr. DONOHO. You referred to health examinations. Would you explain that, please, with respect to your solicitors?

Mr. GEORGE. There are quite a number of ordinances in the United States where our people have to make application for a permit and then submit to a physical examination or health examination before some practicing physician. A $5 fee is usually charged for the examination and it provides that that examination must be retaken every five days, so that you are supposed to become contaminated in that community within 5 days and then you have to have another examination.

The VICE CHAIRMAN. Doctors are all opposed to that, I guess.

Mr. George, you spoke of a bond a moment ago. What is the condition of that bond?

Mr. GEORGE. The condition, speaking of it typically——

The VICE CHAIRMAN (interposing). That is what I mean.

Mr. GEORGE. Is that the consumer will get the merchandise which he orders, and the ammunition back of the passage of these bond ordinances is that they are for the protection of the consumer, but the consumer never pays any attention to it. We don't know of a consumer demand for anything of this kind, but it is very effective as an interference with our business.

Mr. DONOHO. Are there such things as State licenses, Mr. George, to solicit business?

Mr. GEORGE. Yes; there are. Every State has a license.

Mr. DONOHO. When one has a State license, is it necessary to get out local licenses still? I presume that it is.

Mr. GEORGE. In our business, if there is 100-percent enforcement, you have to have a State license, usually a county license, in many places a township license and in many places a municipal license, and possibly a nuisance license to keep you from seeing people whom you haven't called on, even if you have a license.

Mr. DONOHO. What about State licenses? What sort of requirements do they impose?

Mr. GEORGE. State licenses are pretty much like municipal license ordinances. They define the occupation, usually broad enough to cover all of its phases, and they provide that there must be a State or county license paid, about 50–50, and some of them provide for both a county and State license to be paid; and then the usual low type of license is $50 a year, and they run all the way up to a thousand.

Mr. DONOHO. Do these laws on their face impose a burden upon local merchants carrying on a house-to-house sale as a part of their regular commercial or shop-keeping activities?

Mr. GEORGE. With four or five exceptions, which are in the Southeastern States, they all have exempted merchants from license provisions.

Mr. DONOHO. Have you anything else to say about State license laws?

Mr. GEORGE. There are some peculiar incidents of some of these laws that I think the committee would be interested in.

Under the peddlers law of South Dakota you can't get a license unless you are a resident. In other words, unless you are a resident of South Dakota, you can't carry on that occupation.

The State-wide license law of the State of New York applies only to peddlers of imported merchandise. In Indiana——

Mr. PIKE (interposing). Imported from another State?

Mr. GEORGE. It says "imported." I think it means from another State.

In Indiana and Kansas, if the peddler is a resident he is not required to take a license in the sale of certain commodities.

In Louisiana, if he lives in the Parish in which he operates he gets a license at half price.

In Mississippi, if he is a resident he doesn't have to put up a bond, but if he is a nonresident he does.

In quite a number of the States peddlers of agricultural produce are exempted if the products are grown or produced within the State.

With scarcely any exceptions, the peddlers' laws exempt local merchants.

None of the gypsy trucker or itinerant merchant license and bond laws, by reason of specific exemptions, apply to concerns operating in a locally established place of business.

Half of the States exempt various types of ex-soldiers from license fees, and of these States, California, Connecticut, Kansas, Massachusetts, Michigan, New Jersey, North Carolina, Oklahoma, Pennsylvania, Rhode Island, Tennessee, and Wisconsin make the exemption available only to resident ex-soldiers. They forget that these boys were fighting for those States when they were across.

The period of residence required is usually 2 or 3 years, and it goes as high as 5 years in Wisconsin.

In about 10 States there are exemptions in behalf of manufacturers selling goods of their own production. Of these States, Delaware, Louisiana, North Carolina, Ohio, and West Virginia make the exemption available only for local manufacturers.

In North Carolina, in 1937, this sort of law was passed:

> Every itinerant salesman or merchant who shall expose for sale, either on the street or in a house rented temporarily for that purpose, any goods, wares, or merchandise, bankrupt stock, or fire stock, not being a regular merchant in such county, shall apply for in advance and procure a State license from the Commissioner of Revenue for the privilege of transacting such business, and shall pay for such license a tax of one hundred dollars in each county in which he shall conduct or carry on such business.

The supreme court of the State, in the case of *Best & Co., Inc.* v. *Maxwell* (3 S. E. (2d) 292, N. C. 1939), held this to be a valid enactment, even where interstate commerce is concerned.

Take, for instance, if Marshall Field's sent an expert from their hat department to a town down in North Carolina to take orders for hats from Marshall Field's she would be subject to this $100

license, though the transactions were completely interstate in the ordinary acceptation of that term.

The VICE CHAIRMAN. Was there any claim made in support of that sort of ordinance that somebody would buy up an entire bankrupt or fire sale stock and move into an old building in a small town and undersell everybody in the neighborhood and disorganize the mark t and all that sort of thing?

Mr. GEORGE. There are laws in practically all the States covering that that are separate from the peddler's laws, and undoubtedly—I can't say this definitely——they have that sort of law in North Carolina and South Carolina.

South Carolina passed an Act, and in the case of *State* v. *Yetter* (5 S. E. (2d) 291 S. C. 1939), the act was held invalid; the same act was held valid in one State and it was held invalid in the next.

Mr. DONOHO. You referred to gypsy truckers. What are they?

Mr. GEORGE. That is a phase of the truck regulation legislation of the States. About 10 years ago a trade association representing grain elevators and grain buyers, and afterward joined by other trade associations, conceived the idea of reaching the man who, with a truck, made a practice of picking up a load of excess commodities in one locality and taking it usually across State lines, or sometimes not, to another locality where there was no excess of that type of goods, where he would sell them. He would then pick up some excess merchandise there, farm products, there, and take them to another community where there might be a scarcity and a better market.

They started out to regulate that, and conceived the idea of what has since come to be known as the "gypsy trucker" acts, and these acts were enlarged in their scope until they cover every type of, not only buying for sale, but sale of merchandise where the merchandise is transported in a motor vehicle. These laws require usually an application fee and a license which are very exorbitant, they require two bonds, one that you will pay taxes if there are any taxes to pay, and another bond that you own the goods that you are handling, and so forth, and then you have to comply with the insurance requirements, which are complied with by contract and common carriers.

Mr. DONOHO. You say numerous bills have been introduced on this subject. Have they passed?

Mr. GEORGE. Some of them have passed. In 1937 bills were passed in Nebraska, Missouri, and Nevada, but were vetoed in Missouri and Nevada. The Nebraska bill was considerably amended and some of the barrier features removed. In 1939, 34 of these bills were introduced in 23 States, and they passed in California, Iowa, Wisconsin, and Wyoming. The California, Iowa, and Wisconsin bills were considerably amended and Wyoming passed a very stringent bill which is really a prohibition of that type of business.

Mr. DONOHO. How are these particular laws trade barriers, Mr. George?

Mr. GEORGE. Because it is practically impossible to meet their requirements. The requirements are prohibitive. And each one of them specifically exempts anybody operating from or at a local fixed place of business. A few of them have mileage limits. If you have a fixed placed of business within 30 miles you are all right.

Mr. DONOHO. I understand that you have an opinion as to the sponsorship of this type of legislation.

Mr. GEORGE. Originally it was sponsored by the National Trade Association representing the grain dealers and elevator concerns. They were joined with other associations, and prior to 1937 they organized the Associated Producers and Distributors, and opened offices in Kansas City, Missouri, and so far as I have been able to learn, the sole activities of that organization have been to draft and circulate and promote the introduction and passage of these bills throughout the United States. On their own letterheads they represent that the organization is maintained by trade organizations representing retailers in grain, coal, lumber, hay, fruits, vegetables, flour, feeds, seeds, drugs, groceries.

Mr. DONOHO. You have information to this effect?

Mr. GEORGE. I have their letterhead upon which they make that declaration themselves, and as to activities, other activities Frank M. Stoll—I believe he is their executive secretary—procured the running in the Saturday Evening Post in 1938 of a very lengthy article called "Gypsy Truckers Get the Business." This was a propaganda article aimed at promotion of the passage of this kind of ordinance, and that is where I think it got the name "gypsy trucker." I have been in contact with Mr. Stoll on several occasions in connection with pending legislation of this type in efforts to procure revisions of it.

He has personally been active within my knowledge in connection with bills which were introduced in Missouri, Kansas, Oklahoma during the past two sessions of those legislatures.

Mr. DONOHO. Have these bills had other sponsorship?

Mr. GEORGE. Well, they are sponsored by retail trade associations representing those commodities which I have mentioned at the various State legislatures. I attended a committee hearing on the bills in Minnesota in '37 and there were six of these retail trade associations there asking and urging for the passage of the bill.

Mr. DONOHO. What has been the effect of this type of legislation on your type of merchandise, Mr. George?

Mr. GEORGE. Where it has passed, it is a practical prohibition of the types that are covered by the act after the legislature gets through amending the bills, and sometimes the amendments are sweeping and sometimes they are not. In Wyoming there are no exemptions. Everybody is stopped. The individual truckers of farm commodities, who are invariably covered, are unable to comply and are driven out of these States, and farmers having excess commodities have no other outlet except local buyers and local commission houses. The effect is to establish an efficient community barrier against competition.

Mr. DONOHO. You have referred to commodity registration laws Will you please describe these laws?

Mr. GEORGE. These laws are not aimed at our method of distribution. They apply to all manufacturers, and this type of legislation is increasing and it is reaching out and taking on additional lines of commodities. They require State registration of the named commodity, and in connection with the registration there is usually a fairly substantial fee. Commodities already under this type of legislation are insecticides and fungicides, commercial feeding stuffs, commercial fertilizers, foods, drugs, cosmetics, and nursery products. There, of course, may be others that I haven't paid any attention to.

Mr. DONOHO. How do you relate these laws to the question of trade barriers?

Mr. GEORGE. The actual effect is to impose an enormous amount of registration fees payable in a given State, and the great bulk of these fees are paid by nonresident manufacturers. The manufacturers in 47 States are paying the registration fee in one State.

Mr. DONOHO. I wish you would amplify that a little, please. I am not sure that that is clear.

Mr. GEORGE. Let's take foods, drugs, and cosmetics. Illinois originated the idea, but the bill didn't pass. Louisiana heard about it, and in 1936, I am quite sure, passed the first registration law relating to these products. They provide a $5 fee payable on each separate item of food. For instance, if a manufacturer gets out four kinds of food articles, or four separate brands, or four separate items, he has to pay $20. Most manufacturers of food articles have any number of items, exceeding 20. If you have over 20 here, you get by for $100, and the newspapers, at the time this bill was up for passage, commented and said that it would raise $1,000,000 from manufacturers for the Department of Health of Louisiana. I can't conceive of any necessity for $1,000,000 in a department because of registering food articles coming into the State. All of these articles come into the State under the Federal Food and Drug Act, and all you have to do is to make your application and pay the fee. I have never heard of one being turned down. They just come in there and get your money.

The VICE CHAIRMAN. Do these people in their campaign for this sort of legislation make a contention to the effect that these merchants in a given community are there, local, paying taxes and holding the community together, supplying its ordinary commercial requirements, and that these people come in from the outside and pay no local taxes, they are here today and gone tomorrow, and take their business, and weaken the business structure of the community?

Mr. GEORGE. They make those claims, but I believe there is a satisfactory answer to every one of them. The merchant is not a taxpayer; he is a tax collector. All of this tax load gets back to the communities. Merchants don't make a community. They don't come there until there is a community to live off.

The VICE CHAIRMAN. When do you all arrive?

Mr. GEORGE. In the same way.

The VICE CHAIRMAN. Unless there is some such tax, when do you pay back the taxes you have collected? You collect taxes there.

Mr. GEORGE. I don't get that.

The VICE CHAIRMAN. You say the merchant is a tax collector. You mean by that he is in business and sells for a profit, and he pays a part of that profit in taxes; but, of course, the consumer has paid him the profit out of which he pays the taxes. Then you come into the community and sell for a profit. Then, unless you do pay some tax, how do you give back to the community the share of taxes you have collected in the community?

Mr. GEORGE. Incidentally, 88 percent of our people who make the local profit that is made in that community, spend it with those same merchants who object to them, but I think a broad view of the situation is that this is one country, and we pay plenty of the taxes where we do our business.

The VICE CHAIRMAN. I am just trying to get at your reasoning. You do some business where you make your sales, of course.

Mr. GEORGE. Where the sale is made, the profit that is made in the retail sale is spent right in that community, and the taxation is indirect, but it is just exactly as definite.

The VICE CHAIRMAN. What I was trying to get at is, how do you give back, unless you do have some tax, how do you give back to that community the same share of your profit which the local merchant gives who pays the tax?

Mr. GEORGE. Well, we don't—take for instance, let's take a solicitor tax, for instance.

The VICE CHAIRMAN. Let's take the case I have just put to you first.

Mr. GEORGE. Directly, we are subjected to the license tax. In other words, the license tax is applicable to us, but it is not possible to make revenue from an act like that because it is purposely prohibitive.

The VICE CHAIRMAN. I know, but you are arguing with me, and I have asked you a question. You say the merchant doesn't pay a tax. Of course he does pay a tax. That is just what you mean. He goes down to the tax collector's office and hands him some money and gets a tax receipt. What you mean by your statement as I understand it is that he is paying the tax collector a part of the profit made from selling goods to the people in the community, or to whom everything is sold. Is that true?

Mr. GEORGE. My point is that taxes are a part of your overhead.

The VICE CHAIRMAN. What is your point about how your people make your share of contribution to that community from the profit you make out of that community unless you are taxed?

Mr. GEORGE. I don't make that claim. I make the claim that it is not a community question.

The VICE CHAIRMAN. They seem to not agree with you about that, the people who live in the communities.

Mr. GEORGE. I understand that. This is one whole community, the United States. What profits we make at the point where we manufacture the goods we pay into the State and Federal Treasury, and the school fund that is contributed from Washington to Montana, for instance, or to any other States, comes from the income that all of us are paying into the Federal Government, and we are carrying our load.

We figure that if the people in one State want to depend entirely upon their own people for their business, then that is a different thing, but where there is an interrelation of commerce between communities, you can't lay it on the basis of paying a tax per square mile in the locality.

The VICE CHAIRMAN. In other words, you recognize there have to be some taxes paid by the people in the communities, and you want the privilege of going there and doing business there without making contribution to the taxes.

Mr. GEORGE. In the first place, I don't consider it a privilege.

The VICE CHAIRMAN. I wasn't sure whether you did or not.

Mr. GEORGE. It is a right. We have as much right as anybody else has to do business.

The VICE CHAIRMAN. But why don't you pay your proportionate share of the profit made in their community to the upkeep of the community?

Mr. GEORGE. We aren't given an opportunity to pay a share of the taxes that we can stand.

The VICE CHIARMAN. You claim that what they charge you is exorbitant, but you don't mind paying a tax?

Mr. GEORGE. We will pay our share of the taxes under all conditions.

The VICE CHAIRMAN. You say you do not object to paying a license tax?

Mr. GEORGE. We do not object to paying a tax if it is not prohibitory, and if it is consistent with the amount of our interests, the interests of the person affected.

Now, Congressman, we don't have that local transaction ourselves in about 50 percent of our companies. That person is a dealer trading on his own account. You understand, we sell the goods to that person and that person resells on his account to the consumer. That is a local transaction not within the scope of interstate commerce, and the tax burden, if any, is on that person. Where we have a solicitor take an order in your town, for instance, and he sends it to Chicago for acceptance and later delivery if the order is accepted, the shipment is made through the mails to the consumer and that is an interstate transaction and it has been generally understood until probably the last couple of weeks—having in mind the possible effect of various recent decisions of the United States Supreme Court—that those transactions are not lawfully taxable.

The VICE CHAIRMAN. I think I understand your position. It is hardly as strong as you put it in the first instance. You don't mind paying your share of the taxes for the benefit of the community, but your claim is that the taxes which they charge you are prohibitive and not a fair share.

Mr. GEORGE. That is right.

Mr. DONOHO. You referred to laws requiring the registration of foods and preparations for animals. Would you explain this type of law, please?

Mr. GEORGE. There are 42 States that have laws of this kind containing registration fees in some cases, tonnage taxes in others, and in still others a registration and tonnage tax. Registration fees run all the way from $1 to $25 per each individual item and they are on an annual basis. A manufacturer having 10 articles in a State of that kind would have to pay $250 a year. This condition exists in 42 States, and when you consider a manufacturer doing business on a national scale, he has to pay those fees in 42 States, and they are very exorbitant and a considerable burden. When you look at it from the amount of money that is taken from all manufacturers in all of the States, it is a very substantial figure.

Mr. DONOHO. What is the situation with respect to insecticides and fungicides?

Mr. GEORGE. Similar laws apply in that case, but there are only 14 States that have them at the present time.

Mr. DONOHO. Does any of this legislation require the payment of registration fees or licenses by local dealers?

Mr. GEORGE. Very few of them. There is a tendency growing up toward fees on dealers.

Mr. DONOHO. Is there anything else you would like to discuss that I haven't covered by my questions, Mr. George?

Mr. GEORGE. I think not. I have some tabulated information on these laws showing their citations, and other detailed information which I have only touched on in my testimony, and I would like to offer them for the files of the committee, or the record.

Mr. DONOHO. They will be offered for the files of the committee.

Mr. KADES. Mr. George, I understood you to say in reply to the Chairman's question that the organization which you represent doesn't object to local license and franchise taxes, but you feel that those should be so computed as not to be prohibitory, is that correct?

Mr. GEORGE. That is not exactly it. My organization wouldn't have anything to do with it, but the individual firms where the transaction is that of the sales person, so-called, and he is a dealer, that would be the dealer's responsibility and I don't know what the dealer would do. On the other transactions, they have never been considered within the taxing authority of the locality.

Mr. KADES. Do the organizations which comprise your Association attempt to regulate the method by which the dealer does business?

Mr. GEORGE. No.

Mr. KADES. Could the dealer open a store of his own in competition with other local stores and not solicit from house to house?

Mr. GEORGE. He could; yes.

Mr. KADES. And still handle the same articles?

Mr. GEORGE. Yes; I don't know of its ever being done except occasionally somebody has done it.

Mr. KADES. Can you account for the fact that it isn't being done in view of this legislation that you have described? Why wouldn't the legislation have a tendency to foster the establishment of small stores by your dealers?

Mr. GEORGE. The tendency would be to stop this man from any kind of operations because usually those people don't have funds with which to start a store. They are very small operators and it is very difficulty to get a tax small enough to be a fair burden on the amount of their sales and gross income. For instance, a tax of $100 a year might be 33⅓ percent of their income. So many of them are part-time people.

Mr. KADES. Has your organization done anything to attempt to open up capital markets to the dealers?

Mr. GEORGE. I really don't know what you mean by that.

Mr. KADES. If the corporations which comprise your association provided financing for the dealers through whom you do business, then it would be possible for them to do business without paying the various prohibitory taxes and license fees, would it not?

Mr. GEORGE. You mean if the companies would finance a store for them?

Mr. KADES. That is right.

Mr. GEORGE. Then they would come under the chain-store laws, and they are just as bad.

Mr. KADES. That the objection that you have to this legislation is the same, substantially, as that made to the chain-store tax legislation.

Mr. GEORGE. My objection to it is that it has no tendency toward promoting the public welfare, and the regulations, taxes, and burdens are used as a means of controlling and destroying competition. I don't think that a man should be made to choose the type of business which he shall perform because some one group of distributors want to have it all for themselves. Why should our people not be free to use such methods of distribution as they desire or choose?

Mr. KADES. Is it your opinion that the legislation is aimed at the dealers, or is it aimed at the concerns which are members of this association?

Mr. GEORGE. It is aimed at this method of distribution, which is through sales persons—we call them dealers because they buy and sell on their own account, but they are house-to-house distributors. They are little fellows, these house-to-house distributors; they buy their goods from us, probably have $100 worth of goods at a time, and sell them to the consumer, and then when they sell those they buy more.

Mr. KADES. You don't think it is a fair statement, then, to assert that the prohibitory legislation which you have described is aimed at direct-selling companies? As I understand what you are saying now, you are endeavoring to show that the legislation is aimed at preventing persons without capital from going into business, not that it is aimed at large direct-selling companies.

Mr. GEORGE. Practically all the large direct selling companies do the same type and kind of business that the little ones do. This type of legislation is aimed at our method of house-to-house distribution by personal solicitation and it is in competition with local stores, and because it is in competition with local stores, these burdensome legislative enactments are passed.

Mr. KADES. Is it possible that it might be sound public policy to attempt to preserve the small-business man from that kind of competition?

Mr. GEORGE. In the first place, they don't need preservation from us. We don't do over 1 percent of retail sales in the United States; and in the second place, we produce more business for them than we ever took away from them.

Mr. KADES. How does that occur?

Mr. GEORGE. Our people go around and promote a sale and don't make it. They create interest in that particular product. Ninety-five percent of those sales are made by the merchant. We get 5 percent of them, or less. Take a commodity like aluminum ware, the merchants tried to sell aluminum ware when it first came onto the market and it was a flop. It went into the direct-selling method of distribution and became a popular item in the household and it passed out of the hands of direct selling and now 95 percent of that is sold by the merchants, and we created that market for them.

The VICE CHAIRMAN. Did you send them a bill or anything? Why don't they solicit you to come in, Mr. George; are they just not smart or something?

Mr. GEORGE. I think they need education on the subject. I am serious about that.

The VICE CHAIRMAN. Are you really serious?

Mr. GEORGE. I am very serious about it. I can show you other illustrations of where we have created markets. We are the mis-

sionary people in retailing, and we certainly create more business than we get. I have convinced merchants of that.

The VICE CHAIRMAN. You are a pretty good salesman.

Mr. DONOHO. Mr. Chairman, Mr. George has some data that he wishes to introduce for the files and it is rather important and unique material. I wish he would describe it very briefly for the record so that anyone looking over the record would know where to go for that material.

The VICE CHAIRMAN. Go ahead.

Mr. GEORGE. The paper marked as my "Exhibit No. 1," is a copy of that Louisiana Food, Drug and Cosmetic Act.

No. 2 is a tabulation of State animal preparation laws.

No. 2A is the tabulation of insecticide and fungicide registration laws.

No. 3 is the Green River ordinance.

No. 4 is a list of communities, practically correct, where the Green River ordinance is in effect. It shows the population of the communities opposite each name.

No. 5 is a nuisance ordinance with discriminatory local exemptions.

No. 6 is a variation of the nuisance ordinance prohibiting annoying or trespass.

No. 7 is a combined nuisance and license ordinance.

No. 8 is extracts from publications showing that this is a commercial, and not a public-welfare activity—the imposition of these barriers.

No. 9 is a Synopsis of the State license laws of the various States.

No. 9A, Special trade-barrier incidents of State peddlers license laws, and copies of that North Carolina and South Carolina act which I referred to.

No. 10, a typical license ordinance.

No. 11, a license-and-bond type of ordinance.

No. 12, a bond type of ordinance.

No. 13, police permits conditioned upon fingerprints and other provisions.

No. 14, an ordinance requiring a waiting period before our people can start trying to make a living.

No. 15, an ordinance requiring that repetitious health examination.

No. 16, an ordinance containing practically all the burdens you ever heard of, from Duluth, Minn.

No. 17, the Gypsy Truck Act, passed by Nebraska, which is the original act of that kind in the United States.

No. 18 is the tabulation of gypsy-truck legislation which shows how prevalent the efforts are to pass this type of law.

No. 19, some remarks on barriers and merchandising.

Mr. DONOHO. Mr. Chairman, I offer these various papers for the files.

The VICE CHAIRMAN. They are received for the file.

(The data referred to were marked "Exhibit No. 2394" and are on file with the committee.)

Mr. DONOHO. Mr. Chairman, I believe the witness has some recommendations he would like to make.

Mr. GEORGE. These are not all original; reciprocity between States and communities; legislative repeal of barrier laws; State legislation curbing the power of municipalities to enact barrier ordinances; con-

gressional and State regulation of pressure groups. I believe the committee realizes that most legislation is not the result of legislators, it is the result of pressure groups, particularly that which related to merchandising.

The VICE CHAIRMAN. Have you any specific plans for stopping that? [Laughter.]

Mr. GEORGE. One very effective thing I think you could do would be to require a legislator, upon introducing a bill by request, to state exactly who requested it. That is just one detail.

Mr. PIKE. Do you suppose you could ask lobbyists to take those health examinations, Judge?

Mr. GEORGE. I believe there are ways of finding out at least what a pressure group is aiming at. Practically all pressure legislation is enacted in the name of the "dear public." I haven't given any detailed thought to it, but I think that is something that could be studied with profit.

Corrective Federal legislation which has a slight tendency to compel the State to take corrective action itself; Federal legislation to occupy the whole field of commerce to the exclusion of State legislation which has a tendency to get in there when there is room. I am of the opinion that Congress could with profit to the country cover more fully the various phases of interstate commerce, and in that event, according to the law, the States would have to step aside. There is too much left open that really substantially affects commerce in the States.

Take some steps—I don't know what they would be—to make the consuming public conscious of the fact that theirs is a paramount interest in trade barriers. I feel that in this country we have gotten away from the fundamental idea that merchandising and distribution are a means to an end and that consumers are a first consideration. If we could bring that old idea back, we would be much better off and we would have much less trouble, I think, in our complexities of business life.

I think a permanent commission of this kind would be very well worth having to work federally, and in conjunction with the States, on the elimination of unnecessary barriers and regulations which are not in the public interest.

The VICE CHAIRMAN. Does the Council of State Governments show any interest in this?

Mr. GEORGE. It is one of their projects.

I think the States should be given a chance to solve some of these unique laws and administrative activities, but where there is deficiency of action on their part I think Congress should step in. I think there was compensation in the "horse and buggy" days; we didn't go so fast, but we had a lot less trouble.

The VICE CHAIRMAN. We knew a whole lot more about what to do when we got there, didn't we?

Mr. GEORGE. Yes.

I have no further remarks.

The VICE CHAIRMAN. We are very much obliged to you. That was a very interesting statement.

(The witness, Mr. George, was excused.)

Mr. DONOHO. Dr. Agnew, will you come forward, please?

The VICE CHAIRMAN. Do you solemnly swear the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth, so help you God?

Dr. AGNEW. I do.

TESTIMONY OF DR. P. G. AGNEW, SECRETARY, AMERICAN STANDARDS ASSOCIATION, NEW YORK, N. Y.

Mr. DONOHO. Will you give your name and address, please, sir?

Dr. AGNEW. P. G. Agnew, 29 West Thirty-ninth Street, New York City.

Mr. DONOHO. Whom do you represent, Dr. Agnew?

Dr. AGNEW. The American Standards Association. I am secretary of the association.

Mr. DONOHO. Please describe your association briefly.

Dr. AGNEW. The association is a federation of 75 national organizations that are interested in standardization. These include 6 of the regular departments of the Federal Government, 14 or 15 of the national engineering and professional organizations, and the rest are national trade associations.

Mr. DONOHO. Please outline in a few words, if you can, what the work of your organization is.

Dr. AGNEW. The work of our organization consists in the development of national standards: dimensional standards, such as bolts and nuts; specifications for materials, for machinery, machine elements; safety codes for the protection of workingmen and for the protection of the public.

Mr. DONOHO. What is the relationship between the work of your association and trade-barrier problems, Dr. Agnew?

Dr. AGNEW. We have found in our work that many of the standards that are being developed through the organization have a very direct effect in the elimination of certain types of trade barriers, particularly those types of trade barriers which arise through the use of legally enforced local standards.

Mr. DONOHO. Would you give an illustration?

The VICE CHAIRMAN. I am afraid I didn't get the Doctor's statement. Your statement was that your work tends to eliminate State barriers or runs in conflict with State barriers?

Dr. AGNEW. It tends to eliminate State barriers. Our work in the past 20 years has definitely eliminated a considerable number of State barriers.

The VICE CHAIRMAN. I interrupted you too soon. I beg your pardon, Doctor.

He was just about to explain, I believe.

Mr. DONOHO. Yes; I believe he was. He was going to illustrate.

Dr. AGNEW. I would like to illustrate this work by the work on bedding and upholstery of furniture in which we are now engaged. This problem was brought to us by the organized retailers, and in the work the leadership is being taken by the enforcement officials of the various State governments. The association was asked to undertake the job because there are now in existence a large number of conflicting regulations among the various State governments. Thirty-seven States have legislation on which regulations are based. There are 16 of those States that are very active in this enforcement.

There are a half a dozen States that have legislation and are not enforcing it, and others are enforcing it only indifferently.

We have organized a very representative committee of all of the groups concerned to work upon this problem.

To give you the nature of the conflict, there are several types of conflicts between the regulations in the various States. The most important of these consist in differences in the requirements in regard to the materials that go into the product, and also in the requirements of labeling. For example, the State of New York requires that feathers that have been reconditioned shall be labeled "curled feathers." That is not legal in Pennsylvania, which requires that they shall be labeled "crushed feathers." In New York reworked cloth clips are called "garnetted"; in other States they must be labeled "shoddy." Furthermore, there are important differences in the administration of these laws and regulations, so that often double inspection is required, and it has actually happened in many cases that even when the regulations are the same, one administration rules the matter prohibited and other States permit it, even though the wording of the regulation is the same.

A striking illustration of this is in the State of California, where the administration of the law is so different that a pillow which is made of downs and feathers, 90 percent down and 10 percent feathers, if it is made in the State of California, may be labeled "pure down." If it is made outside of the State and imported into the State, it must be labeled "90 percent down," although the materials are identical.

Furthermore, there are very annoying differences in the form of label required, differences in the statements on the label, differences in the color of the label required, differences in the size.

Mr. DONOHO. Are differences like that very important? They seem rather small.

Dr. AGNEW. They are small, but sometimes small things, like a microbe, may cause considerable trouble, and these require virtually the preparation of the material specially for the destination of the product.

Mr. DONOHO. Just what is your association doing about this sort of thing?

Dr. AGNEW. Under the leadership of the State officials that are charged with this duty, they have an association called the National Association of Bedding and Upholstery Law Enforcement Officials, we are developing——

The VICE CHAIRMAN (interposing). Let's get that. You say the States have an association of their officers whose business it is to enforce the law with regard to bedding?

Dr. AGNEW. That is right, sir.

The VICE CHAIRMAN. That is distinguished from the association of the States as it functions, I believe, mainly through the office of the chief executives of the States?

Dr. AGNEW. Yes, Mr. Chairman. There are a considerable group of organizations of State officials.

The VICE CHAIRMAN. That is right, the chiefs of police, sheriffs——

Dr. AGNEW (interposing). Public-utility commissioners. There are at least seven or eight of such national organizations of State officials that are cooperating in this work.

The VICE CHAIRMAN. I just wanted to put that in the record. Thank you.

Dr. AGNEW. In this case, Mr. J. Davis Donovan, of Maryland, is the president of that association and he is the chairman of our committee. It is a rather long list, but to show you how this work is carried out, I would like to read the list of the different national organizations that are participating in this work. Each of them is concerned with some angle [reading]:

National Association of Bedding and Upholstery Law Enforcement Officials
American Association of University Women
American Cotton Waste Exchange
American Home Economics Association
American Hospital Association
Associates for Government Service
Bedding Manufacturers Board of Trade, Inc.
General Federation of Women's Clubs
Maryland and District of Columbia Bedding Board of Trade
National Association of Bedding Manufacturers
National Association of Curled Hair Manufacturers
National Association of Furniture Manufacturers, Inc.
National Bedding and Upholstery Manufacturers Board of Trade
National Bureau of Standards
National Retail Dry Goods Association
New England Bedding Manufacturers Association
New York State Department of Labor—Bedding Division
Supply Men's Club
U. S. Department of Agriculture: Consumers' Counsel, AAA; and Bureau of Home Economics.

The VICE CHAIRMAN. In those various groups do you have very different general basic interests or are they groups that have the same interests basically?

Dr. AGNEW. There are groups there that have quite different interests. The manufacturers' interest in many respects is quite different from the retailers' interest, and in many respects the consumers groups' interests are different. Again the institutional buyers of such products have different interests.

The VICE CHAIRMAN. I don't mean to take up too much time, but what is the difference between their interests and the interests of the ordinary housewife?

Dr. AGNEW. Well, it is closely allied to the interests of the ordinary housewife.

This committee is made up of representatives of these various organizations. Three standards for the different materials that go into this have already been developed. Other standards are under way—for inner springs, feathers, and downs; and also for quite important methods of test to see whether the material is new or reworked, and whether second hand or used material is properly sterilized.

The VICE CHAIRMAN. I think the committee gets that point of the picture. Is there an agency of inspection and supervision or does the individual buyer have to determine for himself?

Dr. AGNEW. In this case the various State laws and the regulations require a label revealing the fact or certifying that it has been properly sterilized, and also to prevent fraud in misrepresentation of the contents. You can't tell by looking at a mattress or a pillow what is on the inside, and these labels prevent fraud as well as make for the protection of the health of the public.

The VICE CHAIRMAN. I get that. How do you go about having an agency of inspection and supervision whose efficiency and authority would be generally recognized in interstate commerce?

Dr. AGNEW. This scheme depends wholly on the cooperation between the different States through this national organization of the officials. Fortunately the manufacturers have cooperated very closely with it.

The VICE CHAIRMAN. I can understand. You see, I know pretty well what we want, and I think you know what we want, too. What I am trying to get at is how do these groups agree upon who is to do the inspecting, or do you contemplate an arrangement where there will be a compact among the States which will accept each other's inspections?

Dr. AGNEW. That is right. That is exactly what the association of officials is planning, and certain steps have already been made between certain States, but that is not yet general, and the general arrangement with a coordinated system of inspection will have to await completion of all of the standards in this field.

The VICE CHAIRMAN. With respect to these springs that you speak of, does that require a very large and expensive rearrangement of machinery for manufacturing?

Dr. AGNEW. No, Mr. Chairman; the type of standardization work that we do does not attempt to stop manufacturers from doing anything. It is just to reveal what the product is.

The VICE CHAIRMAN. Personally, as one member of the committee, I am tremendously interested in what you are talking about. I don't know how much more you want to say before you let me begin to ask you some questions.

Mr. DONOHO. Had you rather ask your questions now? I believe the doctor indicates he would be glad to answer them.

Dr. AGNEW. Just as you like, Mr. Chairman.

The VICE CHAIRMAN. I don't want to interfere with the doctor's statement.

Mr. DONOHO. I don't believe you will, Mr. Chairman.

The VICE CHAIRMAN. I have, if I may speak for myself, given some consideration to what I think are the possibilities of standardization. As I see it, if you can by standardization be able to describe a commodity by a well-recognized trade term, then you would make it possible to put that commodity, whether produced by a little manufacturer or a big manufacturer, in contact with the general market while it probably is at the point of origination. If instead of having to ship your mattress, for instance, around over the country to have it inspected, you could sell it by its descriptive trade name and there were an agency of inspection and supervision which would make the person buying it by its descriptive trade name feel confident that it would be delivered according to that description, there would be—and some day I hope there may be—an intermediary agency that would give selling confidence that there would be receipt and payment accordingly.

But if you gentlemen who are interested in standardization could work out systems of standardization with regard to commodities which are in general demand, both as to raw material, possibly, and as to finished commodities, it would seem that you probably would make it possible for the small producer of a standardized raw material to

list his commodity on some market place comparable to an exchange, and if it could be done, then he could establish trade contact with the general market, however small the producer is. On the other hand, the small manufacturer, it seems to me, could produce a commodity that would meet, for instance, your standard requirements—for instance in mattresses—and there should be some place where it would be made possible for the person who wants to buy that mattress to get in trade contact with the person who has produced it, whereby it seems to me that that would go far toward bridging the distance between production and consumption and go far toward creating the possibility of the small man not big enough to have an individual selling organization to bridge the distance between himself and the general market. I don't like to ask you directly, but I am not sensitive. Is that crazy stuff or is that somewhere in the realm of reasonableness? People are very candid with me and I have quit blushing, so you needn't mind.

Dr. AGNEW. Mr. Chairman, far from being crazy, that is in many commodities a realized fact today. It is a realized fact in a considerable number of commodity specifications, but mostly in the industrial field rather than in the consumer-goods field. Our whole organization was set up to eliminate conflicting standards, because at that time there were several hundred organizations in the country issuing standards. It was set up primarily for standards for those products which one corporation buys of another, but a few years ago some of the consumer organizations came to us and asked us to enter into the field of consumer goods. We have done so, and that work as yet is very small compared with the work that we have done in the other field—a dozen specifications in the consumer-goods field against 400 standards that have been issued and approved in the field of industrial goods.

The VICE CHAIRMAN. I wish you people would kind of keep working on that thing. I have believed in it 30 years (I was very young when the idea first came to me, of course) and I am certain that many commodities are susceptible of being sufficiently described by a trade term that the buyer and seller can have the same picture of what that thing is. Where it is not possible for these buyers and sellers to get together, it would be possible, it seems to me, to establish an intermediary agency of inspection, supervision, and labeling so that entire strangers would have confidence in trade with each other in the commodity which the buyer had never seen, purchasing from a producer or seller whom he had never seen and whose integrity was of no concern to him. If we could do that, it seems to me we would be moving pretty far toward establishing a sort of democracy in business opportunity.

Dr. AGNEW. May I illustrate a fine example of just what you have outlined, Mr. Chairman? That is a realized fact. It is not an accomplishment of our organization. I wish I could say it were. That is what is known as the I. E. S. lamp. Those letters stand for Illuminating Engineering Society, which developed specifications for a lamp for the household that would give really good lighting, adequate lighting, would be flexible and which would not be injurious to the eyesight, in other words, a real illuminating engineering job. This lamp was developed and put on the market by any manufacturer that wanted to meet those specifications, and a great many of them

were made and actually, for the first few months, they could not keep up with the orders, the lamp was so popular. The output is controlled by a well-developed system of test and inspection, and it is one of the notable recent new developments in merchandising.

The VICE CHAIRMAN. Well, sir, it is worth your whole trip down here and almost worth half of this examination to have somebody really give some testimony like that. It seems to me a most important thing. You can readily see that one of the big difficulties that confronts modern society in trying to preserve a democracy of opportunity is the fact that with the application of steam, electricity, and gasoline to our activities, the field of production and the field of consumption have moved so far apart that a small organization can't bridge the distance, can't maintain trade contact. In the days of the manorial markets when the individual was the industrial unit, the community in the main the industrial organization, the old manorial markets which were under Government control afforded the opportunity for everybody to bring his commodity in and really get in contact with the general market. Now, we have had no substitute for that, no way for the person who has a commodity for sale, a relatively small producer, to let the persons who want to buy his commodity know that he has a commodity; he can't ship it all over the country, but if he could ship the descriptive trade name, if there were some place, more or less on the hilltops of commerce, where he could list the commodity for sale and to which prospective buyers could resort, even by telegram, then you would seem to me to have made a great step.

I am trying to get this across to you because you are in a key position—we can suspend this operation, we've got so many words here now that we can never read them all. Say up here at the headwaters of the Potomac there are buyers on one side of that river and sellers on the other, the difficulty in getting across is not so great, but when the thing moves down here to this broad river if there were no public bridges it would be only a tremendously big farmer, for instance, on the other side who could build a bridge of his own to span the river and the little fellow couldn't get across. What he would have to do would be to sell to somebody to bring his stuff across. We should have somebody to take that place, and you people can do it, and it can't be done, as I see it, unless you do the job.

Dr. AGNEW. Your remarks are very encouraging, Mr. Chairman. You have outlined in admirable form the main objective of the American Standards Association. I think that it is remarkable that so small an organization has been able to attract the cooperation of so many large groups. All of the 400-odd standards that we have developed have a very definite influence toward a free national market. You spoke of definitions of terms. Even a very technical specification, Mr. Chairman, like the specification for cement, after all is but a definition so that a buyer can send a telegram even, as you say, "Send me a thousand barrels according to Specification No. 37," and that is the definition of what the buyer and seller mean and they are speaking the same language.

Mr. Chairman, I believe that the plans of the committee are to delve much more deeply into this whole subject of standards at a later time. I did want the opportunity to present certain phases of our work which do definitely affect those.

The VICE CHAIRMAN. I beg your pardon—no, I don't, either; I'm glad I interrupted you.

Dr. AGNEW. So am I, Mr. Chairman.

Mr. DONOHO. Dr. Agnew, I don't think I will ask you any more specific questions. I wish you would go ahead and develop in your own way those aspects of your work which relate to the problem primarily under consideration here.

Dr. AGNEW. I should like to mention a few other examples of this type of work. We have developed a safety code for refrigeration, for the protection of the public against the hazards of this new art. When that code was developed we had a very rough time of it. In my opinion, very unfortunately certain of the commercial groups made contact with the municipalities to influence ordinances, to affect the materials one way or the other.

Mr. PIKE. Those are the refrigerants?

Dr. AGNEW. That is right. We have taken that standard through three stages, and it has gone a very long way in cleaning up those barriers in the form of city ordinances, and has made a pretty clear national market. Now this has gone hand in hand with the research and standardization work on the subject, and as a result, over this period of years the product has improved very definitely and the price has dropped. It is a fine illustration of that freeing of a national market, an improvement of product, with protection of the consuming public, by an organized attack on fundamental problems.

I mentioned safety codes. We have a group of more than 50 codes, a code for grinding wheels, a safety code for elevators, for punch presses, an electrical code, and so on. The purpose of these codes is for the protection of employees in industry and for the protection of the public. That program was started originally at the instance of the manufacturers who were annoyed by conflicting State regulations. For example, an electric motor for a particular use in order to be legally safe in Pennsylvania had to be legally unsafe in the State of Wisconsin, and similarly the Wisconsin motor was legally unsafe in the State of Pennsylvania.

There are three methods of guarding gears so that the workman doesn't get his fingers destroyed. One group of States required one of those methods, another group of States required another method, and a third group required a third group of standards. A thoroughly organized committee went at it and brought out a code which allowed in the proper place all of these three types.

Mr. PIKE. All three were satisfactory?

Dr. AGNEW. For particular situations. Each was allowed wherever the situation was applicable, of course. The same thing in punch presses—different requirements in the different States. Each of these committees that work on, say, the refrigeration code or the elevator code, and so on, is made up of individuals that represent all the interests involved, and this has brought about a fundamental integration as between the different States and the requirements as between employers and labor for the protection of the workmen. Insurance companies used to have different regulations; they are now using these national codes. In fact, in much of this work there is a really integrating factor going on as between the Federal Government and the State governments, and in other cases the municipal governments.

Mr. PIKE. That means almost in each case that somebody has to give up his petty idea in order to fit in with the others?

Dr. AGNEW. That is right. It is remarkable, though, how after they have worked together, a committee of men like that, sometimes bitter rivals at the start, really get interested in the fundamentals.

Mr. PIKE. The old example we used to get on the border; on one side you drove on the left, on the other side on the right, and either one was perfectly sound, but if you got on the other side you were in trouble.

Dr. AGNEW. Your illustration reminds me of a few other jobs that this organization has tackled. Fifteen years ago you stopped your car on Fifth Avenue in New York City on green, you started it on yellow, and red meant caution. There was a different system in Cleveland, a different system in Chicago, a different system in Buffalo, and so on. The Association of Police Chiefs asked us to take up that problem, and there were many different ideas, but there came out of it a unified code which is now in universal use in this country; it is in extensive use in Europe and is being introduced generally in each of the other continents.

The VICE CHAIRMAN. You made a very interesting statement. When people get together and do together a thing; they learn by doing that thing how to get together and do other things.

Dr. AGNEW. That has happened many times in our committee. May I illustrate that by another code? In the gas burning appliances, originally that committee was gotten together to develop a minimum code for gas safety. There were battles in that committee that lasted a half dozen years. They learned to work together and they solved the problem, and under the leadership of the gas industry itself, but with the cooperation of every other group that had a substantial concern with the problem they have developed specifications, standards, for 27 different types of gas burning appliances and accessories, which includes all of the tyyes of apparatus that you find in a well-equipped home.

There was a tendency years ago for city barriers to grow up. There were different kinds of ordinances passed in about 50 cities, but this group of standards, worked out on a voluntary basis, has pretty well worked out that situation and there is a pretty free national market unencumbered by local restrictions.

A very interesting part of this is that it had to be founded on a great deal of research and testing work, which was headed up in the gas industry itself, and as a result, in the last 10 years there have been more improvements in gas-burning appliances than had taken place in the 40 years previously. In that 10-year period the thermal efficiency of the top burners of the gas range has increased by 50 percent. That means that today in the modern stove you can heat 3 quarts of water with the same amount of gas that 10 years ago was required to heat 2 quarts. Similarly, the efficiency of the gas-fired hot-water heater has increased 25 percent in that same 10-year period. That improvement has gone forward coordinately with this standardization work, not alone from standardization work, but coupled with research and standardization.

The VICE CHAIRMAN. Let me ask you, Doctor, in your experience of trying to bring about acceptances of abolishing trade barriers, is it recognized generally that these trade barriers are not economic and

that the pressure of a general recognition as it comes to be understood tends in itself to break down these barriers?

Dr. AGNEW. I would say that the groups I am working with would agree with the expression that you have just made.

Mr. DONOHO. Have you anything further to add, Dr. Agnew? [1]

Dr. AGNEW. Mr. Chairman, in connection with the Chairman's last remark, I would like to add two things: First, that in the electrical development their market has been kept pretty fairly free by a series of codes, notably the National Electrical Safety Code under the leadership of the National Bureau of Standards, and the National Electrical Code on the wiring of buildings under the leadership of the National Fire Protection Association. In connection with the words of the chairman a moment ago, it seems to me that this voluntary method of developing national standards has an enormous role to play in the removal of certain types of local standards, particularly those which depend on local regulations. It seems to me that it should be definitely the obligation of the Government administrator, Federal, State, or local, before he issues and puts the police power of the law behind a local standard, to investigate the subject and find out whether there are national standards that are workable and that will apply; and second, it seems to me that it should be the moral obligation of the industrial leadership to see that such national standards are developed where there is a need for them.

The VICE CHAIRMAN. Doctor, thank you very much.

(The witness, Dr. Agnew, was excused.)

Mr. DONOHO. Mr. Beesley, will you come forward, please?

The VICE CHAIRMAN. Do you solemnly swear that the testimony you are about to give in this proceeding shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BEESLEY. I do.

TESTIMONY OF THOMAS QUINN BEESLEY, PRESIDENT, NATIONAL COUNCIL ON BUSINESS MAIL, INC., WASHINGTON, D. C.

TRADE BARRIERS IN RELATIONSHIP TO TRANSACTING BUSINESS BY MAIL

Mr. DONOHO. State your name and address, please.

Mr. BEESLEY. Thomas Quinn Beesley, president of the National Council on Business Mail, Inc., Second National Bank Building, Washington, D. C.

Mr. DONOHO. What is your purpose in being here?

Mr. BEESLEY. To present the views of the large users of the mails, the chief customers, in other words, of the Postal Service and the problems they are encountering of barriers to transacting business by mail throughout the States.

Mr. DONOHO. Mr. Beesley, the chairman has mentioned the lateness of the hour, so if you would, will you, in your own way, please give your statement?

Mr. BEESLEY. I shall be very happy to keep in mind the chairman's request.

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[1] See also data subsequently submitted regarding trade barriers and State laws on bedding and upholstery, appendix, p. 16193.

It so happens, Mr. Chairman, I live here, and if there are other witnesses who would like to get out of town over night I can come at any time in the next few days.

My remarks, Mr. Chairman and gentlemen of the committee, are presented for a group who represent approximately one-third of the total postal revenue of the United States. Our organization comprises approximately 1,000 of the largest users of the mails for business purposes in 49 different lines of industry in every State of the Union except 2, Arizona, and New Mexico. We are the Washington clearing house on all postal problems for 14 very large trade associations who are affiliated with us, and whom we represent in Washington.

Obviously, as users of the mails we are engaged in interstate commerce in a great many different ways. Our organization contains, for example, the largest paper mills, the largest paper distributors, the largest paper manufacturers in the United States. It contains the 20 largest manufacturers of envelopes. The correspondence schools, through their organization, are members. The mail-order houses, through their association, are members. The printers and the other six divisions of the graphic arts, through their organization, are members, so that we have about as many different problems to contend with in interstate commerce as any organization in the United States with one very important exception which differentiates us from all the others.

We are the only one using the facility which is exclusively under the control of Congress by the Constitution. The seven words of the Constitution, "to establish post offices and post roads," are the basis on which we operate, and in the remarks I am about to offer, Mr. Chairman, for the record, I would like briefly to review seven items which I will state in order and then go back over them in the same sequence.

The first is the constitutional background of this problem of trade barriers when we are using the mails; the second is the important difference today between the old methods and the new which have come about through advertising as an economical method of distributing goods; third, the various forms of trade barriers which affect anyone who uses the mails; fourth, the effect of those trade barriers; fifth, the problem of the Post Office Department in relation to these trade barriers; sixth, the trend as we see it and the probable effect of it; and seventh, our recommendation so far as we have gone in our study of this problem.

The United States, as we see it, Mr. Chairman and gentlemen of the committee, is heading very swiftly back to the same condition, the same disputes, the same deliberately erected barriers within States to uses of the mails and the flow of business which wrecked the Confederation of the States and led to the Constitution, which had written into it that provision, "to establish post offices and post roads."

The commerce clause was also produced from the same source, and I think we are getting back there to that same state of confusion about as rapidly as the Government could go. It was separatism that wrecked the Confederation.

Now, today the situation has a new phase which is becoming a serious menace to anyone who has to transact business in any way through the mails by offering goods for sale or services for sale. And the im-

portance of that to our national economy at the present time is that one of the most economical methods of distributing goods and services is through advertising, both national and retail. It isn't only the direct-mail letter that produces goods. Catalogs produce goods. In fact, Mr. Chairman, at this point I would like to add a comment that I didn't have in my original notes that was produced by your own very clear comment with regard to manorial markets. You spoke of the manorial market. The only vestigial remains of a manorial market is the catalog. That enables many manufacturers to combine to offer their goods, and a great many goods to be offered at very low prices so that very large numbers of very low income people have common access to them which they would not otherwise have.

Advertising, to be effective, must have universal distribution, and people must have access to the goods it offers without restraint. The consequence is that the Post Office and the Postal Service are perhaps the best method that any modern merchant can use for selling his wares. Certainly it is one of the cheapest. The consequence is that retailing today has entered on a new phase that wasn't in existence 25 years ago when I first entered the advertising field. It is the trend away from the large city to the small town. It is the metropolitan newspaper which, instead of being just the Washington Post, let us say, is the morning newspaper of nearby Maryland, nearby Virginia, just as Washington is within the sales territory of the Philadelphia papers and the New York papers, and the Post Office Department has recognized that fact by giving coupon privileges for business-reply purposes to metropolitan merchants, so that you can clip them out of their retail ad, you can paste one on the outside of an envelope, and mail it back business reply with no postage, the postage being paid by the business house in New York, Philadelphia, and so on.

That is expanding all over the country. Small-town merchants in many instances reach out anywhere from 50 to 150 miles by mail into the rural areas. But when you come into conflict with local statutes and regulations and ordinances and arbitrary administrative action, all shortsightedly designed for the supposed advantage of local residents and products and enterprises, you cease to be a merchandiser. You become a legal specialist. You become a tax expert. You are beginning to discover there are such things as quarantine and ports of entry and a thousand other things that have been the subject of this investigation so far. And you don't realize just how many of those there are, gentlemen, until you start to do business by mail.

The other night, in preparing these remarks, I sat down to make a list, and before I had gone very far I had 11 of them and I stopped at that point because I didn't want to refine the picture too far. For example, you have the "most favored State" agreements, to use my phrase for it. The politer word for it would be "reciprocal arrangements," but it is a most-favored-State treaty basis.

You have regulations or taxes on various forms of advertising.

You have use and consumption taxes.

You have quarantine and inspection regulations.

You have foodstuff definitions and standards; State-of-origin and similar legislation.

You have direct-selling ordinances and regulations; you have trucking regulations and taxes. You have regional-freight-rate conventions. You have preferential treatment of local products. And then, to cap it all off, you have discriminatory corporate or agency requirements for out-of-State businesses, and when you get done with all that you can start worrying about Social Security and Workman's Compensation and so on.

The VICE CHAIRMAN. The trouble of it is that we can't quite probably relieve you of all this.

Mr. BEESLEY. To pick out just a few of them at random and put them together, I will visualize for you a business that is just moderate in size, not a big one that would be affected by all of these. I am taking a business that sells only by mail and distributes a low-priced product which it can very frequently truck in as cheaply or more cheaply to its warehouses or its main places of business than it can get it in any other way.

The first thing that it runs into are the use and consumption taxes. For example, you sell a low-priced dress, Mr. Chairman, to a woman in Michigan from your place of business in Chicago. There is a use tax imposed by the State of Michigan after it comes to rest and gets into her possession. While it is in the United States mails it is still in your possession and subject only to such Federal taxes as you are subject to. The moment she gets it, there is the Michigan use tax immediately to be paid by her. And who is going to collect it? And how are you going to arrange to pay it?

Ohio is in the same situation. Experience goes to prove that when you write and ask the customer to send in that use or consumption tax, you are lucky in some States if you can collect so much as 50 percent, and you are doing uncommonly well, gentlemen, if you collect as much as 70 percent in any State.

The VICE CHAIRMAN. Is that tax the same tax that would be charged by a local merchant who sells a dress in the community?

Mr. BEESLEY. Yes, sir; with the great advantage on the part of the local merchant that with him it is an over-the-counter transaction, where the tax is collected immediately.

The VICE CHAIRMAN. What would you do about that? Would you exempt the foreign merchant as against the local merchant?

Mr. BEESLEY. No; I shouldn't say that. I should say that first of all some uniform system of taxation should be worked out.

The VICE CHAIRMAN. You are discussing the specific thing to which you are objecting. I was wondering what remedial legislation would be suggested to your mind.

Mr. BEESLEY. I have anticipated that question, and will say that I have spent more than 2 years trying to work out something that will be practical and satisfactory, and I will be frank to tell you we haven't been able to formulate a program, but we do hope to bring some program of that kind before the Congress.

The VICE CHAIRMAN. We will pass that up. We don't want to hear about what you can't do; we want to know what you can do.

Mr. BEESLEY. I might say, as the chairman will recall, that I have appeared before other committees of Congress on this subject of taxation where they have attempted to put the Post Office into the business of being a tax collector, like the bill which was originally supposed to be to help collect taxes on merchandise, and when the actual facts came out it was really to help collect cigarette taxes.

The last time it came up, the Post Office Committee disposed of it 16 to 3 adversely, so we are still back where we started.

But I mentioned taxation first because it is one of the big barriers to trade due to the lack of uniformity, lack of a method of collection, and its overhead of collecting and paying back to the State. Of course, the other items there, like State-of-origin and similar labeling laws, have been discussed in connection with the topics of other witnesses, and I won't go over that again except to mention that you do run into them very seriously when you do business by mail. I have already mentioned trucking regulation and taxes and their connection with this problem. Regional freight-rate conventions have been the subject of so many speeches on the floor of the House and in the Senate recently, so I can't rehearse that. Preferential treatment of local products has been covered by other witnesses, but definitely it is one of the business hurdles in doing business by mail, and of course discriminatory corporate or agency requirements for out-of-State business explains itself. It reduces itself to two main headings, taxation and special restrictions, which have become a Chinese wall confronting any advertiser who attempts to distribute goods nationally.

The consequence is, gentlemen of the committee, that business after business has been compelled to reshape its methods of sales, its methods of advertising, its methods of distribution into almost parochial lines to meet the varying conditions. The company lawyer is rapidly becoming a very important figure in any sales and advertising conference. You have to find out whether you are going to jail before you start to advertise and do business, and after you have got that important problem settled, the next person you call into the modern business conference is your tax manager, if you are big enough to have on you are fortunate, and any business of any size today has to have one, along with the traffic manager and advertising manager. After the lawyer and tax manager have got done with it, you can start in to make your sales plan, and such formerly simple things as samples, trial offers, coupon replies, and other standard selling methods, instead of being a sales utility, are rapidly become a hazard to you. It doesn't make any difference to you whether you are a newspaper publisher or magazine publisher or mail-order house, or are selling education by mail or you are selling silverware to retail jewelers and wholesalers for sale in turn to the public, the problem confronts you identically in any phase of business.

That brings us to a very important consideration that is necessarily constitutional, gentlemen. State lines are political and geographical accidents which the Post Office, as a Federal utility for interstate commerce, perforce has to ignore. The Supreme Court a long time ago settled the question about the jurisdiction of the Post Office Department. It settled it so thoroughly that Post Office vehicle drivers do not have to have a license to drive if the Post Office says that they don't, no matter what the State law is or the local ordinance. It is supreme in their own jurisdiction.

Another very interesting example is the one that was discussed here so colorfully yesterday afternoon by the gentleman from Shenandoah, Iowa. Personally, I doubt the constitutionality of that quarantine provision of the Agricultural Act, because I think it interferes with the constitutional authority of the Post Office Depart-

ment. I would like to see a case tested in the Supreme Court to see what the reaction to that would be. Of course, the simple solution would be just to repeal that provision and not waste the time and the money finding out what the Supreme Court thinks about it. That is a recommendation that I put before the committee to consider because it is one of the most irritating and totally unnecessary examples of trade barriers in the whole course of doing business by mail, and it has another aspect, gentlemen, that I think ought to be brought to your attention. The Post Office Department has made repeated efforts to obtain the cooperation of the State quarantine officials even to the extent last spring of sending an executive all the way to the Pacific Coast to sit in with him and put before them a very simple solution of the problem which seven States, or eight States, have long since adopted, putting on packages the label that is evidence, on its face, that the commodity has been inspected at the source by the State plant quarantine inspector of the State of origin, which should be sufficient for all purposes in any State. But no cooperation was possible, and all he got out of the trip to California was the ride.

In addition to that, these other proposals that have been made here in Washington to have the Post Office disclose the names of addressees on packages so that the State tax collectors could get at the felon or culprit who was getting this stuff in without paying his nine- or ten-cent tax is simply a revival of something that led to the Revolutionary War, the old Orders in Council, and writs of resistance. It was rather shocking to see that introduced into the United States after that was settled between 1775 and 1789. I advert to it merely for the record.

Our conclusions are that trade barriers are going to wreck our modern economy unless some abatement, some check, is put upon them, and something like a national system of interstate commerce can be worked out. I have already adverted to the fact that efforts to correct the present situation through programs of cooperation have made some progress in some quarters, but they have failed miserably and completely in others. I don't wish to go into the reasons why I think they have failed, but I want to get into the record the fact that in a good many directions they have failed.

Another thing, the trend is continuing. I don't see any very notable curtailment of it. The scope of judicial proceedings is too narrow, the expense is too heavy, the time involved is too long to effect the relief required. We are coming rapidly to the conclusion that action by the Congress to devise a policy fair alike to the States and to the Union is going to be the only ultimate answer. We have reached that conclusion, gentlemen, because, in our opinion, Congress alone has the resources and the plenary power to survey this problem and deal with it as the facts of history and, in our judgment, the plain wording of the Constitution indicate.

The VICE CHAIRMAN. We are very much obliged to you.

(The witness, Mr. Beesley, was excused.)

The VICE CHAIRMAN. What time do you want to convene?

Mr. DONOHO. At 10:30?

The VICE CHAIRMAN. We will stand in adjournment until 10:30 tomorrow.

(Whereupon, at 4:55, a recess was taken until the following day, March 22, 1940, at 10:30 a. m.)

INVESTIGATION OF CONCENTRATION OF ECONOMIC POWER

FRIDAY, MARCH 22, 1940

UNITED STATES SENATE,
TEMPORARY NATIONAL ECONOMIC COMMITTEE,
Washington, D. C.

The committee met at 10:40 a. m., pursuant to adjournment on Thursday, March 21, 1940, in the Caucus Room, Senate Office Building, Senator Joseph C. O'Mahoney presiding.

Present: Senators O'Mahoney (chairman), and White; Representative Williams; Messrs. Pike and Brackett.

Present also: W. L. Whitehead, Securities and Exchange Commission; Frank H. Elmore, Jr., Department of Justice; John E. O'Neill, Federal Alcohol Administration; D. Haskell Donoho, associate attorney; Dr. Frederick V. Waugh, head of Division of Market Research, Department of Agriculture; and Paul T. Truitt, chairman, Interdepartmental Committee on Interstate Trade Barriers, Department of Commerce.

The CHAIRMAN. The committee will please come to order.

Are you ready to proceed?

Mr. DONOHO. Yes, sir. Mr. Holifield, will you please come forward?

The CHAIRMAN. Do you solemnly swear that the testimony you are about to give in this proceeding shall be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. HOLIFIELD. I do.

TESTIMONY OF M. B. HOLIFIELD, ASSISTANT ATTORNEY GENERAL, COMMONWEALTH OF KENTUCKY, FRANKFORT, KY.

Mr. DONOHO. Will you state your name and address, please?

Mr. HOLIFIELD. M. B. Holifield, 112 East Todd Street, Frankfort, Ky.

Mr. DONOHO. Whom do you represent?

Mr. HOLIFIELD. I represent the Honorable Hubert Meredith, attorney general of the Commonwealth of Kentucky.

Mr. DONOHO. Mr. Holifield has a statement he would like to present.

The CHAIRMAN. We shall be glad to hear it.

TRADE BARRIERS RELATING TO STATE PROBLEMS OF FINANCE, HIGHWAY CONSTRUCTION AND MAINTENANCE, AND PUBLIC SAFETY

Mr. HOLIFIELD. We have been advised that certain interests have listed the Kentucky law regulating size and weight of trucks as

being a "trade barrier." I must confess that I do not know definitely what is meant by the use of that term. I assume it means an unreasonable and improper interference with trade and commerce, but whatever it may mean, it is my purpose to show that the Kentucky statute is nothing more than a reasonable and proper exercise of a police power of the State for the purposes of preservation of public highways and protection of public safety, and that it is not either legally or economically an unreasonable or improper interference with trade or commerce.

The only aspect of this question in which we are interested is in maintaining the right of a State to preserve its property and to protect the safety and convenience of the public in its use of that property; and to show that this statute attacked as a trade barrier is a reasonable and proper exercise of the police power to accomplish the two purposes I have mentioned.

For some time prior to 1932, there was in effect in Kentucky, a statute limiting gross weight of trucks to 28,000 pounds. However, it was found that this limitation was not furnishing adequate protection to the highways, and that the large, heavy trucks permitted under this law were endangering public safety, and unduly interfering with the public's use of the highways; consequently, in 1932 the present act was passed. This limits gross weight of trucks to 18,000 pounds (including load), height to 11½ feet, width to 8 feet, length of single unit trucks to 26½ feet, and length of semi-trailer trucks to 30 feet.

Not long after this act became effective its validity was attacked on various grounds, among others, that it constituted an interference with interstate commerce. The validity of the act was sustained in *Ashland Transfer Co.* v. *State Tax Commission* (247 Ky. 144, 56 S. W. (2d) 691). On page 693 the Court said—by the way, that is of the South Western:

> We are concerned in this case only with public highways. Their regulations, maintenance, and protection, as well as the safety of travelers upon them, is everywhere and by all courts conceded to be within the police power of the jurisdiction maintaining them.

The court, after referring to a number of decisions of the Supreme Court of the United States, said:

> * * * the law as universally declared by both state and Federal courts is that such regulatory acts will be upheld and enforced in all cases where they are confined to what is termed "reasonable" regulation, and that neither exact precision nor even scientific calculation is essential to reasonability.

The court quoted with approval from *Morris* v. *Duby* (274 U. S. 135), the following:

> In the absence of national legislation especially covering the subject of interstate commerce, the state may rightly prescribe uniform regulations adapted to promote safety upon its highways and the conservation of their use, applicable alike to vehicles moving in interstate commerce and those of its own citizens.

Insofar as the validity of the act in its application to interstate commerce is concerned the Ashland Transfer case was reconsidered and reaffirmed in the case of *Whitney* v. *Fife* (270 Ky. 434, 109 S. W. (2d) 832).

The validity of other aspects of the act was again affirmed in *Commonwealth* v. *Abell* (273 Ky. 802, 122 S. W. (2d) 757).

In August 1937 certain operators of commercial trucks, and shippers by such trucks, filed suit in the Federal court for the eastern district of Kentucky, attacking the law particularly in its application to approximately 1,800 miles of the best highways of the State on the alleged ground that they were adequate to support heavy loads "without material damage," and hence that as to those highways the law created a barrier to trade and constituted an unreasonable interference with interstate commerce. After both sides had prepared the evidence the plaintiffs, who were represented by the general counsel of the American Trucking Associations, Inc., of Washington, D. C., dismissed the case without even asking for a trial.

In view of that fact, and of the numerous court decisions I have cited, it is clear that, in the legal sense, the law in question is not, and does not create, any "trade barrier," but is simply a valid exercise of the recognized right of the State to use its police power for the protection of its property and its citizens.

Did you want to ask any questions?

Mr. DONOHO. I just wanted to make a summation. Your position, as I understand it, is that such restrictions as you have in Kentucky, which you discussed, are unquestionably constitutional?

Mr. HOLIFIELD. Yes.

Mr. DONOHO. I might add, I don't think there is any disagreement with that position at all by anyone.

Mr. HOLIFIELD. I propose now to show that the law is not only a legally valid use of the State's police power, but in Kentucky's case at least is a physically necessary exercise of that power, because of the condition of our highway system.

The total highway mileage of Kentucky is divided as follows:

State Highways	8,657 miles
County Roads (as of July 1, 1938)	47,563 miles
City streets, approximately	2,886 miles

Conditions on the 8,657 miles of States highway, vividly illustrating the inadequacy of those highways to accommodate safely or without undue damage trucks larger or heavier than those allowed by our present law, were described by no less an authority than Mr. Thomas H. Cutler, chief highway engineer of Kentucky, in an address delivered before the Kentucky Association of Highway Contractors at Louisville on March 1. In this address Mr. Cutler pointed out that on State highways alone there are approximately 23,931 curves which are sharper than 6°, 24,180 locations with inadequate sight distances for moderate safe traffic, 1,500 miles of inadequate surface types, 6,000 miles of surface too narrow for present safe traffic, and "several hundred bridges which are not only inadequate, but dangerous." I wish to file a newspaper account of Mr. Cutler's speech, from the Louisville Times of March 1, and to discuss briefly each of the shortcomings mentioned by Mr. Cutler.

Mr. DONOHO. You wish to offer this for the record?

Mr. HOLIFIELD. Yes, sir; but if you wish to put it in the files, it will be all right.

Mr. DONOHO. Mr. Chairman, it is reasonably short. I suppose it would be proper to offer it for the record.

Acting Chairman WILLIAMS. This may be admitted for the record.

(The clipping referred to was marked "Exhibit No. 2395" and is included in the appendix on p. 16160.)

Mr. HOLIFIELD. Of the 8,657 miles of State highway, only 1,786 miles, or approximately 20 percent of the total, have a cement, concrete, brick, or high-type bituminous surface.

The remaining 80 percent either have a low-type bituminous, untreated stone, gravel, or earth surface, and could, under no circumstances, be expected to support loads heavier than are allowed by our present law. The mileage of each type of surface is shown in the following tabulation:

Type of surface	Miles	Percent of total mileage
Earth	325	3.76
Untreated gravel and stone	3,015	34.80
Low-type bituminous surface	3,534	40.80
High-type bituminous surface	643	7.44
Cement-concrete or brick	1,140	13.20
Total	8,657	100.00

I am herewith filing a map headed "Road Condition Map of Kentucky," prepared by the Kentucky Department of Highways, on which are shown the location and types of surface on U. S. Routes 51, 45, 41, 41–E, 41-W, 68, 31-E, 31-W, 25, 25-E, 25-W, 27, 60, and 42.

Mr. DONOHO. Mr. Chairman, I offer this map for the files of the committee.

Acting Chairman WILLIAMS. It may be received for the files.

(The map referred to was marked "Exhibit No. 2396" and is on file with the committee.)

Mr. HOLIFIELD. These, generally speaking, are the best and most important highways in Kentucky, and were the routes (aggregating about 1,800 miles) particularly designated in the Federal court suit referred to above as being able to support without material damage heavier trucks than are now permitted by law.

The next exhibit is a statement prepared by the Kentucky Department of Highways showing in detail the type of surface, width, thickness and year of construction of each section of each of these ten principal highways. These two exhibits thus supplement each other, the first showing in map form part of the data shown in tabular form in the second.

Mr. DONOHO. Mr. Chairman, I offer this statement as an exhibit.

Acting Chairman WILLIAMS. It may be received for the files.

(The statement referred to was marked "Exhibit No. 2397" and is on file with the committee.)

Mr. HOLIFIELD. The next exhibit is a traffic flow map prepared by the department of highways, and from which it will be seen that the 10 United States routes mentioned above are the most heavily traveled highways in the State.

Mr. DONOHO. I offer this map as an exhibit to be filed with the committee.

Acting Chairman WILLIAMS. It may be received.

(The map referred to was marked "Exhibit No. 2398" and is on file with the committee.)

Mr. HOLIFIELD. From "Exhibit No. 2396" it appears that practically every one of these routes is composed of sections of high type

surface broken by sections of intermediate type surface and in some instances by sections of low type surface.

The next exhibits are, respectively, a map and tabular statement showing types of surface on all highways in the state system not included in the 10 principal routes mentioned above, and not, therefore, shown in "Exhibits Nos. 2396 and 2397."

Mr. DONOHO. Mr. Chairman, I offer these maps for the files of the committee.

(The map referred to were marked "Exhibits Nos. 2399 and 2400" and are on file with the committee.)

Mr. HOLIFIELD. "Exhibit No. 2399" shows in map form part of the data shown in tabular form in "Exhibit No. 2400"; and "Exhibits Nos. 2396, 2397, 2399, and 2400" together present a complete picture of the surface construction of all Kentucky State highways.

The inability of Kentucky highways to carry loads greater than those now permitted by law is further emphasized by the next exhibit, which is an Associated Press dispatch appearing in the Louisville Courier Journal of February 16, 1940, according to which—

> the State Highway Department announced today it had ordered the maximum 18,000-pound gross load limits reduced on a number of highways to prevent further strain to surfacing already damaged by recent extreme cold.

Mr. DONOHO. Mr. Chairman, I offer this statement for the record.

Acting Chairman WILLIAMS. Personally, I am of the opinion we can't be receiving every editorial in the country that is written concerning these roads.

Mr. DONOHO. I wanted your opinion on it. The witness is perfectly willing that it be in the files.

Acting Chairman WILLIAMS. I think it had better go in the files.

(The clipping referred to was marked "Exhibit No. 2401" and is on file with the committee.)

Mr. HOLIFIELD. It appears from the details given in this dispatch that a number of the highways to which this order applied were portions of the United States highways to which I have heretofore referred.

Clearly, if under any conditions the present limit has to be reduced, it is absurd to argue that it should be increased.

The great majority, even of our State highways, are, as Mr. Cutler stated, too narrow to accommodate with even reasonable safety vehicles as large as those who attack our law as a "trade barrier" would like to impose upon them. The United States Bureau of Public Roads has officially stated:

> Pavements of 18-foot width are too narrow for modern passenger cars alone or for modern mixed traffic. Pavements of 20-foot width are reasonably adequate for light traffic used infrequently by wide trucks but are inadequte for heavy mixed traffic.

Yet the surface of about 2,800 miles, or practically one-third of the highways in the whole Kentucky State system, is less than 18 feet wide; on more than 4,700 miles, or 55 percent of the total, the width is only from 18 to 19 feet; and on only 735 miles, or 8.5 percent of the total, is the width 20 feet or more. This exhibit shows in more detail the width of Kentucky highways.

Mr. DONOHO. Mr. Chairman, I offer the tabulation as an exhibit for the files of the committee.

Mr. PIKE. It may be received.

(The table referred to was marked "Exhibit No. 2402" and is on file with the committee.)

Mr. HOLIFIELD. On account of the rolling and mountainous topographical conditions in Kentucky there are, as Mr. Cutler mentioned, on all of our State highways, an abnormally large number of grades, curves, and restricted sight distances.

The next exhibit is a tabulation prepared by the Kentucky State Highway Department showing as to each of the principal highways referred to in "Exhibits Nos. 2396 and 2397" the number and length of grades 7 percent and over, the number and length of curves over 6 degrees, and the number of restricted sight distances of less than 250 feet, of from 250 to 500 feet, and of from 500 to 1,000 feet.

Mr. DONOHO. Mr. Chairman, I offer this tabulation for the files of the committee.

Acting Chairman WILLIAMS. It may be received.

(The tabulation referred to was marked "Exhibit No. 2403" and is on file with the committee.)

Mr. HOLIFIELD. As a supplement to "Exhibit No. 2403," I am also filing three additional tables as "Exhibit No. 2404."

Mr. DONOHO. Would you describe these exhibits, please?

Mr. HOLIFIELD. The first exhibit shows the number, and number per 100 miles, of restricted sight distances on all main highways in the State system; the second exhibit shows the number, and number per 100 miles, and the length and length per 100 miles, of excessive grades on all main highways in the State system; and the third exhibit shows the number and number per 100 miles, and length and length per 100 miles, of excessive curves on all main highways in the State system.

Mr. DONOHO. Mr. Chairman, I offer these data which the witness has described for the files of the committee.

(The data referred to were marked "Exhibit No. 2404" and are on file with the committee.)

Mr. HOLIFIELD. By way of explanation, the significance of these figures arises from the following facts. A curve of more than 6 degrees is a traffic hazard, because it requires reduction of speed for safe operation. A grade of 7 percent or more is an even greater traffic hazard, particularly where large, slow-moving trucks are a part of the traffic, because to negotiate such grades trucks must greatly reduce their speed, causing congestion and delay to other and speedier traffic, and tempting impatient drivers to take the chance of passing on hills. We have had in Kentucky many serious accidents from just this cause—accidents in which no truck was directly legally—let me add that in my testimony—involved, but for which some truck was clearly responsible. Restricted sight distances—that is, points where a driver's clear vision of the road ahead is restricted by curves, grades, or other obstacles—are an obvious traffic hazard, tending to slow up and congest traffic and lead to accidents caused by reckless passing.

Where there are as many traffic hazards as there are in Kentucky, the admission to State highways of trucks larger or heavier than those now allowed would not remove any imaginary "trade barrier" but would rather create an insurmountable barrier to all automobile and light truck traffic. For example, U. S. No. 60 is one of the most heavily traveled roads in the State. On the 22-mile section of this

highway between Frankfort, the State Capital, and Shelbyville (en route to Louisville, Kentucky's largest city) signs forbidding passing within 500 feet or more have been posted at 57 of the worst places, the aggregate length of these "no passing" distances on this one section of highway alone being approximately 5.4 miles. In other words, even a private passenger car is forbidden to pass another automobile going in the same direction on one quarter of the entire distance betweeen Frankfort and Shelbyville. This is typical of many other sections of even the 1,800 miles of the highest type roads in the State. Imagine the intolerable conditions that would be created by operation on such roads of trucks of 40,000 or 50,000 pounds.

On the State highways there are 600 bridges and underpasses having a width of less than 18 feet, many of which are so narrow that it is impossible for two automobiles to pass. Of the 712 bridges and grade separations with a span of 10 feet or longer on the 10 principal highways mentioned above, 100 are substandard in one or more of the following particulars: width, height, or load capacity. The location of these bridges and the particulars in which they are substandard are shown in this exhibit. These same bridges are also shown in tabular form here.

Mr. DONOHO. Mr. Chairman, I offer these data to be filed with the committee.

Acting Chairman WILLIAMS. They may be received.

(The data referred to was marked "Exhibit No. 2405" and is on file with the committee.)

Mr. HOLIFIELD. In the address referred to above, Mr. Cutler stated it would now cost $130,000,000 to bring the State's present highway system to a "safe standard." His estimate coincides with that prepared by the American Association of State Highway Officials as of January 1, 1940, when the said that 1,189 miles should be rebuilt at a cost of $22,168,000; 4,010 miles should be widened at a cost of $31,217,000; 1,985 miles should be relocated at a cost of $59,720,000; total $113,105,000, and 1,797 bridges should be widened or rebuilt at a cost of $19,325,000, or a total of $132,430,000.

As of July 1, 1938, there were 47,563 miles of county roads. Of this total only 127 miles were paved with cement-concrete or high-type bituminous paving; 17,943 miles were surfaced with low-type bituminous paving, stone or gravel, and 29,493 miles were plain dirt or earth roads, of which 6,464 miles were in the primitive state. About 30,000 miles of the county road system have no width because they are not surfaced. On 16,400 miles which have any sort of surfacing, the width is less than 16 feet. Of the remaining 1,680 miles only 185 miles, or 1 percent, are 20 feet or more in width. No one can reasonably contend that heavier or larger trucks should be permitted on any of the county roads.

I do not wish to be understood as criticizing our State Highway Department because Kentucky has consistently followed a pay-as-you-go policy of highway construction and has avoided a heavy burden of highway debt. The necessity which confronted them was to get the people out of the mud so they could get their products to the market. But the facts I have recited demonstrate that the Kentucky law is a reasonable and proper exercise of police power for preservation of highways and protection of public safety. To

open up our highways to trucks of the weight and size permitted in some other States would so endanger and inconvenience other traffic and so damage our highways as to create a real "trade barrier."

It would seem that public opinion in Kentucky, authoritatively expressed by the legislature, should be given consideration on this subject.

I will put this in, and if you want to object, all right.

Mr. DONOHO. We are delighted to have your statement.

Mr. HOLIFIELD. The present law was adopted in 1932 by an overwhelming vote of both Houses. An effort has been made at each biennial regular session of the legislature since that time and at one or more special sessions to have the law amended, but in every instance such efforts have failed. At the last session, just ended, a bill was introduced in the lower House to increase maximum gross weight to 32,000 pounds and and maximum length to 35 feet. This bill was defeated 69 to 16.

Another measure proposing to authorize the highway engineer, by order approved by the commissioner of highways, to permit operators of larger and heavier trucks on certain Federal-aid highways, was defeated in the Senate. From my own observation and knowledge of the sentiment of the people of Kentucky, I can say that the legislature in consistently supporting the present law has faithfully reflected public opinion.

Considering the public interest from other standpoints, additional facts may be mentioned which show that this law has not had the effect of a trade barrier.

Kentucky has no outstanding State highway bonds; Kentucky and Texas have the lowest truckload limits of any of the Southern States. It is certainly significant that with the single exception of Florida, the per capita State indebtedness of those two States is the lowest in the South (Kentucky, 86 cents; Texas, $2.79). With few exceptions there is a strikingly close relationship between the outstanding highway bonds of the Southern States and the truck weights permitted in those States.

If, as we understand it is claimed, the Kentucky law is in fact a barrier to truck transportation, it would seem logical to expect that a substantial percentage of trucks now operating in Kentucky would be close to the maximum sizes and weights permitted. Yet the Statewide highway planning survey, after weighing 10,375 loaded trucks at various pit-scale stations in Kentucky between August 1937, and July 1938, found the average weight of those trucks to be only 13,364 pounds, or approximately 75 percent of the maximum allowed by law. Again, out of a total of 67,574 trucks licensed to operate in Kentucky in 1939, only 578 were of greater than 2-ton capacity. Even if overloaded by 100 percent of their rated capacity, a substantial portion of these 578 would not approach the gross weight limit of 18,000 pounds. But all of the 578 trucks constitute substantially less than 1 percent of the whole number of trucks. Certainly no law can reasonably be considered a trade barrier when its possible effect is limited to less than 1 percent of those who might conceivably be affected by it. Details of 1939 truck registrations are given in this exhibit, which I now offer to be filed.

Mr. DONOHO. Mr. Chairman, I offer this tabulation for the files of the committee.

Acting Chairman WILLIAMS. It may be so received.

(The tabulation referred to was marked "Exhibit No. 2406" and is on file with the committee.)

Mr. HOLIFIELD. Finally, it is certainly reasonable to expect, if the Kentucky law actually is a trade barrier, that it would result in higher transportation charges to the public, and it is in this point that the public's major interest lies. The exhibit which I now offer, shows, however, that the general level of common-carrier truck rates in Kentucky is no higher than is the level of such rates in the States north of the Ohio River, where larger and heavier trucks are permitted to operate, and is actually lower than is the level of such rates in other Southern States where larger and heavier trucks are permitted, therefore, the Kentucky law has not operated to increase transportation charges to the public, and the only effect which any change in that law could have would be to increase the profits of a few commercial truck operators who would be able to operate larger and heavier vehicles.

Mr. DONOHO. Mr. Chairman, I offer these charts for the files of the committee.

Acting Chairman WILLIAMS. They may be received.

(The charts referred to were marked "Exhibit No. 2407" and are on file with the committee.)

Mr. HOLIFIELD. In conclusion, whatever may be the real significance of the term "trade barrier," now so frequently heard as a slogan by the interests which are seeking through Federal intervention to override State laws, it is submitted that the facts which have here been recited demonstrate that the Kentucky law is not, either legally or economically, an improper or unreasonable interference with trade or commerce, but is only a reasonable and proper exercise of the police power to preserve the property of the State and protect the safety of its citizens.

It may be that the law does increase to some extent the cost of the operation of those who would otherwise use larger and heavier trucks in and through Kentucky, but there are few, if any, police regulations which are not accompanied by some increase in cost to those to whom they apply, and the public interest is not in the cost of truck operation, but in the rates charged for truck transportation.

It has been pointed out above that those rates in Kentucky are as low as—are lower than those in neighboring States, and I might add that official Interstate Commerce Commission reports for 1938 show that nine of the largest truck companies in Kentucky had in 1938 a combined net profit of over $300,000. It seems, clear, therefore, that our law is accomplishing its double purpose of preserving our highways and protecting our citizens, and has not been accompanied by any increase in transportation charges and has not seriously affected that very small minority of truck operators who may be affected by it.

That is the conclusion of my statement.

Mr. DONOHO. Mr. Chairman, I have no questions to ask the witness.

Mr. PIKE. I have one, Mr. Holifield. From this statement, and the action of the State as compared with the action of other States of the Union, it appears that the Kentucky road system is pitifully inadequate for modern traffic.

Mr. HOLIFIELD. That is true, sir. I am sorry to confess it.

Mr. PIKE. There are two more small questions I have in mind, more comment than questions, possibly. On page 12 it is mentioned that there are practically no trucks in Kentucky which, when loaded, will come to and exceed the 18,000-pound legal limit. Of course, it is quite natural that with an 18,000-pound law nobody in Kentucky would waste money by buying trucks for use in Kentucky which would be illegal when put to use. Of course, there are no statistics available from this statement, and I don't know of any others, showing the number of interstate trucks overweight that would like to use Kentucky highways but are prohibited.

Mr. HOLIFIELD. Interstate truckers or operators in Kentucky are required to register in Kentucky a statement, of course, but they have to unload if they have larger capacity than we permit them. It is not necessary for them to reload if they have smaller when they go to the next State.

Acting Chairman WILLIAMS. Thank you very much, Mr. Holifield.

(The witness, Mr. Holifield, was excused.)

Mr. DONOHO. Mr. Strong, will you come forward, please?

Acting Chairman WILLIAMS. Do you solemnly swear that the testimony you are about to give in this proceeding shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. STRONG. I do.

TESTIMONY OF FLOYD D. STRONG, ATTORNEY-DIRECTOR, MOTOR CARRIER DIVISION, KANSAS CORPORATION COMMISSION, SECRETARY, KANSAS PORT-OF-ENTRY BOARD, TOPEKA, KANS.

Mr. DONOHO. Will you state your name and address, please?

Mr. STRONG. Floyd D. Strong, Topeka, Kans.

Mr. DONOHO. Whom do you represent, Mr. Strong?

Mr. STRONG. I represent the Honorable Payne Ratner, Governor of the State of Kansas, and the port-of-entry board of our State.

Mr. DONOHO. Mr. Chairman, Mr. Strong has a statement which he wishes to make.

Mr. STRONG. Mr. Chairman and gentlemen of the committee, on behalf of the State of Kansas, Governor Payne Ratner, and the port-of-entry board of our State, I wish to express our sincere appreciation of the invitation to appear before this committee and discuss the operation and administration of the Kansas port-of-entry law as it relates to the free flow of commerce between the States.

The port-of-entry plan is relatively new. Kansas inaugurated the first system less than 10 years ago. It is, therefore, no more than natural that it should be scrutinized, and we are happy to explain our particular method of control and fully indicate its aims and purposes. Any discussion of a particular type of regulation must necessarily involve some detail; therefore, in this presentation we will try to be as factual as possible rather than argumentative.

Frankly, we feel that it has been a success. While we have had our problems, it has accomplished for Kansas an efficient means of exercising a reasonable control over motor carriers, with an absolute minimum of difficulty and without hampering freedom of commerce as carried on by motor vehicle.

To be at all intelligent in our presentation we must first at least briefly mention a few of the conditions which brought this plan into being.

In the year 1931, the State of Kansas initiated a new system of taxing motor carriers, for the commercial use of its highways. This new method of assessment was not for the purpose of increasing the tax burden of such carriers, but was enacted into law with one purpose in mind—to provide a more fair and equitable means of distributing the tax burden among them. Prior to that time the tax was levied on the basis of capacity and weight of vehicles. It was collected through the customary medium of the annual license plates sold to the truck owner to be placed on the truck. The scale of fees paid was determined solely by the size and capacity of the vehicle.

Nothing else made a bit of difference. The owner who operated his truck over the highways only 100 miles a month paid identically the same fee as did the owner who operated 10,000 miles in the same month.

To correct these obvious inequalities of taxation, the Kansas Legislature determined that both weight and distance should be factors in determining the tax to be paid. The problem was given careful and detailed consideration, and resulted in the imposing of the "gross-ton mileage tax," which is exactly what its name implies. It assesses a tax of one-half mill per gross ton-mile traveled, and acts upon all operators alike. The truck owner is called upon to pay his share of the upkeep of the State's highway system in direct proportion to his use of the highways.

Early experience in the administration of this system resulted in the discovery that an improved method of enforcement was a necessity. Some method of checking in the field was needed to prevent wholesale tax evasion.

Mr. PIKE. What did you use at first as a method of collecting? Was it a report at the end of the year by the trucker?

Mr. STRONG. A monthly report—a voluntary monthly mileage tax report.

Mr. PIKE. And for the person just coming through the State?

Mr. STRONG. There was no way of checking him, no way in which he could obtain authority to operate within the State without first coming to the State capitol and obtaining the necessary authority.

The taxpaying operator deserved protection from his less scrupulous competitor.

At the same time, Kansas was meeting a different problem, that of so-called "hot oil." Bootleg gasoline, escaping taxation both in Kansas and other States, created a serious problem in the State's gasoline tax administration. This gasoline, frequently of inferior quality, presented such a threat to the State's revenue from that source that the Kansas Legislature provided a number of "registration offices" at which all importers of gasoline were required to stop and declare their cargo and destination.

Mr. PIKE. That was during the period of very cheap crude prices, when gasoline was coming up mostly from Oklahoma and Texas at that time.

Mr. STRONG. Yes; that is right, and some coming from Wyoming. That was in the days when gasoline was being doctored and it was of

an inferior quality, and it was being bootlegged into the State, due to the differences in the gasoline tax in the various States.

You see, in our country out there, some of the funds for highway purposes are raised by the tax on gasoline.

This plan of establishing these gasoline-registration offices was preeminently successful from its inception. During the first year of the existence of the gasoline "ports of entry" the State's receipts from gasoline tax jumped over $1,000,000, increasing from $7,234,584.27 in 1933 to $8,259,830.61 in 1934. This was followed by smaller, but nevertheless steady, increases as the administration was improved, until receipts from gasoline tax last year, 1939, totalled $10,076,640.33. A major contributing factor to this increase has been the efficient operation of the port-of-entry system.

Not only was the tax feature of the law enforced, but surprising strides were made in eliminating unfair and fraudulent trade practices. Adulteration of liquid fuels was practically eliminated, and stolen gasoline was made a highly undesirable commodity to possess.

The use of those registration offices was so successful that in 1933 the State determined to extend their functions to include the enforcement of its gross-ton-mileage tax law, and the Kansas ports of entry, as such, were set up to perform these additional duties.

The repeal of the national prohibitory amendment placed a further demand upon this agency of the State government. Kansas is a dry State.

Mr. PIKE. It is almost the dry State, isn't it?

Mr. STRONG. Well, it is one of them.

Acting Chairman WILLIAMS. In name only?

Mr. STRONG. You know what they say about Alabama, they'll vote dry in Alabama as long as they can stagger to the polls. My statement is that Kansas is a dry State.

Experience soon taught that a good many of the "original packages" in interstate commerce, concerning which we have the famous "original package doctrine," leaked quite a bit in passing through the State. It was necessary to devolve some means of checking and sealing cargoes of intoxicating liquors, to provide protection to the laws of the State in this regard. Thus, there was added a third duty to the Kansas ports of entry.

Another function of the ports of entry, which is a distinct advantage, not only to the public generally, but also to the operators themselves, is the protection afforded by the safety-inspection features of this system. Every piece of equipment when cleared through the ports of entry is inspected for safety requirements with resultant savings in property as well as life and limb.

Essentially, these four duties are the same today as they were 7 or 8 years ago at the inception of the system. The ports of entry are efficiently and quickly performing them in Kansas today.

Turning now to the mechanical side of the system, we find that ports have been established at convenient points at or near the State lines on every practical highway. In all, there are some 73 of them, so located as to require no detouring or unnecessary traveling to pass by them. Upon entering the State, each truck or bus stops at the port and secures a "clearance" into or through the State, as its business may require. This is simply done, and there are no cumbersome details about it which unduly hamper or delay a carrier's progress.

The whole process takes a surprisingly short time, and in many cases the clearance can be effected in as little as 60 seconds.

Mr. PIKE. What would be the average time, Mr. Strong; have you any idea about that?

Mr. STRONG. Oh, it would vary.

Mr. PIKE. Presuming the papers were in reasonably good shape.

Mr. STRONG. I would say a minute, a minute and a half, two minutes, unless there were some difficulty. I gave the example of 60 seconds. That has to do with your regular passenger bus, usually, where they make out their manifests in advance, they come by the port and hand in the manifest, that is a declaration of what the cargo is, he is given his clearance, a sticker is put on the windshield, and he is through in a minute.

Mr. PIKE. He is through. Now here comes a trucker with a miscellaneous load of goods, a rather long manifest. How much inspection goes on at that point?

Mr. STRONG. While he makes out his manifest. His manifest is a declaration of the description of his vehicle and his gross weight, that is empty weight and cargo, and origin and destination, and insurance coverage.

Mr. PIKE. You don't have to give a detailed list of cargo, except to swear there is no liquor?

Mr. STRONG. That is right. If there is liquor there is a statement on there, and then, of course, it is sealed. While he is doing that—I will cover that here in a moment—the other port attendants make an inspection as to tires, and lights, and brakes, and so forth. An absolutely strange trucker who has never been in the State before would be through, I would say, in not over 2 minutes if everything is in order.

The information elicited covers the destination, route, description of vehicle, cargo, and nature and scope of the insurance coverage. A clearance form is filled in by the attendants at the port, and a carbon copy of the clearance is given to the operator, together with a sticker for the windshield of the vehicle. While the truck driver is attending to these matters, port attendants are making a brief but efficient check of the equipment to ascertain if it meets the safety requirements of the motor vehicle laws of the State. This law, in the main, coincides exactly with the safety rules and regulations of the Interstate Commerce Commission. There are no additional requirements which cause expense or difficulty in compliance.

Mr. PIKE. On that point, Mr. Strong, do trucks coming into the State have anything to show whether they have or have not passed the I. C. C. requirements?

Mr. STRONG. They have their I. C. C. plates. Now the Interstate Commerce Commission as yet has never devised what they call an authority card or cab card. I propose to put on every truck an authority card showing the nature and scope of its operations, and the Interstate Commerce Commission, I understand, are working on that plan, too.

Mr. PIKE. So when that thing gets clear you will probably have a reciprocal arrangement.

Mr. STRONG. That is true. Since the enactment of the Motor Carrier Act, you will see the problem which confronts the States. We would certainly have no right either real or implied, to clear a man

to some point in the State of Kansas in interstate commerce to which he did not have authority to go in interstate commerce as granted by the I. C. C. At the present time we make no inquiry into the scope of that authority. We rely on him. If he violates his interstate authority he is answerable to the Interstate Commerce Commission. We clear him on his statement that he has a right to go there.

When the vehicle is bearing this sticker, that is the sticker which put on his windshield showing the type of carrier, it is free to proceed, and may travel the length or breadth of the State without other inspection or check, except for a very occasional and brief inspection that might possibly be given by a State or local officer. Such routine inspections, however, never go beyond the ascertainment of the fact that the vehicle is operating on the route which has been declared, and unless there is a violation or alteration of that route, no delay or difficulty is encountered. In actual practice, such further checks are made only very infrequently, and are made for the purpose of keeping traffic moving on the routes declared. Should a carrier have occasion to alter or vary his route, a simple method is provided. Later we shall mention how that is accomplished. The vast majority of trucks, after clearing into the State, have no further contact with the State's representatives until they leave the State, possibly 500 miles from the point of entrance.

The establishment of these State agencies at the very borders of the State eliminates any inconvenience, expense, or delay to which motor vehicles would otherwise be subjected in making side trips, or rerouting themselves to go to central control points. It also dispenses with the necessity of contacting State offices in advance to secure authority to travel the highways of the State. This system, maintained at some cost to the State, is primarily for the convenience of the motor carrier, and makes it easy and economical to comply with the State law.

It is, of course, elementary that the several States have comparatively limited power to control interstate traffic, particularly since the passage by the Congress of the Federal Motor Carrier Act of 1935 under the provisions of which the Interstate Commerce Commission is charged with the duty of regulating such carriers. However, there does remain to the States the exercise of two very important functions. In the first place, the States are to regulate and control such operations insofar as may be necessary to protect their citizens. Under this control, it is the duty of the States to see that the vehicles using the highways are safe, that the drivers are competent, and that the general public is protected by requiring the carriers to have adequate insurance coverage. In the second place, to the States is reserved the right to collect from the carrier a reasonable tax to compensate, in part at least, for the use of its highways. The several States have constructed and furnished the right-of-way for the motor carriers, and the States are maintaining this right-of-way at great cost.

Mr. PIKE. Of course, that is with the cooperation of the Federal Government.

Mr. STRONG. That is right.

Mr. PIKE. The main routes, ordinarily.

Mr. STRONG. Of course, all of these States have a considerable State highway system of their own on which they do not obtain Federal aid.

Mr. PIKE. Yes. However, one would be inclined to estimate that the majority of the heavy trucking interstate is apt to stick in the main to the arterial highways.

Mr. STRONG. I think, generally speaking, that is true, especially on the through traffic.

Mr. PIKE. Yes; that would be a fair statement.

Mr. STRONG. The taxation of motor carriers is not, and should not be, an item of profit to the State. In Kansas, the tax imposed is barely enough to maintain the highways in view of the accelerated deterioration thereof caused by motor-carrier operation, if indeed it is adequate to do so.

I might say right here that that particular point is the subject of study by our legislative council pursuant to instructions in House Joint Resolution No. 6 to go into that question. That is, going to the heart of this thing, of what is the common tax factor, and we are making a study of that now. We don't know. We think our tax is a little too low. The operators say, "We think it is plenty high enough." There is only one thing to do, and that is to dig in and find out.

Mr. PIKE. A most interesting question. I don't know whether any States have any tangible results on that same question.

Mr. STRONG. No, sir; neither do I. At Mr. Bane's last regional conference, sponsored by the Council of State Governments in Chicago in September, I believe it was, that particular matter, this attempt to find a tax factor which would be common, was discussed. You can see the difficulties in the various States as illustrated by the gentleman from Kentucky; each has its problems to find those factors which are common. Obviously, you must do that at home first to see that you have the proper tax base, and that is what we are doing pursuant to that conference. I think other States are doing it, but I don't know of any tangible figures that are available from any particular State.

Mr. PIKE. I think it has been—and I will check with you if you happen to know—the contention of many of the motor-truck operators that the gasoline tax operates in effect as a ton-mile tax, and in effect it does. There is a real question whether it is an adequate tax, and there is also the question as to whether—and I think you will answer this in the affirmative—the truck of great weight and considerable speed shouldn't bear a larger tax than the privately owned automobile of light weight, in order to compensate for the extra wear on the route.

Mr. STRONG. That is the theory on which Kansas has set up the gross ton mileage tax. We know of no more equitable basis on which to establish it than that. The man with the big load traveling many miles pays more than the man with the little truck going a few miles. He pays in proportion to use.

The statement as to gasoline tax is undoubtedly true. Some states put considerable emphasis on the gasoline tax, others put it all on the license plates, and others put it all on the tag that they buy, covering the right to use the highways. We are trying to find where that should be distributed. We put a little on the gasoline tax so that it catches the ordinary touring car, the private automobile. We scale it

upon the tag based upon the size of the equipment, so it covers the price of the tag and places a burden there. Then we scale it some more on the actual gross ton mileage, so it doesn't fall with a thud on any particular place. It is proportionate.

Mr PIKE. And it isn't as though the State were taking in too much money.

Mr. STRONG. No.

Mr. PIKE. So you feel you need practically all of those and possibly some more.

Mr. STRONG. Yes. That is at least the subject of a study by our legislative council now.

Mr. PIKE. It seems to be a fairly common situation.

Mr. STRONG. The proceeds of the gross ton mileage tax are spent by Kansas for the purpose of maintaining the highway system. The cost of administration is strictly limited to 10 percent of the amount collected. It never has been contended that the Kansas gross ton mileage tax imposes an unfair or excessive burden upon motor transportation.

To be somewhat more specific in our explanation of the assessment and collection of the gross ton mileage tax, let us examine its operation a little more closely. There are two methods by which this tax is imposed and, depending upon the circumstances, each carrier falls into one of these classifications. The majority of the operators, whether they are residents of Kansas or of some other State, and whether they are engaged in intrastate or interstate commerce, are registered and licensed by the State corporation commission. The State corporation commission of Kansas is the regulatory body authorized and directed to control motor transportation in the State. The individual carrier may fall within any of three classes: A common carrier, contract carrier, or private carrier. Regardless of this classification, the carrier is required to keep a record of the movement of his vehicles and at the end of each month to report to the State, through the medium of its corporation commission, the miles which he has traveled. This mileage, together with the capacity and weight of the units operated, determines the amount of tax due. The carrier pays this tax at the end of the month and that payment is, of course, based upon the actual use which he has made of the highways of Kansas.

Acting Chairman WILLIAMS. Do you have any difficulty about getting a correct report on that, or is there any penalty attached to it for the person who is inclined to cheat a little?

Mr. STRONG. Frankly, we feel that we are making about 50-percent collection. Now from our good operators, our large operators who keep books, through our auditing system, we feel we are getting about 100-percent response, but we have so many of another type of operators, and, of course, we just have to rely on their honesty about it, subject to our audit and subject to these clearances. When these Kansas operators have occasion to go through the ports, knowing there is a record filed there of their trip through the port, they are pretty apt to report that trip at least.

Mr. PIKE. You don't suppose any of the boys turn their speedometers back?

Mr. STRONG. We make no speedometer check. It is just his statement. The law requires that he shall keep a daily record, and at the end of

the month he is to compile his monthly report from the daily record, and he is to preserve that daily record for 3 years at least or until authorized by the commission to destroy it.

Mr. PIKE. Of course, as Congressman Sumners said yesterday, one of the gravest duties imposed on the State tax authorities is to see that the person who pays his tax fully is protected against the one who is inclined to cheat, and you still have some real holes in administration.

Mr. STRONG. Oh, undoubtedly. This is a new thing. This whole motor-carrier industry has sprung up, as you well know, within the last 10 or 12 years, and it is just a matter of approaching it as intelligently and sensibly as you can and allowing the industry to grow in the manner in which it is entitled to grow and develop.

Mr. PIKE. It isn't that your home folks aren't as honest as the outside ones; you haven't any machinery for checking them up as well.

Mr. STRONG. That is about the situation. I think one is about as honest as the other. We attempt to treat them all alike.

The particular function of the clearances through the ports of entry by the regularly certificated carrier is to provide a check up on the carrier's mileage reports. From a practical standpoint, it would be difficult, if not impossible, to have any idea whether his report was correct if it were not for the availability of this check.

We particularly ask that the committee note that the out-of-State operator is subjected to no discriminatory treatment in this connection. He has the same right to secure a permit; the requirements are no different for him than they are for the Kansas resident, except that he is required to appoint a resident agent to receive service of legal process.

Mr. PIKE. How does that one fit in, the occasional trucker? Is there some particular fellow whom he can appoint?

Mr. STRONG. Yes; I will come to that. This is the man who operates regularly with more or less frequency into the State, and he can qualify on exactly the same basis as the Kansas operator. The only thing is, being a nonresident, he does have to file a designation of agent. His permits are the same, his reports are the same; he files them monthly. It is the same basis.

Acting Chairman WILLIAMS. Does he have to designate that agent himself or does the law appoint somebody?

Mr. STRONG. The general statute relating to out-of-State operators provides for service on the secretary of state. The motor-carrier law specifically provides that a non-resident motor-carrier operator subject to the authority of the commission shall designate a resident agent, so we have a regular form of designation of agent that they send in. I think that if someone should fail to do this, we wouldn't give him a permit. But in many of those old cases where they didn't, as this law has developed we feel that the citizens of the State are protected due to the general code which provides that service may be had upon the secretary of state.

Acting Chairman WILLIAMS. That is what I would think. It seems to me the law would designate a certain official upon which service could be had, and avoid the necessity of having each individual who may not have an agent or may not know an agent, and would be put at some inconvenience to designate some individual for that purpose, do so.

Mr. STRONG. That is right. I think that is very true. However, we have had no particular difficulty. Our out-of-State operators, usually if they are in the State with sufficient frequency to obtain a permit from our commission, will have an office or a businessman or somebody, because they are doing business in the State.

Mr. PIKE. But usually it is somebody who handles his other business in the State?

Mr. STRONG. That is right; so we experience no difficulty in that respect at all.

His mileage tax is figured on the same formula and amounts to identically the same tax payment per ton-mile operated as does that of the Kansas resident. The registered carrier from another State undergoes identically the same treatment at a port of entry as does the Kansas truckman. The ports of entry of the State of Kansas never have been, and are not in any way, instrumentalities of discrimination against carriers from other States.

Quite to the contrary, the interstate operator has, in some respects, many advantages by virtue of the port-of-entry system. Unless he seeks to do purely intrastate business, he does not need to obtain Kansas license plates and pay the fee therefor. While this fee is not large in comparison with those charged in other States which use this method as the principal means of collecting compensation for the use of their highways, nevertheless this does give to him somewhat of an economic advantage.

As we mentioned a moment ago, there is another class of carrier affected by ports of entry. Out-of-State operators who desire to make only an occasional or infrequent trip into or through the State of Kansas are afforded a method of securing clearances through the Kansas ports of entry without the necessity of first securing a permit from the State corporation commission. The port-of-entry law provides for and denotes them as "special permits" or as a "special clearance." These terms are synonomous. To secure such a special clearance, an operator needs only to stop at the port of entry and state substantially the same facts as are required of carriers clearing in the regular way. In substance, he must describe his vehicle, his destination, his cargo, and the route or distance that he expects to travel in the State. He must likewise show that he has the necessary insurance in some company authorized to do business in Kansas.

Mr. PIKE. Is that any great good, Mr. Strong? I assume most insurance companies are authorized to do business in the State.

Mr. STRONG. That is right. By that I mean this: that is like any out-of-State corporation that is authorized to do business in the State through the secretary of state's office. That follows the general law. As a matter of fact, the list of insurance companies authorized to do business in Kansas would take a dozen sheets. Practically every one I know does business in Kansas, and that is what this refers to.

A man comes up with his insurance identification—a card is enough, he doesn't have to carry a policy. Now a Kansas operator has to file a policy; the out-of-state operator doesn't. If he has an insurance identification card and it should be in some company that no one ever heard of, or that wasn't admitted to do business in Kansas, obviously we would stop him and have him get in touch with his insurance company by phone and find out who they were, and if

they weren't authorized to do business in Kansas, he would stay there. But I know of very few instances where that has occurred because all the insurance companies do busin ·n Kansas. Most all of them are registered there.

Upon making these necessary declarations and showing these facts, together with the fact that he is not making and has not made regular trips into the State of Kansas and does not desire to become a regularly registered carrier in Kansas, he is entitled to such special permit or clearance upon the payment of the mileage tax. In these cases, the mileage tax is figured on a slightly different basis. The statute divides vehicles into three weight classifications, namely, those under 15,000 pounds, those over 15,000 pounds but under 25,000 pounds, and those over 25,000 pounds. On these special clearances the tax imposed is 1½, 2, or 3 cents per loaded mile, depending upon the gross weight of the vehicle and load, and the weight classification into which it falls. There is no application fee, delay, or other impediment placed in the operator's path.

It will be noted that the rate of fees charged on these special clearances are slightly more than those charged the regularly licensed carrier. There is, however, this distinction—the regularly registered operator pays for all miles traveled, while the carrier operating under a special permit pays only for the loaded miles traveled. Empty mileage is not figured in ascertaining the tax under special permits.

Thus, an out-of-the-State operator seeking to make an occasional trip into or across the State of Kansas can come to its borders and in a few moments and upon the payment of a small tax based upon the loaded miles he will travel in the State, secure a valid grant of authority from the State to travel its highways. There are no formalities or red tape in connection with securing this right. He is not required to make an application, pay a fee therefor, be present at any hearing, file any insurance, show the existence of any contract, or prove convenience and necessity, make any deposit to secure the payment of his tax, or do any other of the numerous things required commonly by States in connection with their regular carriers.

Acting Chairman WILLIAMS. Does he pay the tax right there?

Mr. STRONG. Yes.

Acting Chairman WILLIAMS. Is that true in all cases? The truck pays the tax at the port of entry?

Mr. STRONG. That is right, that is the point exactly. At some expense we establish 76 agencies around the State and man them with 203 State employees to be out there at the borders of the State so that he doesn't have to file an application; he pays his mileage tax right there, based on his operation, and goes on about his business.

Mr. PIKE. You have no doubt that this system more than pays for itself, Mr. Strong?

Mr. STRONG. Yes; but not in the mileage collected. For every 50 cents in fees we collect at the port for mileage tax on the occasional operator it costs us a dollar, money actually taken in, but on our tax response by virtue of these, and on our gasoline—I will come to that later and show you the importance of that—it is a big thing to the State. If you can prevent 1 percent tax evasion on gasoline fuel tax alone it amounts to $500,000. It costs us about $250,000 to operate these ports.

In passing, we wish to note that under the Kansas act, the owner of livestock or the producer of farm products is exempt from the payment of the mileage tax, and this is equally true of Kansas residents and residents of other States. They are just simply exempt from all the provisions; they don't have to obtain insurance or do anything; they get loaded up on the highway and away they go. It is the same whether they come in from other States loaded with farm products; they are exempt just the same way.

Similarly, persons transporting their own property where this property is not for sale, lease, or bailment, are totally exempt. In those cases, upon coming to a port of entry, the simple declaration of the facts will entitle the operator to an "exempt clearance" and a certificate to that effect is given which will permit the vehicle to proceed through the State without further explanation or delay.

A few moments ago we spoke of the alteration of routes declared at the port of entrance, that is the man who gets into the State, he is cleared at the port, he is out in the middle of the State and gets a wire from headquarters, "You have got to go somewhere else," household movers and so forth. The regularly registered carrier, that is the man who has a permit, may make such change when necessary, without any previous formality. That is obvious; he just reports it on his monthly mileage. On his monthly mileage report he simply reports the change in mileage total and notes the alteration on the carrier records he regularly keeps. Other methods of checking have been devised which effectively bar any material escaping of tax payment by this means, and we need not dwell upon them here, except to say that they are the same means used to check up on the purely intrastate carrier who has no occasion to ever clear through the ports; that is our auditing system.

The carrier operating on a special permit having left the port of entry may alter his route by contacting a central port within the State, by mail, wire, or telephone, if desired, paying of the additional mileage tax if any, and securing an "extension" or amendment of his special permit. That is the office at Topeka.

Mr. PIKE. If he is a couple of hundred miles from Topeka he may be up against a delay of 2 or 3 days, sending his tax money in, and so forth?

Mr. STRONG. No, sir; he would be out the expense of a telephone call to my office (we keep someone there all the time) giving the certificate number on which he cleared through the port, which will have a description of his equipment and will control the tax bracket in which he falls. He states to us where he desires to go, the highways, whether he is going empty to pick up a load and going loaded so far, and we wire him an extension to clearance number so-and-so by way of highway so-and-so, upon receiving the tax money. He can wire the money in and we can wire him the clearance, and that wire, together with his certificate, which has the number on it, enables him to go right on.

Mr. PIKE. It might not be over an hour or so?

Mr. STRONG. That is right. He does have the expense of that wire to us, under that system, the telephone call and the wire back to him, but that is the way we effect that. When for some reason he gets into the State and has to alter or vary his plans, he contacts the port at Topeka, the central office there, otherwise he would never have any

contact with us at all. This may be done in a few minutes and no special fee is required. He would just have to pay the additional tax.

As the committee has no doubt noticed, we have reiterated in several particulars the absolute similarity of treatment received by the Kansas operator and the out-of-the-State operator. Our purpose in so doing has been only to show that the Kansas ports of entry are in nowise intended or used to work a hardship upon carriers from other States or to raise a wall around the State which only the agile may scale. On the other hand, we believe this method is not only a valid exercise of the taxing and police powers of the State but also is a most reasonable and proper exercise of those powers. This method has been carefully developed for the purpose of expediting the flow of commerce, simplifying the requirements placed upon the carriers, and adjusting the necessary tax load in the most equitable fashion. We sincerely trust that you will bear in mind that with the sole exception of the inspection of petroleum products and the sealing of intoxicating liquor shipments, there is created by the Kansas ports of entry no embargoes, no inspections, and no harassment of the shipping public.

In passing, allow me to mention again a feature of the control imposed as it affects the oil industry. Kansas is a large oil-producing State, and it exports approximately 60 percent of its output. Roughly, two-thirds of this moves by motor vehicle. Through other branches of the State government, refinery agents are stationed at the refineries and distributing points. Cooperating with the ports of entry, checks are made of loads for export from the State leaving those points by truck and such loads are sealed at the loading point. A corresponding check is made at the port of exit, and any tampering with seal or load detected. Further, the ports of entry and other cooperating departments furnish the information gained by these various tests in Kansas to officers of other States to assist in safeguarding the quality of these products of the State from adulteration or pilferage in transit.

Mr. Pike. Also the quantity.

Mr. Strong. That is right, to see that it isn't dumped in the State of Kansas and thus avoid the tax. We furnish Missouri, Nebraska, and all surrounding States, any State to which it is consigned—that is, their oil inspection and highway departments—with a copy of that refinery invoice; it doesn't make any difference where it is going, every State gets a copy; whether they want it or not we send it to them.

It is the sincere belief of the Kansas port of entry officials that our ports are not in anywise a barrier to trade.

The matter of the consideration of the practical operation of ports of entry is not entirely new. Various conferences in connection with trade barriers have considered the question, as this committee is doubtless aware, and the system of operation in use by the State of Kansas has yet to be criticized or found to constitute a trade barrier by any of these conferences in which the Kansas port of entry law has been analyzed and discussed.

At the risk of boring the committee, I should like to refer briefly to just one of these conference reports. The Western States Trade

Barrier Conference, held under the auspices of the Colorado State Chamber of Commerce at Denver, Colo., September 28 and 29, 1939, at which conference 10 Midwestern States, including the State of Kansas, were represented, adopted the following resolution:

* * * Be it resolved, that this conference go on record as declaring that Ports of Entry in the states presented here do not constitute trade barriers within the meaning as defined by the Council of State Governments, and

Be it further resolved, that this conference go on record as endorsing the operation of Ports-of-Entry in the several western states represented until such time as a better or more economical system be devised for collecting taxes justly levied against interstate and intrastate operators alike for the maintenance and construction of highways.

Surely the States in closest contact with the operation of the system in question should be best able to judge of its effects on the traffic moving between these States. The attention of the committee is respectfully drawn to the fact that in no instance, where opportunity for full and complete consideration and discussion has been afforded, has there been an adverse report on the port-of-entry system as operated and administered in Kansas.

Situated in the geographical center of the United States, her fertile plains crossed by many miles of Federal and State highways, Kansas, at the crossroads of America, welcomes the commerce of the Nation, realizing that "trade" means "exchange," and that if she is to market the products of her fields, mines, and factories she may do so only when she freely receives the products of her sister States.

It is hoped that out of this hearing will come a clarification of some erroneous conceptions of the operation of port of entry or registration stations, which have from time to time found expression in articles prepared by persons who have not been fully familiar with the operation and purposes of these agencies.

Acting Chairman WILLIAMS. Does your law prohibit or place any limitation on the size and capacity, height, length, and so on of trucks?

Mr. STRONG. Yes; we have some load limitations in our regular motor-vehicle law of the State.

Acting Chairman WILLIAMS. If one of those trucks comes to a port of entry it would not be admitted, would it?

Mr. STRONG. Yes.

Acting Chairman WILLIAMS. It could be admitted?

Mr. STRONG. Yes, sir; under the regulations of the State highway commission and under the State highway-commission law. You see, we have the State vehicle law, the port-of-entry law, the Kansas motor-carrier law, and the State highway-commission law. The State highway commission is authorized to issue overload and overweight permits at each port of entry. The attendants are provided with those forms of permits. We have lots of large oversized agricultural machinery, these big combines and things, and they have to be moved over the highways. That is to take care of them. The way they do that is to move them during certain daylight hours and under the supervision of a highway patrolman. When a man like that who has too big a load comes to the Kansas port, he must pay for a call to Topeka to get authority for the port attendant to issue that special overweight permit. We have nothing to do with that. That is purely a policing function. Then if there isn't a highway patrolman there, he takes that slip and can proceed on the highway

until he meets the nearest highway patrolman, who supervises the movement to its destination.

Acting Chairman WILLIAMS. Then a truck of any size could obtain a permit?

Mr. STRONG. I think so, provided——

Acting Chairman WILLIAMS (interposing). You have limitations but you make exceptions and issue a special permit for that purpose.

Mr. STRONG. The highway department issue that permit. We have no fee or charge.

Acting Chairman WILLIAMS. In that way there is no holding up of that particular kind of traffic, it is permitted to go on?

Mr. STRONG. That is correct.

Acting Chairman WILLIAMS. That has been the practice and that is the practice?

Mr. STRONG. Yes; that is the actual practice now. Prior to a couple of months ago those men would have to get in touch with the director of highways at Topeka before they could proceed, and have a highway patrolman come there and escort them where they were going, but we have placed those now at all these ports and so the port-of-entry attendant merely calls the office to show that certificate number so-and-so has been issued. It has nothing to do with the tax or anything of that sort.

Mr. PIKE. You have made the administration fit in better with the facts of traffic as you find them.

Mr. STRONG. That is right, and we still have some way to go. I said there is no limitation. There is. For instance, a man could come up to a port of entry with, say, sixty or seventy thousand pounds on a single-axle vehicle or something of that sort. There is a limit on it. We tell him, "Why no, you can't come in."

Mr. PIKE. He probably couldn't get that through any of your border States.

Mr. STRONG. I don't know whether he could or not. Some of them are pretty liberal. Our weights are graduated, if he has a single axle or double axle or dual wheels. In Kansas, I expect there are means of arranging for equipment to haul almost anything. We move these big storage tanks in the oil fields. We have so much heavy oil-field equipment, we have heavy trucks that look like flat cars that those operators use.

Of course, they have the proper number of tires under them and the proper construction, so there is a limitation in that it has to be constructed in a certain way and a certain amount of tire space under it, but we hardly ever get one that has too big a load for the equipment that he can get in the State.

Mr. PIKE. That would be in the discretion of your highway department. If they really thought, properly handled, it wouldn't cause excessive damage to your roads, they wouldn't object.

Mr. STRONG. That is right. If it is too wide, a big combine or some other piece of machinery, under the highway law they have a means of issuing a daytime permit so they will just move between certain daylight hours, and under the supervision of patrolmen. That is just for emergency cases.

Mr. PIKE. What would be your recommendation or feeling about, say, all the States adopting a similar provision?

Mr. STRONG. I think the time is coming when the Federal Government, if the States don't do it, will set up ports at every State border, but they will be joint ports. That is the thing that we find. For instance, with the State of Colorado, we are working very closely with that State. They have only seven or eight ports out there, and they have a real problem. We exchange our port-of-entry slips in checking weights. We have so much difficulty in the improper reporting of weights, and out there Mr. Ridell is attempting to get his legislature to establish more ports, and I am attempting to get my legislature to work with him on the idea of joint ports, so there will be one port where they can go through and clear everything they need, and I think that until we have a picture like that, where all the States realize it, we are always going to have this difficulty.

Our approach to it is simply this, to facilitate that movement as much as possible, and you can't do it by staying at home in your State capital. You have to get out where those boys are, and help them through, and that is the theory on which our ports are operated.

Acting Chairman WILLIAMS. Mr. Strong, we thank you, and enjoyed and were very highly benefited by your presentation.

Will you call the next witness, Mr. Donoho?

(The witness, Mr. Strong, was excused.)

Mr. DONOHO. Mr. Taylor, will you come forward, please?

Acting Chairman WILLIAMS. Will you be sworn, Mr. Taylor?

Do you solemnly swear the testimony you are about to give in the matter now pending shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. TAYLOR. I do.

TESTIMONY OF GREYTON H. TAYLOR, PRESIDENT, THE TAYLOR WINE CO.; PRESIDENT, FINGER LAKES WINE GROWERS ASSOCIATION, HAMMONDSPORT, N. Y.

EXPERIENCES OF A NEW YORK WINE PRODUCER WITH TRADE BARRIERS

Mr. DONOHO. Will you state your name and address, please?

Mr. TAYLOR. Greyton H. Taylor, Hammondsport, N. Y.

Mr. DONOHO. What is your business, Mr. Taylor?

Mr. TAYLOR. We grow grapes, make and sell wine; we do business in about 32 States.

Mr. DONOHO. You are, are you not, the president of the Taylor Wine Co. and also president of the Finger Lakes Wine Growers Association?

Mr. TAYLOR. Yes, sir. I also represent the Wine Institute of California, for whom I have been asked to speak.

Mr. DONOHO. You are representing the Institute here at these proceedings?

Mr. TAYLOR. Yes, sir.

Mr. DONOHO. Mr. Taylor, how long have you been connected with the wine industry?

Mr. TAYLOR. Our family has been connected with the wine industry since 1880. My two brothers and myself are the third generation in the business at Hammondsport.

Mr. DONOHO. What is the extent of your business, Mr. Taylor?

Mr. TAYLOR. We do business in about 33 States at the present time.

Mr. DONOHO. How many vineyardists are there in your part of New York?

Mr. TAYLOR. There are approximately 1,200 vineyardists, people connected with the growing and producing of wine grapes in our district.

Mr. DONOHO. Mr. Taylor, do you know anything about the wine industry in other parts of the United States?

Mr. TAYLOR. Wine is produced in 32 other States. There is an estimated 150,000 people who earn their livelihood as vineyardists, winery workers, and persons employed in allied industries.

Mr. DONOHO. Mr. Taylor, as president of the Finger Lakes Wine Growers Association and president of the Taylor Wine Co., I presume that you are familiar with the problems of the wine industry?

Mr. TAYLOR. Yes, sir.

Mr. DONOHO. Including those problems relating to trade barriers?

Mr. TAYLOR. Yes, sir.

Mr. DONOHO. Mr. Taylor, what are these trade barriers, as they affect your industry?

Mr. TAYLOR. Why, these interstate trade barriers are divided into three major classifications: taxes, licenses, and distribution.

Mr. DONOHO. Please elaborate on the tax discrimination.

Mr. TAYLOR. Why, tax discrimination takes the form of States having higher taxes on wines produced outside of the State as compared with wines produced within the State. For example, in Arkansas there is a tax of 50 cents a gallon on wines produced outside of the State as compared to 5 cents a gallon on wines produced in the State. Then, in Michigan, they have a tax of 50 cents a gallon on out-of-State wines as compared to 4 cents a gallon on Michigan-made wines where the vineyardist is paid $55 a ton for grapes.

In Georgia there is a tax of 60 cents a gallon and 40 cents a gallon on out-of-State wines as compared with 30 cents and 5 cents on Georgia-made wines.

Mr. DONOHO. Mr. Taylor, would you care to make your statement more specific? Just how do these tax discriminations affect you in your business?

Mr. TAYLOR. Why, naturally these tax discriminations make the price of our wines anywhere from 25 to 50 percent more per bottle in that particular State as compared to local wines of the same kind and quality.

Mr. DONOHO. Mr. Taylor, you mentioned license requirements as constituting barriers to your product. Would you explain that, please.

Mr. TAYLOR. The State of Colorado has a license of $1,000 a year which an out-of-State winery must take out in order to ship wine into the State of Colorado. Other States, such as Michigan, have a $250 license; Massachusetts, a $300 license to solicit business in the State; and Missouri, a $100-a-year license.

Mr. DONOHO. Just how do these license requirements specifically affect your business, Mr. Taylor?

Mr. TAYLOR. It makes our cost of doing business in that State very much more, and if all of the States where we do business had a tax such as there is in Colorado, it would cost us $33,000 a year just in State licenses. If this were the case, we naturally couldn't afford to do business on a Nation-wide scale, as we now are.

Mr. DONOHO. These license requirements to which you have referred mean that they must be paid before you can go into the State at all, before you can do any business?

Mr. TAYLOR. Yes, sir.

Mr. DONOHO. That is in addition to any tax which might be placed on your product after you get in the State?

Mr. TAYLOR. Yes, sir.

Acting Chairman WILLIAMS. Does that mean you can't do business at all, that you can't sell your products in those States, without the license?

Mr. TAYLOR. In Colorado we cannot sell or solicit any business in that State without first taking out a $1,000-a-year license.

Acting Chairman WILLIAMS. What kind of license do they charge the local operators?

Mr. TAYLOR. I don't have those figures.

Acting Chairman WILLIAMS. What I mean is this, whether or not they charge a different license for the outsiders from what they charge a person on the inside, the local producer and operator. I don't care to go into the entire field of it, but the idea is whether or not that is a discriminatory license.

Mr. TAYLOR. That usually is the case where they have these licenses. The out-of-State firm is charged more than the producers in the State.

Mr. DONOHO. If Mr. Taylor will refer to his data there, I think he can give you that information.

Mr. TAYLOR. The license fee to solicit for orders, sell and/or ship out-of-State wine into Colorado is $1,000 per year. To solicit orders and to sell Colorado-produced wine, $250 per year.

Mr. DONOHO. Is that discrimination general?

Mr. TAYLOR. In my opinion, yes; that is discrimination.

Mr. DONOHO. And that is general throughout the country; that is, the differences in license requirements of out-of-State wine shippers and sellers of wine produced in the State?

Mr. TAYLOR. Yes; there are a number of States that have that same—of course it is not the same amount, but the same type of license discrimination.

Mr. PIKE. I noticed, Mr. Taylor, that several of these States have these discriminatory license fees and taxes. Some of them I never heard of as wine-producing States at all.

Mr. TAYLOR. Well, there are over 30 wine-producing States. Some of them are not large. The largest ones, of course, are California, New York, New Jersey, and Ohio, but there is wine produced, such as in Florida and various other States, out of either berries or citrus fruits, and also including grapes.

Mr. PIKE. My State of Maine, I notice, has a discriminatory tax, and I can't get any grapes to grow at my home. They won't mature. I never heard of any wine being made there, still it has a discriminatory feature in favor of home-grown products. I wondered if they perhaps referred to cider, of which we are a fairly large producer.

Mr. TAYLOR. They may have had in mind some sort of fruit wine.

Mr. DONOHO. In that connection, wine can be made from apples, can it not?

Mr. TAYLOR. Yes; if it is properly qualified as apple wine; or it can be made from blackberries if it is properly qualified as blackberry wine.

Acting Chairman WILLIAMS. Are your wineries widely distributed, or are they confined to one locality?

Mr. TAYLOR. Our wines——

Acting Chairman WILLIAMS (interposing). Your factories, where you are producing the wine.

Mr. TAYLOR. Oh, yes; they are widely distributed, mostly in grape districts.

Mr. PIKE. I think the chairman meant your own.

Mr. TAYLOR. We have just one winery, located at Hammondsport, N. Y., in the Finger Lakes district of central New York State.

Acting Chairman WILLIAMS. And from that point you distribute throughout the entire country?

Mr. TAYLOR. That is right, in 33 States.

Acting Chairman WILLIAMS. Is there a special tax on the winery too?

Mr. TAYLOR. Of course, we operate our winery under a New York State license, but there is no Federal tax, internal-revenue tax, on a winery. We are under a bond to the Federal Government which all winery premises are.

Acting Chairman WILLIAMS. For what purpose?

Mr. TAYLOR. That is to insure the Government that they will receive the Government excise tax on wine when it is removed from the winery.

Acting Chairman WILLIAMS. And that tax, of course, is applicable to all wineries?

Mr. TAYLOR. That is right.

Acting Chairman WILLIAMS. The same throughout the entire country. That is an excise tax that is levied against all of them, regardless of the location.

Mr. TAYLOR. That is right.

Acting Chairman WILLIAMS. That is all.

Mr. DONOHO. Are there other types of license requirements which you consider discriminatory?

Mr. TAYLOR. Yes; this also reaches into the retail field. In Arkansas, for example, a retailer in Arkansas can sell Arkansas-made wines at a license fee of $15 a year, while a retailer who sells out-of-State wines is required to take out a $400-a-year license.

Mr. DONOHO. You have discussed discrimination with respect to taxes and with respect to licenses. You mentioned discrimination with respect to distribution. Will you please explain that to the committee?

Mr. TAYLOR. There are two good examples of discrimination on distribution. In the State of Washington, for instance, local wines can be sold there and distributed through privately owned retail outlets. Out-of-State wines, such as our New York State wines, must be sold to the liquor-control board. They, in turn, take our prices and mark them up 78 percent before they are turned over to the retailer. This means that our wines have an added price of about 50 cents a bottle. This puts us at the start in a very unfair competitive position.

Mr. PIKE. It would be the same for California wines, all out-of-State wines?

Mr. TAYLOR. Oh, yes.

Mr. DONOHO. Would you explain the situation in this connection?

Mr. TAYLOR. In Michigan, their State law defines wines of over 16 percent of alcohol by volume as distilled spirits. Wines under 16 percent, according to the Michigan law, are allowed to be sold through privately owned stores. Well, now, for instance, our standard sweet wines, such as port and sherry, which we make in accordance with the Federal Rules and Regulations, cannot be shipped in interstate commerce unless they contain more than 17 percent of alcohol. That means that we must sell our wines to the State liquor control commission for distribution through the stores. Well, we have been unsuccessful in getting our wines listed, which means we are prohibited entirely from selling our wines in the State of Michigan.

Mr. DONOHO. What reasons are given, Mr. Taylor, for not listing your wines?

Mr. TAYLOR. It is done by administrative authority. Sometimes I hardly blame them, because the sale of wines through the State liquor stores is very limited, because the bulk of the wines are sold through the privately owned stores. Therefore, they take the position that there isn't sufficient volume for our standard wines to be sold through the stores, and I presume that is the reason they don't list them.

Mr. PIKE. They have a duplicate system in Michigan—State stores and privately owned?

Mr. TAYLOR. Yes, sir.

Acting Chairman WILLIAMS. Have we any monopolv stores as applied to wine?

Mr. TAYLOR. Yes; in Pennsylvania.

Mr. PIKE. In Maine, too.

Mr. TAYLOR. Several States—West Virginia.

Acting Chairman WILLIAMS. Where you have that system do you have any trouble?

Mr TAYLOR. We enjoy a very good sale of our wines in the States of Maine, Pennsylvania, West Virginia, and these other monopoly systems.

Acting Chairman WILLIAMS. It is just a matter of advertising and persuading the board to buy your product?

Mr. TAYLOR. After you get your wines into the State then you have to sell them through advertising; yes.

Acting Chairman WILLIAMS. But the point in my mind is whether you come in in that respect on an equality with the home products.

Mr. TAYLOR. I don't think so. You take in the State of Michigan, the bulk of the wines that are sold are under 16 percent because they are sold through privately owned stores and, therefore, are more widely distributed. A number of State liquor stores don't even handle wines.

Mr. PIKE. Sixteen percent is the cut-off above which private stores can't handle wine?

Mr. TAYLOR. That is right, because wines there are classed as distilled spirits.

Mr. DONOHO. Mr. Taylor, do you have these types of discriminatory laws in New York?

Mr. TAYLOR. We do not.

Mr. DONOHO. Are you in favor of such laws in New York?

Mr. TAYLOR. No, sir.

Mr. DONOHO. Why?

Mr. TAYLOR. Why, even though New York State is considered the most concentrated and the largest wine market in the world, we feel that should we in the grape and wine industry put up trade barriers and create a monopoly for our products, we would in time be retaliated against by other States, and we would soon lose our Nation-wide business in these other States.

Acting Chairman WILLIAMS. You seem to be discriminated against the way it is, according to your testimony here.

Mr. TAYLOR. Yes; we are, in certain States.

Acting Chairman WILLIAMS. How do you account for that?

Mr. TAYLOR. I think it is due, perhaps, to the interest of the local grape grower and the winery; they feel that if they can enact some law which would protect their own industry they would sell more of their products. But usually that isn't the case. It doesn't work out that way, because it makes the cost of wine higher to the consumer and it more or less restricts the sale of wine, we have found.

Mr. DONOHO. Have there been any discriminatory laws proposed in New York State?

Mr. TAYLOR. Yes; only about 2 weeks ago there was a bill in the assembly which would place a tax of 20 cents a gallon on out-of-State wines as compared to 10 cents a gallon on New York State wines. This bill was opposed by our association and other people in the State and was killed in committee.

Acting Chairman WILLIAMS. Who was back of that kind of measure in New York if the wine industry was against it?

Mr. TAYLOR. Well, it was put in by a man named Congdon, down in the Hudson Valley district. I haven't been able to find out who he was putting that bill in for.

Acting Chairman WILLIAMS. I was just wondering what interests would be back of that kind of measure when the local wine producers didn't want it themselves.

Mr. TAYLOR. Our association is in the Finger Lakes district, up-State, which is the largest wine-growing section in the State, and there are some grapes grown along the Hudson Valley outside of New York. I don't know why or for whom that bill was put in.

Acting Chairman WILLIAMS. Unless it could possibly be that it was put in as a revenue-producing measure.

Mr. TAYLOR. It may have been. There have been in the past bills of this nature, but we have always been successful in defeating them.

Acting Chairman WILLIAMS. That would be the ostensible purpose, wouldn't it, simply as a revenue measure?

Mr. TAYLOR. Yes; and also for the possible protection of the grape industry in the State; yes.

Acting Chairman WILLIAMS. That would probably be in the background.

Mr. TAYLOR. It might.

Mr. PIKE. Of course, I think it is fair to say, subject to correction, that your district is known as a district of very high-quality wines rather than a great quantity-producing district.

Mr. TAYLOR. That is right.

Mr. PIKE. So that your national market is much more important possibly to the Finger Lakes district than it might be to some other districts which produced great quantities of grapes, but where the wines didn't have any particular reputation and would almost surely be consumed locally.

Mr. TAYLOR. Our district doesn't produce a large volume of wines in gallons; we do produce, in that section, from 60 to 70 percent of all the fermented-in-the-bottle champagne produced in the United States.

Mr. DONOHO. Mr. Taylor, what are your recommendations regarding trade barriers?

Mr. TAYLOR. Why, we are very much encouraged with the progress which has been made by the Council of State Governments, and felt that we would like to bring this matter to the attention of this committee and perhaps we might, in the future, be able to reduce or do away with some of these trade barriers and could stop other States from going into this type of discrimination.

Mr. PIKE. Again you are trying to leave it up to legislative good sense rather than questioning their powers to do what they have done.

Mr. TAYLOR. Well, of course we in the industry have done a lot toward working to do away with these trade barriers.

Acting Chairman WILLIAMS. You recognize, I think, as we all do, that that is necessarily a question for State governments.

Mr. TAYLOR. Yes; it is.

Acting Chairman WILLIAMS. Especially as applied to intoxicating liquor under the twenty-first amendment, the Congress would have, as I conceive it, absolutely no jurisdiction over that.

Mr. TAYLOR. Yes, sir.

Mr. DONOHO. Have you anything further to say, Mr. Taylor?

Mr. TAYLOR. On behalf of the Finger Lakes Wine Growers' Association and Wine Institute of California I would like to file a summary of the existing trade barriers.

Mr. DONOHO. This is a summary of State laws which in your opinion constitute trade barriers to your products?

Mr. TAYLOR. Yes, sir.

Mr. DONOHO. Mr. Chairman, I offer this tabulation for the record.

Acting Chairman WILLIAMS. It may be received.

(The brief referred to was marked "Exhibit No. 2408" and is on file with the committee.)

Acting Chairman WILLIAMS. Have you anything further?

Mr. TAYLOR. No, sir.

Acting Chairman WILLIAMS. Are there any further questions?

Mr. DONOHO. Mr. Chairman, I have here three briefs which I would like to offer for the files of the committee. These briefs represent statements by interested groups in the liquor industry. One brief is on behalf of the United States Brewers' Association, another is on behalf of the Distilled Spirits Institute of Washington, the other is on behalf of the National Association of Alcoholic Beverage Importers. I might state here that Mr. John E. O'Neill, technical assistant to the Administrator of the Federal Alcohol Administration, has read these briefs and considers them accurate.

Acting Chairman WILLIAMS. And pertinent to this issue?

Mr. DONOHO. Yes, sir.

Acting Chairman WILLIAMS. They may be received for the files.

(The briefs referred to were marked "Exhibit No. 2409" and are on file with the committee.)

Mr. DONOHO. I have no further questions, Mr. Chairman.

Acting Chairman WILLIAMS. We thank you, Mr. Taylor.

(The witness, Mr. Taylor, was excused.)

Acting Chairman WILLIAMS. The committee will be in recess until 2:30.

(Whereupon, at 12:35 p. m. the hearing recessed until 2:30 p. m. of the same day.)

AFTERNOON SESSION

The hearing was resumed at 2:40 p. m. upon the expiration of the recess, Mr. Pike presiding.

Acting Chairman PIKE. The committee will please come to order.

Mr. DONOHO. Will you come forward, please, Mr. Lawrence?

Acting Chairman PIKE. Do you solemnly swear the testimony you shall give in these proceedings shall be the truth, the whole truth, and nothing but the truth, so held you God?

Mr. LAWRENCE. I do.

TESTIMONY OF JOHN V. LAWRENCE, GENERAL MANAGER, AMERICAN TRUCKING ASSOCIATIONS, INC., WASHINGTON, D. C.

TRADE BARRIERS IN RELATION TO MOTOR TRANSPORTATION INDUSTRY

Mr. DONOHO. Will you state your name and address, please?

Mr. LAWRENCE. My name is John V. Lawrence, with business address at 1013 Sixteenth Street, Washington, D. C.

Mr. DONOHO. What is your position, Mr. Lawrence?

Mr. LAWRENCE. I am general manager of American Trucking Associations, Inc., which has headquarters in this city.

Mr. DONOHO. Mr. Lawrence, will you briefly describe your organization and its purpose?

Mr. LAWRENCE. As to our organization, it is a federation of different associations, some 51 in number, in the various States, the District of Columbia, and the Territory of Hawaii. It is composed of all types of motor carriers, large and small, both private and for hire, and a rather fulsome questionnaire has been turned in to the Trade Association Section of the Department of Commerce under direction of this committee.

Mr. DONOHO. Mr. Lawrence, I would like to ask you in a little more detail some of the facts regarding your organization. How many persons are employed in the trucking industry in this country?

Mr. LAWRENCE. We have, according to the latest estimate available, which we entered in testimony on H. R. 2531 a year ago, and which was concurred in by the Bureau of Motor Carriers of the Interstate Commerce Commission by letter, 3,545,000 men and women employed in all branches of the trucking industry, with the exception, of course, of those who have employment in the million-odd trucks operated by farmers, who are not included in that estimate.

Mr. DONOHO. Is the trucking industry composed mainly of small or large operators?

Mr. LAWRENCE. It is largely composed of small operators. In fact, we were the administrative agency of the N. R. A. Code for the Truck-

ing Industry, and by a fulsome survey at that time of the for-hire branch, we found the average ownership was 1.6 vehicles. That has increased somewhat, but not much over 2.

Mr. DONOHO. Mr. Lawrence, how does the tonnage hauled by trucks compare with the total tonnage moved by other forms of transportation?

Mr. LAWRENCE. There have been various estimates made on that. Col. Leonard P. Ayers, of the Cleveland Trust Co., about a year and a half ago issued a rather fulsome study which showed just about 5 percent of the total intercity tonnage moved by motortruck. That was both private and for-hire trucks. The highest estimate runs about 8 percent. The fifty-third annual report of the Interstate Commerce Commission contains such a figure.

Acting Chairman PIKE. Does that mean ton-miles?

Mr. LAWRENCE. In ton-miles; yes, sir.

Mr. DONOHO. Mr. Lawrence, is the business done by trucks business which has been largely diverted from other forms of transportation or, in your opinion, does it represent new business to which other forms of transportation are not adapted?

Mr. LAWRENCE. We would say that a great portion of that is what we might call created tonnage; in other words, new tonnage moved by this form of transportation that could not move before.

Mr. DONOHO. Would you give the committee an example of this new tonnage to which you refer?

Mr. LAWRENCE. To speak offhand, first of all a survey made about 4 to 5 years ago by the Automobile Manufacturers Association showed that of the 122,000 communities in this country, slightly over 48,000 are not served by rail lines. A lot of this tonnage moves at points of that type. We have an increase in tonnage resulting from the decentralization of industry. About a year ago in the January 14 issue of Traffic World in 1939, Mr. S. R. Truesdell, who is assistant to the president of the Chicago & North Western Railroad, published a paper showing that by his estimates, this shrinking in long-haul tonnage by decentralization of industries, the moving of plants from the North to the South, or from the East to the West, had resulted in the shrinking of about $1,000,000,000 of revenue a year.

From those branch plants, with the increased activity there, the distribution is by short haul and that naturally is where the truck is at its best.

Mr. PIKE. You would hardly describe that as created tonnage, but more or less salvaged tonnage, the tonnage that is lost by the railroads.

Mr. LAWRENCE. Disappeared in the long haul, possibly, and created in the short haul.

Mr. PIKE. The tons are still there but the ton-miles have decreased.

Mr. LAWRENCE. That is probably correct, sir.

We have other examples. Take, for instance, the Southeast. Since 1865 and up to the last generation capital has been quite scarce in the Carolinas and other States. Drug specialties, for instance, were never carried in drug stores in that territory because the investment involved was too heavy. Second morning delivery service in small lot shipments was furnished in those stores and those articles which were not known in the stores suddenly appeared on their shelves;

they didn't have to tie up capital. We find fresh fruits and vegetables moving by truck. It has been testified in the Commission proceedings and other proceedings that it takes a town of possibly 20,000 to absorb a refrigerator carload of perishables of that kind. In the smaller towns and villages throughout the country this small unit form of refrigerator transportation has brought those products there. We have cases, for instance, of oysters that were never found in Mid-Western towns except in the larger places, and now trucks taking them out of the Chesapeake here; they have a short route after they have run several hundred miles into the interior, and in a couple of hours they are able to unload 5, 8, 10 tons of them, 1,000 pounds here, 800 there, and so forth, in very rapid order, so that oysters and seafood have appeared in those towns that never had them before.

Livestock: We find a great increase in the transportation of livestock. In the *Hours of Service case* before the Interstate Commerce Commission it was shown that shrinkage on carloads of livestock would run from $25 to $40 per carload while they were in transit. Under this mode—a couple of hundred miles—they are delivered over night with practically no shrinkage. Secondly, there was no necessity to order cars and wait 24 hours for them. The truck was right at the door and started them, saving that extra 24 hours in change in markets.

We find another important branch of the industry is film hauling. It brings films almost instantaneously to every small town in the country. They operate in a different way than others. The drivers have the keys and after the theaters are closed down around midnight, maybe along toward 2 o'clock in the morning, the driver will appear with the keys, open the theater, change the films, and he is on to the next town. Those carriers pay a penalty for every show they miss, so they naturally are right on their toes every moment to deliver the films.

Furniture moving: We find that for distances of 250 miles furniture can be carried for less than the cost of even crating it for any other form of transportation, and it is done economically up to 1,500 miles or more. We find silk rolling into New York out of the Southeast, for instance, and if you were on some of the sidewalk streets there along toward 6:30, in the garment center, you would find men and boys who are hired to sit on the curb and keep their feet in the road; they are holding a parking space for a truck coming right in on schedule. It has come over 500 miles, and within 90 minutes after it begins to unload that silk is on the table being cut into women's dresses and other artilces.

Gasoline: We drive out of here on a Saturday afternoon to Annapolis, maybe, for a football game, and no one imagines the job it is to have that gasoline in the tanks along the road; it is by close coordination between the transportation end and the sales organization of the oil distributor that it is placed there.

Really, in summing up, to bring out that thought, probably one has only to compare the old-time country store with its few staples, largely in barrels, and so forth, with the present store of today which has almost every trade-marked article on its shelves.

Mr. DONOHO. Mr. Lawrence, you have given the committee a picture of your industry and its place in our economy. Would you

develop the relationship between the trade barrier problem and your industry?

Mr. LAWRENCE. Mr. Donoho, there has been called to my mind in connection with this trade-barrier problem a statement made by the late Secretary of the Navy, then Senator Claude Swanson, of Virginia, when the Federal-aid bill was being discussed in the Congress back in 1921. At that time the then Senator Swanson said that this country was paying an annual mud tax of $700,000,000. Now we have in those 19 years that have intervened, hard-surfaced roads crisscrossing the county from end to end, but there is still a great deal of that mud tax left and it results from this mire of conflicting laws that govern the operation of trucks in the country.

Just as one example, I would like to tell of a contractor, a man from Wisconsin, who was leasing certain equipment to another contractor working on the Dixie Highway between Louisville and Fort Knox, Ky. There were two trucks that left Wisconsin, extra trucks needed; they carried nothing. The drivers, in the gentleman's own words, were fine, upstanding young men. They had some expense money with them to pay such transit taxes as they might have to pay on the way through.

But about 3 days later word came from Scottsburg, Ind., that the two of them were in jail. They had to pay various fees, and just as a list of those, they had to take out Indiana licenses for a 6 months' period, and they cost $67; they had fines, and the cost of wiring money to the sheriff of Scott County to get these men out of jail cost $39.61.

Acting Chairman PIKE. That is for starting to drive through Indiana without a license?

Mr. LAWRENCE. Without an Indiana license, but registered properly in their own State.

Acting Chairman PIKE. They had to buy it and then pay a fine, too?

Mr. LAWRENCE. That is correct, sir.

In addition they had some telephone bills and other things of $16; there were $122 in costs to take those two trucks through. In addition to the loss of the mens' time they had to be paid while they were in jail and in trouble.

The complainant in this case said the sheriff and his brother officers were most polite, but they said no reciprocity existed, the law said they had to charge them, and that is all there was to it. There was no reciprocity between their home State and the State of Indiana.

Mr. DONOHO. What are some of the more important of these trade barriers as they affect trucking, Mr. Lawrence?

Mr. LAWRENCE. Probably first and foremost is the matter of weight and size of vehicles that are restricted unduly in certain States, the lack of reciprocity between States, conflicting lighting and other safety appliance requirements; ports-of-entry give us some trouble. Then, too, there are burdensome steps that have to be taken by a carrier in order to enter a State.

Mr. DONOHO. You refer to weight limitations with respect to trucks. Would you develop that, please, Mr. Lawrence?

Mr. LAWRENCE. Well, I have here a study on a chart which covers the State gross-weight limits for motor trucks on a gross-weight basis,

and the source[1] is a publication of the United States Department of Agriculture. These bars have been brought up to date to reflect one or two changes that have occurred in the laws since that was published.

Mr. DONOHO. Is this the chart to which you refer?

Mr. LAWRENCE. That is, sir.

Mr. DONOHO. Mr. Chairman, I offer this chart for the record.

Acting Chairman PIKE. It may be received.

(The chart referred to was marked "Exhibit No. 2410" and is included in the appendix on p. 16162.)

Mr. LAWRENCE. It is interesting to note from this chart that we find a wide variation in these weight restrictions on a gross weight basis. I might explain what gross weight is, so as to get the record clear on that. Gross weight covers the total laden weight of the truck permissible, including the driver, the fuel, all equipment aboard, as well as the maximum load.

Thirty-nine States have their laws on that basis, and it will be seen that they range from Kentucky, at 18,000 pounds, to Rhode Island, at 120,000 pounds.

Mr. DONOHO. Mr. Lawrence, these States of Kentucky and Rhode Island are rather far apart. Do you know of adjacent States which have wide differences in weight limitations?

Mr. LAWRENCE. Well, we can take Connecticut, with 40,000 pounds, and Rhode Island with 120,000 pounds. We have Wyoming, with 48,000 pounds, and Montana, with 84,000 pounds, and then two adjacent States—Kentucky, with 18,000 pounds, and Illinois, 72,000 pounds.

Mr. DONOHO. Mr. Lawrence, all of the States are not on the chart, are they?

Mr. LAWRENCE. No; some of the States, most of the balance of them, have their weight limitation on the basis of wheel load or axle load limitations, whereas there is a pay load limitation in several of those.

Mr. DONOHO. Please explain pay-load limitation, Mr. Lawrence.

Mr. LAWRENCE. Well, the pay-load limitation can be illustrated best by the Texas situation, where no limitation is placed on the maximum weight of the vehicle but rather on the load it carries. In that particular State the maximum load allowed any carrier is 7,000 pounds with the exception that when a carrier is bound to or from a rail station the limit is doubled to 14,000 pounds.

Acting Chairman PIKE. I think it was explained that the cotton particularly lost weight once it was placed on a truck. I believe Judge Sumners brought that out.

Mr. DONOHO. I believe Judge Sumners made that remark.

Acting Chairman PIKE. Do you remember when that law was put through?

Mr. LAWRENCE. Approximately in 1932.

Acting Chairman PIKE. Who was behind it? Do you have any memory?

Mr. LAWRENCE. Well, we had ideas. I don't know. I would hesitate to accuse anybody of being behind it without sufficient proof.

Mr. DONOHO. Mr. Lawrence, how do these weight limitations work to create barriers with respect to interstate trucking?

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[1] "Barriers to Internal Trade in Farm Products," publication of Bureau of Agricultural Economics.

Mr. LAWRENCE. Well, they just develop by reason that the truck that goes through several States—as I think I will show later, a lot of these low States are right across general trade lanes in this country—must conform to the lowest limits of any State it crosses, or else they have to change vehicles at the State line, so that the lowest State limit is the governing limit on the whole trade lane.

Mr. DONOHO. The truck must comply with the limitations of each of the States?

Mr. LAWRENCE. That is correct.

Mr. DONOHO. What effect do State weight limitations have upon operating costs?

Mr. LAWRENCE. I would like to present here another chart, which I think illustrates that, but before doing so I would like to quote for the record from a case decided some time ago by the Interstate Commerce Commission, and this is found as a reference in 18 MCC 265. It covers a case in Investigation and Suspension Docket M 404, covering the transportation of leather from Middlesboro, Ky., to Chicago, Ill. The rate proposed by a motor carrier was 47 cents per hundred pounds, with a minimum weight of 20,000 pounds. This decision was handed down by the Motor Carrier Division of the Interstate Commerce Commission, Division 5, and in their finding they found the rate unlawful, but in quoting from page 266 of that decision——

Mr. DONOHO (interposing). Unlawful as being too low?

Mr. LAWRENCE. Too low. [reading:]

> The minimum weight of 20,000 pounds is proposed because of a restriction in the Kentucky law limiting trucks operated on the highways of the State to a gross weight of 18,000 pounds. Since respondent Silver Fleet's trucks weigh from 7,000 to 8,000 pounds, it cannot transport a load in excess of 10,000 pounds in Kentucky. In order to meet the proposed minimum respondent will operate two trucks to Louisville and there load the leather into a larger unit for movement beyond. The proposed rate produces truck-mile earnings of 12.7 cents, based on 438 truck miles, Middlesboro to Louisville (two trucks at 219 miles), and 301 truck miles, Louisville to Chicago. If respondents established a minimum of 30,000 pounds, the same as the rail minimum applicable in connection with the 47-cent rate, it would necessitate the use of three trucks to Louisville and two trucks beyond. The use of five trucks for the total distance of approximately 520 miles, Middlesboro to Chicago, would reduce the revenue per truck mile to 11.1 cents.
>
> Respondent Silver Fleet's cost per truck mile for nine months of operation prior to October 1, 1938, was 19.9 cents.

If I might refer to this chart,[1] you will see that I have set forth, down to here, the figures as set forth in the quotation from the Commission's decision: The double mileage from Middlesboro to Louisville, the single mileage from Louisville to Chicago, or 739 truck miles total.

The gross revenue on that shipment would be naturally $94. The revenue per truck mile would be 12.7 cents, and the respondent's average cost per truck mile 19.9 cents.

We come to some simple arithmetic as to what the rate would have to be to yield the full average cost using two trucks, and we find the full average rate would have to be 73.8 cents per hundred pounds. That is 73.6 cents as compared with the 47 as proposed.

If one truck were used, for a mileage of 520 miles, a simple calculation gives you 18.1 cents per truck-mile revenue, and summing up we

[1] See "Exhibit No. 2411," appendix, p. 16163.

find the increase over the proposed rate that would be required to meet the full average cost per truck mile on the two-truck basis would be 26.6 cents per hundred pounds, or 56.6 percent increase over the proposed rate, whereas on a one-truck operation all the way through it would be only 4.7 cents per hundred pound increase, or exactly 10 percent increase over the proposed rate.

Acting Chairman PIKE. Was this a rate actually in effect?

Mr. LAWRENCE. It was a rate proposed and which under protest was suspended.

Acting Chairman PIKE. Somebody wanted to lose some money?

Mr. LAWRENCE. They were looking for the business, I guess, and that was the only basis on which they could get it.

Mr. DONOHO. Mr. Chairman, the source of this chart is data from the Interstate Commerce Commission report?

Mr. LAWRENCE. Right down to the center these are all simple calculations made from the basic data in the Interstate Commerce Commission decision.

Mr. DONOHO. And this is the chart to which you refer?

Mr. LAWRENCE. That is, sir.

Mr. DONOHO. Mr. Chairman, I offer this chart.

Acting Chairman PIKE. It may be received.

(The chart referred to was marked "Exhibit No. 2411," and is included in the appendix on p. 16163.)

Mr. DONOHO. What are the general conclusions you draw?

Mr. LAWRENCE. Briefly, the general conclusion I would draw from that is that there has been a penalty placed on Kentucky business of 46.6 percent of the cost, or in other words, 21.9 cents per 100 lbs. in actual money on this particular commodity.

Mr. DONOHO. Mr. Lawrence, your illustration related to Kentucky. Have you any information with respect to this same situation in other parts of the country?

Mr. LAWRENCE. If I might at this time, I should like to produce another chart here. I would like to show on it the weight situations in the different parts of the United States.

Mr. DONOHO. The source of those figures, I suppose, is the State laws.

Mr. LAWRENCE. The State laws gathered by our own people from these other charts, and also estimates in cases where a wheel load or axle load is an allowable limit based on a typical vehicle.

Mr. DONOHO. Is this the map to which you refer?

Mr. LAWRENCE. It is.

Mr. DONOHO. Mr. Chairman, I offer this map.

Acting Chairman PIKE. It may be received.

(The map referred to was marked "Exhibit No. 2412" and is included in the appendix on p. 16163.)

Mr. LAWRENCE. To explain this chart, all these numbers are in tons so as to eliminate the zeroes, and so forth. As you see, we have placed on this chart in tons the figures from the previous chart,[1] as well as the pay-load limitations that are specific in the law and estimates in five or six other States on wheel load or axle load base.

Mr. DONOHO. Are the barriers occasioned by weight limitation particularly acute in any area?

[1] See "Exhibit No. 2410," appendix, p. 16162.

Mr. LAWRENCE. I have already mentioned them. They are acute in a number of areas. We have mentioned this situation through Kentucky, and I will explain as we go along certain other situations. But if you will notice, the whole flow of traffic is north and south in that territory, not east and west, and there are those low limits placed right across the general flow of traffic.

Acting Chairman PIKE. You had better identify those as you go along.

Mr. LAWRENCE. I speak here of the 9-ton gross weight limit in Kentucky, and I am referring to the southeastern section of the United States where the flow is all north and south.

Mr. DONOHO. To be more specific, Mr. Lawrence, what course is open to a trucker who is hauling a load of, say, 34,000 pounds, from Chicago or Indianapolis to Atlanta?

Mr. LAWRENCE. By merely consulting the map, you can see that it would be impossible to go from Indianapolis or Chicago straight south across Kentucky or Tennessee with 34,000 pounds of gross weight, which would account for approximately a load of 10 tons, considering the weight and type of vehicle that would carry that load, because the limit is 9 tons in Kentucky, and 12 in Tennessee, gross.

On the other hand, if he attempted to cross the Mississippi River and recross it, he could get down to Arkansas but he would run into Mississippi and Alabama headed east for Georgia, for Atlanta. So the only course open, unless he was going to reload at the Ohio River line or break into two units and reload again at the Georgia line, would be to go east through Ohio and West Virginia and down the Atlantic seaboard, a rather circuitous route in getting back to Atlanta.

Mr. DONOHO. He would either have to detour around Kentucky or split up his load?

Mr. LAWRENCE. As I said before, he would have to break the load, and many of the operations have to do that at the Ohio River line.

Acting Chairman PIKE. Do you agree with the statement made this morning about the pitiful condition of the Kentucky roads?

Mr. LAWRENCE. I would not be an expert judge on that, Mr. Chairman, but while the speaker was speaking and I was listening in the back with a great deal of interest, one thing struck me particularly, and that was the fact that no mention of bus limitations was made, and while I am not saying this in any degree of envy of our sister industry, I understand that there are no limitations on the maximum weight or on the length of the busses, but merely on the width, and there will be bus witnesses no doubt and that could be verified.

But another thing that struck me in that connection was that checking up the Federal money alone that has been expended in this case—and this was verified by the Public Roads Administration—we find from 1917 to 1941, inclusive, $65,936,858 in Federal money in Federal aid alone was turned over for the roads of Kentucky, and of that amount $26,818,789 covers the period from March 1, 1933 to 1939. It is sort of surprising that the roads are in such pitiful condition with expenditures of that amount of money.

We notice, too, that from the best knowledge we have, that not

all of them—some States, of course, have poor roads, they have better roads and very fine roads, but we do not see the justification if one stretch of poor road is found, for limiting every bit of tonnage in the State to the lowest grade road in the State.

In that connection, in studies that our own staff made in preparation for certain cases we were interested in, we found that as a general rule, about 85 percent of the tonnage moved over 15 percent of the surfaced roads in the area.

Acting Chairman PIKE. Generally, the heavy tonnage keeps to the arterial highways.

Mr. LAWRENCE. That is true.

Acting Chairman PIKE. And particularly interstate tonnage, is that correct?

Mr. LAWRENCE. That is correct.

Mr. DONOHO. Mr. Lawrence, you said there was no weight limitation on busses. Have you any information as to the weight of busses that actually travel through Kentucky?

Mr. LAWRENCE. When we were working on a case which we were mentioned as being in this morning, several of our people were there and found units as high as 30,000 pounds were running into the State.

Mr. DONOHO. How many wheels has this type of bus?

Mr. LAWRENCE. Generally duals on the rear and two wheels forward—not the six-wheeler type.

Acting Chairman PIKE. Three axles?

Mr. LAWRENCE. Two axles, with duals on the rear.

Mr. DONOHO. Ordinarily a truck hauling that weight would have how many axles?

Mr. LAWRENCE. Ordinarily our tractor semitrailer which is the general vehicle in use for that type of commodity would have a rear axle on the trailer, and then two axles on the tractor itself, with duals on both the rear wheels of the tractor, as well as duals on the trailer.

Acting Chairman PIKE. You would have five sets of wheels?

Mr. LAWRENCE. Really 10 wheels; yes, sir.

Now, counsel brought up the question as to detouring around the east coast. Prior to a couple of years ago, 1937, in fact, it was impossible for him to have detoured that way because we had a 20,000-pound weight limitation in the State of South Carolina.

Acting Chairman PIKE. That was gross?

Mr. LAWRENCE. Gross weight, with a law covering 90 inches maximum width, despite the fact that practically every other State in the country had 96 inches—some a few inches more.

Mr. DONOHO. Mr. Lawrence, what is the usual width of trucks engaged in hauling from North to South? Does it exceed in many cases the 90 inches?

Mr. LAWRENCE. Practically all of them are 96 inches. There are limitations in every State in the Union.

Mr. DONOHO. What caused the change in the South Carolina situation, in your opinion?

Mr. LAWRENCE. That particular law was enacted in 1933 and they began to enforce it more rigidly, and carriers there, supported by large groups of shipping interests, various industries, and so forth, first secured a temporary injunction and finally in a three-judge court in the Eastern District of South Carolina secured a permanent injunc-

tion against the enforcement of that particular law. That was in late 1937.

Mr. DONOHO. Will you summarize the findings of the lower court in this connection, Mr. Lawrence?

Mr. LAWRENCE. A good deal of the findings had to do with the effect of the weight limitations on the various industries in South Carolina.

While they cover 27 in number and several pages of fine typewriting, I can probably summarize them in that respect. The findings found that this particular weight law was particularly burdensome to and discriminatory against various South Carolina industries, including textiles, for instance, which had developed and which were making a great deal of use of truck transportation; truck farming of vegetables, fruit growing. Particularly it also impeded the traffic from further South and across the State because refrigerator trucks particularly are much heavier than the average dry cargo truck and all of their limit was used up in the weight of the vehicle itself. The lumber industry was found to be discriminated against. It developed quite a trade in neighboring States. New furniture manufacturers, by the same token, had been able to take their products out of South Carolina into other States. The Charleston port traffic was found to have been discriminated against, three of the intercoastal lines showing a large percentage, from a quarter to a half of their tonnage having moved ex-truck or to truck inbound and outbound. The same impediment occurred in connection with the handling of flour, which was a heavy part of the trade of the port of South Carolina. The fertilizer industry, a large industry in that State, had been discriminated against and was burdened by this law.

Witnesses from these various industries did appear at the proceeding in that case and did make that showing.

Mr. DONOHO. Did the court make any finding with respect to the durability of South Carolina roads?

Mr. LAWRENCE. The court did in that case, and it found first of all—I can quote pretty closely if I may be permitted—that rigid highways of the State of South Carolina were typical of the design of highways of that type in a great majority of the States in the United States today, and that they would permit axle loads of 16,000 to 18,000 pounds to be hauled on them without damage to the highways.

The court also found that the gross weight of vehicles was not a factor to be considered in the preservation of concrete highways, but rather the wheel or axle weights, and that vehicles engaged in interstate commerce were so designed and the pressure of their weights so distributed by the wheels and axles that heavy gross loads could be carried over concrete roads without damage to the surface, and that a gross weight limitation of 20,000 pounds was unreasonable as a means of preserving the highway.

Acting Chairman PIKE. This was the Federal Court?

Mr. LAWRENCE. That was a three-judge case; yes, sir. The case wa *Barnwell Bros. et al.*, v. *State of South Carolina.*

Mr. DONOHO. Do most interstate trucks travel on Federal-aid highways?

Mr. LAWRENCE. As I mentioned before, studies that we have made showed that practically 85 percent of the traffic went over probably 15 percent of the hard-surfaced roads.

Mr. DONOHO. Are standards of construction important on Federal-aid highways?

Mr. LAWRENCE. These standards have been set up by the Public Roads Administration and are substantially in accordance with the findings made in the South Carolina case. I understand that inspectors or engineers are assigned by the Bureau of Public Roads to check road construction to see that it meets those standards.

Mr. DONOHO. Mr. Lawrence, in your opinion can a truck traveling on a Federal-aid highway in one State without harm to the road, travel on a Federal-aid highway in another State without harm to the road?

Mr. LAWRENCE. I see no reason why it could not. If they meet standard specifications, I would see no more reason why the stress should be greater at one point than another.

Acting Chairman PIKE. Isn't it often true, Mr. Lawrence, that the construction of such highways is a piece-by-piece job, and some highways have not been brought up to the standard requirement of the Federal aid because they haven't finished the whole mileage, or isn't that so? I don't know.

Mr. LAWRENCE. Possibly a lot of that may be in surfacing.

Acting Chairman PIKE. They just haven't finished the construction. They don't take a 300-mile stretch and do it all at once; they do it a few miles at a time.

Mr. LAWRENCE. That is undoubtedly so.

Acting Chairman PIKE. In the 8 or 10 years they have been having Federal aid, or however long the period is, there may be, say, a 200-mile stretch with probably 100 miles finished and the other 100 still under construction.

Mr. LAWRENCE. But it has been 19 years they have been building, and I think on many of the main highways at least the major part has been completed——

Acting Chairman PIKE. There are probably still parts that are not finished, however.

Mr. LAWRENCE. In fact so much so that the Federal-aid system is being expanded from time to time to take in more roads.

Mr. DONOHO. Mr. Lawrence, the district court ruling was of course overruled by the Supreme Court. What was the actual basis for the reversal by the Supreme Court?

Mr. LAWRENCE. The lower court was reversed. The case citation is U. S. 303, 177. The Supreme Court upheld the right of the State to legislate in the absence of any legislation by the Congress here, and I might read just a short reference from that decision, two short references. In one case the court held as follows:

Mr. DONOHO. Are you reading from the *Barnwell case?*

Mr. LAWRENCE. This is from the decision of the United States Supreme Court in U. S. 303, 177.

Mr. DONOHO. The *Barnwell case?*

Mr. LAWRENCE. That was reversed in the Supreme Court.

Congress in the exercise of its plenary power to regulate interstate commerce may determine whether burdens imposed upon it by state regulation otherwise permissible are too great and may, by legislation designed to secure uniformity or in other respects to protect the national interest in the commerce, curtail to some extent the States' regulatory power.

Acting Chairman PIKE. That is a majority decision.

Mr. LAWRENCE. That is correct. In another decision, however, it is interesting to note a minority decision, and I refer to the recent *Dixie Greyhound case* decided on February 12 last, that the Court in that particular case—that is the dissenting opinion entered into by Justices Frankfurter, Black, and Douglas—made the following statement. In their dissent these three Justices stated that:

> Our disagreement with the opinions just announced does not arise from a belief that Federal action is unnecessary to bring about appropriate uniformity in regulations of interstate commerce. Indeed, State legislation recently before this Court indicates quite the contrary. For instance, we sustained the right of South Carolina—in the absence of congressional prohibition—to regulate the width and weight of interstate trucks using her highways, even though the unassailed findings showed that a substantial amount of interstate commerce would thereby be barred from the State. (*S. C. Highway Dept.* v. *Barnwell Bros.*) We did not thereby approve the desirability of such State regulations. It is not for us to approve or disapprove. They cannot act as Congress does, when after weighing all conflicting interests, State and National, it determines when and how much the State regulatory power shall yield to the larger interests of national commerce.

Mr. DONOHO. Mr. Lawrence, what is the present situation in South Carolina?

Mr. LAWRENCE. Well, a couple of months after the Supreme Court handed down this decision, the legislature of the State of South Carolina enacted a new law superseding the old, which allowed a 40,000-pound gross weight limit and a 96-inch width limit.

Mr. DONOHO. Does your chart indicate other areas where there is a State weight limitation in interstate trucking?

Mr. LAWRENCE. There are a number of others. To point to them quickly, across another traffic lane across the northern part of the country at North Dakota, and other witnesses no doubt will tell you of troubles on the Texas border, where reloading has to be done, but there would be all kinds of combinations, possibly, some more serious than others shown.

Mr. DONOHO. As I understand it, Mr. Lawrence, it is your opinion that these limitations are not needed to preserve the public roads. Is that true?

Mr. LAWRENCE. That is correct, sir.

Mr. DONOHO. Is it possible that they do make highways safer?

Mr. LAWRENCE. I do not think so. First of all, by limiting the weight of the vehicle they might limit its structural strength, but more important, it is interesting to note that the Bureau of Motor Carriers of the Interstate Commerce Commission, in their annual report for the calendar year 1938, covering accidents reported by motor carriers, motorbus and motortruck operators subject to the Motor Carrier Act of 1935, shows that only 7.74 percent of the accidents reported resulted from the fault of the vehicle, that the great bulk of them, or 90 percent, therefore, were from human causes or some other cause.

Mr. DONOHO. What conclusion do you draw from the fact that the human element is chiefly responsible?

Mr. LAWRENCE. Well, the human element being so responsible for accidents, if weight limits are cut in half or by a third it means that to transport the same amount of commodities you have got to put on two vehicles or two trips or three trips in place of one and you are doubling or trebling the accident hazard.

Mr. DONOHO. Do you have available any figures or accurate information which reflect the accident rates among various types of trucks?

Mr. LAWRENCE. I would like to present at this time a chart based on figures for the period of July 1937 to June 1938, compiled by the National Safety Council, showing accident ratios for some classes of trucks.

Mr. DONOHO. Is this the chart to which you refer?

Mr. LAWRENCE. That is, sir.

Mr. DONOHO. I introduce this chart.

Acting Chairman PIKE. It may be received.

(The table referred to was marked "Exhibit No. 2413" and is included in the appendix on p. 16164.)

Mr. LAWRENCE. I am particularly pointing out in this chart the rate of accidents on petroleum trucks, and as you will see, the average for all trucks reporting is 2.87 accidents per 100,000 miles of operation, whereas the lowest of this group of different types of trucks shown is the petroleum-carrying truck with 2.14.

If I might go a little further with regard to petroleum trucks, I have another chart here. Unfortunately, of the fleet shown on the other chart the group reporting was only on 40 percent. This is the balance. This is a chart, the source of which is the American Petroleum Institute.

Mr. DONOHO. Is this the chart to which you refer?

Mr. LAWRENCE. That is, sir.

Mr. DONOHO. I offer this chart.

Acting Chairman PIKE. It may be received.

(The table referred to was marked "Exhibit No. 2414" and is included in the appendix on p. 16164.)

Mr. LAWRENCE. This shows a greater number of trucks for the years 1933 to 1938, inclusive, and you will see whereas the accident ratio per 100,000 miles is 2.53 in 1933, it decreases practically progressively until it is brought down to 1.45.

Acting Chairman PIKE. In 1938.

Mr. LAWRENCE. In 1938, sir. It shows, I think conclusively, that vehicle sizes have little or nothing to do with it, that after all it is driver education and removing the causes of accidents by education and training.

Acting Chairman PIKE. Would you say that the average size of petroleum trucks had increased or decreased during that period of '33 to '38? Or has there been any change?

Mr. LAWRENCE. I wouldn't say an appreciable change, but I would like to present another chart on that very specific limitation.

This chart I would like to present shows the gross-weight statutes indirectly limiting gasoline truck capacities. The source here again is the American Petroleum Institute.

Mr. DONOHO. Is this the chart to which you refer?

Mr. LAWRENCE. That is.

Mr. DONOHO. I offer it for the record.

Acting CHAIRMAN PIKE. It may be received.

(The table referred to was marked "Exhibit No. 2415" and is included in the appendix on p. 16165.)

Mr. LAWRENCE. We have converted the indirect weight limitation into the number of gallons that can be transported in any one of those

vehicles still meeting the weight requirement. There is one State that has a specific limitation by law, that is the State of Wisconsin. Various bills have been introduced; they are introduced annually. In Minnesota the legislature passed a bill but it was vetoed by the Governor at the last legislative session. South Dakota has a limitation for certain periods of the year. But there are these other indirect limitations based on the natural weight limits allowed.

Mr. DONOHO. What is the relative efficiency from the cost standpoint of these small and large tank trucks?

Mr. LAWRENCE. I would like to present another chart, again the source of which is the American Petroleum Institute.

Mr. DONOHO. Is this the chart to which you refer?

Mr. LAWRENCE. That is the chart, sir.

Mr. DONOHO. I offer this chart.

Acting Chairman PIKE. It may be received.

(The chart referred to was marked "Exhibit No. 2416" and is included in the appendix on p. 16165.)

Mr. LAWRENCE. The title of this chart is Comparative Costs in Operation of Tank Trucks of Different Capacities. I think it illustrates how cutting down the gallonage again increased costs. Taken on a capacity of 600 gallons, we have worked out here the cost for 1 mile as well as for 20 miles, and the comparative figures for a capacity of 2,000 gallons, also for 1 mile as well as for 20 miles. For trips of 1 mile one notes right away that the truck with a capacity of 2,000 gallons is 36 percent more efficient from a cost standpoint than the truck with a capacity of only 600 gallons. Then when the mileage is increased the efficiency increases as between the higher-capacity truck over the lower, so that at 20 miles the increased efficiency is 59 percent.

Mr. DONOHO. What effect does this increased cost have upon the price of gasoline to the consumers; do you know?

Mr. LAWRENCE. Well, that is difficult to determine, but after all, transportation is one of the many factors that enters into cost.

Mr. DONOHO. There is a relationship, do you think?

Mr. LAWRENCE. No doubt there is.

Mr. DONOHO. Mr. Lawrence, early in your testimony you mentioned as a trade barrier to the movement of trucks, limitations on the length of vehicles. I believe you have a chart on that.

Mr. LAWRENCE. I do, and I would like to present this chart at this time, "State length limits for motor trucks." It is based on the studies of the United States Department of Agriculture, again brought up-to-date from the time of their publication to reflect changes in the laws.

Mr. DONOHO. Is this the chart to which you refer?

Mr. LAWRENCE. That is correct.

Mr. DONOHO. I offer this chart.

Acting Chairman PIKE. It may be received.

(The chart referred to was marked "Exhibit No. 2417" and is included in the appendix on p. 16166.)

Mr. LAWRENCE. In connection with the lengths, the length limitation is not so much of a diagonal as we find in the weight limitation. We notice a greater degree of uniformity, but here again we find Kentucky at the head of the list with the lowest length limits of

any State in the Union. There is considerable variation in allowable lengths.

In that connection it might be interesting to speak of a case which occurred at Louisville and West Point, Ky., several years ago. The Dupont Powder people had a powder plant at Old Hickory, Tenn. They supplied, through a substation from the power company, light, police protection, and all the other things that depend on electricity, to that city. In June of 1933 the substation was struck by lightning.

After a lot of telephoning around, finally, on Saturday afternoon, they found that the equipment they needed could be obtained from the Commonwealth Edison Co. on loan in Chicago. Here was a city of 10,000 people without any light, a lot of trouble with heat and police protection and fire protection and everything else depended on it. This material was loaded on two trucks, the trucks owned by Huber & Huber, and both of them went through to Louisville. They arrived there Sunday morning. There was no other way of shipping it. The freight sheds were closed on the railroad, and it would have taken a longer time, possibly. But they left Saturday afternoon and were in Louisville the next morning and they laid there from 6 o'clock in the morning until 3 o'clock in the afternoon trying to dig up permission somewhere to proceed on.

One of these trucks was slightly over the height, and one was 12 inches too long.

It is interesting to note that the driver of one of those trucks, the man's name was Fred Turner, and he is still driving for the same company today, was equipped with a letter, and this is the way the letter read:

> This truck is on an errand of mercy. A city of 10,000 people is dependent on the light, water, and fire protection which the transformer carried hereon will provide. If this vehicle should happen not to be within State regulations, please consider its mission and let it go through.

They had no permission to go through, and they went on to West Point and were held 2½ to 3 hours there, until the people came through by car from Old Hickory and paid the fine. Then they were allowed to proceed. They just told them they were sorry, but the law allowed no change, even on that 12-inch over-length. The truck went on and delivered its load, so that it really got there about 15 or 16 hours later than it should have and left those people without that protection they needed.

When the fellow turned around and wanted to go back, he wasn't allowed to go back through Kentucky but was sent through Missouri and ferried up the river all the way back to Louisville, paying ferry charges and other expenses and extra gasoline.

Mr. DONOHO. Mr. Lawrence, you mentioned as barriers variations of State requirements for lighting and other safety equipment. Could you explain something about these variations in State safety requirements?

Mr. LAWRENCE. Well, I have here a chart which shows the lighting requirements, side-marker lights, directional signals, clearance lamps, identification lamps, reflectors, front and rear, flags, and so forth, and this is based on a study of the laws and material from the National Highway Users' Conference and our own material, showing the rules or regulations in the different States.

Mr. DONOHO. This is the chart to which you refer, Mr. Lawrence?

Mr. LAWRENCE. That is right.

Mr. DONOHO. Mr. Chairman, I offer this chart.

Acting Chairman PIKE. It may be received.

(The chart referred to was marked "Exhibit No. 2418" and is included in the appendix on p. 16167.)

Mr. LAWRENCE. It is interesting to notice in this chart we have here the Interstate Commerce Commission regulations, and it is interesting to notice from an examination the wide variation in these symbols as to state requirements. I might point out in advance that wherever "A" is used, it means amber; where "G" is used it means green; where "R" is used it means red, and "W" is white, in colors. Where several letters are used, where they are side by side, they are optional.

It is interesting to note that the Interstate Commerce Commission did not find any need in their long series of hearings for having these clusters of identification lights, but still 12 different States require them, as will be seen from the chart. In addition, we notice that on these identification lights, while universally people think of red as a rear signal, the State of Michigan requires green showing to the rear. An examination of this whole chart will show very little rhyme or reason for the growth of this variation in colors.

I am informed that many of the States are beginning to agree on the selection of amber in front and red in the rear. In fact, I do know when the Interstate Commerce Commission made its studies we supplied 15 people from our office with 15 from their office and 15 other people they got together to go up and make tests of visibility at the Bureau of Standards, so it was worked out scientifically and not by whim or fancy.

Acting Chairman PIKE. So the I. C. C. probably has given recommendations on that subject, has it?

Mr. LAWRENCE. That is correct; sir.

Recently an agreement was completed. Some of our drivers tell us they still get into trouble. About 6 months ago the I. C. C. had induced a number of States to adopt their lighting regulations, but they also had reached an agreement with the State authorities to permit vehicles carrying the I. C. C. tags, providing they met the I. C. C. requirements, to operate through their States without let or hindrance.

Acting Chairman PIKE. Are they usually statutes, Mr. Lawrence, or regulations?

Mr. LAWRENCE. Some of them are statutes; many of them are regulations issued under the statutes. I would say a majority of them are tied down and it is difficult to change them. The difficulty is that there probably are many more trucks operating in interstate commerce that do not carry I. C. C. tags than do carry them. Our own people carrying I. C. C. tags tell us they still have difficulty, and it is a multitude of difficulties for the fellow who is not under I. C. C. control.

Mr. DONOHO. What have you to propose, Mr. Lawrence, concerning regulations as to lights?

Mr. LAWRENCE. Well, a lot of these regulations came in this way, I think. It was just some pet theory. We had one case up in New Jersey where a bill was introduced in the 1932 legislature that called for a certain luminous arrow that would go on every truck. It came through in a special session. Injunctions were obtained a little

later. In fact, the then Commissioner of Motor Vehicles said the language was obscure and it was difficult to interpret.

The truth of the matter was, the specifications were right in the law; there was only one patented device that met those specifications, and it cost everybody $28 to buy a set for each truck in operation. That law, fortunately, was repealed when the legislature found out the following year what had happened.

Possibly a lot of them have got in that way, or like Topsy, they just grew.

Acting Chairman PIKE. Formerly the interstate angle wasn't so important, and we got some good laws through.

Mr. LAWRENCE. That is true, but there has been increasing trouble for drivers, particularly, to see that their lights are on, and those troubles have probably come to the committee's attention.

Acting Chairman PIKE. You don't lay it to any essential meanness on the part of the legislatures?

Mr. LAWRENCE. No; it is just like Topsy, they grew, and possibly grew in the wrong direction. We believe that good, sound lighting regulations and other safety appliances might be applied. We don't believe in a lot of unnecessary things. A lot of States have directional signals. The Interstate Commerce Commisison, after much study, has not found it necessary to prescribe them yet. We think some good, sound system should be developed that would be operative from one end of the country to the other, so much so that it would reduce the cost; and more important, it would familiarize people with what these lighting regulations are in any State in the Union, and I believe it would be the greatest contribution to safe operation by everyone.

Mr. ELMORE. I notice that Florida is blank. Does that mean they have no regulations?

Mr. LAWRENCE. In respect to those items.

Mr. DONOHO. Is there any reciprocity granted between States with respect to motor-car registration and license fees, license plates?

Mr. LAWRENCE. Well, to the best of my knowledge, with your own private passenger car you can travel anywhere in the United States, but——

Mr. DONOHO (interposing). I didn't introduce your last chart.

Mr. LAWRENCE. I would like to present, as far as for-hire truck operation is concerned, this chart showing the extent of reciprocity on motor traffic among the different States, and the source is our own studies, which have been vertified with the various States.

Mr. DONOHO. I beg your pardon; this is the chart I hadn't identified here.

Mr. LAWRENCE. That is the chart we have now.

Mr. DONOHO. I offer this chart, Mr. Chairman.

Acting Chairman PIKE. It may be received.

(The chart referred to was marked "Exhibit No. 2419" and is included in the appendix on p. 16167.)

Mr. LAWRENCE. Now, it will be noted here, this chart covers only reciprocity, the various forms of reciprocity with respect to license plates or registration fees, and the interesting thing is that while a lot of States here are shown in the "yes" column as granting reciprocity, some of them limit it to the ton and one-half or to the 3-ton vehicle; a lot of others are very limited or give none whatsoever. Still, if all of the combinations between the States were taken

into consideration, the picture would not be so predominantly on this side, because while they may grant it to one State, they do not to another. For instance, Maryland has probably one of the most liberal laws, yet it is interesting to note that we had a little difficulty here a few years ago with a man from Sweetwater, Tenn., who came in from that point with a load of cattle. He went to Baltimore, Md., to market those cattle, and he was safely back as far as Laurel, Md., headed for the District of Columbia, when he was spotted by a patrolman and, as he had Tennessee tags, they asked him to show Maryland tags, which he did not have.

He was fined $30 and not allowed to drive his vehicle further; it was towed to the District line and it was surrendered back after he paid the fine and the towing charge.

Acting Chairman PIKE. Was that because Tennessee had no reciprocity?

Mr. LAWRENCE. Tennessee gives none and is allowed none from Maryland. Maryland has probably one of the finest reciprocity laws of any State in the country, but Maryland said, "We do unto you as you do unto us."

Mr. DONOHO. Have you any other illustrations of the hardships that may be imposed by lack of reciprocity, Mr. Lawrence?

Mr. LAWRENCE. Take an Idaho carrier, for instance, who was going to make a trip through Washington, Oregon, Idaho, Wyoming, to Nebraska. That Idaho carrier would only have to have license plates in his own native State of Idaho, and also in Wyoming, which, as you notice, is not shown on this chart as giving reciprocity. Wyoming does not. On the other hand, a Wyoming carrier who was entering into that traffic would have to take out registration in every one of those five States through which he would go.

Acting Chairman PIKE. On that point, Mr. Lawrence, in one of your earlier instances you mentioned this man getting hung up in Indiana. I note Indiana has reciprocity here. Was that again a case of——

Mr. LAWRENCE (interposing). Wisconsin was at fault, as I tried to point out. The officers were very polite, but they said "Wisconsin gives Indiana no reciprocity, so therefore Indiana will not permit Wisconsin trucks in our State."

Acting Chairman PIKE. Its reciprocity is limited, too.

Mr. LAWRENCE. That is correct.

Mr. DONOHO. In your opinion, Mr. Lawrence, why isn't there more reciprocity between the States?

Mr. LAWRENCE. It would be difficult to go into all of them. An examination of the reciprocity laws shows no great degree of standardization. It is more or less of a hodgepodge, and at this point, too, I would like to point out another reason why we have trouble, and I would like to present a chart showing the State bodies charged with handling motor-carrier reciprocity, and here again the source is ourselves.

Mr. DONOHO. Is this the chart to which you refer?

Mr. LAWRENCE. That is.

Mr. DONOHO. Mr. Chairman, I offer this chart for the record.

Acting Chairman PIKE. It may be received.

(The chart referred to was marked "Exhibit No. 2420" and is included in the appendix on p. 16168.)

Mr. LAWRENCE. Now, on this chart, I have already said we had a hodgepodge of laws, and in addition we have sort of a hodgepodge picture as to the officials that are charged with handling reciprocity—no uniformity, we might say. These are not all of the States. They are only those that grant reciprocity, and it will be seen that in some cases a reciprocity board—Michigan, for instance, is set up, in other States, the public-service commission handles it, in several States the highway department, in other States the motor vehicle commissioner's office, in Alabama we have the probate courts, the county judges, and some of them are handled by statute, and in some of them several officials are mixed up, and one can see very easily, with dissimilar officials handling the matter the difficulty of arriving at reciprocity.

Mr. DONOHO. Mr. Lawrence, at the beginning of your testimony you mentioned the securing of permission to enter a State oftentimes operates as a barrier. Would you explain that, please?

Mr. LAWRENCE. Well, you might mention several cases in that connection. First of all take the case of Alabama, that I have just been talking about. If a man wants to enter that State, he must go to the judge of probate, or the nearest county court as he enters the State. He pays, I believe, $1.50 if it is a private vehicle, and he pays $5.50 if it is for hire, and then he pays a mileage tax that is higher than the mileage tax on the intrastate vehicle. But he has to go to that county judge. Now, what happens is that many of these fellows come over the State line along toward midnight or 1 a. m. in the morning, and they have to sit down and wait until the judge comes around in the morning to pay their small fee to him. But probably it has cost them more to be tied up that time than the actual amount of the fee. An interesting commentary in that connection is the fact that by their senate bill 528 of 1932 the State of Mississippi had similar small fees paid, but it was mandatory, unless arrangements were made in advance, to pay it to the sheriff of the county first entered. Well, the judges seemed to be a little more inviolate than the sheriffs, because they used to wake the sheriffs up to pay these fees at any hour of the night, so that when they reenacted the laws in 1938, the Sheriffs' Association was the strongest proponent of an amendment so it would not be necessary to wake the sheriff at any hour of the night, and that law has been changed.

Mr. DONOHO. Mr. Lawrence, what is the position of the motortruck industry with respect to taxation generally?

Mr. LAWRENCE. Might I just mention one other phase of that?

Mr. DONOHO. Yes, sir; please.

Mr. LAWRENCE. Of that difficulty of getting into a State. Take the State of New Hampshire. Even from Providence, R. I., if one were to move into the State of New Hampshire, move his own household effects, it takes at least 5 days to get permission. The rules are so set up that they can't distribute in advance applications to enter the State. You must first write for an application for permission to enter the State. Then the application is mailed back to the applicant carrier. The carrier then fills it in and mails it back, and finally it is mailed back to him with permission. That takes, between Providence and the New Hampshire line, about 5 days, and it takes considerably more if one were coming from Kansas or Texas or some other distant point.

Acting Chairman PIKE. What about us poor people in Maine who can't get out without going through New Hampshire?

Mr. LAWRENCE. I always thought that little bridge between Newburyport and Kittery was quite a problem.

Acting Chairman PIKE. We can't bypass New Hampshire without going into a foreign country or getting into the water. That is why they call us provincial, I guess.

Mr. DONOHO. I asked you before, Mr. Lawrence, what is the position generally of the trucking industry with respect to the payment of taxes?

Mr. LAWRENCE. Well, I think practically all motor carriers, all that I know, feel that they have got to pay a reasonable amount of taxes, both general business taxes for the support of general government, as well as the special taxes that go into the highway fund. What our chief difficulty has been is the multitude of taxes that we have to pay, and at this point I would like to show this last chart that I have here, which shows the taxes paid, 21 in number, in the State of Virginia, and the source is Hon. Thomas W. Ozlin, chairman of the State corporation commission of that State.

Mr. DONOHO. This is the chart to which you refer?

Mr. LAWRENCE. That is correct, sir.

Mr. DONOHO. I offer this chart, Mr. Chairman.

Acting Chairman PIKE. It may be received.

(The chart referred to was marked "Exhibit No. 2421" and is included in the appendix on p. 16169.)

Mr. LAWRENCE. In that connection, you will notice that we have Federal taxes, State taxes, and local taxes. The State of Virginia has always prided itself on having a most conservative fiscal policy, but they have 21. The State of Illinois, on the other hand, has 27, and the State of Illinois is not unusual in the number that motor carriers must pay. In other words, it would simplify matters greatly if there were not so many taxes. One of the difficulties, and I think one of the other witnesses will bring it out, is that there are so many of these little taxes of 50 cents, 60 cents, and $1, if you file the wrong type of return, if some innocent individual comes in and just forgets to pay it, but the fine very often is $50 or $100 if it is not paid.

Mr. DONOHO. Mr. Lawrence, what is your position on ports-of-entry? Are you for them or against them?

Mr. LAWRENCE. Well, I heard here a very fine discussion of them. They sounded like very fine things this morning.

Acting Chairman PIKE. We would like to hear your side.

Mr. LAWRENCE. I imagine other witnesses will discuss that, particularly those who may follow me and have had actual experience with them. But the one thing that runs in my mind is that in this increased collection of taxes, while in the first year the presentation made this morning showed a 13 percent increase in taxes, there was about a 9½ percent increase country-wide, and when all of the years are taken, there is just about the same increase in that State as there is country-wide.

I note, too, that the reports of the two States that have been using ports of entry show that it has cost them more to make the actual collections than the actual receipts at those ports of entry. The administration charge has been higher than the receipts.

Mr. DONOHO. Can you give the figures on that, Mr. Lawrence?

Mr. LAWRENCE. I have those figures right here.

Acting Chairman PIKE. I think the Kansas witness told us it cost $1 to collect 50 cents in taxes.

Mr. LAWRENCE. In '35 the collection was $189,186.70, whereas in the same year, the expenses were $233,947.17. For the 14-month period ended July '36, the Nebraska system cost to administer $53,915, and the collections totaled only $36,425.38.

Now, frankly, we are very much opposed to the imposition of these ports of entry. We feel, while it has been said that on some carriers the time spent there is not much, when you take all of the carriers, and a great number of them, as the chairman pointed out this morning are irregular-route types of operators who occasionally may cross that line, it is a burden in lost time, and we feel that some more economical way, both from the standpoint of the trouble and the annoyance, as well as the time spent by the carrier, lost time, could be found to collect these small taxes.

Mr. DONOHO. Mr. Chairman, I have no further questions to ask the witness, but I believe that he has some recommendations which he wishes to make.

Acting Chairman PIKE. I think we should hear recommendations.

Mr. LAWRENCE. Mr. Chairman, I have covered a few of these points, and we feel, first of all, that as to our recommendations, we need, particularly on this weight question, as well as other factors of size, a greater degree of uniformity, not necessarily one standard country-wide, but at least in regions, not with this patchwork situation by States having burdensome restrictions interposed across the main trade routes, you might call it, of the country.

There has been a great deal of talk about bringing this about, but on some of these laws years have gone on and nothing tangible has happened, and on some of them the situation in the States is such that we have grave doubts whether much will happen. As to our own position in the matter, that has been clearly stated both in the second session of the Seventy-fifth Congress in transmissions to the House and Senate Interstate Commerce Committees, as well as in the first and the second regular sessions of the Seventy-sixth Congress, and we did, not so long as 4 or 5 weeks ago, send to every Member of the Congress, both the House and Senate, our recommendations for amending present legislation to have the Federal Government at least partially step in to this picture.

With your permission I would like just to read that proposed amendment, and I think the sense of it will be perfectly clear.

The amendment would be to section 225 of the Motor Carrier Act, and would read as follows:

Provided, That upon complaint by any state or Federal agency alleging that any state imposes unreasonable regulations on sizes and weights of motor vehicles, and that such regulations have the effect of creating trade barriers, and obstruct the free flow of interstate commerce, the Commission may, after notice—

I refer to the Interstate Commerce Commission—

to the state or states involved and after full hearing, prescribe reasonable regulations consistent with the public safety, the preservation of the highways and the free flow of interstate commerce, and

Provided further, That the Commission shall not prescribe regulations applicable to particular highways or bridges if the state highway department certifies to the Commission that the proposed regulations would exceed the capacities of bridges or be inconsistent with reasonable preservation of particular highways.

The purpose of that, Mr. Chairman, was not to take from the States the present legislative action that they now have, but merely when no other result could be arrived at that there would be the Federal power to supersede that State power.

Acting Chairman PIKE. You have advice of competent counsel that that would be within the constitutional powers of Congress?

Mr. LAWRENCE. Our own counsel have been rather familiar with most of these cases, and they seem to be of that opinion. We haven't had any objection raised on that ground as yet, sir.

Acting Chairman PIKE. Suppose you got all these things through, do you think there might be a substantial reduction in cost to consumers or users of your service?

Mr. LAWRENCE. Well, the point was made, Mr. Chairman, here this morning, about the level of rates. Competition does, too, level off rates; but one very interesting thing, I think the commerce would grow; for one thing, it would give increased service to the public; secondly, another very important factor that is lost sight of—competition keeps down the return to the employer—is that our studies show that over-all throughout this industry the total pay roll is 42 percent, but that 50 cents of the dollar goes into pay roll. I will explain that, because that 42 percent figure takes into consideration where one carrier employs somebody to do something for him, and where most of his work is pay roll, is not included as such, and we find a number of carriers where 60 cents of the dollar goes back in pay roll. That is not unusual where they do all their own work all the way through.

Acting Chairman PIKE. You are not including in that any labor cost attaching to the vehicle?

Mr. LAWRENCE. No; that is just its operating cost. In other words, about 50 cents of every dollar goes to labor, and that is an important factor, that with larger vehicles naturally the man could earn more if he had more tonnage.

Acting Chairman PIKE. Is that a popular method of pay, that drivers get more the larger tonnage they handle?

Mr. LAWRENCE. Naturally, the more work he does; I mean, there is more in the dollar.

Acting Chairman PIKE. I mean there is more in it, but does he get any of it?

Mr. LAWRENCE. I think, from the experience of the carriers that come to see me, sometimes they say he gets all, they get little.

Acting Chairman PIKE. Does the driver of a 20-ton truck normally get more pay than the driver of an 8- or 10-ton truck?

Mr. LAWRENCE. Sometimes within certain limits there is not much difference, but in broad differences, several tons, there are always different scales as a rule.

Mr. DONOHO. Have you other recommendations to make, Mr Lawrence?

Mr. LAWRENCE. Well, the others are very simple. As I mentioned before, we favor the securing of some uniformity, and a little more definite than it is today, on this matter of lights and safety appliances. We believe that the ultimate goal should be universal reciprocity on truck plates, corresponding to just those on passenger cars. We believe that taxes should be unified instead of diversified, brought under less headings so more people would know about them and not get in

trouble. We believe that we should simplify the requirements of doing business in the different States, make it easier for people to enter them rather than to spend half a night waiting to find someone or spending 5 days to get an application through.

Mr. Chairman, those, roughly, are our recommendations based on this presentation.

Acting Chairman PIKE. Some of those latter ones, Mr. Lawrence, wouldn't be clearly under the power of the Federal Government. Some of those other recommendations still have to go back to the State legislatures and commissions.

Mr. LAWRENCE. I believe that is true, sir, in many of them.

Mr. DONOHO. Would you say that with respect to securing uniformity as to State requirements of light and safety appliances?

Mr. LAWRENCE. I don't think it would be so as to appliances on equipment.

Acting Chairman PIKE. I agree, but on State taxes.

Mr. LAWRENCE. Possibly on taxes and items of that nature.

Acting Chairman PIKE. Are there any questions?

(The witness, Mr. Lawrence, was excused.)

Mr. DONOHO. Mr. Conner, will you come forward, please?

Acting Chairman PIKE. Do you solemnly swear the evidence you shall give in these proceedings shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. CONNER. I do.

TESTIMONY OF J. L. CONNER, TRUCK DRIVER, AKRON, OHIO

Mr. DONOHO. Will you state your name and address, please?

Mr. CONNER. Lee Conner. I live at 97 East South Street, Akron, Ohio.

Mr. DONOHO. Please state your occupation.

Mr. CONNER. Truck driver.

Mr. DONOHO. What is your record for safety as a truck driver, Mr. Conner?

Mr. CONNER. I have driven 9 years, and I haven't had an accident in 9 years, and I think that is a pretty good record.

Mr. DONOHO. What is your method of operation—what territory do you cover?

Mr. CONNER. I own my own truck and I lease it to Roadway Express, and I travel from Akron, Ohio, to Dallas, Tex.

Mr. DONOHO. Does the Roadway Express operate in other parts of the country?

Mr. CONNER. Yes, sir.

Mr. DONOHO. Do you operate your truck in such other parts?

Mr. CONNER. No, sir.

Mr. DONOHO. Why?

Mr. CONNER. It is too big, the weight and the length; I can't get through into Kentucky, Tennessee. I would have the freight worn out by the time I got down there with it.

Mr. DONOHO. Through what States do you travel making your trip?

Mr. CONNOR. Ohio, Indiana, Illinois, Missouri, Kansas, Oklahoma, and Texas.

Mr. DONOHO. Do you meet with what you consider trade barriers in going through these States?

Mr. CONNER. I do.

Mr. DONOHO. Into what general types do these barriers fall, Mr. Conner?

Mr. CONNER. License, for one, and length, weight laws, and different permits that the various States have.

Acting Chairman PIKE. How often do you make this round trip?

Mr. CONNER. I make it twice a month.

Mr. DONOHO. Let's take your trip from Akron to Dallas—what requirements must be met? What weight and size must you have, and what license fees must you pay in Ohio?

Mr. CONNER. To start out of Ohio I have to have a license plate and a P. U. C. O. card—that is, a public service commission card of Ohio.

Mr. DONOHO. How much does your license cost?

Mr. CONNER. The State license costs $150.

Mr. DONOHO. How much does the P. U. C. O. card cost?

Mr. CONNER. That is $45 per truck, and you must have this P. U. C. O. card with you at all times. I can haul 25,000 pounds pay load in the State of Ohio, but the other States——

Mr. DONOHO (interposing). Now, let's go to the other States. When you go into Indiana, what must you have with regard to license, cards, or permits?

Mr. CONNER. First, I don't have to have any license, but I have to have a permit, and the law doesn't require any definite place for that to be painted on the side of your truck. Some officers will tell you, "It wants to be on the side." Another officer will stop you and say, "That ought to be on the bumper," and you have to erase that, and the next one will stop you and say, "That has to be on the back." You know, it is just continuous that way, most every trip that you go through the State.

Acting Chairman PIKE. This permit is taken out once a year, or for each trip?

Mr. CONNER. How is that?

Acting Chairman PIKE. The Indiana permit is taken out once a year?

Mr. CONNER. That is right.

Acting Chairman PIKE. Except for changing it at the whims of the officers, that is good for the year?

Mr. CONNER. That is good for the year, that is right.

Mr. DONOHO. To continue with Indiana, what about the weight and size requirements?

Mr. CONNER. We have to cut our weight down there to 16,000 per axle, and your length law is 40 feet in Indiana.

Mr. DONOHO. What difficulties do you meet in Illinois?

Mr. CONNER. Nothing there in the way of license or permits, but speed of 20 miles an hour, and 35 feet length, and that is different.

Mr. DONOHO. Now, what about Missouri?

Mr. CONNER. That is the worst State we have.

Acting Chairman PIKE. I'm sorry Congressman Williams isn't here.

Mr. CONNER. That is a bad State. We have a card similar to this P. U. C. O. card. That costs us $500 per truck a year, and if you

don't have that card, you have to have what they call a travel order, that is an emergency card that costs you $4.50, and you are limited to 24 hours in the State, and they tell you the time you enter the State and the time you must get out.

Acting Chairman PIKE. So if you didn't have the annual permit, you would have to buy one of those on the way down and another one the trip back?

Mr. CONNER. That is right.

Mr. DONOHO. I believe you had an experience with this travel order. Will you recount it, please?

Mr. CONNER. I was going across the State, and we generally carry one spare tire with us, and I happened to have the bad luck to blow out two tires and I had to go back 70 miles to get another tire—I put the spare on but I had to have another to go with the spare tire. In the meantime the weight officer came along and I told him I couldn't make it out of the State. He looked at the travel order and saw the time and gave me a note setting forth the trouble I had, and said if I got stopped by any other officer in the State going out, that would clear me. He signed it and put on his telephone number and his address. The maintenance foreman of Greene County signed it. When I got down to the last checking station in the State, I got stopped there and I was an hour behind time, and they took me down to the justice of the peace and he asked me if I was going to plead guilty to the case, and I said, "How much are you going to charge?"

He said, "Seven dollars and a half," and I said, "I will plead guilty."

When I pled guilty and paid my fine, then he took my keys away from me, and he said, "I am going to hold you until tomorrow morning, until you get another travel order to get out of the State." He held me there from 7 o'clock in the evening until about 9 o'clock the next day before I got out of the State.

Mr. DONOHO. Before you could get another travel order?

Mr. CONNER. Yes.

Acting Chairman PIKE. And that was another $4.50?

Mr. CONNER. That is right.

Mr. DONOHO. About the matter of height, how is that determined in Missouri?

Mr. CONNER. They have a platform scale in Missouri and either a board or chain hangs down to the limit, and when you drive under that, if one piece on the truck hits the chain or board as it goes through there, it knocks a light on in the office, and of course a patrol officer comes out and you have to stop and untie it and clear the chain.

Acting Chairman PIKE. What do you do, let your tires go down a little before you go in there? [Laughter.]

Mr. CONNER. You have to watch that mighty close because they are always after you for that.

Mr. DONOHO. I believe we have gotten down to Kansas. I believe Kansas has a port-of-entry law.

Mr. CONNER. Yes; it does.

Mr. DONOHO. How does that affect it?

Mr. CONNER. I'll tell you; they have two ports in 21 miles we have to clear and we figure 2 hours to drive 21 miles and clear the ports-of-entry.

Acting Chairman PIKE. You just go across a corner of the State, I take it.

Mr. CONNER. That is right. It is 21 miles.

Mr. DONOHO. Do you know of any hardships imposed on other drivers, from your knowledge?

Mr. CONNER. Yes; I do. Another trucker and myself loaded Phillips' petroleum down in Oklahoma and we were going up into Illinois with our loads, and we came to these ports. We had to fill out these port-of-entry slips, or custom office slips, as we call them, and he didn' put down his correct weight. He thought he put down enough weight. Some way or other he had made an error in the weight, but he was paying the maximum license that they require for a permit in the State, but we got out here just between these two little towns——

Mr. DONOHO (interposing). Let's clarify that. You mean he had nothing to gain by making that mistake in his weight?

Mr. CONNER. That is right. He just overlooked that. We were supposed to have the same amount on. They weighed me and I was all right, but he was about 1,000 or 1,500 pounds over. He didn't have this down, so it wasn't anything for the State to gain, but they took him back to the J. P. and he said, "He is overweight and he has misrepresented himself here," and they charged him $25.50.

Mr. DONOHO. He wasn't overweight with respect to the State law, was he?

Mr. CONNER. No; he wasn't overweight.

Mr. DONOHO. He just had not put down the right figure?

Mr. CONNER. That is right; he just hadn't put the right ones down, and it wouldn't have cost him any more in Kansas if he had put that down, he could have had another two or three thousand pounds extra, but he just made a slip, trying to be honest.

Mr. DONOHO. Go ahead with the other Kansas requirements, Mr. Conner.

Mr. CONNER. You have to pay 2 cents a mile, and for those 21 miles they tell us that we burn 3 gallons of gas across the State, and they charge us 12 cents for that 3 gallons of gas.

Acting Chairman PIKE. A duplicate gasoline tax?

Mr. CONNER. That is right. Their State tax is 4 cents, and they make us pay that if we don't buy gas in the State.

Acting Chairman PIKE. That wasn't brought out this morning, I think, that gas-consumption tax in going across the State.

Mr. DONOHO. I don't recall it, Mr. Chairman. What about size and weight in Kansas?

Mr. CONNER. They don't bother you so much on size and weight, not on permits, but just for the gasoline tax and the 2-cent road tax.

Acting Chairman PIKE. That just cost you just about an hour to an hour and a half at those two ports, if you figure 2 hours for 21 miles.

Mr. CONNER. If there is no one ahead of you, and you know some of those custom officers come in there and get to hunting or going some place, and you may stay there, no telling how long. One port in particular is a little mountain town and one street. When we pull in there with a truck, there may be two or three trucks, one going north and one south, and there are two policeman there and they say, "You guys can't park in the city here." There is no place else to park and if we pull around the corner and get out of the little old town, we are out on this 18-foot highway again, so we had to pull down on a side street. You couldn't get around and it would tie up traffic, you had to back the truck up to get back on the main

street, and then maybe some drunk would come along and run into you.

Acting Chairman PIKE. Kansas is a dry State, it was testified this morning. [Laughter.]

Mr. CONNER. Missouri is mighty close, though.

Mr. DONOHO. Mr. Conner, what about these forms that you fill out when you go into Kansas at the port of entry?

Mr. CONNER. In those forms you have to describe the make and the type of truck, the unladen weight, who owns the freight, the shipper, and the consignee; if you have a miscellaneous load you have to name the different things you have on your truck, whom they are going to; and your motor number, your serial number. Oh, I don't know, it is a form about 10 by 12, I would say, that you have to fill out before you can get across there, and then you take that in to the custom officer and he in turns writes us another duplicate of that, and then he takes ours, and then gives us one to carry with us and a sticker to put on the windshield, and when wet get to the other port on the other side, then we have to stop and take the one off the windshield and give it to the other custom officer on the other side. You can go out of the United States into Canada with a passenger car twice as quick as you can clear that with a truck in Kansas there.

Mr. DONOHO. I believe we have gotten down to Oklahoma now. What happens there, Mr. Conner?

Mr. CONNER. That is just another country, too, because they have everything down there. You have to buy a State license and you have to have a permit, but now that doesn't cost anything. Their license costs $240 per truck and you have got to have a 10 permit, a sign that you have to put on the front or rear of the truck, and you have to paint a sign on that. That is about the same as the others on weight, that is about 16,000 per axle, but we buy our license there according to the weight that we haul. Twenty-one thousand is about our limit weight and that costs us $240 in the State of Oklahoma.

Mr. DONOHO. And now we have come to Texas. What happens there?

Mr. CONNER. You have to break your load there into two parts.

Acting Chairman PIKE. Yes; that is right.

Mr. CONNER. And make three trips. You have to make three trips into Dallas—that is as far as we haul most of the time. That is about 100 miles. You have to take 1,000 pounds off when you enter the State and then you have to make two extra trips to Dallas and back, and if you get down there and wait a day and you get another 21,000 pounds coming out, then you have to make the same three trips out again to get out of the State.

To relate one experience I had, I decided I wasn't going to unload my load once, and I had just pulled over into the State and cleared the town and the weight officer got me and made me unload it. While I was unloading it, a rainstorm came up. I went on with the other 7,000 and I had 14,000 piled up out in the field, and when I got back I just had an armful of stuff and I put it back in the truck. It was Goodyear merchandise, tubes and stuff, and it cost $40 or $50 to get that separated and back in the cartons that it belonged in.

Mr. DONOHO. You spoke first about the numbers painted on your truck. How many do you have painted in all, do you recall?

Mr. CONNER. I have four numbers in Ohio, that is two for the tractor and two for the trailer, and then there is this one number in Indiana that may be painted in four or five different places, just wherever an officer who stops you tells you to paint it.

Acting Chairman PIKE. If you put it on a new place, are you supposed to wipe out the old one?

Mr. CONNER. You are supposed to. In Missouri they require another 10 sign there, that is on the trailer, 10 on each side in 2-inch letters. It has the series number and permit number on that. In Kansas we don't have to have anything there, but in Oklahoma we have to have a permit, and in Texas we have got to paint that permit, that is a railroad permit, and that costs us $11 to get that, that is per year, and then we have to have the number of that railroad permit on that, and we also have to have a railroad driver's license.

Acting Chairman PIKE. What is that railroad permit, Mr. Conner?

Mr. CONNER. I don't know whether I can explain that or not. That is just the railroad commission of Texas.

Acting Chairman PIKE. I see, a permit from the railroad commission which is in charge of truck regulations?

Mr. CONNER. I think so.

Acting Chairman PIKE. Yes; they have some very miscellaneous duties in that railroad commission in Texas.

Mr. CONNER. Then we have to get this operator's license, that is for each driver, and that lasts for the year. That is in addition to your regular driver's license that you have to have in the State of Texas.

Acting Chairman PIKE. Because you are a common carrier, I take it.

Mr. CONNER. That is right.

Mr. DONOHO. Who has to stand the extra expense entailed by the payment of all these fees that you describe?

Mr. CONNER. I do.

Mr. DONOHO. What about the shipper or the consignee?

Mr. CONNER. That just causes him to have to pay a higher rate to get his freight there, that is all.

Mr. DONOHO. I have no further questions to ask Mr. Conner, Mr. Chairman.

Acting Chairman PIKE. Thank you very much, Mr. Conner, we are glad to have some of this first hand.

(The witness, Mr. Conner, was excused.)

Mr. DONOHO. Mr. Banigan, will you come forward, please?

Acting Chairman PIKE. Do you solemnly swear the evidence you will give in this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BANIGAN. I do.

TESTIMONY OF LEON F. BANIGAN, MANAGING DIRECTOR, NATIONAL COUNCIL OF PRIVATE MOTOR TRUCK OWNERS, INC., WASHINGTON, D. C.

Mr. DONOHO. Will you state your full name and address, please?

Mr. BANIGAN. Leon F. Banigan, National Press Building, Washington, D. C.

Mr. DONOHO. You are managing director of the National Council of Private Motor Truck Owners, Inc.?

Mr. BANIGAN. I am.

Mr. DONOHO. As managing director of this organization, you are familiar with the problems confronting your organization, I suppose.

Mr. BANIGAN. Yes.

Mr. DONOHO. Including those relating to trade barriers?

Mr. BANIGAN. Yes, sir.

Mr. DONOHO. Mr. Banigan, will you please outline the salient facts concerning the nature of the business done by the operators composing your group?

Mr. BANIGAN. In order to assist the committee in identifying and understanding the nature of the business done by private truck owners, I should like to point out the distinction between the operations of our group and those of other truck operators.

Private truck owners, as represented by the National Council of Private Motor Truck Owners, Inc., are not for-hire carriers. They are not in the transportation business. We have been called "private carriers" but that is a misnomer. We are not carriers. We are farmers, retailers, bakers, milkmen, manufacturers who incidentally employ our own privately owned trucks in the production and distribution of our merchandise, to better serve consumers.

Of the 4,400,000 trucks registered in the United States in 1939, according to the Automobile Manufacturers Association, 3,600,000 of them, or approximately 85 percent, were privately owned trucks. About a million of these private trucks are on the farms. More than 90 percent of them are small delivery and service vehicles of 1½ tons or less.

Single unit installations represent by far the greater number of privately employed trucks, and more than 75 percent of the trucks are in fleets of seven or less.

Most of them operate in local short-haul activities—out and back in the local distribution of commodities in an area that can be covered in a normal working day of 8 to 10 hours, or less.

Local distribution areas in the United States have developed without respect for political boundaries between States. The people in these natural marketing and distribution areas, served by private truck operators, have come to depend upon the comforts and conveniences of these services. They regard them as not only desirable but necessary, regardless of State lines.

The privately operated truck is the link closest to the consumer in modern distribution in this country. It is largely the privately operated truck which delivers foodstuffs and other necessities at your door, and permits neighborhood retailers to have on their shelves what you want.

Hence, anything which hampers and restricts the operation of private trucks very largely affects the consumer, both as to the services which he requires and his cost of living.

When distribution areas spread across State lines, the effect of trade barriers upon private truck operation and upon those who depend upon private truck operation is particularly severe since their operations are usually confined within the area affected. The private truck owner cannot change his route to avoid a particular spot, as one of Mr. Lawrence's drivers did.

Mr. DONOHO. Does your council represent the type of truck operators to which you have referred?

Mr. BANIGAN. Yes; our council represents at the present time the ownership of approximately 1,500,000 private trucks employed in agriculture and industry incidental to the activities of that ownership as farmers, manufacturers, retailers, and so forth. Our membership is composed of private truck operators of 1 to 12,000 trucks, such as local retailers, larger private operators, and various national trade associations. We represent these individuals and associations in those matters of interest and concern to them as owners and operators of private trucks.

Mr. DONOHO. In your opinion, Mr. Banigan, is private truck operation seriously hampered by trade barriers?

Mr. BANIGAN. Yes, sir.

Mr. DONOHO. Will you please state some of the conditions affecting private truck owners which in your opinion constitute trade barriers?

Mr. BANIGAN. Private truck operation is mostly affected adversely in interstate business by conflicting laws and regulations.

Mr. DONOHO. Will you enumerate some of these conflicting laws and regulations?

Mr. BANIGAN. Yes. The principal ones are, first, requiring registration or license fees and special taxes to be paid by the owner in more than one State; conflicting size and weight requirements is another one; conflicting equipment requirements is a third; and the pyramiding of special taxes such as fuel tank gasoline tax, and so forth.

Mr. DONOHO. Mr. Banigan, will you explain how in your opinion the duplication of license fees and special taxes affects private truck operators?

Mr. BANIGAN. In a number of States, Colorado, Wyoming, and others, the private truck owners from a foreign State must take out duplicate registration and display duplicate license plates if they wish to operate regularly in those States. This may mean an increase in license cost to the private truck owner up to as much as 100 per cent.

Mr. DONOHO. Can you give us an example of this increase?

Mr. BANIGAN. Yes. As an illustration, one of our members who manufactures and distributes a food product pays license fees and taxes of $85 on a truck registered in California. This truck crosses the line into Arizona and it is required to have Arizona plates at an additional cost of $175, more than 100 percent increase over the California registration and tax cost. And that truck, incidentally, in its regular route operation, runs 13 miles in California for each mile that it runs in Arizona. The California fee is regarded as fairly high for this particular type of truck, while the added cost of Arizona registration creates a serious trade barrier for this truck operator, so far as this type of truck is concerned.

Mr. DONOHO. Mr. Banigan, in fleet operation is it usually desirable that each truck be available for service anywhere within the operating area?

Mr. BANIGAN. Generally speaking, yes. Consider a fleet of 10 trucks. The necessity of purchasing duplicate license tags may either increase the operating expenses to an amount which prohibits the crossing of a State line in carrying on the business of a

particular private truck owner, or it may seriously affect the flexibility of his operation and his service to customers across the line if as a result of duplicating costs of licenses he is forced to use only a part of his fleet of trucks in interstate commerce. Thus, the requiring of duplicate license plates in order to operate in neighboring States constitutes a definite trade barrier, we think.

Mr. DONOHO. Would you discuss further some of the barriers resulting from the requirement of duplicate registration fees?

Mr. BANIGAN. Yes. At this time I should like to refer to two charts. These charts visualize the East North Central and adjoining States and conditions with reference to lack of uniformity in operating fees. The sources of these charts are, first, for the bar chart, the Compilation of State Laws by the National Council of Private Motor Truck Owners, and the map is a map issued by the Census Bureau showing the census divisions of the United States.

Mr. DONOHO. You don't wish to introduce them?

Mr. BANIGAN. Yes; I would like to introduce them.

Mr. DONOHO. Mr. Banigan, have you indicated the source of these charts?

Mr. BANIGAN. Yes; the record has that, I believe.

Mr. DONOHO. I submit them for the record.

Acting Chairman PIKE. They may be received.

(The chart and map referred to were marked "Exhibit No. 2422" and are included in the appendix on pp. 16170 and 16171.)

Mr. BANIGAN. The figures on the bar chart illustrate the great difference in annual fees for a two-and-a-half-ton truck. Note the difference between $206 in Wisconsin and $35 in Indiana, in the east-north-central group, and between Wisconsin, at $260, and its neighbor, Iowa, at $80. It is obvious that the Michigan or Illinois private truck owner who desires to operate occasionally in Wisconsin would find the $206 operating fee exacted by Wisconsin such a burden on his interstate trade that he might easily prefer not to operate in Wisconsin.

Mr. DONOHO. Mr. Banigan, you heard Mr. Lawrence's testimony with respect to weight limitations. Have you anything further to add to his statement?

Mr. BANIGAN. Well, conflicting size and weight restrictions burden the operator of private trucks which pass over State lines, in much the same manner as they do those of the for-hire transportation agencies and others covered by Mr. Lawrence's testimony. While, as I mentioned earlier, a large percentage of the privately operated trucks are of the smaller types, the private truck operator also employs the larger trucks to some extent, and these particularly are affected by lack of uniformity in sizes and weights of trucks permitted in the various States.

I should like to emphasize particularly, however, that the private truck operation is mostly of a local character, and therefore when conditions of this kind are faced by us near State lines we must live with them; as I said a little while ago, we can't drive around them, we can't avoid these bad spots, and so to that extent they bear pretty heavily on the private operator.

Mr. DONOHO. Aside from size and weight requirements, are there equipment restrictions which operate as barriers, Mr. Banigan?

Mr. BANIGAN. Mr. Donoho, before answering that question, may I present, for such use as it may be to the committee, two other charts?

Mr. DONOHO. Will you describe them, please?

Mr. BANIGAN. One of these charts also shows the maximum length in feet and gross weight in this east north central group and adjoining States, and the other consists of charts which show the maximum and minimum gross weight and over-all lengths by census divisions of the United States.

Mr. DONOHO. And the source?

Mr. BANIGAN. The maximum length and gross weight limit chart is from Compilation of State Laws by the National Council of Private Motor Truck Owners, and the source of the zone chart, which I hand you, is a compilation of information by the National Highway Users' Conference, prepared by Mr. R. E. Plimpton.

Mr. DONOHO. I offer these charts for the record.

Acting Chairman PIKE. They may be received.

(The charts referred to were marked "Exhibit No. 2423" and are included in the appendix facing p. 16172.)

Mr. BANIGAN. In answer to your last question, which I interrupted——

Mr. DONOHO (interposing). I asked you as to other equipment restrictions which act as trade barriers.

Mr. BANIGAN. There are a number of others aside from those. For instance, there are a number of equipment restrictions in the various States which are in conflict and which tend to burden interstate commerce.

Mr. DONOHO. Can you give an example of these conflicting equipment restrictions?

Mr. BANIGAN. One example would be clearance lights. These lights are prescribed to indicate the width of truck bodies. Again using the East North Central States for the purpose of example, clearance lights are not required in Ohio and Illinois, but the other three East North Central States—Indiana, Michigan, and Wisconsin—do require clearance lights.

Mr. DONOHO. And how do these clearance-light requirements conflict?

Mr. BANIGAN. Well, in Indiana and Michigan, two amber lights at the front of each vehicle are required. Wisconsin requires one light, which may be green, blue, or amber. The result is that Ohio and Illinois trucks are in violation of the law if they visit any of their neighboring States which require clearance lights, and the Wisconsin private truck operator is also disobeying the law when he enters either Indiana or Michigan.

Mr. DONOHO. Do you know of any other cases where lack of uniformity in equipment acts as a burden?

Mr. BANIGAN. The lack of uniformity in brake requirements is another instance. A truck in Wisconsin must stop in 50 feet from a speed of 20 miles per hour, Michigan in 40, and Indiana in 30. Hence a truck which is legal as to brake efficiency in Wisconsin, which gives it 50 feet in which to stop, may be in violation of the Michigan and Indiana laws, which only give it 40 feet and 30 feet, respectively.

Mr. DONOHO. Do you care to mention any other law which acts as a barrier in the operation of private motortrucks?

Mr. BANIGAN. Another particularly burdensome situation affecting the motortruck operators is the growing attempts to collect taxes on the fuel in the tanks of the trucks entering the States. Twenty-three States now have such laws. Sometimes the tax is applied only to the gasoline carried as fuel in excess of certain quantities exempted by the laws. Other States deny license-plate reciprocity entirely if the foreign truck is equipped with oversize or extra fuel tanks. Florida and Vermont are examples of this.

Mr. DONOHO. Mr. Banigan, is there wide divergency in the exemptions in the application of these taxes?

Mr. BANIGAN. Yes; the divergencies are extremely wide. For example, Illinois and Wisconsin require out-of-State trucks to pay a tax on the fuel-tank gasoline carried in excess of 20 gallons. Indiana exempts only 15 gallons. Iowa allows 50 gallons.

Mr. DONOHO. How does this tax situation, this gasoline-tax situation, affect the private truck operation?

Mr. BANIGAN. Such restrictions, in addition to the annoyance and delay caused, usually pyramid the gasoline taxes of the private motortruck owner and in doing so materially increase his fuel costs and hence his costs of operation. An example will illustrate. The truck fills a 50-gallon tank in Ohio near the Indiana line. At the 4-cent gas-tax rate existing in Ohio, the tax payment amounts to $2. Since Indiana exempts only 15 gallons from tax liability, the operator on crossing the line is required to pay the Indiana tax of 4 cents a gallon on 35 gallons, on the 35 gallons which is in excess, and that amounts to another $1.40 on the same gasoline.

Mr. DONOHO. Do many States provide for reciprocity covering the operation of private trucks?

Mr. BANIGAN. Yes; a large number of States extend reciprocal privileges to their neighbors and sometimes to the trucks of distant States, insofar as waiving of registration fees and acceptance of license plates are concerned. However, while such reciprocal arrangements tend to minimize the burdens of interstate trade to some extent, they fall far short of accomplishing desirable conditions in the operation of private motor trucks over State lines.

Mr. DONOHO. You say they fall far short. Would you please amplify that?

Mr. BANIGAN. Yes. Let us again refer to the East North Central States merely as an example. We have picked out this particular region, not because it is particularly stringent in its application of its laws but because it is a region in which there is a very high volume of private-truck operation as well as other types. The laws of each of these States specifically authorize reciprocity, and each one honors the license plates issued by the others to private truck operators, subject to certain important limitations. Wisconsin, for instance, waives its registration fee on private trucks from neighboring States, but collects a mileage tax from such trucks of more than 8,000 pounds gross weight. The law in Illinois denies reciprocity to nonresidents doing business in that State. In other parts of the country full reciprocity is limited according to the truck capacity, as in Maine—3 tons—or according to time operated, as in New Hampshire. The latter State permits nonresident trucks 3 tons or under to operate 20 days a year without registration, if under reciprocity. However, reciprocal arrangements may be rescinded as well as entered into,

and when difficulties and misunderstandings on anything occur between neighboring States, the private operators doing business in the trading areas crossed by a State line are sometimes innocent victims through the withdrawal of reciprocal privileges by one State or the other.

Mr. DONOHO. Have you any further statement to make, Mr. Banigan?

Mr. BANIGAN. I should like to state for the benefit of the committee that, first, private truck operation across State lines is frequently hampered and sometimes made impracticable by existing situations, particularly with respect to duplicate registration requirements, and conflicts in size, weight, and equipment requirements. Many States do exempt smaller private commercial vehicles from some of their more stringent regulations.

Second, the impact of conditions as they exist between States in these matters is frequently severe so far as private truck operation is concerned, because this operation takes place in a relatively small area day in and day out, and if that small distribution area in which the private truck operates is divided by a political boundary between States having divergent laws and regulations, the private truck operator crossing that State line cannot escape those conditions.

Third, the private motortruck owners would welcome greater uniformity in State legislation and regulation affecting motor-vehicle operation, particularly where such laws and regulations in adjoining States conflict as to size, weight, and equipment, and so forth.

Fourth, the National Council of Private Motor Truck Owners, speaking for its membership who own and operate a million and a half private trucks, more than half of which are on the farms of the United States, wishes to recognize the constructive efforts that are being put forth toward the improvement of trade-barrier conditions, particularly by such organizations as the American Association of Motor Vehicle Administrators, American Association of State Highway Officials, the Council of State Governments, and the Joint Legislative Committees on Interstate Cooperation.

Fifth, the private owner as represented by the National Council of Private Motor Truck Owners believe that much progress in the elimination of trade barriers has been accomplished, particularly within the last year or two, and we welcome opportunities to cooperate in the furtherance of this particular effort toward the elimination of the various types of trade barriers which affect our group.

The Council regards the problem of State trade barriers as a State problem to be solved by cooperative action of the various States, and with such inspiration and assistance as may be available to them as the result of various Nation-wide surveys and other valuable data collected by such Government bureaus as the Public Roads Administration, Department of Commerce, the Works Progress Administration, and I would like to add also the data that are being compiled by this very fine hearing at the present time.

The National Council of Private Motor Truck Owners, speaking for its own membership, does not regard the problems presented by these State trade barriers as readily soluble by Federal action, and we wish to make it clear that nothing presented in our testimony should be interpreted as the favoring of the substitution of Federal regulation for that of the individual States in the elimination of trade

barriers affecting our group as private motortruck owners and operators.

Mr. DONOHO. I have no further questions, Mr. Chairman.

Acting Chairman PIKE. Thank you very much, Mr. Banigan. We haven't questioned you because there didn't seem to be any controversial matter in there, except possibly that last one. There may be some difference of opinion as to whether the Federal Government has some power, and there is a real question as to whether it should exert that power; how far it should exert it, if it has it.

Mr. BANIGAN. We are merely expressing our opinion.

Acting Chairman PIKE. Thank you very much, Mr. Banigan.

(The witness, Mr. Banigan, was excused.)

Mr. DONOHO. Mr. Smith, will you come forward, please?

Acting Chairman PIKE. Do you solemnly swear the evidence you shall give in this proceeding shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. SMITH. I do.

TESTIMONY OF PARK M. SMITH, NATIONAL ASSOCIATION OF MOTOR BUS OPERATORS, WASHINGTON, D. C.

Mr. DONOHO. Mr. Smith, the chairman has referred to the lateness of the hour, so any cooperation toward expedition on your part will be appreciated.

Whom do you represent at these hearings, Mr. Smith?

Mr. SMITH. I represent the National Association of Motor Bus Operators.

Mr. DONOHO. Will you please outline briefly what this association is?

Mr. SMITH. The National Association of Motor Bus Operators is the trade association of motor bus owners whose purpose, among other things, is to promote and develop the business of transporting passengers by motor vehicles. It is composed of 600 member companies, including affiliated State associations.

Mr. DONOHO. What has been your experience, Mr. Smith, in the field of motor transportation and bus operation?

Mr. SMITH. My experience in the motor-transportation field, in connection with motorbus operation covers a period of 17 years—4 years as assistant statistician of the Minnesota Railroad and Warehouse Commission, 2 years as consultant on truck and bus operations, 8 years as Secretary of Greyhound Management Co., 1 year as assistant director of the Bureau of Motor Carriers of the Interstate Commerce Commission, 1 year as assistant to the president of the Keeshon Trans-Continental Freight Lines, and for the past year I have been doing special assignments for the National Association of Motor Bus Operators.

Mr. DONOHO. Mr. Smith, can you state generally the size and scope of the passenger motor-transportation industry in the United States?

Mr. SMITH. Yes. For the year 1939 the industry carried 4,324,000,000 passengers. This is supplemented with 759,000,000 school and private passengers, making a total of over 5,000,000,000 passengers for the year.

There were 2,281,000,000 bus-miles operated; expenses amounted to $185,000,000 in salaries and wages to 120,000 employees, while operating materials, such as insurance and material costs, amounted to $177,000,000. Taxes were very close to $50,000,000, while capital expenditures in the year amounted to $99,000,000, making approximately a $500,000,000 outlay for the year.

Mr. DONOHO. Do the laws of the States pertaining to the motor-busses operate uniformly, or do they show a lack of uniformity?

Mr. SMITH. There is a wide difference and lack of uniformity in the laws of the various States relating to motor-vehicle regulation.

Mr. DONOHO. What are some of the more important aspects in which this lack of uniformity appears?

Mr. SMITH. Lack of uniformity appears, particularly in the State law requirements as to sizes and weights and special lighting requirements.

Mr. DONOHO. Would you go into more detail with respect to the size and weights of commercial vehicles?

Mr. SMITH. I might say briefly that in 1937 the Bureau of Public Roads, under a mandate from Congress (Public Res. No. 768, 74th Cong.), made a comprehensive study of traffic conditions and measures for their improvement. In the study is brought out the fact that the provisions respecting maximum permissible length, width, height, and weight of commercial vehicles differ in practically every State. The weight provisions of the State laws are based on tire widths, wheel loads, axle loads, net loads, or gross loads; they range from 18,000 pounds to 120,000.

Mr. DONOHO. What is the effect of such lack of uniformity on the passenger motor-transportation business?

Mr. SMITH. Well, the lack of uniformity creates trade barriers to the free flow of commerce and directly affects the operation of motor-busses in the various States in interstate commerce.

Mr. DONOHO. Are barriers in connection with sizes and weights new, or have they existed for a long time?

Mr. SMITH. They have been of long standing; they came with the motor-carrier laws themselves, and in the early days their importance wasn't as great as today. As the industry advanced and travel became heavier, the barriers became greater. The bus industry in the last 15 years has made rather rapid progress, and this progress is comparable to the general progress in highway construction. The laws of a number of the States regulating commerce have been changed; some, however, are of long standing and are outmoded and therefore cause barriers that should be eliminated.

Mr. DONOHO. The laws haven't kept up with technological improvements?

Mr. SMITH. That is right.

Mr. DONOHO. You stated generally that trade barriers retarded the general improvement of bus service to the public. Would you elaborate on that, please, sir?

Mr. SMITH. Well, in present-day bus operations it is not uncommon practice to operate vehicles 1,000 miles in one trip. Years ago that couldn't be done. The result of such operations is a convenience to the public and results in reduction in operating costs because of the fact that you can get more bus hours out of each 24-hour period than you could in the old days of the less efficient vehicle.

As we increase the operating radius of the bus, naturally the trade barriers become greater and the mechanical advantage of the bus and the convenience to the public in some cases is greatly if not entirely offset by these barriers.

Mr. DONOHO. You have pointed out the great lack of uniformity regarding weight limitations. Have uniform standards for vehicle weights been recommended, to your knowledge?

Mr. SMITH. Yes; there are recommendations of the American Association of State Highway Officials, and there is a Uniform Vehicle Code promulgated by the National Conference on Street and Highway Safety, and the National Conference of Commissioners on Uniform State Laws. This uniform code has been endorsed by many national organizations and groups and, among other things, provides that with a low-pressure tire, a 9,000-pound wheel load or an 18,000-pound axle load is permissible.

It might be added that the Federal Government aids the various States in building roads, and these roads are to a certain extent made uniformly and conform to certain specifications and standards set by Public Roads Administration, formerly known as the Bureau of Public Roads.

Generally speaking, hard-surface pavements will carry an 18,000-pound axle load on the balloon tires. Practically all rigid-type pavements are designed to carry 9,000-pound wheel load.

In determining specifications in connection with thickness of flexible-type pavements, weather and subgrade conditions are important elements. Pavements must be built of sufficient thickness to carry loads over the subgrade support encountered. They must withstand buckling action due to climatic conditions.

Mr. DONOHO. In that connection, Mr. Holifield this morning testified with respect to buckling of the roads due to weather conditions in Kentucky, and related that to the injury done roads by heavy motor transportation. What is your opinion on that? Does that relationship obtain?

Mr. SMITH. It is my opinion from information in the form of a letter from Public Roads Administration that in many cases but little differential in thickness is required to provide for a load of 9,000 pounds as compared to that required to meet weather conditions. In other words, your pavement must be built thick enough to take care of weather conditions, and if it is, in most cases you have a thick enough pavement to stand the 18,000-pound weight.

Mr. DONOHO. Mr. Smith, do you have available information concerning weight limitations on motorbusses in the various States?

Mr. SMITH. Yes. This is a table of weight limitations imposed by various State laws for motorbusses, permissible gross weight, and axle weights according to 20-foot axle spacing, 10½-inch tire widths, dual rear wheels with a maximum of two-thirds of gross weight on one axle.

Mr. DONOHO. And what is the source of this chart?

Mr. SMITH. This is a compilation made by our association from the various State laws and the law of the District of Columbia.

Mr. DONOHO. This is the chart to which you refer, Mr. Smith?

Mr. SMITH. Yes.

Mr. DONOHO. I offer this chart, Mr. Chairman, as an exhibit.

Acting Chairman PIKE. It may be received.

(The chart referred to was marked "Exhibit No. 2424" and is included in the appendix on p. 16173.)

Mr. DONOHO. Will you explain the table, please, for the benefit of the committee?

Mr. SMITH. I might say that there are 8 States—Florida, Kentucky, Massachusetts, Montana, New Jersey, South Dakota, Tennessee, and Texas—where no axle load is specified in their laws. Their weight limitation is on other than an axle-load basis. Axle loads vary from 16,000 to 26,000 pounds. There are 19 States in which an 18,000-pound axle load is specified by law, which is in conformity with the uniform code. Eight States have axle loads in excess of 18,000; 12 States have axle loads less than 18,000. Restrictions on gross weight vary from 15,000 pounds to 54,000.

Mr. DONOHO. Do you have any further information concerning the effect of weight limitations in the several States?

Mr. SMITH. Yes; we have prepared some additional charts. The first is a chart showing motorbus weight limitations by groups of States.

Mr. DONOHO. What is the source of that? Is that chart to which you refer behind you there?

Mr. SMITH. Yes; this is a copy of that chart.

Mr. DONOHO. What is the source of that?

Mr. SMITH. This is compiled from the motor-vehicle laws of the various States, and, I might say, based upon the specifications that are outlined in the table; that is, according to a 20-foot axle spacing, 10½-inch tires with dual wheels, with a maximum of two-thirds load on one axle.

Mr. DONOHO. Is this the chart to which you refer?

Mr. SMITH. Yes.

Mr. DONOHO. Mr. Chairman, I offer this chart as an exhibit.

Acting Chairman PIKE. It may be received.

(The chart referred to was marked "Exhibit No. 2425" and is included in the appendix on p. 16174.)

Mr. SMITH. I would like to point out on the chart that the black are States where the axle limitation is under 16,000 pounds. I might comment that there is only one State—South Dakota—in the northern group, most of the States falling in the South, being North Carolina, Tennessee, Georgia, Texas, and Arizona.

The next group are the ones that are blank, or white. These States have an axle weight of 16,000 pounds, and are more numerous than some of the others.

The third group, 16,000 pounds to 18,000 pounds, are in red, and seem to be pretty well scattered all over the United States.

Acting Chairman PIKE. That doesn't correspond with the chart as I have it here. "C" shows 16,000 to 18,000, as you say, but only gives those five yellow States.

Mr. SMITH. I'm sorry; that's right. The yellow are 16 to 18—Maryland, Delaware, Pennsylvania, South Carolina, and California. That is right.

Then the red are the 18,000-pound limits.

The blue is over 18,000, and again I call attention to the fact that most all of these States are located in the northeastern section of the United States, with the exception of Kentucky and Florida. We might say there that we have heard considerable testifying about

the limits on trucks in Kentucky. However, in the bus operation we find the reverse. There are no limitations on weights.

Acting Chairman PIKE. It is one of the most liberal States as far as bus operation is concerned.

Mr. SMITH. It is the only State that doesn't have some restriction.

Mr. ELMORE. Can you offer any explanation for that?

Mr. SMITH. I don't know as I can. I heard some testimony this morning, and I have no——

Acting Chairman PIKE (interposing). If you give it much publicity, they may get around to it.

Mr. SMITH. It just brings out pretty thoroughly the lack of uniformity, the lack of study given in these basic laws when they were put in. It may be because the law is old, I don't know, or that it hasn't been amended. I understand there have been laws in Kentucky lately on weights, or proposed laws.

Mr. DONOHO. I believe you have another chart that you wish to offer, do you not, Mr. Smith?

Mr. SMITH. Yes; I do. This is Passenger Carrying Restrictions Due to Weight Limitations. This and the following chart are examples of busses that may be operated. I have taken two 37-passenger busses, one of the most modern type and one a few years old.

Mr. DONOHO. And this is a compilation of data by your association, this chart?

Mr. SMITH. Yes.

Mr. DONOHO. Mr. Chairman, I offer these two charts as exhibits.

Acting Chairman PIKE. They may be received.

(The charts referred to were marked "Exhibit No. 2426" and are included in the appendix on pp. 16175 and 16176.)

Mr. SMITH. This chart is made up to show the number of passengers that can be carried in a 37-passenger bus in various States. Where the laws restrict the weight to a low weight, it means less passengers, so that in some States you can't operate an empty vehicle, and in some States you can operate as many as the full load of 37 passengers.

Acting Chairman PIKE. This is the same bus in all cases?

Mr. SMITH. This is the same bus in this particular chart, and there we might say that with this individual bus, which has a maximum weight of 25,465 pounds, a maximum load weight of 16,785, figuring the passengers at 195 pounds per person—we figure 195, because a passenger probably weighs around 150, and the baggage would bring up the other 45 pounds. In Tennessee it would be impossible to operate the bus.

Acting Chairman PIKE. Even empty?

Mr. SMITH. Even empty. In the green, or South Dakota and North Carolina, there could be 10 passengers carried. On the yellow, you could carry 20 passengers, and on the blue 25. On the red, 30 passengers; the brown, 35, and a full load could be carried in the white States.

Now, I might point out there that you will note that the full loads may be carried, and note the relation of the full-load States to the mountainous territories. In other words, most of the States that you can carry a full load in are mountainous, as for instance, in East here, through Kentucky, West Virginia, and Virginia, where

you have mountain ranges, you can carry 37 passengers. In some of the Western States the same way. However, some of our States where it is flat, where we should probably be able to carry our heavier loads, we have restrictions, or more restrictions.

Mr. ELMORE. Florida seems to be a notable exception to that.

Mr. SMITH. Yes; Florida has a full bus.

Acting Chairman PIKE. The committee are congratulating each other for Florida and Maine. They have both been liberal.

Mr. SMITH. Now, in connection with the other example, this is a modern Diesel motor, air-conditioned bus, weghing 28,475 pounds with a weight on 1 axle of 18,275 pounds, and the most modern equipment. Again we find the black excludes the vehicle entirely. It may be kind of hard to see from there, but this is brown and so is this. The black is North Carolina, Tennessee, and South Dakota.

That means that with the long range of the bus today, where you can operate thousands of miles, or a thousand miles in one journey, the eastern seaboard is entirely cut in two in the use on extended trips of the most modern equipment. In other words, from New York to Florida you can't use the most modern equipment because of a belt consisting of North Carolina and Tennessee, which prohibits the use of the vehicle in the State. That, naturally, is a barrier, a barrier to the people who use the transportation. It is a restriction of this modern convenience and air conditioning that is available, but not available to that section or in that operation.

Again, it will be noted how the full-passenger load, which is the white, can be carried in the mountainous States.

Acting Chairman PIKE. The full load is the purple, isn't it?

Mr. SMITH. That is right. The white is the 34 passengers; that is within 3 of a full load, and in bus operation, of course, if you can't carry but a half load you probably haven't got a very profitable operation.

Mr. DONOHO. Mr. Smith, do you have available the length limitations imposed by the various States?

Mr. SMITH. Yes; I have a table which shows the State law provisions regarding permissible lengths of vehicles.

Mr. DONOHO. This is a compilation by your association?

Mr. SMITH. Yes; this is compiled by our association from the laws.

Mr. DONOHO. This is the chart to which you refer?

Mr. SMITH. That is the table, yes, sir; or the chart.

Mr. DONOHO. I offer this chart.

Acting Chairman PIKE. It may be received.

(The chart referred to was marked "Exhibit No. 2427" and is included in the appendix on p. 16177.)

Mr. SMITH. It may be noted from the table that there are 9 States which show a length shorter than 35 feet; 25 States that show 35 feet, and 9 States over 35 feet. There are 2 States that show a length restriction of 28 feet, but it is qualified and may be extended by various bodies in the State upon proof of necessity.

Mr. DONOHO. Have any national standards with respect to length for motor vehicles been proposed?

Mr. SMITH. Yes; the American Association of State Highway Officials in the Uniform Motor Vehicles Code provide a permissible length of 35 feet.

Mr. DONOHO. For a single vehicle?

Mr. SMITH. Yes; that is for a single vehicle.

Mr. DONOHO. You stated earlier in your testimony, Mr. Smith, that there was a lack of uniformity in special lighting requirements in the various States. Would you briefly describe this, please?

Mr. SMITH. Yes. I believe we have had, by one of the other witnesses, a pretty thorough explanation of that lighting, and I might say that there are just the three classifications, really, besides your ordinary lighting, and that is clearance lights and side marker lights, and identification lights.

Mr. DONOHO. Then the situation which Mr. Lawrence describes obtains with respect to busses generally?

Mr. SMITH. Yes; it does.

Mr. DONOHO. Mr. Smith, you have outlined weight, length, and lighting restrictions and requirements. Has any action been taken to bring about uniformity of these requirements in the States?

Mr. SMITH. Yes; there has been, I think, considerable work done. The National Conference on Street and Highway Safety and National Conference of Commissioners on Uniform State Laws developed the uniform vehicle code. Standards have been set up by the American Association of State Highway Officials. The various officials of the States have more or less cooperated. The Council of State Governments is an agency through which, I believe, considerable uniformity may be brought about, and at the present time the Interstate Commerce Commission, through the Bureau of Motor Carriers, is making a special study of sizes and weights for a report to Congress in connection with the regulation or proposal for regulation in connection with sizes and weights.

Mr. DONOHO. Mr. Smith, would you draw the general conclusions which you have come to with respect to the trade-barrier problem in the motorbus field?

Mr. SMITH. Yes. That there exists in State motor-vehicle laws regarding sizes and weights and special lighting requirements in the individual State a pronounced lack of uniformity.

That the lack of uniformity in the motor-vehicle laws of the individual States creates barriers to the free flow of interstate commerce.

That such barriers are restricting the full advantages of economy and comfort available to the riding public, and are not in the public interest.

That such barriers are unnecessary and unreasonable from the standpoint of protection of the highways and have no practical reason for their existence.

That such barriers may be removed by the adoption of more nearly uniform standards in the motor-vehicle laws, rules, and regulations, and administrative rulings, in the individual States.

That there is in existence a uniform motor-vehicle code recommended as a standard for national uniformity in the motor-vehicle laws of the States.

That the provisions of the uniform motor-vehicle code are reasonable, and have been developed by the National Conference on Street and Highway Safety and the National Conference of Commissioners on Uniform State Laws, which conferences were made up of representatives of all important national bodies having special knowledge of the facts.

That there are active organizations—official, governmental, and private—in existence today whose objectives, among other things, are to bring about national uniformity in the motor-vehicle laws of the States.

That there is at present an investigation being made by the Interstate Commerce Commission.

Mr. DONOHO. Have you any recommendations which you wish to make, Mr. Smith?

Mr. SMITH. I have one that I would make; that is that uniformity of motor vehicle laws should be brought about by the cooperative action of the individual States. The reason for this conclusion is that Federal legislation on sizes and weights of motor vehicles in interstate commerce would not remedy the present lack of uniformity which exists in the States as regards intrastate commerce, and might, on the other hand, tend to aggravate the existing situation. A comparable situation may be cited in the motor carrier utility field, where jurisdiction over interstate commerce is vested in the Interstate Commerce Commission by the Motor Carrier Act, 1935. Since this act does not apply to intrastate commerce, jurisdiction over such commerce remains in the hands of the State regulatory authorities, whose administrative activities are characterized by the same lack of uniformity as has been noted in the field of motor vehicle regulation.

In order to attain uniformity of laws, rules, and regulations, and administrative rulings throughout the United States, consideration should be given to commerce as a whole, and no distinction made between interstate and intrastate practice. In view of the fact that Federal legislation would involve farreaching changes in the Federal Constitution it would seem that the only practical approach is through cooperative State action.

Acting Chairman PIKE. Of course that last is a matter of opinion that I think we had better leave to the courts.

Mr. SMITH. Oh, yes; entirely.

Acting Chairman PIKE. I think we can take notice that the Commerce Clause has been somewhat expanded in interpretations since 1935. Isn't that true, Mr. Truitt?

Mr. TRUITT. Yes.

Mr. DONOHO. I have no further questions to ask, Mr. Chairman.

Acting Chairman PIKE. Thank you very much, Mr. Smith.

We will adjourn until 10:30, I believe. I don't think we can get the congressional members here earlier.

(Whereupon, at 5:40 o'clock, a recess was taken until Saturday, March 23. 1940, at 10:30 a. m.)

INVESTIGATION OF CONCENTRATION OF ECONOMIC POWER

SATURDAY, MARCH 23, 1940

UNITED STATES SENATE,
TEMPORARY NATIONAL ECONOMIC COMMITTEE,
Washington, D. C.

The committee met at 10:30 a. m., pursuant to adjournment on Friday, March 22, 1940, in the Caucus Room, Senate Office Building, Representative B. Carroll Reese, Tennessee, presiding.

Present: Representative Reece (acting chairman); Senator O'Mahoney (chairman); Representatives Sumners (vice chairman), and Williams; Messrs. Pike and Brackett.

Present also: Frank H. Elmore, Jr., Department of Justice; D. Haskell Donoho, associate attorney, Department of Agriculture, and Paul T. Truitt, chairman, Interdepartmental Committee on Interstate Trade Barriers, Department of Commerce.

Acting Chairman REECE. The committee will please come to order. Are you ready to proceed, Mr. Donoho?

Mr. DONOHO. Yes, Mr. Chairman.

Mr. Singer, will you come forward, please?

Acting Chairman REECE. Will you be sworn? Do you solemnly swear the testimony you are about to give in this procedure shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SINGER. I do.

TESTIMONY OF RUSSELL SINGER, GENERAL MANAGER, AMERICAN AUTOMOBILE ASSOCIATION, WASHINGTON, D. C.

Mr. DONOHO. Will you give your name and address, please?

Mr. SINGER. My name is Russell E. Singer. My address is Washington, D. C.

Mr. DONOHO. Whom do you represent, Mr. Singer?

Mr. SINGER. I represent the American Automobile Association.

Mr. DONOHO. Would you give the salient facts regarding your association, please?

Mr. SINGER. Yes. The American Automobile Association is a national federation of motor clubs throughout the United States. We have 750 clubs and branches with close to a million members. These clubs, in the course of a year, handle about 10,000,000 tours.

Mr. DONOHO. Are you concerned with the impediments to the interstate movement of passenger cars?

Mr. SINGER. Yes; we are concerned very directly. During the past 40 years motor transportation has grown from year to year to the

point where we now have 26,000,000 passenger cars, enough to carry the entire population of the United States. The movement of these cars is becoming an increasingly important problem, and particularly are we concerned with the free movement, so far as State borders are concerned.

Mr. DONOHO. Is the problem of trade barriers with respect to passenger traffic a new one or an old problem?

Mr. SINGER. Well, it is a comparatively new problem. We had a similar problem some years ago in the matter of reciprocity between the States in license plates, but public opinion forced a change in that so that we now have general national recognition of reciprocity as between the States with regard to license plates.

Mr. DONOHO. What is your principal trouble now, Mr. Singer, with respect to the free movement of passenger cars?

Mr. SINGER. I might summarize by saying that the principal trouble so far as the private passenger-car operator is concerned is in four distinct classifications. First, the requirement that visitors obtain tourist permits and in some instances the payment of fees for these permits.

Second, the application of the so-called caravaning laws; that is, laws governing the movement of vehicles moving under their own power or in tow for purposes of sale—to privately owned and properly licensed vehicles not intended for sale.

Third, the agricultural inspection stations which discriminate against motorists as against those that use other means of transportation.

And fourth, restrictions on commercial travelers using their own vehicles.

Mr. DONOHO. On the first point, how many States require tourist permits?

Mr. SINGER. Thirteen States require tourist permits.

Mr. DONOHO. Will you name them, please?

Mr. SINGER. Arizona, Arkansas, Iowa, Massachusetts, Minnesota, Mississippi, Montana, Nevada, Oklahoma, Oregon, Texas, Utah, and Virginia.

Mr. DONOHO. Will you explain something about these permits, please?

Mr. SINGER. Yes. These permits vary in the date that they are effective from immediate entry up to about 30 days, so that the degree of stringency as regards the requirements of the various States is quite varied. Ten States issue windshield stickers indicating that a permit has been issued for the car. In two States they require a fee to be paid after 25 days, namely, Mississippi, $1, and Texas, 50 cents. California has recently stopped the issuance of tourist permits. I believe they were one of the first States to require a tourist permit, and there seems to be a general agreement that permits serve no real purpose except giving a check on the number of visitors and the value of the tourist dollar.

Mr. DONOHO. And that is your conclusion, also?

Mr. SINGER. Yes; that is in keeping with the position of the American Automobile Association as represented by resolutions passed at annual meetings.

Mr. DONOHO. How do the so-called caravaning laws apply to tourists?

Mr. SINGER. These caravaning laws are penalizing the bona fide motorist in this manner. The caravaning laws are now in effect in 14 States and they are designed primarily to halt the passage of cars under their own power or in tow for purposes of sale. However, vicious examples of how caravaning laws have been effective have been reported in many complaints that have come to our affiliated clubs, particularly in the West.

I should like, if I might, to cite one or two of those as illustrative of the problem.

Mr. DONOHO. Please do, Mr. Singer.

Mr. SINGER. A California resident purchased a car from a California dealer and arranged through the dealer to take delivery of the car in Michigan. He gave permission to a friend to drive the car, his car, from Michigan back to California, and provided his friend with all of the credentials necessary to show that he was driving the car with the owner's permission.

Before leaving California, the man who was driving the car secured license plates——

Mr. DONOHO (interposing). Before leaving Michigan, you mean?

Mr. SINGER. No; before leaving California he secured the license plates and the registration card, and the California plates were established on the car when delivery was taken in Michigan. This was all in accordance with the California vehicle code.

Everything went along all right until the driver came to the New Mexico border, and there he was stopped and was first required to acquire a carrier's registration permit at an expense of $5.60. He was then required to obtain license plates at a cost of $7. Next he was required to make application for a State-corporation-commission permit and pay the sum of $25. In other words, he paid $37.60 for the privilege of driving, as a tourist, across the State of New Mexico, which is a distance of about 374 miles.

Mr. PIKE. What is the theory behind that, Mr. Singer?

Mr. SINGER. These caravaning laws, as I said, are intended to prevent cars from being moved under their own power or a car being towed for purpose of resale.

Mr. PIKE. Let's go back and say what is the purpose of those laws. Did the railroad people try to get them through?

Mr. SINGER. That is the general opinion of the people in the West, where the problem primarily exists. It is a form of tax in order to reach the motorist who may be driving his car to California, or some Western State, for purpose of resale.

Mr. PIKE. In this particular instance we had it was made very clear to us yesterday that New Mexico needs all the money it can get from any source. I wonder what the shadow of opinion, where they got the idea that this car was for resale—how this would come under the caravaning law.

Mr. SINGER. Well, sir, I think it works in this way. Practically any new car that goes through New Mexico, particularly with California plates, is under suspicion, and apparently the burden of proof is on the owner of the car or the driver of the car to prove that he is not operating the car for purpose of taking it to California for resale.

It really gets down apparently to the problem of administration.

Mr. PIKE. That is it, probably the local man was a little extra zealous.

Mr. SINGER. Of course, there are many other illustrations of how this works in other cases. I might go on and carry this case further to show you some other difficulties that this same driver encountered, not only in New Mexico but in Arizona and Nevada, because when this driver got to the State of Arizona, he was required to pay another $3 fee, and when he got to Nevada, he was required to pay a $7.50 fee, so that this one driver was required to pay fees totaling $58.10 to drive through three States.

Now, I have since learned, in the last 24 hours, that the States of Arizona and Nevada have refunded these fees to the driver, but the State of New Mexico has not.

(Representative Sumners assumed the chair.)

Mr. DONOHO. Mr. Singer, you mentioned agricultural inspection stations as discriminating against motorists. Will you explain that, please?

Mr. SINGER. We feel that agricultural inspection stations as operated now are discrimination against motorists as compared with other users of other forms of transportation. In other words, the question might very well be asked, why should the motorist alone be subjected to quarantine inspections while those traveling by air, rail, and water are not subjected to inspection, delays, and search of baggage. In other words, if a person is going to transport fruits and vegetables and roots, and so forth, in baggage, it is quite as easy to transport it when traveling by air, rail, and water as it is by motor car. So we feel that this form of inspection as operated at the present time is a discrimination that has been established at State borders against the motorists.

Mr. DONOHO. Mr. Singer, you testified that retaliatory tactics are often used against commercial travelers using their own vehicles. Will you elaborate on that, please?

Mr. SINGER. Yes. Our position on that can be rather clearly illustrated by a commercial traveler going into one State and being required to take out a special license. Now, I think we can very properly distinguish between a commercial traveler who is going into a State in a private passenger car to take orders or transact business and a commercial traveler who may be in a State delivering goods, but in some of the States there is a requirement that a commercial traveler operating in the State, taking orders, is required to take out a special permit. Again the question might very properly be asked, why should commercial travelers traveling by automobile be singled out for special tax treatment over a commercial traveler crossing the State border by air or rail?

In the States of New Mexico and Arizona, salesmen are required to buy special licenses on the ground that the car is used [illegible] business. In Colorado, salesmen traveling in out-of-State vehicles are frequently asked to take out Colorado registration certificates and purchase Colorado plates.

The VICE CHAIRMAN. In the State where that license is required on the ground that it is a car used for business purposes, is a similar tax or license fee levied against residents of those States operating cars that are engaged in business?

Mr. SINGER. I couldn't answer that question fully, but I surely think that the residents of the State would not be required to take out any registration other than that which is required of all automobiles registered in that State.

The VICE CHAIRMAN. If they make no distinction between an automobile used for pleasure and ordinary family purposes and an automobile used for business?

Mr. SINGER. I do not know that they do make any distinction.

The VICE CHAIRMAN. I am not asking you what you don't know. I am trying to find out what you do know.

Mr. SINGER. I don't know about that.

The VICE CHAIRMAN. What I am trying to get at is, why do you make the point that a license fee is charged for the automobile operated by a commercial traveler on the score that it is used for business purposes? There must be some explanation or you wouldn't put that in.

Mr. SINGER. Well, if I might illustrate it, I spoke of Colorado.

The VICE CHAIRMAN. Yes; I thought you were speaking of New Mexico.

Mr. SINGER. All right. I will take New Mexico. It may very well be that a commercial traveler whose headquarters are in Oklahoma City is required to travel in New Mexico, and he is required to take out a special license on the ground that the car is used for business.

Now, whether or not a salesman in New Mexico is required to take out a special license because he solicits in New Mexico I do not know.

The VICE CHAIRMAN. That point would not strike me as being very important unless it does show discrimination.

Mr. SINGER. Well, we claim that it shows discrimination against the man who is soliciting orders by automobile over that of a salesman who may travel into New Mexico by rail or fly in, where he is not required to take out any license to solicit business.

The VICE CHAIRMAN. I get your point.

Mr. DONOHO. Mr. Singer, is there a tendency on the part of the States to remove these restrictions which you have mentioned?

Mr. SINGER. Well, there has been a good deal of enlightened thought on this subject by such organizations as the National Association of Motor Vehicle Administrators and by this Council of State Governments. I do know that this subject has been under discussion during the last 3 to 4 years at western conferences of motor clubs that have been held, and these motor clubs have been contacting State officials constantly in an effort to get the State officials where they felt that there was a weakness in administration to help straighten them out.

I can tell you, for instance, of one instance where one of the western clubs, the Automobile Club of Southern California, contacted the officials of Arizona and pleaded the case of four residents of southern California who complained about the treatment in Arizona, and I have a letter from the supervisor of the motor-carrier department and motor-vehicle-checking stations returning, in four cases, $3 that had been collected illegally at the Arizona border from motorists who were able to prove that they were not transporting their cars for sale or resale.

Mr. DONOHO. Mr. Singer, what is the opinion of your association in regard to the economic effects of the conditions which you have outlined?

Mr. SINGER. We see a very definite danger, if this movement is permitted to continue, and particularly if it spreads. We feel that it is going to have a very important influence on one of the great American industries, the industry of travel, which today is regarded as a $5,000,000,000 industry. It is an industry that has grown year after year, and it really depends for its continued progress on the free movement of the motor vehicle unhampered by the restrictions and the fees that are charged at some State borders. To illustrate the importance of travel from an economic standpoint, I should like to quote just a sentence or two from a recent study that we made entitled, "Americans on the Highway," which is a factual publication of recent transit tourist travel. It states:

> With the travel urge stimulated by two World's Fairs, car-owning Americans took to the highways in 1939 in greater numbers than ever before. It can now be conservatively estimated that motor travel expenditure during the last year reached the all-time high of five billion dollars, an increase of 18 per cent over the $4,250,000,000 estimated for 1938. In 1938 the vacation army was composed of an estimated 52,500,000 people traveling in 15,000,000 cars.

I mention these figures only to show the great economic significance of the free movement of the tourist dollar.

The VICE CHAIRMAN. It doesn't indicate much that the business of traveling is in danger of dying a sudden and quick death, does it? The business of traveling seems to be holding up, doesn't it?

Mr. SINGER. It is increasing from year to year.

The VICE CHAIRMAN. You think that business of travel is in grave peril now?

Mr. SINGER. I shouldn't say it was in grave peril. What we are concerned about is what the effect will be if these barrier restrictions and some of the things I have recited here continue to grow, and if they are successful in one State we know how eager many of the States are for tax income, and it may very well be that many other States will look to this as a lucrative source of income.

The VICE CHAIRMAN. Would you look to anything that would probably help people to stay at home as being possibly in line with sound economics about as much as rambling all over the country spending $5,000,000,000 a year when they can't pay their ordinary debts—stay at home and sort of work on the home fires a little bit?

Mr. SINGER. The point is that the tourist dollar is distributed very, very widely. Many people think that it is rather restricted or confined, but it finds its way into all the channels of the community, the hotels and the filling stations and the department stores and so on, so that this does represent a great economic asset for all communities.

The VICE CHAIRMAN. Mr. Singer, do you think, when you visualize this thing, that the States may be depended upon for a while yet to work these problems out along the line of the instances which you have enumerated?

Mr. SINGER. I should say yes. It is primarily a State problem, but I do think that your honorable committee could do a great deal to stimulate activity along that line.

The VICE CHAIRMAN. That is what I am trying to get at. Is it your notion, coming as a practical man dealing with a practical problem, that the better thing would be to do what could be done reasonably to stimulate State action in the sense of State responsibility, or do you think the Federal Government ought to get into the

picture, either directly or indirectly, coercively, in exercising the power, or do you care to express an opinion?

Mr. SINGER. I should say it is essentially and primarily a State problem, but I do think there can be a stimulation given by the Federal Government to do away with this problem, or assist in its solution. If I might illustrate, some years back, before we had the national numbering system, many of the States had their own numbering system. You came to a State border and you had to pick up another number. Today, as you know, you can travel from the East to the West and from Maine to Florida and have in mind only one number. In other words, State borders do not mean a discontinuance of a number. That was brought about largely through the States getting together and agreeing upon certain standards. But the Federal Government was represented in the commission or the committee that worked that out, and the committee continues to function, and the Federal Government continued to have representation in that committee in order to work out the uniform standard. So that it would seem to me that something along similar lines might very well come as an outgrowth of the hearings that you gentlemen have been having on this subject.

The VICE CHAIRMAN. The powers exercised by the Federal Government with regard to these licenses have been advisory powers?

Mr. SINGER. Oh, yes; they have been advisory. I don't know that the committee or the commission that has been set up has been recognized by the Federal Government in any official way. It is the association of State Highway Officials, on which the Bureau of Public Roads has been represented for many years.

The VICE CHAIRMAN. Of course we have to consider now, we seem to be deciding now in America, which way we are going to try to go, that is, to give the States a little more time to work out the things that are within the governmental capacity of the State or to have the Federal Government step into the picture, exercising its authority either directly or indirectly.

Mr. SINGER. Well, sir, I would say that on this particular issue the border barrier where we have the most complaints comes from a limited number of the western States. I am speaking now from the standpoint of the movement of the passenger car, not in the whole field of motor transport, and I should think that if this committee felt that it could go on record as encouraging the States, particularly the Western States, the Southwestern States, to get together and try to work this out, it would be a great stimulant to that objective.

The VICE CHAIRMAN. Well, as one member of the committee, or rather as an individual, I think I wouldn't mind expressing the notion to the States that one of the reasons why, it seems to me, the States are losing some of their powers is because of the failure to properly exercise the powers which they have. I think that is one of the reasons, and of course the other reason, it seems to me, is that sometimes you get in too big a hurry and don't recognize that the more democratic the institution is, the slower it moves but the greater the accomplishment when it does move, because ordinarily you have the agreement of the people before you can move.

Mr. SINGER. One of the great writers recently referred to our country as our varied but United States.

The VICE CHAIRMAN. I guess he is right about it.

Representative WILLIAMS. Isn't it true that the States have worked out the problem so far as the automobile travel is concerned for pleasure travel by reciprocity agreements generally, each one according to the other the same privileges that are accorded to their cars, and vice versa?

Mr. SINGER. Yes; on the question of reciprocity that is true. There is complete reciprocity in the recognition of the license plates.

Representative WILLIAMS. There isn't very much discord among them so far as the real travel is concerned of pleasure cars.

Mr. SINGER. The points that I cited illustrate that problem so far as the passenger-car owner is concerned, and are rather limited to the States of Arizona, New Mexico, Nevada, and California.

Representative WILLIAMS. That is just a question of a new car passing through there, whether or not it is for sale in some other place or whether it is really owned by the driver.

Mr. SINGER. That is right, whether or not there is an attempt to violate the caravan law.

Representative WILLIAMS. That, of course, is just a very limited field.

Mr. SINGER. In those States; yes.

Representative WILLIAMS. And as a general proposition, so far as the pleasure vehicle is concerned, the passenger vehicle, the matter is pretty well settled among the States.

Mr. SINGER. Well, there are 14 States that now require tourist permits.

Representative WILLIAMS. That is on the ground that the other States, some of the other States, will not permit that?

Mr. SINGER. No; there is no reciprocity there.

Representative WILLIAMS. You need not go over that. I was not here when you did that. You need not repeat it, but those States are Western States, principally, are they?

Mr. SINGER. No; they are pretty well scattered through the country—Massachusetts, Virginia—so I would say they are East, Middle West, and Far West.

The VICE CHAIRMAN. You might tell us, in a sentence, mightn't you, what makes a person a tourist in the sense of that requirement?

Mr. SINGER. Well, an out-of-State man traveling in the State with an out-of-State license. For instance, I traveled in California in a borrowed car and went into Oregon, and when you come into the State of Oregon on any of the main highways you are greeted with billboards indicating that you must register as a tourist within a certain time limit—I have forgotten just what the hour is; I think it is 12 hours—and then you take out a tourist permit and a windshield sticker is put on your windshield indicating that as an out-of-State tourist you have taken out a tourist permit in Oregon, and that is true of many other States in the West.

The VICE CHAIRMAN. Is the notion that that person that has that particular sort of license or permit is going to travel around as a tourist in Oregon, as distinguished from somebody who is passing through the State?

Mr. SINGER. No; it makes no difference whether you are just passing through the State or whether you are going to be there for a while. Every out-of-State automobile driver is required to take out this tourist permit.

The VICE CHAIRMAN. I believe you have stated, though, you have already got that in the record.

Mr. SINGER. Yes; I have.

Representative WILLIAMS. Only one question: Is there a fee charged for that?

Mr. SINGER. In two instances there are fees charged. In the State of Texas, 50 cents; and in the State of Mississippi, $1 after a 25-day period.

Representative WILLIAMS. In other words, they are permitted to pass through the State or travel around in it for 25 days for nothing.

Mr. SINGER. That is right.

The VICE CHAIRMAN. Have you heard much complaint?

Mr. SINGER. The automobile clubs in the Western States, because they feel that there is an element of retaliation, are now taking the leadership in having these tourist-permit laws repealed. That is true in California. I think California was one of the first States to adopt the tourist permit.

The VICE CHAIRMAN. I am sorry to have been responsible for making you go over that again.

Mr. DONOHO. I have no further questions, Mr. Chairman.

The VICE CHAIRMAN. Thank you very much.

Mr. SINGER. Thank you, gentlemen.

(The witness, Mr. Singer, was excused.)

Mr. DONOHO. Mr. Salisbury, will you come forward, please?

The VICE CHAIRMAN. Do you solemnly swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SALISBURY. I do.

TESTIMONY OF PHILIP SALISBURY, CHAIRMAN, COMMITTEE ON STATE TRADE BARRIERS, THE NATIONAL FEDERATION OF SALES EXECUTIVES, NEW YORK, N. Y.

Mr. DONOHO. Will you state your name and address, please?

Mr. SALISBURY. Philip Salisbury, 420 Lexington Avenue, New York.

Mr. DONOHO. What is your occupation?

Mr. SALISBURY. I am executive editor of Sales Management magazine and chairman of the special committee on State trade barriers of the National Federation of Sales Executives.

Mr. DONOHO. Mr. Chairman, Mr. Salisbury has a brief statement he would like to make.

TRADE BARRIERS IN RELATION TO NATIONAL SALES EXECUTIVES

Mr. SALISBURY. I am appearing as chairman of this committee, which is an organization of more than 5,000 sales executives, bound together through 42 sales executives' clubs located in the large cities, the members employing 200,000 salesmen and doing an aggregate annual business in excess of $10,000,000,000 a year.

Selfishly, the members of this group are, of course, very much interested in this whole movement, especially if it is a deterrent to sales, as we believe it is. The group feels that the possibility of reaching the President's announced goal of $90,000,000,000 a year is not likely to be an actuality unless goods can move freely in interstate commerce.

The VICE CHAIRMAN. You mean people are not getting what they otherwise could get and would pay for if they could get hold of the goods?

Mr. SALISBURY. Yes; the trade barriers are, in the first place, additions to cost, usually, and the addition to cost reduces consumption, and that sets in force a number of other movements which tend to reduce the standards of living and cut down employment, and so on.

The VICE CHAIRMAN. Have you figured just how destructive to the exchange of commodities and buying and selling that is?

Mr. SALISBURY. Well, we feel that there is a great deal of evidence as to the existence of trade barriers but there is a lack of sufficient factual data on what they cost the nation, and one of our recommendations is that cost data be secured. I have personally made quite an investigation of the subject among business organizations. I find that to most businessmen, as well as to the consumer, trade barriers are a sort of an abstraction. They have heard about them, they perhaps know some people who have been hit, but they haven't been hit directly themselves by something that is definitely called a trade barrier, and except when they do strike home, barriers are going to continue to be abstractions, and we think that a way should be found to drive home in dramatic fashion whatever the costs and effects of trade barriers are.

Therefore, the first suggestion which the National Federation of Sales Executives wishes to make is the recommendation that the Bureau of Foreign and Domestic Commerce should make periodic surveys, starting, perhaps, with a small-scale sample, but one made among manufacturers and wholesalers and retail merchants designed to measure the actual dollars and cents cost of State and municipal barrier laws. We have plenty of good material on the existence of the laws, but it is our opinion that it would be difficult to repeal them to the extent that we think they should be repealed until the housewife knows, for example, that those laws cost her, let's say, $1 a week on her food and household bills, and that the retailer is only getting nine-tenths of the volume of business that he might get because prices have gone up so that consumption is reduced, or that the manufacturer finds definitely that his sales are cut a definite amount of money.

The VICE CHAIRMAN. That would require a pretty elaborate study, wouldn't it?

Mr. SALISBURY. I think that through the cooperation of business groups the study could be simplified and the cost lessened. For example, this group that I represent is so interested in the subject that I can promise, I know, that the great majority would very willingly cooperate if someone would take the initiative in working up a questionnaire method which would be designed to get the answers to some of these questions. Theoretically the barrier laws definitely help certain groups. They hurt other interests. I don't think any of us know just what the balance is, what barrier laws are costing and who pays for them, whether they result in unnecessary increases in prices and how much, and whether they cut down consumption and reduce the standards of living, and to what extent.

As a sample, the Wisconsin oleomargarine law I imagine has been discussed here. That is designed to protect the dairy farmers of that State, and has the practical effect of equalizing the price of butter and oleomargarine. Now, the dairy farmers of that State

think that it has put money in their pocketbooks, and perhaps it is true. It probably has. But has it taken more money out than it has put in, for it is estimated that about 90 percent of Wisconsin dairy capacity is available for export, and the State of Wisconsin has made itself so disliked, along with certain other States which have very high oleomargarine taxes, that recently Georgia refused to allow Wisconsin butter to be used in relief distribution, on the ground that Wisconsin had taken money out of the pockets of Georgia farmers who have cottonseed oil, and just the other day I ran across an editorial in the Dallas News on the same subject. They were addressing themselves to cottonseed, of course, and they said that hard-boiled tit-for-tat is the proper remedy. Once excluding States find their products topped cold at their own borders, as should be the case, the great light of reason will burst upon them, which, if carried out, brings another example of retaliation and reprisal which is one of the greatest curses in the whole trade-barrier movement.

Now, what I think everyone interested in distribution should know is, what is a true balance, say, in the State of Wisconsin? Is the net effect of that oleomargarine law good for the State or is it taking out more dollars than it puts in, and how much more does the Wisconsin housewife, for example, have to pay for butter than would be the case if oleomargarine would be allowed to compete freely?

The second suggestion is that your committee recommend that the Bureau of Foreign and Domestic Commerce operate a continuous reporting service on proposed barrier laws coming before State, county, and municipal legislatures. The Marketing Laws Survey and the Council of State Governments have done an admirable job in laying out the existing barrier laws, but to our knowledge nothing has been done by any group to find out currently the new laws that are being proposed in the State legislatures. Most of these laws get on the books because there isn't very much information about them. The consumer, the average businessman, does not know about them until it is too late, or if he has heard about them he doesn't sense the effect that they may have on trade until they are operative.

We feel that that is a Government function because I don't think any private organization is equipped to do the job, and such a reporting service should get out frequent bulletins to be cleared through business organizations of all kinds, civic leaders, editors, and consumer groups.

Just currently the Legislature of New York is considering a bill which would call for an annual registration fee of $25 on all proprietary foods and drugs and cosmetics, and so on. One of the members of this organization I am representing acts as agent for or manufactures 3,000 items of that kind, which would call for an annual registration cost of $75,000 to him in the one State. Now perhaps he could take that in his stride, but if one State does that I am sure that other States and even cities would try it. In fact, the bill came up first before the councilmen of New York; it was defeated there and now has been introduced in the State legislature at Albany, and I understand has a fairly good chance of passing.

No one is doing a reporting job on proposed laws of that kind, and we think that the Government might well do it.

The VICE CHAIRMAN. You think that we should have some sort of a bureau to check down to the individual housewife and try to give her information as to just how much trade barriers affect her. You know you have to be pretty accurate, because trade-barrier legislation shifts very fast. Wouldn't you be in the difficulty that about the time you got your study made the law would be either amended or repealed, or something of that kind?

Mr. SALISBURY. Of course, there is that difficulty. Substantially what we are suggesting is that the Government carry on from where it has stopped right now. It has done an admirable job of analyzing and digesting the existing barrier laws, but new laws are being proposed all the time, and with publicity and a little fight when the important laws are known, those laws might be headed off before they become laws.

The VICE CHAIRMAN. You know Congress is constantly introducing laws that affect economic interests of groups, and so forth. Would you see any reason why the same study to advise the people ought not to be made?

Mr. SALISBURY. I think that a much better recording service is done nationally by magazines and newspapers on proposed Federal legislation than is done about the legislation proposed in the 48 States.

The VICE CHAIRMAN. Do you think that information gets down to the housewife that you want to educate about these 10,000 bills we introduce every year here?

Mr. SALISBURY. Naturally, only the outstanding ones.

The VICE CHAIRMAN. Don't you think you should broaden your suggestion and have some Federal agency, some Government agency, study these proposed Federal laws that are in danger of passing, before they get passed?

Mr. SALISBURY. I would be delighted to see such a thing; yes.

The VICE CHAIRMAN. Have you heard any of your people complaining about the expenses of government?

Mr. SALISBURY. I don't know any who haven't.

The VICE CHAIRMAN. I think, if I may be permitted to say for the education of the country, that this is a very clear example of what is happening. I don't mean this personally at all, because we are all doing it. You have a situation here where the States at least have governmental power to do this job, and it is difficult, and you are all aware of it. Your group wants this Federal activity, and another group wants another Federal activity, and the total of the things they want is to continue everything we have and increase it. There is just one thing that we are in agreement about, and that is that taxes are too high.

I am trying to do just a little bit of education myself right now, just taking advantage of this opportunity.

Now, then, you may go ahead.

Mr. SALISBURY. You can probably educate me on the third suggestion I make because there is a legal point involved, I realize, but we think that the services of the Federal Trade Commission might properly be used to soften or limit some of the harmful effects of existing barrier laws. The Commission is policing industry constantly through its enforcement of such laws as the Robinson-Patman Act and the Wheeler-Lea Act, and business organizations are estopped

from indulging in unfair and deceptive trade practices, such as mislabeling of their product and the making of false advertising claims; but we wonder why similar action isn't taken against States that indulge in deceptive trade practices.

I know one of the previous witnesses has spoken of the so-called fresh-egg laws. Georgia is just one of several States which has a law which says that the only legally fresh eggs are laid by hens in that State. Eggs laid by hens in other States, even if they are rushed by railroad or air express so they arrive in Georgia, let's say, on the day that the hens laid them, cannot legally be sold as fresh eggs, and at least by implication the State of Georgia seems to be saying, "Only Georgia eggs are fresh eggs."

Now, isn't that a false advertising claim? Wouldn't the Federal Trade Commission proceed against a business organization that indulged in such unfair competition?

The VICE CHAIRMAN. It may be, academically. But you see, we are going pretty far if we engage in settling disputes between the hens in different States.

Mr. SALISBURY. I only used that as an example, because I knew it had come up before. There are plenty of other laws that operate in such a manner that they deprive legitimate business of a chance to operate.

The VICE CHAIRMAN. We have some testimony here that gives us at least some hope, substantial hope, too, that the States are beginning to appreciate the general economic burden resulting from the practices which you gentlemen enumerate, and are working at the job, are really working at the job. Now, the point with myself as one member of the committee, and I think it is a point with all of us who are beginning to be conscious of the fact that we have more governmental responsibility and power here at Washington than we can take care of—the remarkable thing to me personally is that so many people, people of great wealth and power and responsibility, are trying to bring some more power here. All we can do with it after it comes up here is turn it over to a bureau, because it is beyond human capacity to deal with it otherwise. That is the remarkable thing to me in this particular period. We just see something right immediately in front of us, but all roads lead somewhere if you keep on traveling on them.

Mr. SALISBURY. Yes, sir; it is my impression that a great many of the States are very sincerely trying to cut down these barrier laws, to repeal old ones and to refrain from passing new ones, but that may be only a lull in the firing. Many of us feel, for example, if we should get into another depression, that there would be another big hatching of these barrier eggs, because they seem to be a depression phenomenon largely.

The VICE CHAIRMAN. Yes; I know; that is true; but the remarkable thing to me is, and I think this is the important thing about this hearing—the important opportunity about this hearing: We have now got nearly a million people on the pay roll of the Federal Government operating the executive branch of the Government alone. Their salaries are costing you people nearly $2,000,000,000 per annum, and you come in and want some more of them. You have already got your State governments functioning. Bringing these

powers up here does not reduce the State official personnel or the burdens of State government; it increases them. They have got to have some people to come up and try to get some of the money back we take from them by taxation. And all of you important—not all of you, but a great part of the important business interests of this country, while agreeing generally that something has to be done about it, always attach to that agreement a "but," and that "but" always means more people up here and some more power in Washington.

Mr. SALISBURY. Most of the suggestions I made do not call for more power——

The VICE CHAIRMAN (interposing). You understand what I am saying is not personal; I am speaking about a general trend, and I think it might be well for you businessmen to start thinking about it. This is a suggestion I make in great earnestness to the business interests of America. You can't continue to bring these powers up here to Washington and preserve the responsibility and governmental capacity of the States.

Mr. SALISBURY. Well, we are asking this particular body for fact finding and reporting which we do not think would be very expensive. We believe that the reason the States are taking a more far-sighted, broad-minded attitude than was true a couple of years ago is because there has been considerable publicity and some of them have been educated, let's say, some have been more or less scared by the adverse publicity that has resulted from the raising of trade barriers as an issue.

The VICE CHAIRMAN. When a good doctor finds that his medicine is having effect, when the family find that the doctor's medicine is having pretty good effect, why should they want to change the medicine?

Mr. SALISBURY. We want to continue the same medicine. For example, in the case of the work that has been done in making a digest of the existing laws, we want to continue that same medicine through digesting the proposed laws and letting the world at large know what is likely to happen in this State and that State unless they make a protest and give good reasons to those State legislators why it is not a good thing.

The VICE CHAIRMAN. As a matter of fact, doesn't this cooperative effort among the States grow out of specific items of legislation, specific policies, as distinguished from any academic consideration or philosophical examination of questions?

Mr. SALISBURY. I don't know whether I quite understand you. Is it being done?

The VICE CHAIRMAN. I mean, don't these changes and these improvements that you find in the policies of the States, some of which have been enumerated here, grow out of specific situations that are not difficult to discover, rather than from any academic or philosophical examination of the question as to what States ought to do and States ought not to do?

Mr. SALISBURY. Well, I think there is not automatically any information which reaches people vitally affected by legislation which is being proposed in connection with the bill I referred to in New York State. I was very much astounded to find only 2 days ago—and this bill has been up for several weeks now, and vitally affects

a large association in the field which is hit by this legislation—that the head of that association and the directors knew nothing of it. As soon as they found out about it——

The VICE CHAIRMAN (interposing). Why didn't they know something about it?

Mr. SALISBURY. They didn't because I don't suppose they have facilities to have their own representative at all State capitols. No business organization can do that. That is why we are suggesting that a central authority help us in supplying that information.

The VICE CHAIRMAN. You know, there is sometimes some conflict between an executive agency and the legislative branch as to what would probably be the effect of proposed legislation.

Mr. SALISBURY. Well, that is true; but to the same extent that the Marketing Laws Survey listed various existing laws which they brand as barriers to trade, I think they could do an equally good job predicting a proposed law that would be a barrier. It is true many of the various States would not agree with the Marketing Laws Survey that this law and that law was a barrier. The Government has gone that far in the case of old laws. I think it could do it in the case of new laws.

The VICE CHAIRMAN. All right; if you all want to pay for it, we we will let you have it, but don't holler about your taxes.

Mr. DONOHO. I have no further questions.

(The witness, Mr. Salisbury, was excused.)

Mr. DONOHO. Dr. Elliott, will you come forward, please?

The VICE CHAIRMAN. Do you solemnly swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Dr. ELLIOTT. I do.

TESTIMONY OF DR. W. Y. ELLIOTT, SCHOOL OF GOVERNMENT, HARVARD UNIVERSITY, CAMBRIDGE, MASS.

Mr. DONOHO. Will you state your name and address, please?

Dr. ELLIOTT. William Y. Elliott, 660 Concord Avenue, Belmont, Mass.

Mr. DONOHO. I believe you are associated with Harvard University. What is your position there?

Dr. ELLIOTT. Professor of Government.

Mr. DONOHO. Dr. Elliott, what has been your previous experience in the field of trade barriers?

Dr. ELLIOTT. I have been a student of the problem; have given courses on Government regulation of industry which led me into some study of it. I have been a member of the Committee of the Business Advisory Council of the Department of Commerce on this problem for some time, although I should like to emphasize that I am in no sense speaking for the Business Advisory Council which reports only to the Secretary of Commerce, and through him to the President, so I am speaking only in a purely individual capacity.

Mr. DONOHO. I understand, Dr. Elliott, you have prepared a statement on the trade-barrier situation. What phases of the subject do you wish to discuss at this time?

LEGAL APPRAISAL, ANALYSES, AND SUMMARY [1]

Dr. ELLIOTT. I should like to discuss the constitutional and legal aspects of trade barriers and some possible remedies that that study indicates. I am a little bit troubled by the oath I have just taken which is to speak the truth and the whole truth and nothing but the truth about constitutional law, which may be, if not in the realm of prophecy, in the realm of surmise, so I beg leave to enter that exception at the outset with the committee, that it is a matter of opinion, and opinions well may differ.

I should, of course, in this discussion confine myself to trade barriers between the States as they have been defined in the course of the hearings. It is useless, I think, at this stage of the hearings to iterate more than a general departure from that in noting that there are many barriers to trade which are not, strictly speaking, trade barriers, and of equal importance. Obviously in this discussion inspection and licensing laws, liquor control and its limits, control of itinerant merchants, grading, labeling and standards, motor-carrier regulation, are the most important matters that have come before the committee, and with these I propose to deal.

I should like at the outset to note in relation to some of the notions that have arisen in previous testimony that in summarizing the general constitutional aspects of this problem, we may be confronted with a new emphasis at least on the part of the Supreme Court.

The Court's traditional role as umpire of the Federal system has throughout history been one of its main functions. It now seems to me at least as a student (and in this I have taken some counsel from my colleagues at Harvard and I brought down with me Mr. Hubert Nexon, of the Harvard Law Review, because he helped prepare the cases and in all has spent considerable time on it), to depart from that role. I am very much impressed with the fact that in the absence of congressional action today, the whole field of interstate trade barriers, properly speaking, has been opened up in quite new ways. It is true that, in the absence of congressional action, for a long time the Court has permitted incidental regulation of interstate commerce where there is no direct heavy burden on interstate commerce. That has been alluded to in the testimony of Mr. Martin with reference to the Marketing Laws Survey.

I would, however, like to call to your attention some of the recent cases that would seem to me to indicate a very large shift in emphasis if not in general tendency of the law. As you gentlemen all know, after all, the Supreme Court has lines of precedents which it can follow out and which give it a suitable leeway. If it begins to follow one line of precedents it changes the emphasis of the law.

A great deal has been said about the dissenting opinion of Justices Black, Frankfurter, and Douglas in the *McCarroll* (*Commissioner of Revenues, Arkansas*) v. *Dixie Greyhound Lines*, in the previous testimony. That is a dissenting opinion, but it makes explicit, I think, what is implicit in a great many other Court decisions. I beg leave, therefore, to quote some of the language with which you are probably familiar, simply because it does put the problem in a dramatic light.

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[1] A summary of Dr. Elliott's testimony is included in the appendix on p. 16177.

Judicial control of national commerce, unlike legislative regulation, must from inherent limitations of the judicial process, treat the subject by the hit or miss method of deciding local controversies upon evidence and information limited by the narrow rules of litigation. Spasmodic and unrelated instances of litigation cannot afford an adequate basis for the creation of integrated national rules which alone can afford that full protection for interstate commerce intended by the Constitution. We would therefore leave the question raised by the Arkansas tax for consideration of Congress in a Nation-wide survey of the constantly increasing barriers to trade among the States. Unconfined by "the narrow scope of judicial proceedings" (Taney, C. J., dissenting, *Penn.* v. *Wheeling etc. Bridge Co.*, 12 How. 518, 592) Congress alone can in the exercise of its plenary constitutional control over interstate commerce not only consider whether such a tax as now under scrutiny is consistent with the best interests of our national economy, but can also, on the basis of a full exploration of the many aspects of a complicated problem devise a national policy fair alike to the States and the Union. Diverse and interacting State laws may well have created avoidable hardships * * * But the remedy, if any is called for, is within the ample reach of Congress.

Now taken in connection with the cases which I have noted in the testimony, I am afraid not corrected as to proofreading, and I apologize for that because it got into the hands of the stenographers rather late, I think that this statement of the dissenting opinion in the *McCarroll case* indicates a shift which was already to some degree anticipated by the Barnwell against South Carolina Commission of Highway case, a decision given by Justice Stone some years ago, allowing to the State a latitude in the control of its intrastate commerce problems that did impose admittedly a burden upon interstate commerce, and perhaps a burden that, taken over the country at large, was of a rather serious nature.

I am interested also in some tax cases which I would like to call to your attention simply because they indicate the shift in emphasis of the Court. The recent *McGoldrich* v. *Berwind-White Coal Co. case*, in which Chief Justice Hughes dissented from the majority opinion and was supported in his dissent by Justices Roberts and McReynolds, indicates in that field too a realm of use taxation which is compensatory to sales taxes within the States, and which more emphatically than any previous cases that I know, allows the imposition of a tax upon the passage of coal from an out-of-State State into another State in such a way that though the tax falls on the consumer it may be actually applied to the vendor in an indirect manner. If you compare this case with some other tax cases you can see, I think, that the majority of the Court today is prepared to support a much wider range of State taxation.

I am, for instance, extremely interested in the *Beauchamp case*, *Beauchamp* v. *Ford Motor Co. of Texas*, in which it is possible to get at the assets of a corporation that are located outside the State in proportion to the amount that the gross sales of that corporation inside the State bear to the total gross sales of the corporation. The use of this formula allowed taxation of the Ford Motor Co., amounting to a tax on assets of about $23,000,000, I understand, in Texas, whereas the use of the simple formula of immediate tax on assets would have amounted to assets of about $3,000,000. That is not a unique case by any means. It simply shows the development of an emphasis that permits the States a much wider range of activity in a direction that might, and I think probably would, have been limited by previous courts. In all these matters I would like to show that it is a matter of emphasis, but the emphasis is very important.

The burden of umpiring the Federal system is very heavy upon the Court. Manifestly it is growing a little bit weary of having to undertake individual decisions in every instance, and it looks as if it were putting up to Congress to have a generalized form of action undertaken after careful study. What line that will take will depend, I think, a great deal upon recommendations that may come out of this hearing and the other hearings that have been conducted by the T. N. E. C. For weeks of your time have already been occupied with this and I shall not try to go through the testimony other than to note that we have not dealt with the building trades in this hearing, though this does constitute one very important avenue both of direct burden on interstate commerce and of indirect burden through those local specifications and contractors' practices and sometimes trade-union practices. This seems to me to be an important matter for general consideration in our total economy, but it does not fall directly into our immediate interests. Nor, for that matter, has there been adequate presentation of the problems of chain store taxes, although they may have an incidental effect on national commerce as a whole rather than on interstate commerce as strictly defined by the Court.

I am entirely in sympathy with the presentation of the nature of this problem which states that the States have exercised legitimate powers in many cases. A barrier on interstate commerce may arise from a thoroughly legitimate exercise of the State's powers of taxation, certainly as defined by the present court. It may arise from thoroughly legitimate and constitutional regulation through the police power for health, sanitation, foreign corporations. It is entirely possible that these things have very deep roots in the very nature of our Federal system, and I am sure that they have. No superficial effort to remedy them that rules out State action as the first line of defense would have any meaning whatever.

It is clear that in the field of quarantine, for instance, Federal regulations might possibly be drawn in such a way as to make more uniform the problem of plant and animal quarantine, but as the States would find new methods of evasion it is strongly suggested to me at least that cooperative or joint Federal and State action already practised in some of these areas may be very necessary in this sort of thing. I am impressed by Congressman Sumners' remarks on the recent testimony just preceding my own here: about trying to ascape imposing still larger burdens on the Federal Government where these may be undertaken by the States. It seems to me that in many ways joint State and Federal action, using the States themselves to do inspections but setting Federal standards and some conformity that would be acceptable to the States, is indicated.

The same reasoning, I think, applies to the application of taxes, licenses, and other discriminatory proceedings in dairy products and similar matters.

Perhaps where States persistently refuse to permit equal entry for products of this character, Federal action is necessary in setting negative standards; standards that can be understood and applied but that will not impose very heavy bureaucratic burdens in addition to the already large tax burdens that the Federal Government must impose. Congress may have to forbid, in short, where it does not prescribe,

and the doctrines of the court that I have set forth in this brief seem to indicate that in that sphere, Federal action will be necessary to overcome lack of uniformity so far as the court is concerned.

It may well be that those States who refuse to allow purchases of materials from outside the States by public purchasing agencies can be dissuaded sometimes by Federal action, perhaps merely publicity, sometimes it is conceivable, by the use of the grant-in-aid device in a regularized way. Joint State-Federal action, Federal action, negative and affirmative, and grants-in-aid, all three methods, it seems to me, are involved in an approach to this problem.

Now, in dealing with the technique to be worked out, I was very much impressed by Mr. Bane's evidence. You all know what valuable work his Council of State Governments has been doing as a first line of defense. That is the main defense always in meeting pressures that are generated by retaliation of one State against the other, and certainly the reciprocal application of State standards in an effort to work out solutions through State action is the major attack on this problem, and I don't wish to underestimate that in what I am about to say about Federal action.

In advocating a solution for that problem that would give a generalized remedy for it, it seems to me that Mr. Bane has made one of the most constructive suggestions that I have run into. It was one that I intended to propose in somewhat different form but I rather liked his better because it was simpler. He suggested, if you remember, the creation of a Federal-State joint committee, modeled, he thought, a little bit along the lines of the T. N. E. C. so far as its Federal membership was concerned; modeled, he proposed, somewhat on the operation of the existing machinery of the Council of State Governments so far as the State membership was concerned.

This body would afford, I think, an opportunity for studying the limits of wise Federal action, the limits of grants-in-aid. He proposed to push its studies, and I think quite properly, beyond the immediate purview of this problem of interstate trade barriers, because he felt, and I feel, that the tax system of the country is so integrated, the need for revenues by the States, the application of Federal grants, that unless a committee of that sort studied the whole Federal-State problem as well as the immediate problem of interstate trade barriers it wouldn't go to the roots of it.

If such a permanent committee existed for study of that kind, it seems to me that it would have several very useful functions bearing directly on this inquiry, aside from its larger uses in occupying the twilight zone that has not been covered in intergovernmental relations.

The first one would be that it would, I think, permit a continuous reporting and an effort at research that would effectively give the right kind of answer to this problem of publicity, the problem of educating the public, with the joint efforts of the State governments involved in that process (that is very essential, it seems to me) through an agency that is well qualified to undertake it and whose work has already been so valuable. In the second place, it might very well consider complaints. It seems to me that that is a very valuable part of its duties. We get interested parties such as those that have been appearing at your hearing on both sides, entirely properly; but in order to estimate those claims of parties at interest a committee that represented the States who know the thing firsthand as a direct adminis-

trative body would be very useful indeed. I should think, too, that it might readily recommend action to the States as well as to the Federal Government in an area where joint action is possible or in some instances where Federal action alone is possible.

If such a body were set up, I anticipate that it would study very much more thoroughly than I am proposing in the outline that I have here, some of the remedies that appear to be necessary from the cases and from the testimony in this hearing. I feel that at the present time there are loopholes in the existing set-up left by the court's decisions, its recent tendencies, which may develop into rather serious barriers under pressures from State governments, and that Federal action in this area may be necessary simply because it is exactly like an international problem in the working out of an international convention. When a few States adopt bad practices this tends to degenerate the whole interstate problem and to invite the retaliatory process. While I want to urge always that the efforts of the State governments are primary in education, prevention, standardization, still the use of inspection laws that may afford a useful vehicle for adoption by the States, the use of grading, labeling standards, is a very important approach to it from the Federal angle and seems to me to be called for. Now, the loopholes do exist.

Mr. DONOHO. Will you continue?

Dr. ELLIOTT. I don't want to drag the committee through this long brief.

The VICE CHAIRMAN. You are making a most interesting statement. This is Saturday morning and we are going to stay with you until you get through. We pay you a great compliment in that.

Dr. ELLIOTT. I don't wish to impose upon the patience of this committee that has sat so long and so faithfully and has listened to so much testimony that I hesitate to impose any long analysis.

The VICE CHAIRMAN. I know my colleagues will agree that we want to hear you.

Dr. ELLIOTT. Very well, sir, I will be happy to do so, but if at any time you indicate to me——

The VICE CHAIRMAN. You wait until I indicate.

Dr. ELLIOTT. If you will bear with me from the point of view of just a general study of this problem of legal barriers, I won't attempt to cite the cases that I have put in the footnotes, since this is not an academic procedure.

Representative REECE. However, the statement is going in the record, is it not?

Dr. ELLIOTT. I should like, if I might, to correct it before it goes in.

Mr. DONOHO. It will be offered for the record.

Dr. ELLIOTT. The foundation on which relief from barriers to interstate trade rests in constitutional principle is that no State may lay a burden on interstate commerce, quite clearly. But in the normal exercise of its police or tax powers the State may indirectly affect interstate commerce. The question that we are concerned with is the extent to which the present state of the law permits State regulation or taxation to produce disrupting effects on interstate commerce. In the examination of the problem, I think we will have to remember that in many cases when State action demonstrably offends the commerce clause of the Constitution, the ordinary scope of case-by-case

privately financed litigation is too slow, too expensive a process to give relief particularly to the small man.

I was very much interested, if I may say so, in the testimony of Mr. Connor yesterday, which I hope members of the committee may have time to read very carefully, because he was, as I understood it, an independent trucker. It never occurred to Mr. Connor, apparently, that he had any legal possibilities of relief. Am I correct in that? He approaches the problem simply from the point of view of a truck owner and operator who went on a route through a given number of States; he put up with great patience and good nature with the things that he found there, recognizing that they were beyond his control, and if he had to reload three times at a State border he did it, though he tried once to get by with it and got caught and had to pay a fine, and so on. The important thing about it is that for that type of operator and for the itinerant merchant and for a large number of small people, litigation in the ordinary course is far too expensive a remedy, too difficult, and I am making a proposal in the conclusions of my remarks that I hope may have some bearing, based upon the assumption that perhaps where there is a Federal interest the Department of Justice may be asked to intervene in the same way that the act of—what was it, Mr. Sumners, August 24, 1937, I believe, allowed the Attorney General to intervene in constitutional issues.

I was very much impressed by the simple way in which Mr. Connor approached the problem and the burdens that he found as an independent trucker in meeting the kind not only of legal and statutory problems that he was confronted with, but the administrative application of them where there was a disagreement between agents and policemen in the same State as to where the "pass number" should be painted on his truck, and so on.

It seems to me, for that, litigation is probably not the appropriate remedy and that probably for that reason positive Federal standards might well spare a very large burden of litigation and change the presumption of proof which under the existing court decisions rests upon the litigant who is complaining about these matters. It might even prevent the necessity of litigation when it was clearly established.

The parent cases for the taxation of motor vehicles traveling interstate are *Kans.* v. *N. J.* (242 U. S. 160 (1916)), and *Hendrick* v. *Maryland* (236 U. S. 610 (1915)). Both these cases approved small, nondiscriminatory license and registration fees, graduated according to horsepower; the taxing statute devoted the revenues thus raised to the administration and maintenance of the State highway system. Now, there was no attempt to test the fee involved by the level of road expenditures or by the extent to which the opponent of the tax used the highways, both cases resting to a considerable extent on the ground that the charge made was reasonable for the use of the highways. I would like to call attention to the fact that in many instances in the absence of congressional action, the court has taken the same attitude as if this were a due process case and it was prepared to say that where there was any ground for asserting the reasonableness of the statute the State could act. That is a very understandable attitude on the part of the courts. The States are faced with grave administra-

tive burdens of collecting taxes, they must raise revenues from rather limited sources, and it is therefore entirely understandable that the courts should uphold such taxes.

But when these taxes develop, as they have in the series of cases that I laid out here, into such an area that they begin to show quite clear burdens on the little man and on, for that matter, the big trucking companies too, though they are better able to meet them, they are administratively organized to meet them and know how to deal with their administration, then the thing does assume an importance in the national interest, it seems to me, that demands some study.

I won't try, in spite of your good nature, sir, to go over these cases unless you think it is necessary.

The VICE CHAIRMAN. I think merely the citation of the case with a brief summary of what has been decided would be about all we need in view of the fact that you are going to put your entire statement in the record.

Dr. ELLIOTT. In that case, I just note that in the case of the Dixie Ohio Express Co., for instance, (p. 10 of the brief[1]) versus State Revenue Commission of Georgia, a trucking company sought to contest a tax of fifty to seventy-five dollars depending on the weight of its trucks, over and above fairly heavy license fees and gas taxes, but the court in supporting the tax talked to a certain extent about the tax cost per mile, which seemed fairly low, and then went on to discuss the worth of the privilege of using the roads, in other words, bringing in the additional factor of privilege. The development of this doctrine reflected itself in *Aero Mayflower Transit Co.* v. *Georgia Public Service Commission*, and begins to indicate that it is not just a question of cost accounting, the exact amount that a person may get out of the use of the roads, but that the privilege too will be brought in.

I could, of course, and if you care to, would go into the refinements of that doctrine that I have tried to trace out here, but it seems to me unnecessary.

Let me just deal with mileage taxes. In view of the fact that the approval of flat fees imposed on interstate commerce as compensation for the use of the highways within the State has already been approved, it is natural to expect that mileage fees are general, and they are. Perhaps the most important case in this connection is *Interstate Busses Corporation* v. *Blodgett* (276 U. S. 245 (1928). That case approved a tax of 1 cent a mile on all interstate carriers traveling on the State highways, the receipts to go into the highway fund. The tax was valid even though a different method had been adopted for the taxation of intrastate carriers, since it was reasonable on its face and the taxpayer couldn't prove that the method adopted produced an unjust discrimination. The interesting thing to me about the *Blodgett case* is that the lower Federal courts have consistently followed the ruling in that case, even where the taxes collected were not used directly for the highway fund. I think that is a development that will interest lawyers particularly in this problem. I cite some cases in the lower Federal courts at the bottom of page 12.

Gasoline taxes, too, of course, are a very heavy item in our State economy and fiscal revenues The place of them in this study is, however, of rather small importance, principally because the extent to

[1] *Infra*, p. 16181.

which it is likely to be a burden on interstate commerce is small. There was this recent case of *McCarroll* v. *Dixie Greyhound*, in which the majority opinion held that a tax on gasoline in the tank of the carrier which was not taxed in relation to the mileage within the State of Arkansas, which was in question, was unconstitutional and could not be imposed on the Dixie Greyhound Lines, but in the main such a tax would be upheld perfectly simply if it could be shown to bear a direct relationship to the use within the State.

Methods of evasion have been attempted. Some of the cases, I think, are unimportant and I won't burden you with them.

The chief danger of the erection of trade barriers in the field of what we may call "nontax" regulation of motor carriers seems to me to arise from two types of State regulation of highway use, the requirement of a permit to operate from various kinds of State administrative boards, and weight and length restrictions, and these have been elaborately presented to you in evidence on both sides of the case, and about that I have nothing to say. But I do think it worth while noting the conflicting report of facts the administrative boards involved in this requirement of permit may be often more important than the actual law itself, that the time and delay involved in getting permission sometimes is the most important factor in the nuisance that the law imposes, and certainly that *the least we can ask in this is for a standardization of procedure that will allow a very clear immediate action on the part of the issuing of permits by the State governments.*

Weight and length limitations, as I think I can show, are a more difficult problem and one that may require grants-in-aid assistance through the Federal-roads program if any real attack is to be made.

Perhaps the most vexing problem with which the interstate carriers have had to deal is the variation in weight and size provisions of various State laws. Congressional legislation seems clearly necessary for the elimination of the difficulty, for it is a fact that the best efforts of the carriers themselves have been to some degree offset by other interests which I needn't name on the other side, sometimes intrastate carriers, sometimes, I dare say, the railroads who are interested in this problem quite legitimately. The railroads feel that a type of competition has come into existence with the railroads, particularly for long haul, that is very difficult for them to meet, and that is a matter of social policy which must be decided by the Congress if it acts in terms of its total economic policy and its terms of control of the transportation problem. About that I don't want to express an opinion. I am simply in this matter suggesting that if there is to be any uniformity in this area, on the evidence of the past development of the problem, it seems very necessary to get Federal action.

If you look at the cases, the case that mainly settles the law is *South Carolina Highway Department* v. *Barnwell Brothers.* There the lower court decision from which appeal was taken was based on comprehensive findings of fact based on expert testimony. The findings showed that it was probably unnecessary to have the stringent regulations enacted by the State either to maintain the highways in good condition or to keep operating conditions safe—it was a very elaborately briefed case but I think this a fair summary. It was further shown that the restrictions imposed were more exacting than those of the other States along the main arteries of interstate traffic, and that the existence of the restrictions was a material burden on interstate

commerce. In the face of those facts, the Supreme Court followed its previous decisions and held that the regulations were valid. The test of reasonableness was applied, just as though it were a due-process case, and by the standard of reasonableness in this the Court in its newly humble frame of mind about due process, which I think is easily remarked, upheld the regulations. They were found not so clearly bad as to permit the Court to strike down the State legislation. We had some testimony on that in yesterday's hearing which may be of interest. I believe later on this situation was remedied by actually a change in the South Carolina law, which now permits heavy trucks, though I am not sure that the tax situation has been altered.

The second vexing problem that faces the carriers is the necessity of acquiring operating permits which are not issued as of course by State authorities, but there is an element of discretion involved. It is generally true that carriers for hire must apply to an administrative board for their licenses, though sometimes they apply in the easiest conditions to town clerks, almost any official; that simplifies the matter and remedies it somewhat more easily. These boards issue licenses which are in the nature of certificates of necessity and convenience. In the case of intrastate carriers, it is quite clear that the controlling consideration is the competitive situation, but it was early settled that competitive considerations could openly not be made the foundation of state issuance or denial of permission to operate over interstate highways (*Bush & Sons Co.* v. *Maloy*, 267 U. S. 317 (1925); *Buck* v. *Kuykendall*, 267 U. S. 307 (1925)). It was in large part the inability of the States to regulate competition between interstate motor carriers which led to the passage of the Motor Carrier Act. Now I have heard a great deal of criticism of that act. I am rather struck by the fact that in some of the previous testimony no recommendation for Federal action was made by some of the parties at interest who have been most affected. I think perhaps I might note that Mr. Smith made no such recommendation for the motor busses.

(The chairman, Senator O'Mahoney, assumed the Chair.)

The CHAIRMAN. You mean none of the recommendations here?

Dr. ELLIOTT. Yes; none made recommendation for Federal action, which was rather interesting to me.

Mr. DONOHO. I believe Mr. Lawrence made such recommendations.

Dr. ELLIOTT. He did, but I call attention that he entered this in his *oral* testimony as a suggestion that came from the trucking association which he represents in their recommendations on a Senate bill that is now in the joint conference committee, to this effect:

> *Provided*, That upon complaint by any state or federal agency alleging that any state imposes unreasonable regulations on sizes and weights of motor vehicles, and that such regulations have the effect of creating trade barriers, and obstruct the free flow of interstate commerce, the Commission may, after notice to the State or States involved and after full hearing, prescribe reasonable regulations consistent with the public safety, the preservation of the highways and the free flow of interstate commerce: *And provided further*, That the Commission shall not prescribe regulations applicable to particular highways or bridges if the State Highway Department certifies to the Commission that the proposed regulations would exceed the capacities of bridges or be inconsistent with reasonable preservation of particular highways.

Now, that is the only testimony that I heard or saw that definitely prescribed Federal action. That is rather striking.

Aside from that—I believe there was testimony this morning—among the motor carriers that was almost the only oral testimony.

The CHAIRMAN. Is it your feeling that the conditions of the problem are such that you would normally expect those who are interested in trucking to make some such recommendation?

Dr. ELLIOTT. It is, sir, and I am at a loss to understand the lack of it. Perhaps he does represent the major trucking interests, I believe, involved, and in that respect spoke for a large number. I suppose Mr. Conner made no recommendations but he would undoubtedly be glad to see something done about it.

The CHAIRMAN. Do you make a recommendation?

Dr. ELLIOTT. I do, sir, and I would be prepared to base it primarily upon the grant-in-aid system of those roads which are federally supported, but I think that Federal standards connected with the grant-in-aid device may be essential to get at this problem.

The CHAIRMAN. Would it be appropriate for me to ask you here from what point of view you make the recommendations—from the point of view of the public, from the point of view of the States, from the point of view of the Federal Government, or from the point of view of those who use the roads?

Dr. ELLIOTT. It is a very difficult thing, of course, to reconcile so many interests, but so far as my study of the problem goes I can see nothing inconsistent with any of those interests involved in a grant-in-aid system which, limited to the Federal roads, the main highways, would permit the issuance of certificates for passage which would be accepted by the States—I speak of that as a certificate of inspection that is perfectly adequate—and further, minimum standards for weight and load regulations, carefully determined after expert inquiry and full consideration of the problem, for certain roads in each State, not in an attempt to govern the whole road system of each State. The testimony submitted by many States here—testimony was submitted only by Kentucky but it is shared by other States—shows that they are not prepared to build up a road system which in its entirety would possibly support the type of motor traffic that would be necessary.

The CHAIRMAN. In other words, certain types of motors would be permitted to travel only upon particular roads or kinds of roads.

Dr. ELLIOTT. Quite so. It seems to me that that is essential and that the device of Federal grant-in-aid may be coupled with mileage taxes, flat mileage taxes in the States. It is conceivable that if the grant-in-aid proved inadequate for this matter or difficult of administration, that a raising of the Federal excise on gasoline taxes and a turning over to the States of a percentage of it would be a method of handling the problem. One of the great difficulties that came up, I think, in the ports-of-entry testimony is that the States do want a method of getting taxes that cannot be evaded. The device is extremely expensive. If I correctly understood the testimony that was given by the Kansas Commissioner, he spoke of getting back 50 cents on the dollar for every dollar expended; the figures were not quite so heavy as that as I had them, that is they got more back than that but he no doubt knew what he was speaking of. He said, however, that the evasion of the State gasoline taxes and possibly of the severance taxes, though I wasn't quite clear about that, taken together was so

important that if a 1 percent evasion could be prevented he said, insofar as I understood him, that it would be $500,000. Am I correct?

Mr. PIKE. I think that is correct.

Dr. ELLIOTT. I rather thought it would be $100,000, but at any rate it was a very large figure, and as you can see, a saving of this amount to the States would go a long way toward justifying even the expensive and arbitrary—I won't say arbitrary, but administratively complicated device of the ports-of-entry which have been so much complained about.

In order to avoid that kind of picture, he himself suggested that Federal ports of entry might well be necessarily since the duplication of ports of entry by different States is a tremendously complicated problem, and joint administration proved very difficult in enforcement. Some talk of regional arrangements of this sort, by joint State action, was made, but it seems to me that a great part of the burden of the port-of-entry device would be avoided if there were redistribution of tax revenue and a simplification of it, allowing the Federal Government to collect certain amounts of the taxes and give them back to the States. One of the great difficulties in our Federal-State system, as you perfectly well know, is the concurrent jurisdiction which permits reduplication of bureaucracies and reduplication of efforts. Now, it seems to me that here is a point for exploration by the committee, by a committe of the type that Mr. Bane suggested, for joint State-Federal action where perhaps the centralization of functions in the Federal Government would really save a tremendous amount of money and would prevent the necessity for duplication in areas like this State problem. I have dealt with that in the brief in specific form, but I won't attempt to go into it further here.

The CHAIRMAN. Do I understand you to say that you have dealt with this recommendation Mr. Bane made with respect to joint Federal and State action?

Dr. ELLIOTT. Yes, sir.

The CHAIRMAN. Did you make any suggestions as to how that could be brought about?

Dr. ELLIOTT. Yes, sir; I made several suggestions along that line.

The CHAIRMAN. What sort of device would you use to make it effective?

Dr. ELLIOTT. Well, now, if you take the device that is used in inspection laws and in quarantine, and in some instances in licensing, you will find, I think, a device that is suitable for one approach to this problem, that is to say, setting Federal standards and allowing the States to carry out the Federal standards subject to Federal inspection. That cuts down the amount of duplication that is necessary in that area. In some instances Federal standards, like cotton, wheat, are enforced, as you know.

The CHAIRMAN. Of course, there is naturally involved here a question of the delegation of legislative power. Have you studied that phase of the problem?

Dr. ELLIOTT. Yes; I know the difficulties connected with the delegation of legislative power, though I think in this instance it is allowing the States to accept Federal standards and making it worth their while to accept Federal standards in lieu of supplanting the State action.

The CHAIRMAN. Would the Federal standards in your plan be laid down by Congress or would they be laid down by this joint board?

Dr. ELLIOTT. I should like to have this approach made to the problem, a statute by Congress, after careful study by the Joint committee (Federal-State), that did not raise too high barriers, barriers of too high standards, a rather low standard, for instance in milk inspection, and in similar fields, perhaps in plant inspection and in nursery stock and so on—nursery stock is one of the very difficult problems in this area—that would be accepted by the States generally in return for a grant-in-aid that would permit inspecting to be done in the States subject to Federal check. I think that is the most feasible device for accomplishing this. In other words, the States would be confronted with a Federal statute whose operation would go into effect if they did not do it, perhaps would delay the operation of the Federal statute, and provide the alternative that if States did accept the Federal standards with a grant-in-aid, then they could apply them themselves subject to Federal check.

The CHAIRMAN. But would the standard be set forth in the law?

Dr. ELLIOTT. Yes, sir; definitely.

The CHAIRMAN. They wouldn't be fixed by the administrative agency or board.

Dr. ELLIOTT. No; the standards would have, I think, to be set forth in the law in most instances. Some people have proposed——

The CHAIRMAN (interposing). That, of course, would overgo any question of delegation of power.

Dr. ELLIOTT. It certainly overrides, it puts the full power of the Federal Government in its control over interstate commerce in the field, and I should judge that it would overcome the question of delegation particularly with the present court. I feel it necessary to add that. I am not sure what limits there are today to the delegation of Federal powers. The cases don't indicate it clearly, to my mind.

To depart from the brief entirely, but to answer what may be reasonably the most important questions that may be in your minds, the first is a proposal that the Secretary of Agriculture in certain instances should be given a negative veto on State quarantine legislation by congressional action. There are several things to be argued pro and con on that, but I don't particularly like that solution. I think it is apt to be politically unpleasant, and I think it is not the type of action that probably is best suited to this problem. If the States are given the right to set up standards of inspection of their own that do not bear on out-of-State people more heavily than their own, and if they are given the choice in inspection between a Federal standard and State standard of their own, where the burden bears just as heavily *at the same process or stage* of production on their own people as on outsiders, you overcome to a considerable degree some of the difficulties in this inspection problem. I have tried to indicate that in the course of the brief with the citation of cases, and I think I will just leave it there, with your permission.

The same arguments, roughly speaking, apply to the problems of Federal standards of labeling and grading. Labeling and grading can, I think, be regulated by the Federal Government in many areas

in which this is not now done. The Federal Government is best equipped to do it. It would be unwise if it pushes it beyond.

The CHAIRMAN. Mr. Donoho, is it desired to have this brief appear in the record?

Mr. DONOHO. Congressman Reece requested that it be put in the record.

The CHAIRMAN. And it has been so ordered?

Mr. DONOHO. It hasn't so far. I intend to offer it at the end of his testimony.

Dr. ELLIOTT. The labeling aspect presents certain difficulties in many States where they have used labeling and grading, in the absence of congressional action, where they might prejudice out-of-State products by devices of labeling and grading that, generally speaking, would invite the consumer within the State to purchase local products. It is much like buy-British or buy-American or that sort of thing. I don't know what limits can be put on that. I believe it was your conclusion[1] in the study you made that that is not clearly covered by court cases, and that probably the States can continue there. Here we will have to depend, as we do in so many other things, on State actions.

The CHAIRMAN. In order that the record may be clear, will you not give the name of your associate?

Dr. ELLIOTT. Mr. Nexon is the gentleman to whom I am referring. I introduced him at the outset of the testimony.

The same thing might be said of liquor legislation and of the itinerant merchant. The liquor legislation is, I think, closed to Federal action under the twenty-first amendment. The *State Board of Equalization* v. *Young's Market* (299 U. S. 59), and later, *Indianapolis Brewing Company* v. *Liquor Control Commission* (305 U. S. 391), effectively estopped any effort at preventing any discrimination that any State may work out in this field. Legally, constitutionally, a State like Kansas is, I may say, to some degree justified in its ports of entry, by being, as the Commissioner explained yesterday, defined as a "dry", as you explained, State.

This problem of the difference in liquor control does furnish one avenue that is completely within the power of the State to do whatever it likes, and there is nothing the Federal Government can do about it. It will have to depend upon the good sense of State legislatures, on the efforts of wine growers and liquor dealers and brewing people to prevent this retaliatory type of wall that has sprung up in that field, and I see nothing beyond an enlargement of the efforts of Mr. Bane's Council of State Governments.

May I then just dismiss that question unless there are further questions about it in the minds of the committee. I think that is foreclosed. Interstate trade barriers to the itinerant merchant are similarly a rather dismal picture from the point of view of any Federal remedies, the taxing power of the States in this area being so sweepingly upheld by court decisions that I don't believe that the Federal Government can offer very much help outside of his protection as a driver or as a vendor through motor vehicles. In that respect, his position can, generally speaking, be improved to the same degree that motor-vehicle traffic as a whole is improved, but so far as the cases

[1] Addressing Mr. Hubert Nexon of the Harvard Law Review.

go at the present time, unless there is a very large change of heart on the part of the court, I see it not very much helped. It is true in *Ward* v. *Maryland* (12 Wall. 418), the court struck down the State's attempt to tax merchants who were not permanent residents of Maryland at a higher rate than those merchants who were, and the court based its rule on article IV of the Constitution, paragraph 2, of course, and made no reference to the problem of interstate commerce in the main opinion. There was a concurring opinion that did put the decision on interstate commerce, but in *Walton* v. *Missouri* (91 U. S. 275), a later case, a State statute required a license and license fees only from those peddlers who sold out-of-State goods, and the statute was held invalid as a burden on interstate commerce.

I am in real doubt about the bearing of *La Tourette* v. *McMaster*, and I cite that (248 U. S. 465), where a State statute denied to nonresidents the right to get licenses as insurance agents. It is clear that no interstate commerce is involved in insurance business, of course, on the *Paul* v. *Virginia* basis and others, and this statute was upheld despite the interposition of the claim of privileges and immunities under article IV, paragraph 2.

I cite it merely because the court distinguished cases like the *Ward case* on the peculiar grounds that this statute made a distinction between citizens and residents, which I am completely at a loss to understand, but if that distinction is maintained, you see, it puts the itinerant trucker in a very curious position. If he isn't a resident, it doesn't make any difference about his being a citizen of another State. The term "resident" has been held to be the distinction, if that language should be at all conclusive on the court in other cases—but as I say, I am very puzzled about that, and the best advice I got at Harvard was also puzzled as to whether or not this turned on the insurance intrastate business, and would therefore be limited to the peculiar problem of collecting taxes, and so on, in connection with an intrastate business—it may be that the definition of "resident" and "citizen" wouldn't be more widely applied. I hope not.

I have spoken, therefore, about most of the things that seemed to me to be barriers erected by a State government. They are covered in detail with the cases cited in the brief.

I should like now, if it seems fitting to you, to turn to some proposed legislation just to summarize and to perhaps be questioned on parts of it. Some of this I don't feel at all confident about myself. I feel that much more mature study than the hasty study I have been able to make should be had, with a limited study of the cases, but lines of thought may be produced here that would at least enable the committee to weigh some of the proposals.

I would hope that the creation of this interstate or the State-Federal joint committee that Mr. Bane spoke of would help in the process, illuminating the problem. On page 30 of the brief I have partly covered the proposed legislation.

It is conceivable that an immediate Federal certificate of inspection that would serve as an interstate passport for inspected goods would be of great assistance in this field. The Federal Government might proceed immediately to eliminate interstate trade barriers in some fields by providing that the product inspected at the proper stage of production require no further inspection for transportation

across State lines and entrance into any State. That, I think, is constitutionally entirely within the powers of Congress, and it would certainly solve a great part of this problem providing it is politically feasible.

This type of legislation has been used under the guidance of the Bureau of Animal Industry for the interstate shipment of cattle, and where the industry is so set up that almost all the produce moves across State lines and the only sale is an interstate sale, certainly this kind of legislation would be satisfactory, or at least—I say certainly—it would seem to be satisfactory. It has probably worked pretty well in the case of shipments of cattle where the product moves from various States to a common center, for example Chicago, and where the only sale is an interstate sale from the commission merchant to the packer, who is the ultimate consumer as far as the movement of cattle as such is concerned.

Where there is a considerable traffic intrastate as well as interstate and where there is a considerable retail trade which develops only after the interstate purchaser has produced the goods, the use of general Federal standards is not by itself sufficient to meet the problem. In the case of milk, for example, a low Federal standard would be completely unsatisfactory, while if a high Federal standard were instituted, some States might discriminate against the interstate deal by lower, but still satisfactory, domestic inspection laws, or by lax administration, and the last is just as possible as the former, as some of the cases previously cited would indicate.

Furthermore, it seems to me desirable that the States be given some leeway in the choice of health standards which they choose to enforce if practical administrative mechanisms can be devised.

Finally, if a low Federal standard should be adopted, considerable disruption might be caused by a State requirement for a higher standard for retail sale, and I raise the question there which I don't know the answer to, as to whether the Federal Government could eliminate the State inspection before the second sale in the State, after the original package has been broken, when the requirements will apply alike to inter- and intrastate products. About that I know no conclusive evidence, and I simply raise the question.

Now, to remedy the basic difficulties suggested by the application of a uniform standard to products like milk, it would seem to be possible to construct a statute that would permit of differences in standards between the States and at the same time remove the difficulties of administrative discrimination created by inability or refusal of in-State inspectors to make inspection of milk and other products coming from out of State. The first step would be to enact a blanket law permitting all milk (or other products) meeting low standards set up by the Federal Government to enter every State. The operation of this statute I think ought to be postponed for a considerable period. Its primary purpose is to serve as a sanction to force effective State compliance with a workable Federal law.

Second, the statute should forbid any further inspection of milk so introduced to the State under Federal certificate unless and until there was an identical and contemporaneous (that means at the same stage of production) of domestic milk.

The CHAIRMAN. Do you think that such a provision would stand up?

Dr. ELLIOTT. I think so, sir. I think that is entirely within the constitutional powers of the Federal Government. You see, it is dealing with something that negatively has been, I suppose, taken care of in *Baldwin* v. *Seelig*, a New York case, and positively is clearly within the power of the Government, as far as I understand it——

The CHAIRMAN (interposing). Do you think it would be possible for the States to apply different standards for the distribution of the commodity after its introduction?

Dr. ELLIOTT. Yes, sir; I do think so.

(Continuing.) I think perhaps the Federal statute could remedy this though not adequately. All these things deserve much more careful study than I could possibly give them.

The VICE CHAIRMAN. Do you think the requirement of a State with regard to the last act in distribution could discriminate against the milk from without which was permitted to enter under State regulation or law?

Dr. ELLIOTT. Well, I am not sure. I don't know what Mr. Nexon would think about that. I would like his advice on it. That isn't quite the case that is raised in the *Baltimore case*, of course. Mr. Nexon's view is that they probably would not be permitted to discriminate if the court got the case raised squarely before it, but that it would be easier to make sure that they didn't discriminate by a double type of supervision of the type I am advocating here, in other words, a Federal act that would permit a standard to be set that the State might accept.

Let me just go on to the third part of this, which I think will help clear it up.

The statute should provide for criminal penalties in the third place for any State official who willfully discriminated between domestic and foreign products in conducting his inspection. Now that may be a little drastic. I doubt if it would be very much used, but its presence would be of considerable effect I think in discouraging the type of thing we have heard a great deal about in this area.

The issuance of Federal certification to the product coming from out of State might well be taken over by State authorities in the way I have already suggested, provided they met Federal standards of competence, checked by frequent Federal inspections. The cost of such a program for the Federal Government would be fairly low, since in most cases State agencies will probably be functioning already and since only small grants-in-aid will be necessary to force State-of-origin action.

The economic interest of the State of origin should suffice to induce active cooperation. The State of origin is clearly interested in getting this type of inspection. However, some grants-in-aid should probably be used since they would make more easy the use of careful Federal check of the work done at the State of origin, and that I think is essential under the existing set-up, such as we have in milk control.

The apparent flaw in the plan created by permissible State inspection after entrance—and this is a flaw which has been alluded to—does not seem to me to be very important, although it might be bothersome if there were much inspection.

Two factors seem to militate against much inspection or red tape arising from this source. In the first place, effective inspection of

some products must be made at the source and the State of destination will ordinarily have to maintain most of the inspection of home products at the source. If you are going to protect equally, then you have to have protection at the source. But the Federal passport will cover the inspection of out-of-State products at their source. That takes care of that and allows inspection at the source on materials at the same stage with the domestic inspection, supposing they have it.

In the second place, the likelihood of in-State inspection at later stages in which the producer is still interested—and our interest, of course, is confined to consideration of the out-of-State producer—is very small since home forces would seriously resent bearing the cost and annoyance of double inspection. If you made that inspection on home products where on the same type of products you were inspecting out-of-State products, they would have to have a double inspection which domestic producers don't very much want, since inspection is usually adequate for all purposes and it is only for discriminatory purposes that this double inspection is put on.

The Vice Chairman. Doctor, suppose a State wanted a higher standard of commodity, a higher quality of commodity than was permitted——

Dr. Elliott (interposing). Wait a minute, I cover that in the next paragraph.

Representative Sumners. I withdraw the question. I understand it is very important.

Dr. Elliott. It *is* a very important question because you don't want to cripple the State to a low standard.

The second step in the scheme is the establishment of a series of simple and standard grades of strictness of inspection by the Federal agency in charge of the product. Each State will then be permitted to select whichever of the standards it chose—that I think takes care of that—and thereafter a Federal passport would provide admission for the product in question into that State only if it specified that the State's requirements were met. In other words, you could exclude it if you wanted to have the higher standard. However, as a condition of exclusion, products not meeting the specified standard (at whatever level above the minimum chosen) the State would have to offer proof to the proper agency that substantially equivalent inspection of in-State sources of supply was being made—and I think that would discourage the abuse of this effort if it were subject to check-up. Furthermore, the right of the State to continue exclusion would exist only so long as it satisfied the Federal agency that effective domestic standards were being maintained within the State. In other words, you can have exclusion, and I don't think you can prevent it providing a health standard set by a State is higher than the one set by the Federal Government.

The Vice Chairman. The whole scheme is merely to prevent a discrimination of a State against commodities coming from without.

Dr. Elliott. Quite so.

The adoption of a statute drafted to meet the suggestions made above would seem to eliminate the possibilities of discrimination in the present system of such State inspection. Furthermore, by making each State's requirements matters of public record—I think that is very important if I may say so, Congressman Sumners, in connection with some remarks you were making the other day—with the Federal

Government, the task of the distant producer would be considerably simplified. We are interested in a study of American economy in furnishing information, both to producers and consumers, that is easily available, isn't difficult to get at, for the little fellow who knows very little about this enormously complicated mechanism of government. In that respect this kind of Federal action would have a very valuable educational effect as well as simplifying the procedures involved. Incidentally, once the State's requirements as to inspection of source are met, the possibility of subsequent inspections within the State seem fairly small, since satisfactory original safeguards will have been provided. In view of the original sanctions provided by the basic statute which is to operate if the State does not select its own standards, the States should comply with the provisions of the statute designed to operate permanently, without much persuasion.

I don't think it would be difficult to overcome the tendencies toward noncooperation on the part of States; once this mechanism was set up, it would be, I think, so valuable to producer and consumer alike that it would in itself demonstrate its usefulness.

I find the problem of motor vehicles far more complicated and far more difficult, and I don't make any pretense that the one or two suggestions I make here have been adequately considered or that they are in any way more than just a suggestion, but if I may make them with that confession, I will do so.

The power to make regulations I think might be difficult in the absence of grants-in-aid to work out effectively. There are no cases that at present rest squarely on the right to force the State to stop exacting compensation, to interfere with the State's taxing power in that way, or to allow given weights to pass over roads in which it has property interests.

On the size and weight problems, I think perhaps Commissioner Eastman has, himself, expressed doubt as to the constitutionality of Federal legislation, presumably on the ground of State property interests. That is the main line that the cases previously considered would throw out. But there is a dictum in the Barnwell Brothers case that strongly supports the opposite view, and I take it in light of the court's general orientation at this time that that is more probably a correct view of the law.

On the other question of the exaction of State compensation for use of State roads there is an earlier dictum indicating that the State had an indefeasible right to compensation for the use of roads as against the Western Union Co., for instance, which was operating under a Federal license—that is cited above—to use roads which had been designated as post roads. However, assuming the property rights of the State to be like property rights—there I am not at all certain—it may involve a question of the attribute of sovereignty. I can only guess that the temper of the decision in the *O'Keefe case*, for instance, would not be likely to support that view. You know, divesting the States of the unqualified immunity of State instruments from Federal taxation looks as if that doctrine of State sovereignty would not be likely to crop up in this connection and it would more likely be put on simple property rights doctrine.

There is no reason, if that is a correct analysis, to say that the Federal Government may not make reasonable regulations on the ground of the commerce power as it has with respect to the railroads.

However, with grants-in-aid actually in use at the present time for the road system, there is no reason why the Federal Government should not make whatever regulations it chooses. I hope they will be wise, but when the grant-in-aid system is there as a lever and the Federal Government has the power to grant or to withhold funds for roads that come up to its own standard of specification, it surely has an instrument it could follow out if it chose to do so, and where the constitutional question I feel reasonably certain would not be raised.

The VICE CHAIRMAN. Doctor, the exercise of the power to give or to withhold grants almost eliminates any question of any character of Federal constitutionality.

Dr. ELLIOTT. You have put your finger on what I think is the most important and debatable ground of our Federal system. We are being pushed over into this area of grants-in-aid, not because of the desire of Federal centralization coming from Washington, as so many people assume, but from the pressures coming up from the States, and it is an indirect type of Federal centralization which has very real dangers. You know perfectly well what the political pressures are behind that type of effort on the part of the State governments to get Federal money, and it is so often and so easily represented as being something for nothing.

The VICE CHAIRMAN. And an interesting thing is that we go on in this system, discussing limitation upon Federal powers, when we know as a matter of practice when we turned the control of the purse strings over to the Federal Government, we turned over practically all governmental power that can come within the operation of that policy.

Dr. ELLIOTT. Precisely. Now, it seems to me very much a question of what we can do to get the grant-in-aid system regularized—I don't quite dare suggest judicialized, but certainly regularized in its application. The English experience there, if I may diverge, seems to me to be interesting They have worked out a formula. It is of course a centralized system, not a Federal system, but that has been used in the British Federal dominions as well. It is an effort to work out a formula for distributing grants-in-aid, and it seems to me that might be one of the most important subjects of study by an intergovernmental committee of the type recommended by Mr. Bane, or whatever type you, yourselves, set up. If your own committee is continued, as many people may hope, in some form, not necessarily its present form, as a permanent grand commission of inquiry into the economic structure of the American system, nothing could be more important, I suggest, than this study of the tax system and of the grant-in-aid in spending, which as you say, sir, centralizes the system inevitably with the power of the purse, no matter what constitutional limitations may be existing in the strict law.

The VICE CHAIRMAN. Some of the gentlemen around here want to dramatize this outfit of ours to get over some idea to the people. I think if we could get across this notion to the people of the States who are insisting on the surrender of power in order to get back a little part of the money that we take from them, we could make them understand that they are converting this Federal Government into a government of general governmental powers, regardless of what the

Constitution says, it probably would justify the money spent in organizing this effort.

Dr. ELLIOTT. I think that educational effort is highly important and I would hope you would go on beyond that to try to deal with the real needs that are existent and we know exist for grants-in-aid.

We have some interesting, if I may diverge from the brief——

The CHAIRMAN (interposing). Before you divert from the topic, let me remark here that there is a cause for the development of the demand for the grants-in-aid.

Dr. ELLIOTT. Quite so.

The CHAIRMAN. And that cause, it seems to me, is the element in the problem that the most of us have been overlooking for 50 years as it has been coming into existence. The cause, it seems to me, is to be found in the basic range of the study of this committee, namely, in the steady growth of the economic units which carry on our economic life. The reason that the states and the cities are turning with more insistent demand constantly to Washington for the Federal grants-in-aid is because they are unable to produce the revenue within their own borders to render the services which the people believe are necessary to be rendered.

Dr. ELLIOTT. What you say, sir, bears out very much my own impression that at the basis of the whole study you have this problem of the distribution of taxing power in terms of the type of units involved.

The VICE CHAIRMAN. I want to make this testimony: You don't lose nearly as many votes in getting the money in directly from the Federal Government as you lose in taxing the people who have to vote for you to get the money.

Dr. ELLIOTT. Well, I may be guilty of one of these characteristic evasions of the pressures of the political power in suggesting the creation of still another committee or commission. They are useful in breaking the back of just such problems as that, and getting, in this instance, a joint Federal and State study of a matter which the direct political pressures make it very difficult to meet.

There is a statute on the books today which denies grants to such States as fail to maintain their present proportion of appropriations from vehicle taxes to road uses. I am sure that that statute is very difficult to apply. I know of no instances where it has been applied. It is one of those politically loaded kinds of statutes where the——

The CHAIRMAN (interposing). I have in mind a special instance in which it was, as I recall, practically set aside because of the complete inability of a particular State to meet the requirements of grants-in-aid, and had that rule been followed, it would have been impossible for that State to have had the Federal aid system of roads, and of course if the State didn't have the Federal aid system of roads, then the interstate transportation by road through that State would have been denied to all of the citizens of other States who wanted to use it.

It seems to me that the grant-in-aid rule as applied to the construction of interstate roads in the first instance illustrates very clearly the genesis of this whole movement. These roads became necessary because interstate or national traffic was so great that the States themselves could not supply the sort of a standard road that the national traffic demanded, and if it had not been for these

grants-in-aid, we certainly would not today have that wonderful system of roads which has made possible the development of the motorcar industry and the prosperity of the oil industry.

Dr. ELLIOTT. I think there is no doubt whatever about that, that grants-in-aid have been the natural products of a system in which the sources of tax revenue within the existing system of States was inadequate to support the activities of a national character, and that the States have been reaching out for new sources of revenue, is perfectly true. That doesn't in the least, I think, controvert the other problem, it rather strengthens it, that the political pressures will necessarily be very heavy sometimes to abuse the grant-in-aid for this very reason.

I don't know whether the Federal examples have real relevance in this instance, but it does seem to me that there are two things we might note. One of them is the equalizing effect of the Federal rebate of the inheritance taxes to attempt to prevent an abuse by States of the taxing power. That is one indirect method that has been used in a negative sense. The other is the social security type of legislation where some sort of effort at regularizing the grant-in-aid for the Federal contribution basis has been made.

Now, I suggest that those matters are really appropriate subjects of study, if not for this committee in its whole report, at least for much more thorough study in terms of the whole system of Federal revenues, the whole fiscal problem. As a student of taxation, I am increasingly impressed by the fact that the States are bidding against each other for industry, for example. We have not talked about that. We have been talking about States preventing things. But here they are competing against each other for industries in a way that is well known to all of you by a type of pushing in the tax structure here that bulges out somewhere else.

There is no way of preventing States from doing that under our Federal fiscal set-up and very little study, curiously enough, has been given to that whole problem of governmental agencies at the fiscal level. Some of the problems you, Chairman O'Mahoney, have suggested, and others have in this area. The sources of revenue are so basic to this whole problem that unless they are touched we are skirting the superficialities; we are seeing the symptoms of something that is far deeper in the structure, and it is for that reason that I hope this trade-barrier thing will take the attention of this committee in terms of its implications at the deeper level and will be correlated into your whole recommendations in that way.

I don't want to speak of it, of course, as if it were the sole problem or to publicize it in those terms.

May I just finish up by pointing out—because the time is growing so short and I shan't more than just indicate it—that the course of legislation it seems to me, should be that regulation of charges should be directed toward the regular carriers operating under the Motor Carriers Act now and that they should be governed by the ton-miles of travel. Trucks that only rarely move within a given foreign State should be given exemptions from payment of State taxes, since the State will derive a considerable amount of revenue from gasoline taxes and other sources. That is now done by most States, but some States make it very difficult to do it. The extension of a limited period of free movement in a State would not create any serious diffi-

culties—and evidence in the testimony shows that was generally followed by I believe most States, but that certain very grave exceptions existed—for States by causing disappearance of revenues, since, to the extent that high fees are now exacted, the revenue collections available must be very small because the cost of entrance to the State is prohibitive for persons making only occasional trips, and furthermore, the cost of collection is very great and there are administrative difficulties.

The question of safety equipment has already been dealt with under the Motor Carriers Act for carriers subject to regulation under it, and they, in effect, are given passports for interstate travel when they have complied with the Federal act so far as safety equipment is concerned. The issuance of corresponding certificates after appropriate inspection and provision of standard safety equipment would seem to be a simple matter for trucks not subject to the act. You could extend this principle it seems to me without great difficulty, and I gather there is a movement in that direction.

The simplest solution of the weight problem probably is a specification for each road touched by the grant-in-aid system. I don't know, that may be too complex; certainly the Federal main highways ought to be covered. The adjustment of size and weight to each road as it is rebuilt with Federal money would seem to provide a relatively quick and safe way of keeping the main avenues of interstate traffic open. While this solution would not provide for regulation of State weight and size provisions on roads other than main arteries frequented by the itinerant trucker, his truck will ordinarily be relatively small and not seriously hampered by low weight limits. It would deal with the big fellows, mostly, and is intended to.

If the grant-in-aid machinery is not considered adequate for the purpose of inducing appropriate State legislation, the Federal Government might raise its excise on gasoline and refund portions collected to such States as enact satisfactory legislation.

I will, with your permission, skip the remaining brief comments on this point, noting simply that the itinerant merchants will be helped by anything that helps motor carriers, and there is not much else you can do for them except in that way. If you reduce ports of entry and fees of various kinds, you certainly help them.

The State may make any reasonable classification it likes for purposes of taxation—itinerants, margarine, etc.—and the fact that the burden falls principally on persons from out of State makes this kind of legislation more likely to be passed. But the fact that the legislation looks like nothing more than a reasonable classification makes it immune from court attack, and I can see no conceivable congressional handling of this kind of problem. It seems to me that is up to the States, and there interstate action, reciprocal action, State action along the lines suggested by Mr. Bane, is the only way to get at the problem.

May I summarize in a few minutes the conclusions? A survey of the cases as well as a recapitulation of testimony shows that trade barriers often grow from legitimate concerns of the States to protect health or prevent the spread of plant pests or to raise adequate revenue. But what begins as a legitimate exercise of the States' police power often ends by being perverted into the protection of local inter-

ests against out-of-State competition. It is capable of administrative perversion even where it isn't in the statute itself.

That the cumulative and total effects of State barriers, as defined by Dr. Melder and Mr. Bane, are very injurious to our national economy has been amply shown in the testimony and could be developed by further consideration of building restrictions, public purchasing, ramifications of State tax laws, and discriminatory practices of many other types. We have offered only a reasonably limited sector of that major problem, but from the cases and the evidence submitted, I want to come to the following recommendations that the demonstrated needs are about these:

First, for continued and increased efforts in the States and by the States through cooperative State action to halt retaliation, to check further legislation of a discriminatory type. Mr. Bane has shown the increasing success of the Council of State Governments and other organizations in this area, the Governors' Conference and many others that are operating in this area, of which his has been one of the major ones.

The repeal of existing barriers can be hoped for, and I stressed "hoped for," because the evidence up to date doesn't show very great progress in the repeal of existing barriers. That indicates, I think, the need for some of the subsequent recommendations.

Second, for Federal statutes to lay down reasonable standards both for plant, animal and dairy inspection, and for the interstate passage of motor vehicles, chiefly trucks.

It is true that the larger problem of complete national standards of uniformity in trucking, for instance, motor vehicles, cannot be directly effected in this way. No doubt the effort to get States to adopt the Uniform Motor Vehicle Code advocated in the testimony of Mr. Park M. Smith is admirable. But for the smaller problem of getting reasonable standards that can be enforced for interstate passage throughout the country a Federal statute is constitutional and seems to be the most feasible and the most effective method.

Third, for the creation of a permanent Joint Federal-State Committee on Intergovernmental Problems. I emphasize that that is a larger problem than just trade barriers, but of course its particular terms of reference would interest us in this inquiry in trade barriers.

Such a committee, with a small permanent staff, would have three functions:

(*a*) Reporting and research on this problem.

(*b*) Acting as a focal center for hearing and sifting complaints against the operation of barriers to interstate trade.

(*c*) Referring these complaints, if justified, to the States or to the Federal agencies who might appropriately act on them.

Fourth, in a negative sense, Federal action may be necessary for the restraining character of the type that was advocated in the language of the dissenting opinion of *McCarroll* v. *Dixie Greyhound Lines* case cited. Conceivably statutory action by Congress, after mature study, might be recommended by the Federal-State committee, and I should think it would be appropriate before such survey.

Fifth, for making available the assistance of the Attorney General—and this I come to with some hesitancy, but I invite your attention nevertheless—of the United States to aid in bringing to

trial doubtful or unconstitutional acts of the States, congressional action being absent.

I have further qualified that in the preceding testimony by noting that in Federal courts this power could be given, I think, without any question as to its constitutionality on the terms of the Sumners Act that we have referred to before.

In State courts, it could not be given to fight a suit for damages, clearly, but it might be given to permit aid in the defense of people brought up by action on the part of the State making the individual a defendant.

The CHAIRMAN. Do I understand you to mean that the Attorney General of the United States should be clothed with the responsibility and duty, as it were, of defending persons who were charged with violation of State law?

Dr. ELLIOTT. I have recommended that with qualification in the preceding testimony, sir, with this qualification, that on the recommendation of this interstate, this Federal-State committee, cases might be brought to the Attorney's attention, in which he would be empowered by the statute to aid if he thought public interest or constitutional questions were involved.

The CHAIRMAN. You have made a very thorough and complete analysis of this problem, it is quite evident, from your very interesting discussion of it here this morning. The thought that comes to my mind is that perhaps the suggestion that so-called trade barriers should be eliminated amounts, in the last analysis, to a suggestion that State lines should be obliterated.

Dr. ELLIOTT. Well, now, I just don't follow your reasoning in that, though it may come to that.. If State lines are, in themselves, necessary trade barriers——

The CHAIRMAN (interposing). Let's get it clear.

Dr. ELLIOTT. Your reasoning is correct.

The CHAIRMAN. When you say you don't follow my reasoning, I want it to be understood that I am not stating an opinion or advocating any particular conclusion. I am merely asking you whether that is not the logical development of the abolition of trade barriers. In other words, if we are to undertake Federal legislation such as this which you now suggest, clothing the Attorney General with certain powers to attack the constitutionality of State statutes, are we not adding to the growing power of the Central Government?

Dr. ELLIOTT. Why, sir? Those cases can come up by litigation at the present time by private suit. The essential point involved in my recommendation adds nothing whatever to the Federal powers. It adds something in the nature of a protection which the Federal Government is affording to people who are not able to protect themselves. Now, unless it be true that State boundaries are, in themselves, inevitable barriers to trade——

The CHAIRMAN (interposing). Well, the Attorney General is not now a public defender in any sense of the word.

Dr. ELLIOTT. No; but what additional Federal power is involved in having him clarify a case of doubtful character in which constitutional issues may be involved in State courts, any more than in Federal court ? The case can be raised if the man has the money to raise it today, and if the courts will hear him.

The CHAIRMAN. Well, the jurisdiction of the courts, certainly of the Federal courts, is exclusively a jurisdiction in cases.

Dr. ELLIOTT. Surely, and controversies.

The CHAIRMAN. And there is no constitutional power, for example, for declaratory judgments, as it were, is there?

Dr. ELLIOTT. Well, they have been made——

The CHAIRMAN (interposing). Yes, but——

Dr. ELLIOTT. And they are being accepted.

The CHAIRMAN. That is a sort of trend. It may be part of this same trend.

Dr. ELLIOTT. I accept the trend, sir, but I don't accept your explanation of the trend. I don't see that that destroys State lines.

The CHAIRMAN. Again, am I making any explanation? As I not asking you a question?

Dr. ELLIOTT. You are making a judgment on what I have said, if I understand you.

The CHAIRMAN. No; I am asking you if that is not a tendency.

Dr. ELLIOTT. Then I will say *no* in answer to your question, if that is adequate, and I would be prepared to defend my no by saying that it doesn't seem to me that the judgment suggested by your question—put it that way—is a correct summary of my testimony. I don't in any way envisage breaking down the States as units of government in their appropriate functions, provided you don't take the view that the States can block interstate commerce in this country.

The CHAIRMAN. I didn't even have the remotest idea that you were recommending that. Again I say I am merely asking, if it doesn't appear to be the fact that if we appeal to the Federal power, and exercise the Federal power, to obliterate interstate barriers, we are not treading the road to eventual abolition of State lines.

Dr. ELLIOTT. I should say rather the contrary, that unless we do use the Federal power to obliterate interstate trade barriers, we may well have to tread the road toward Federal centralization of a much more extreme type through sheer desperation, that this system may break down through becoming an unworkable system economically.

The CHAIRMAN. In other words, your position is that if the trade barriers are eliminated, either by cooperative action——

Dr. ELLIOTT (interposing). Yes.

The CHAIRMAN. Among the States, or by the work of some such committee as was suggested by Mr. Bane, or even by Federal legislation——

Dr. ELLIOTT (interposing). Quite.

The CHAIRMAN. In the field of interstate commerce, then the local jurisdiction of the States would be strengthened.

Dr. ELLIOTT. Precisely.

The CHAIRMAN. Is that your position?

Dr. ELLIOTT. That is my position, and it would be strengthened because it would be limited to matters according to the intentions of the Founding Fathers. I haven't burdened this committee with a long exegesis of the intentions of the Founding Fathers. I haven't thought it worth while, but it surely must be obvious that nothing was more in the minds of the creators of this Constitution than to establish that States should not be permitted to destroy an area of free trade within the United States, and there is surely nothing more

clear than that Congress has plenary powers in this field if it chooses to exercise them. It is in the absence of the exercise of that power that a great amount of these trade barriers have sprung up.

I am suggesting merely what I hope are not very extensive actions by the Federal Government which can utilize existing machinery, existing types of action that have already been sanctioned, to make it possible for the States to resist the growth of retaliation in this sphere.

The CHAIRMAN. It is very important, I think, that your testimony should be quite clear upon this point.

Dr. ELLIOTT. Yes; I agree; and I am glad to have you bring it out, sir.

The CHAIRMAN. When we agree, for example, as we apparently did earlier in the morning, that particularly as a result of the system of grants-in-aid there has been a growing concentration in Washington and that powers of government, political powers, have followed the power of the purse, as Congressman Sumners implied, it seems clear to me that some people might interpret the suggestions which have been made here by you and others as another step upon that road, so I am very glad to have you develop your belief that it would rather be to prevent further development along that road.

Dr. ELLIOTT. I am most grateful to you, Senator O'Mahoney, for pointing out this aspect of the testimony, because I know how easy it is to be misunderstood in the emphasis.

What I would like to say, perhaps, in concluding, and let the record stand for the remaining conclusions that I have had and just leave off testimony because it is in the brief, is this: Actually, Federal powers now exist of such extensive a caliber in the grant-in-aid that what I am proposing is merely a regularization of those powers and an effort at making them available as an instrument for which they were originally, I think, intended. It isn't adding anything to existing Federal powers to use grants-in-aid in this way. The sum total of the money spent in the very small type of grant-in-aid that I am suggesting would certainly be far less than the money that is misspent now on State administration of equivalent laws without grants-in-aid. It would make, I think, more uniform and more satisfactory types of inspection and things of that kind.

Therefore, what I would urge in conclusion is this: In studying the problem of interstate barriers it is necessary to remember that essentially these barriers have grown up in the absence of congressional action and in the absence of national standards that were enforceable; that politically it is very difficult to prevent their continued growth through two factors, the fact that pressure groups, once having established a type of barrier in one State, produce retaliation in other States by States that don't wish to retaliate in the first instance, or don't wish to have to deal with the problem, and that therefore there is a sort of debasing of the coinage; that if that method of individual action is permitted to go on in an area that was not intended to become international within our Federal system but was intended to be controlled and kept national, to wit interstate commerce, we will have failed to fulfill the clear injunctions of our own Federal Constitution; that the judges at the present time have adopted a view which is, I think, inherently reasonable but perhaps pushed to an extreme, of saying that in the absence of congressional action there

is very little they can do to prevent the growth of this type of barrier.

Therefore, it would seem to me clear that while welcoming all State action at the original line, and saying that the battle must ultimately be lost or won under local government, as all democratic government must be, as a national system we have equally the clear duty that presents itself to Congress, to study this problem and to make some sort of solutions, though I don't for a moment pretend that those that I have hastily given out here are necessarily the ones.

The CHAIRMAN. Are there any other questions to be asked of Dr. Elliott at this time?

Mr. DONOHO. I have no questions to ask Dr. Elliott.

The CHAIRMAN. Dr. Elliott, may I thank you on behalf of the committee for a very interesting and stimulating paper?

Dr. ELLIOTT. I wish to thank you for a very courteous hearing, Mr. Chairman.

Mr. DONOHO. Mr. Chairman, I would like to offer Dr. Elliott's brief for the record.

Dr. ELLIOTT. I should like to have the opportunity of proofreading the brief, Mr. Chairman, with the explanation that I have never had it in my hands since it was completed.

The CHAIRMAN. Before it is presented and published as an exhibit?

Dr. ELLIOTT. Yes.

The CHAIRMAN. Then it will not be presented for the record today.

Dr. Elliott, you may stand aside.

The chairman is in receipt of a letter from Secretary of Agriculture Wallace which ought to be read into the record at this place. It is dated March 22.

DEAR SENATOR:

As you know, the Department of Agriculture is very much interested in the hearings on interstate trade barriers which are being held by your committee this week. Among the most important trade barriers are several which interfere with interstate trade in farm products. We are, therefore, much concerned with this problem and are anxious to find a solution which will permit a freer flow of farm products in interstate commerce.

I have read with great interest the suggestion made by Mr. Frank Bane, Executive Director of the Council of State Governments, for the establishment of a continuing Committee on Federal-State Relations.[1] This Department heartily approves Mr. Bane's suggestion. We believe that a committee of this kind could study in detail several of the specific trade barriers in agriculture and could be very helpful in working out practical programs on which the Federal and State Governments could cooperate.

Sincerely yours,

(Signed) H. A. WALLACE,
Secretary.

The testimony of Mr. Bane and his recommendations, to which Secretary Wallace referred, are to be found in the record for March 18. This was the suggestion, that there should be Federal-State cooperation in this. In this connection Mr. Bane said:[2]

It would be our hope that such a committee, if established, would not confine itself exclusively to this one problem, but, in cooperation with the Council of State Governments and other interested organizations, would explore other major questions of Federal-State relationships so pertinent to the effective operation of our Government—problems arising from conflicting and overlapping tax laws, grants-in-aid and their effect upon education, highways, health, and welfare, as well as general State and Federal services, the development and

[1] See supra, p. 15751.
[2] Ibid.

coordination of our various systems of transportation, and problems of personnel inherent in the Federal, State, and local cooperative government which we have developed.

Such a committee, of a continuing nature, concerning itself with the general problem of Federal-State relationships, would constitute an agency through which difficult problems could be solved, and through which our entire governmental machinery could be made to work more efficiently and economically for the common good.

I may say that, of course, this committee has not had any opportunity to study the recommendations of Mr. Bane, and his testimony, like that of any other witness who appeared before this committee, is not to be regarded as an indication of what the final view or recommendation of the committee will be.

Mr. Donoho, are there any other witnesses?

Mr. DONOHO. There are no other witnesses, Mr. Chairman.

The CHAIRMAN. May I, on behalf of the committee, express our gratitude to you, Mr. Donoho, and to you, Mr. Truitt, and Mr. Pike, for a very interesting presentation on behalf of the Department of Commerce. I think that the testimony was exceptionally well handled and marshalled in a very effective way.

Mr. PIKE. I don't believe I deserve the credit, Senator. They did all the work. I just listened.

Mr. DONOHO. I thank you very much, regardless of where the credit should lie.

The CHAIRMAN. The committee will then adjourn, subject to the call of the chairman.

(Whereupon, at 1:15 p. m., an adjournment was taken subject to the call of the chairman.)

APPENDIX

EXHIBIT No. 2345

THE WHITE HOUSE,
Washington, April 1, 1939.

MY DEAR GOVERNOR: I am immensely pleased to know that the Council of State Governments has called a National Conference on Interstate Trade Barriers, to meet in Chicago in April.

Long known as the world's greatest single free trade area, much of our country's commercial importance has been due to the mobility of trade throughout all the states. The last few years have seen the rise of virtual tariff barriers along state lines—damaging restrictions that have hindered the free flow of commerce among the several states. Business, agriculture, and labor have all suffered because of state and regional discriminatory measures adopted in the vain hope of protecting local products from the hazards of economic fluctuations.

Interstate trade barriers have arisen in many instances from the same causes that resulted in mounting tariff walls between nations—accountable for so much of the world's unrest in recent years. The Federal Government is seeking to break down trade walls between this and the other nations of the world, and to remove the hampering restrictions that have been placed upon world commerce.

Interstate trade barriers, if allowed to develop and multiply, will, however, constitute social and economic problems even more serious than international tariffs. It is a matter which demands the immediate attention of all the people of our country, and it is my earnest hope that the several states meeting in Chicago will take effective steps toward the removal of all barriers to the free flow of trade within our nation.

Very sincerely yours,

(Signed) FRANKLIN D. ROOSEVELT.

The Honorable ROBERT L. COCHRAN,
President, The Council of State Governments,
1313 East Sixtieth Street, Chicago, Illinois.

EXHIBIT No. 2346

THE THIRTIETH ANNUAL CONVENTION OF THE GOVERNORS' CONFERENCE
OKLAHOMA CITY, OKLAHOMA, SEPTEMBER 26–28, 1938

The Governors' Conference adhered to its traditional policy of not passing resolutions, but agreed that the Chairman, Governor Robert L. Cochran of Nebraska, should be authorized to announce that the group unanimously opposed the principle of state trade barriers and were of the opinion that such barriers between the states should be removed. In the words of Governor Bibb Graves of Alabama there was "more unanimity of opinion on it than on any subject that I have heard discussed by this Conference in a number of years."

EXHIBIT No. 2347

THE GENERAL FOURTH ASSEMBLY OF THE COUNCIL OF STATE GOVERNMENTS, THE MAYFLOWER, WASHINGTON, D. C., JANUARY 18–21, 1939

Resolved that in accordance with the recommendation of the Midwest Regional Assembly of the Council of State Governments, this Fourth General

Assembly of the Council recognizes that trade barriers, under any guise are detrimental to the economic welfare of the country;

That this Assembly recommends complete adherence to the traditional American policy of free trade among the forty-eight states;

That this Assembly requests the secretariat of the Council of State Governments to study legislation and policies which tend to create such barriers and to restrict the free flow of commerce; and

That this Assembly call an interstate conference on this subject, to be attended by legislative and administrative delegates designated by the Cooperation Commission of the various states.

And be it further resolved that the Council of State Governments requests the Congress of the United States to conduct a general investigation of all freight rates and to recommend an equitable freight rate for the entire United States.

EXHIBIT No. 2348

SPECIAL COMMITTEE RE TRADE BARRIERS, FEBRUARY 11–13

Hon. Lloyd C. Stark, Chairman, Governor of Missouri, State Capitol, Jefferson City, Missouri.

E. J. Condon, Director of Public Relations, Sears, Roebuck & Company, Chicago, Illinois.

John Cover, U. S. Department of Commerce, Washington, D. C.

John Ise, Professor of Economics, Kansas University, Lawrence, Kansas.

Simeon E. Leland, Chairman, Illinois Tax Commission, 33 North La Salle Street, Chicago, Illinois.

Albert Lepawsky, Executive Director, Federation of Tax Administrators, 1313 East 60th Street, Chicago, Illinois.

A. H. Martin, Jr., Director, Marketing Laws Survey, 1734 New York Avenue, N. W., Washington, D. C.

Jewell Mayes, Commissioner of Agriculture, State Capitol, Jefferson City, Missouri.

F. E. Melder, Dept. of Economics & Sociology, Clark University, Worcester, Massachusetts.

S. Chester Oppenheim, Marketing Laws Survey, 1734 New York Avenue, N. W., Washington, D. C.

Lafayette Patterson, Agricultural Adjustment Administration, U. S. Department of Agriculture, Washington, D. C.

Jacob Viner, Professor of Economics, University of Chicago, Chicago, Illinois.

EXHIBIT No. 2349

TRADE BARRIERS' COMMITTEE, PUBLIC RELATIONS

Chairman: W. F. Wiley, Publisher, Cincinnati Enquirer.
Secretary: Hal Hazelrigg, Raymond Rich Associates.
James Truslow Adams, Southport, Connecticut.
Albert Baker, Concord Monitor.
Raymond Leslie Buell, Public Affairs Committee.
William L. Chenery, Editor, Collier's.
Virginius Dabney, Editor, Richmond Times Dispatch.
John T. Flynn, News Enterprise Association Service.
Hon. Wheeler Milmoe, Editor, The Bee-Journal, Canastota, N. Y
James O. Monroe, Editor, The Herald, Collinsville, Ill.
Chester Rowell, Editor, San Francisco Chronicle.

EXHIBIT No. 2350

RESOLUTIONS ADOPTED BY THE NATIONAL CONFERENCE ON INTERSTATE TRADE BARRIERS, APRIL 7, 1939

RESOLUTION I

WHEREAS the preamble to the Constitution of the United States of America reads:

"We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America."

AND WHEREAS it is felt that we here, through the efforts of this Conference, must keep the faith inherent within that great keystone of our democracy, our Constitution, the purpose of which is so clearly and inspirationally set forth in the Preamble thereto;

Now therefore be it resolved that we do our utmost, individually and collectively, to prevent any and all state actions that may run contrary to the governmental philosophy so adequately expressed in the above quoted Preamble.

RESOLUTION II

WHEREAS the interruption of the free flow of commerce among the several states of the United States is detrimental to the economic welfare of the country, and

WHEREAS the increase of interstate trade barriers and the passage of discriminatory legislation by the states has resulted in the adoption of retaliatory legislation, in contravention of the spirit of the Union and the welfare of the people thereof, and

WHEREAS these practices by the several states place additional burdens upon the consumer and as such must inevitably postpone the return of our national prosperity and result in lower standards of living in this country,

Now therefore be it resolved that the National Conference on Interstate Trade Barriers declares itself to be unalterably opposed to the erection of these discriminatory trade barriers, and

Be it further resolved that this Conference recommends that the states return to the traditional American policy of free trade among the states, in order that the consumers and producers of the Nation may buy and sell without legal discrimination, either as to the place of origin of goods, the method of transportation or the efficiency of the producer.

RESOLUTION III

WHEREAS the National Conference on Interstate Trade Barriers has considered at length the barriers which obstruct the free flow of commerce throughout the nation in agriculture, industry, labor and other fields, and

WHEREAS a carefully prepared long-term program must be formulated if this threat to our national economy is to be arrested,

Now therefore be it resolved that this Conference request the Council of State Governments, through its Commissions on Interstate Cooperation, to continue the important work of this Conference by:

1. Discouraging the adoption of any retaliatory legislation by states which feel themselves aggrieved by the legislation of their neighbors.
2. Encouraging the repeal of trade barrier legislation which may have already been adopted by the several states.
3. Encouraging the enactment of uniform laws, and the adoption of reciprocal agreements, which have for their aim the reduction of trade barriers between the states.
4. Initiating regional hearings throughout the United States, such hearings to be officially called by the Commissions on Interstate Cooperation in conjunction with the Council of State Governments, in order to follow through the recommendations made by this Conference.
5. Undertaking surveys and factual studies as proposed by this Conference or the Commissions on Interstate Cooperation.

Be it further resolved that in order to provide facilities for the conciliation of specific differences between states resulting from trade barriers, this Conference recommends that the state which considers itself adversely affected by the legislation of another state petition the Council of State Governments to use its good offices to arrange a conference with the state which has enacted the offending legislation before taking any other action.

RESOLUTION IV

Resolved that this Conference urges that *in each State*, in order to assist the Governor, legislators and administrative officials thereof to eliminate the laws of such state as constitute interstate barriers, the Commission on Interstate Cooperation or some other appropriate agency of the state shall prepare and disseminate a survey of statutory provisions which might under some circumstances operate as barriers; and that in preparing this study, each Commission shall consider the digest relating to laws of its respective state contained in the digest prepared by the WPA Marketing Laws Survey, and in the series of Trade Barrier Bulletins prepared by the Council of State Governments. Among the Council's Bulletins and the reports of the Marketing Laws Survey which this Conference thus recommends for consideration are those relating to the following specific subjects, which, in the opinion of this Conference, deserve especial attention at this time:

Public Purchase Preference Laws.
Margarine Excise Taxes.
Ports-of-Entry.
State Use Taxes.
State Laws concerning Peddlers.
Motor Vehicle Laws.
Agricultural Quarantines.
State Laws concerning Dairy Products.
State Laws concerning Out-of-State Alcoholic Beverages and more especially concerning Wine, Beers, and Distilled Spirits.

RESOLUTION V

Be it resolved that the Central Secretariat of the Council of State Governments be requested to prepare and distribute to the Commissions on Interstate Cooperation of the several states, a study designed to determine whether it is feasible and desirable to use interstate compacts or agreements to facilitate and implement the states' action in the removal and prevention of interstate trade barriers, and whether Federal consent to such compacts and agreements is necessary, and, if deemed advisable, to include in the report of this study drafts for such compacts and a draft for congressional consent thereto.

RESOLUTION VI

Be it resolved that this Conference on Interstate Trade Barriers of the Council of State Governments approves the action taken by the Congress of the United States in conducting a general investigation of all freight rates and urges its continued effort to arrive at an equitable freight rate basis for the entire United States.

RESOLUTION VII

WHEREAS a number of agencies of the governments of the several States and of the Federal Government have cooperated in the organization and preparation of the National Conference on Interstate Trade Barriers, and

WHEREAS the success of this Conference is due in no small measure to the time and effort devoted by the personnel of these agencies in assisting the Council of State Governments,

Therefore be it resolved that the National Conference on Interstate Trade Barriers does hereby express its sincere thanks to:

The Federation of Tax Administrators.
The National Association of State Agricultural Commissioners, Directors, and Secretaries.

The Marketing Laws Survey of the Works Progress Administration.
The Department of Agriculture.
The Department of Commerce.
The Council of State Governments.

RESOLUTION

Joint Meeting of the New York Joint Legislative Committee on Interstate Cooperation and the Pennsylvania Commission on Interstate Cooperation, New York City, January 11, 1940

WHEREAS trade barriers are destructive of the free intercourse of commerce guaranteed under the Constitution of the United States, and

WHEREAS the effect of such trade barriers is to destroy the markets of our manufacturers and farmers by inviting the retaliation of other states, thereby proving harmful to the very business which they seek to protect,

Therefore be it resolved that the Joint Legislative Committee on Interstate Cooperation of the State of New York and the Commission on Interstate Cooperation of the Commonwealth of Pennsylvania, conscious of the evil effects of such barriers and restrictions upon the free flow of trade, are opposed to the enactment of laws and the promulgation of regulations which discriminate against each other's products;

Provided, however, that this declaration shall not be construed to restrict the exercise, by either state, of its police powers for the protection of the health of its people and the establishment of standards of quality;

And be it further resolved that in the furtherance of this policy, neither state government nor any political subdivision thereof, should in its specifications, nor in its purchases of any product of given quality discriminate by price differential or otherwise against the products of either state;

Provided, however, that such policy of nondiscrimination against out-of-state products, herein declared, shall not prevent the award to a local producer in case of a tie bid.

EXHIBIT No. 2351

W. P. A. Chart No. 1.

Source: Marketing Laws Survey-Trade Barrier Study.

MICHIGAN WINE TAX

FROM HOME-GROWN GRAPES

ONE GALLON

TAX 4¢

FROM OUT OF STATE GRAPES

ONE GALLON

TAX 50¢

EXHIBIT No. 2352

W. P. A. Chart No. 2.

Source: Marketing Laws Survey-Trade Barrier Study.

PREFERENCES IN WINE MANUFACTURED WHOLLY OR IN PART FROM PRODUCTS GROWN IN STATE

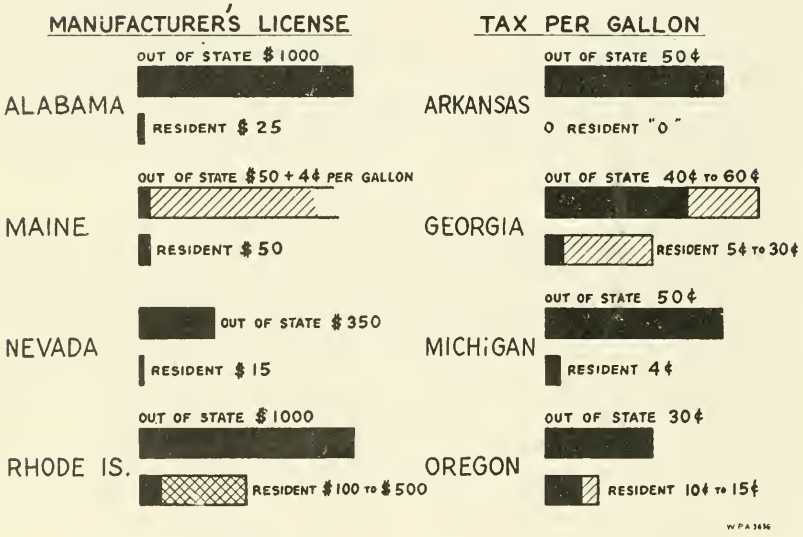


EXHIBIT No. 2353

W. P. A. Chart No. 3.

Source: Marketing Laws Survey-Trade Barrier Study.

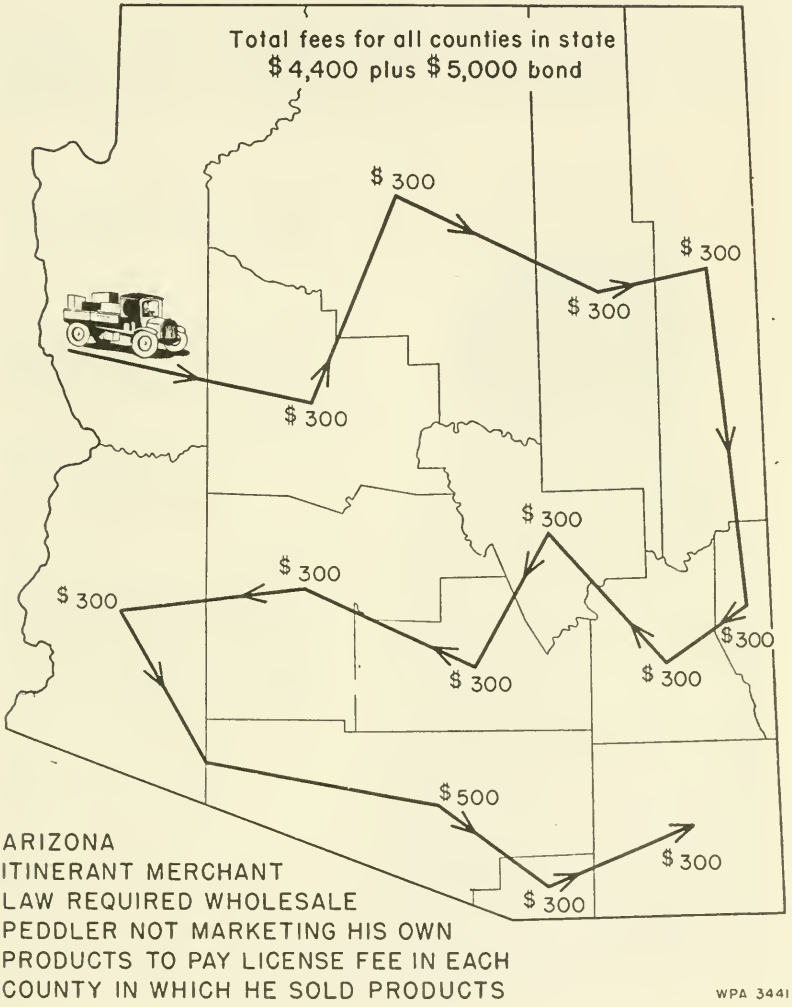
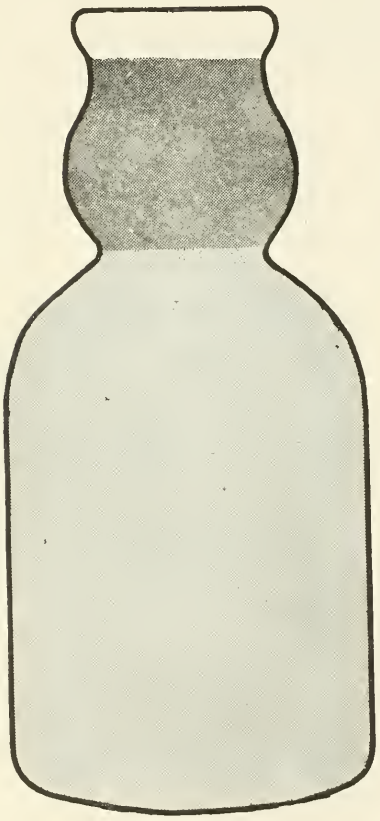


EXHIBIT No. 2354

W. P. A. Chart No. 4.

Source: Marketing Laws Survey-Trade Barrier Study.

RED MILK IN RHODE ISLAND



MILK PRODUCED OUT OF THE STATE

If any provision of section is violated, inspector may color milk with vegetable matter.

R. I. Rev. Gen. Laws (1938) c. 217, §2; R. I. L. 1939, c. 660, §§ 180, 184

On August 10, 1937 such action was taken and red coloring matter added to 5,000 quarts of milk from Bellows Falls, Vt.

"Barriers to Internal Trade in Farm Products" U.S. Department of Agriculture, Bureau of Agricultural Economics, 1939, page 11

EXHIBIT No. 2355

W. P. A. Chart No. 5.

Source: Marketing Laws Survey-Trade Barrier Study.

ILLUSTRATING THE EFFECT UPON WISCONSIN OF A QUARANTINE DECLARED BY NEW YORK

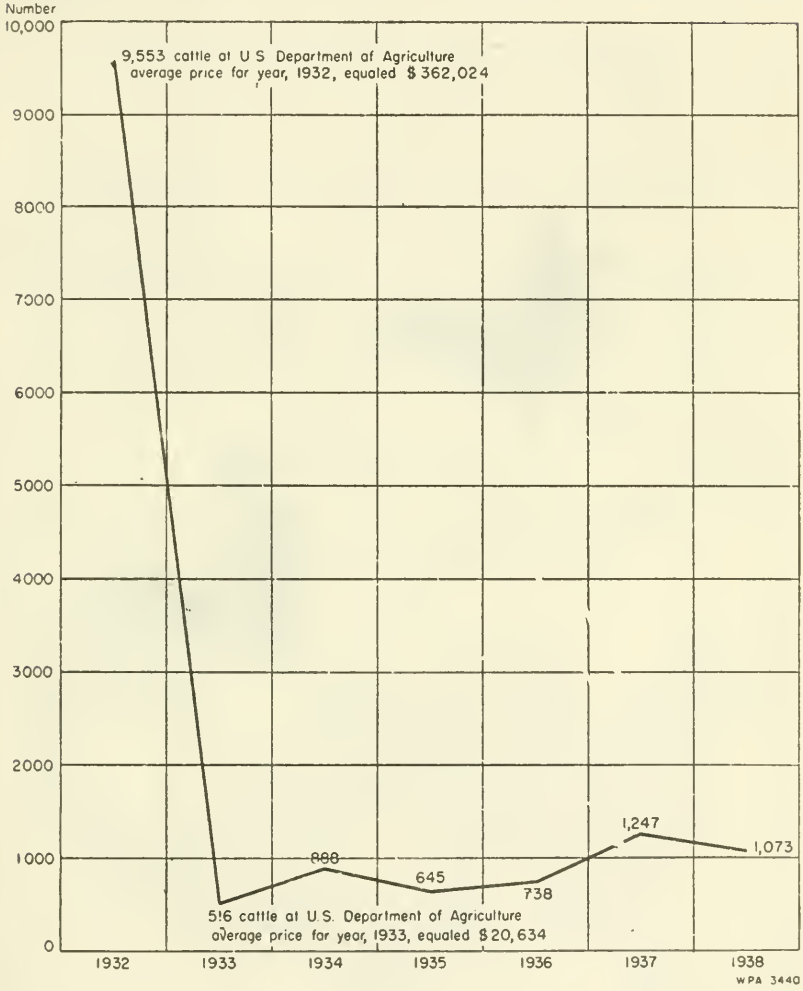


EXHIBIT No. 2356

W. P. A. Chart No. 6.

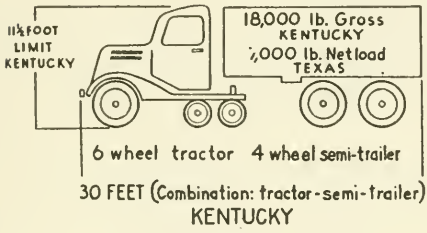
Source: Marketing Laws Survey-Trade Barrier Study.

SAID THE GEORGIA HEN TO THE FLORIDA HEN --

EXHIBIT No. 2357

W. P. A. Chart No. 7.

Source: Marketing Laws Survey-Trade Barrier Study.



COMPOSITE VEHICLE (AND COMBINATION) THAT WOULD MEET REQUIREMENTS OF ALL STATES AS TO LENGTH, GROSS WEIGHT AND HEIGHT

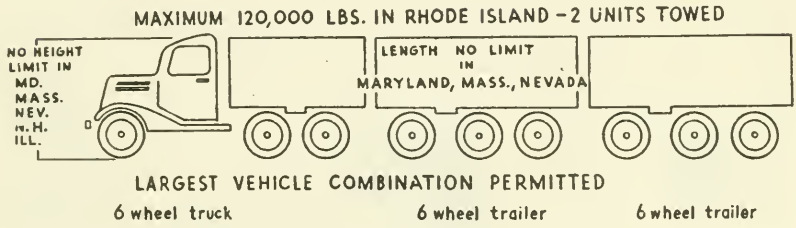


EXHIBIT No. 2358

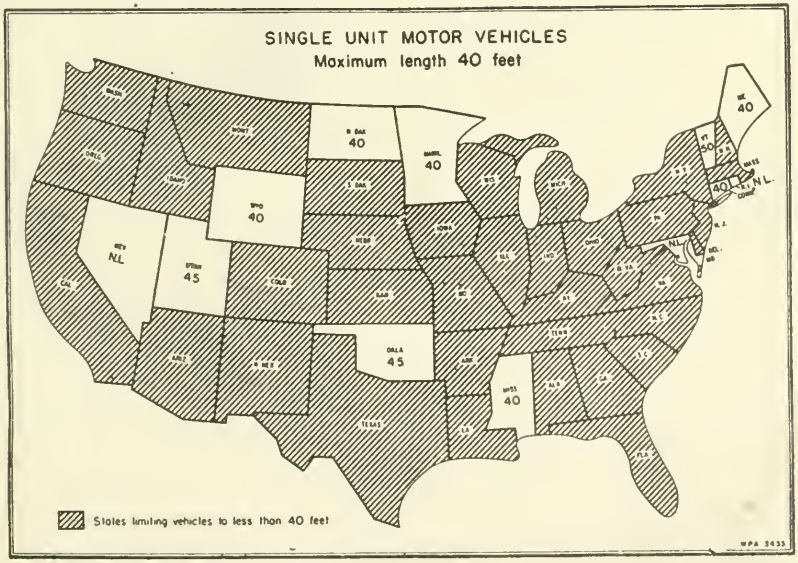


EXHIBIT No. 2359

W. P. A. Chart No. 10.

Source: Marketing Laws Survey-Trade Barrier Study.

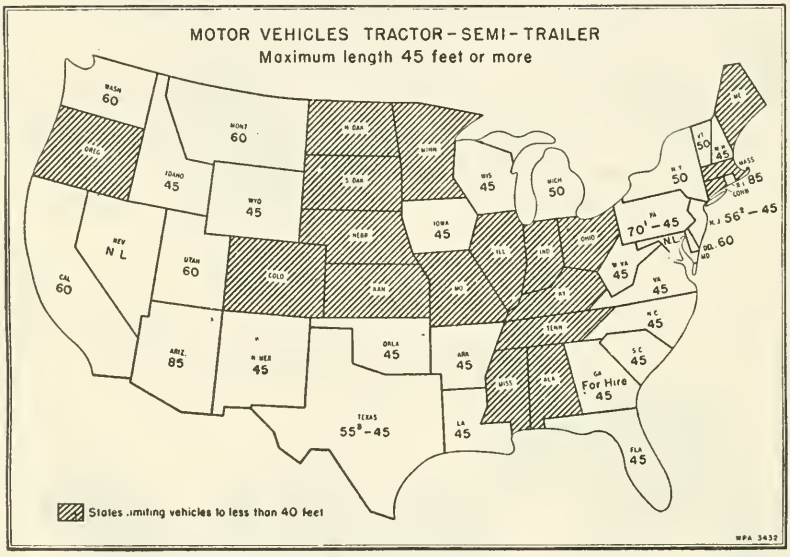


EXHIBIT No. 2360

MOTOR VEHICLE LIGHTING REQUIREMENTS OF SELECTED STATES

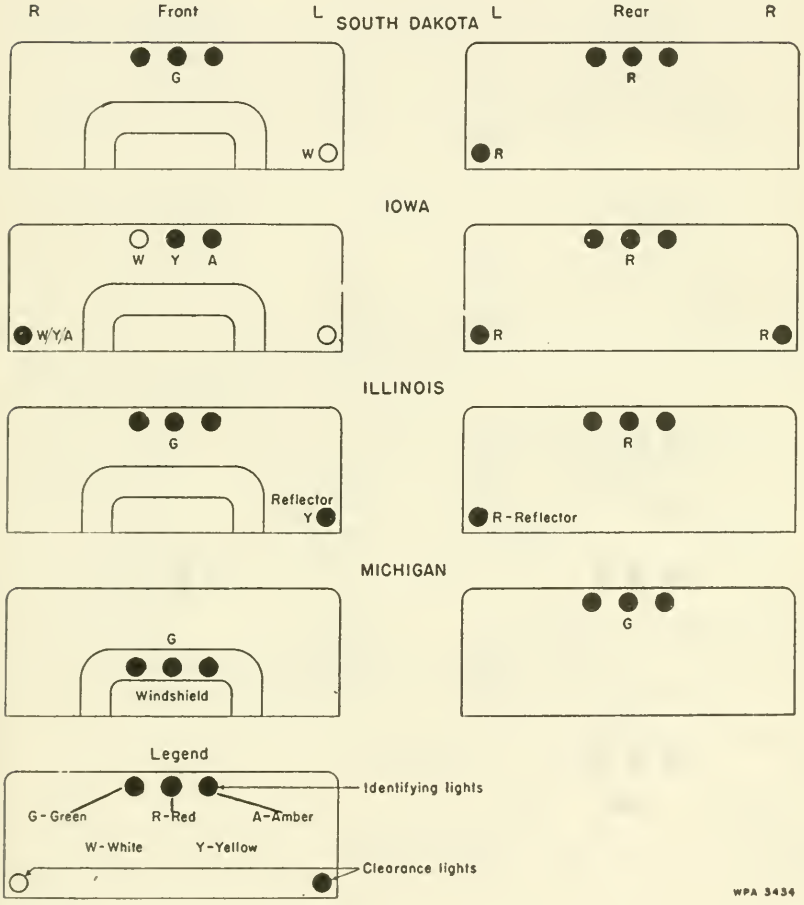


EXHIBIT No. 2361

MOTOR VEHICLE LIGHTING REQUIREMENTS OF SELECTED STATES

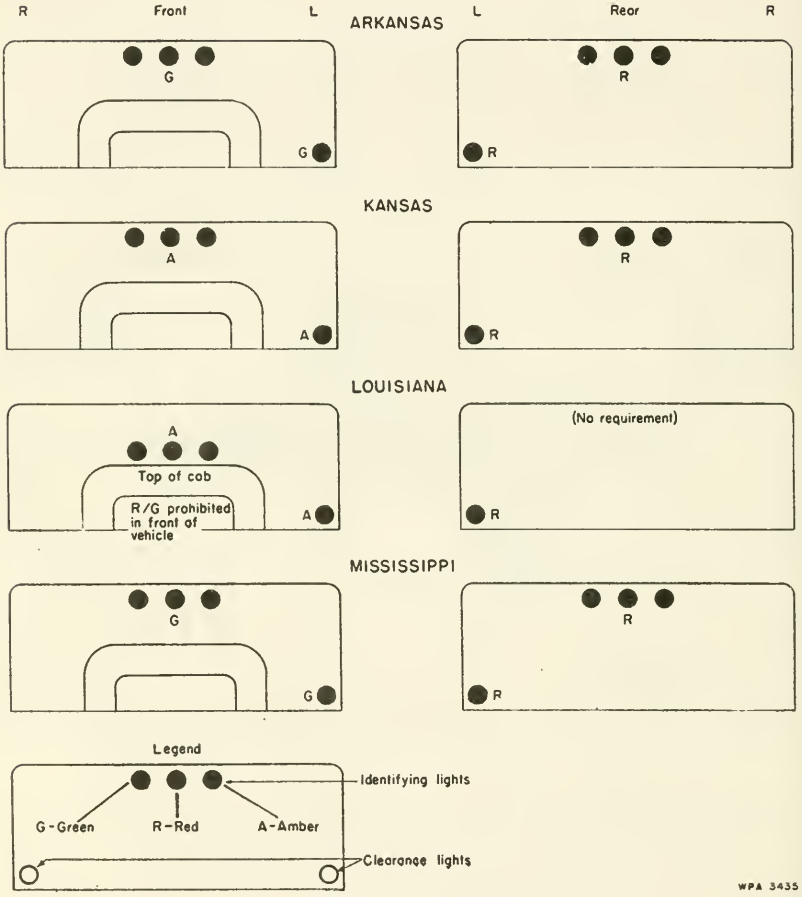
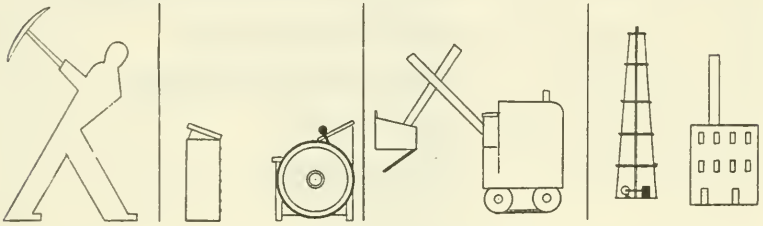


EXHIBIT No. 2362

W. P. A. Chart No. 13.

Source: Marketing Laws Survey-Trade Barrier Study.

PREFERENCE TO STATE RESIDENTS



LABOR	PRINTING	BIDDERS CONTRACTORS	LOCAL PRODUCTS
28	23	14	23
STATES	STATES	STATES	STATES

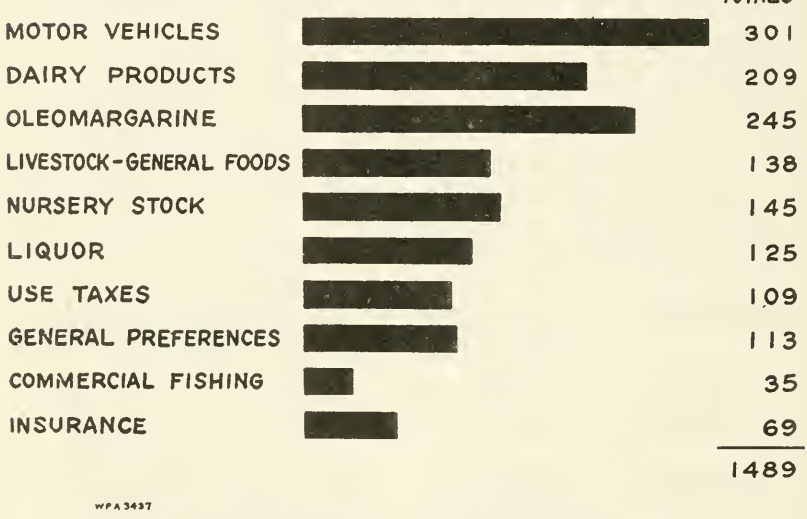
NO PREFERENCES IN ALABAMA

EXHIBIT No. 2363

W. P. A. Chart No. 14.

Source: Marketing Laws Survey-Trade Barrier Study.

SUMMARIES OF STATE STATUTE PROVISIONS BY SELECTED CATEGORIES



"EXHIBIT No. 2364," introduced on p. 15817, is on file with the committee.

"EXHIBIT No. 2365," introduced on p. 15818, is on file with the committee.

EXHIBIT No. 2366

[National Cottonseed Products Association]

Ingredients used in margarine production, year ending June 30

	1936	1937	1938	1939
	Pounds	*Pounds*	*Pounds*	*Pounds*
Babassu oil	11,407,743	17,188,787	10,452,039	12,206,917
Beef fat				36,914
Butter	37			
Coconut oil	167,214,593	101.375,166	87,054,115	70,759,226
Color	2,527	1,860	1,714	1,421
Corn oil	830,256	1,326,932	1,224,807	554,467
Cottonseed oil	93,917,152	137,017,852	177,582,605	109,224,141
Cottonseed stearin				960
Derivative of glycerin	1,024,628	1,194,550	1,229,507	881,572
Lecithin	20,343	26,254	70,462	87,966
Milk	75,251,561	72,369,931	76,976,779	64,712,110
Neutral lard	2,044,215	2,010,409	1,604,925	1,230,556
Oleo oil	15,180,898	18,039,308	11,739,156	13,025,484
Oleo stearin	3,199,642	3,251,988	3,443,958	2,968,399
Oleo stock	1,949,202	1,826,788	1,239,914	1,416,123
Ouricury		441,598		
Palm oil	750,470	1,607,463	109,615	990
Palm-kernel oil	1,062,253	6,089,352	7,593,744	1,244,459
Rapeseed oil	8,786			
Rice oil			69,658	
Peanut oil	3,918,323	3,732,092	3,243,767	2,748,616
Salt	19,440,573	18,159,063	18,085,183	14,517,288
Sesame oil	91,992	22,962		
Soda (benzoate of)	180,106	162,508	164,726	134,820
Soybean oil	3,736,178	26,842,239	33,222,115	53,982,075
Soybean stearin				17,907
Vegetable stearin				9,174
Vitamin concentrate			11,517	14,363
Margarine produced	371,737,616	389,264,249	415,121,856	332,874,281
Cottonseed oil:				
As percent of fats and oils used	30.8	42.7	52.4	40.5
As percent of margarine produced	25.3	35.2	42.8	32.8

Source: U. S. Commissioner of Internal Revenue. Annual Reports, except data for 1939 which is from monthly releases. Percentages of cottonseed oil are our own calculations.

EXHIBIT No. 2367

[National Cottonseed Products Association]

Farm cash income —Cotton and cottonseed

Year (calendar)	Cotton ($1,000)	Cottonseed ($1,000)	Total ($1,000)	Percent of total from Cottonseed
1929	1,363,007	148,943	1,511,950	9.5
1930	726,911	97,234	824,145	11.8
1931	455,342	41,614	596,956	8.4
1932	418,514	42,180	460,694	9.2
1933	528,838	48,713	577,551	8.4
1934	758,523	104,331	862,854	12.1
1935	608,328	103,458	711,786	14.5
1936	763,360	141,519	904,879	15.6
1937	770,377	129,776	900,153	14.4
1938 [1]	575,741	91,494	667,235	13.7
1939 [1]	525,320	83,485	608,805	13.7

[1] Preliminary from releases by the Bureau of Agricultural Economics.

Source: U. S. Department of Agriculture. Bureau of Agricultural Economics. "Income Parity for Agriculture," Part 1, Section 1.

EXHIBIT No. 2368

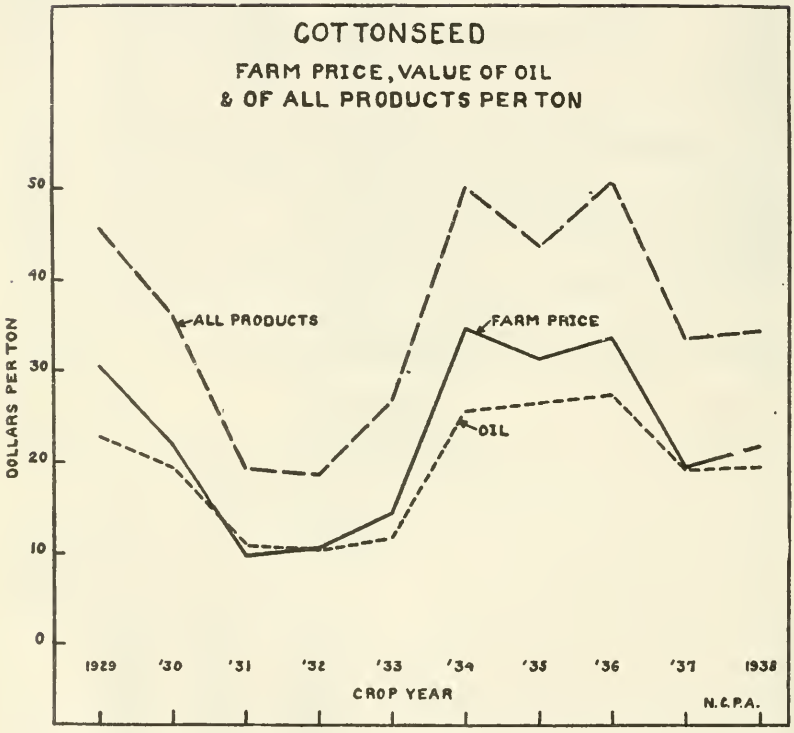


EXHIBIT No. 2369

State Taxation of Oleomargarine as of March 1, 1940

State	Excise tax (cents per lb.); where two rates are given first refers to uncolored; second to colored margarine	Annual license taxes (a) Manufacturer (b) Wholesaler (c) Retailer (d) Restaurant (c) Hotel (f) Boarding House
Alabama	10 (1)	
Arkansas	10 (1)	
California		(a) $100, (b) $50, (c) $5, (d), (e), (f), $2.
Colorado	10 (2)	(a) $25, (b) $25.
Connecticut		(a) $100, (b) $50, (c) $6, (d), (e) $3.
Florida	10 (3)	
Georgia	10 (4)	
Idaho	5, 10	(b) $200, (c) $50.
Iowa	5	
Kansas	10 (2)	
Louisiana	12 (1)	
Maine	10 (1)	
Minnesota	10 (5)	(a), (b), (c) $1.
Mississippi		(b) $100, (c) 10 (1).
Montana		(b) $1,000, (c) 400.
Nebraska	15 (6)	(a) $100, (b) $25, (c) $1.
New Mexico	10 (3)	
North Carolina	10 (1)	(b) $75.
North Dakota	10	(a) $10, (b) $5, (c) $2.
Oklahoma	10	(a), (b), $10 (c) $5, (d), (e), (f) $2.
Pennsylvania		(a) $1,000, (b) $500, (c) $100, (d), (e) $50 (f) $10.
South Carolina	10 (1)	
South Dakota	10	
Tennessee	10	(a) $5, (b), (e) $3, (c), (d) $2, (f) $1.
Texas	10 (1)	
Utah	5, 10	(b), (c), $5.
Vermont		(b), (c) $25.
Washington	15	
Wisconsin	15	(a) $1,000 (b) $500, (c), (d), (e) $25, (f) $5 (7).
Wyoming	10 (8)	

Notes: (1) Tax applies to margarine containg any fat or oil other than the follow¹ng: oleo oil, oleo stock, oleo stearin, neutral lard, corn oil, cottonseed oil, peanut oil, soybean oil or milk fat. (2) Same as (1) with soybean oil omitted from exemptions. (3) Same as (1) with beef and sheep fats added to exemptions. (4) Same as (1) with pecan oil added to exemptions. (5) Tax applies to margarine containing less than 65% of animal fats and any fats and oils other than milk fat, peanut oil, cottonseed oil and/or corn oil. (6) Margarine containing more than 50% of animal fats and oils and no imported fat or oil is exempt. (7) Consumers who purchase margarine in interstate commerce are required to pay annual license tax of $1 and excise tax of 6¢ a pound. Bakers' and confectioners' licenses are $5. (8) Margarine containing 20% or more of animal fats and oils is exempt.

NATIONAL COTTONSEED PRODUCTS ASSOCIATION.

EXHIBIT No. 2370

Revenue obtained from margarine taxes in selected States, year ending December 31, 1938

State	Revenue from Excise Tax	Revenue from License Tax	Total Revenue
Idaho (5 cents)	$1,430.00	$330.00	$1,760.00
Iowa (5 cents)	170,385.00		170,385.00
Utah (5 cents)	32,059.81	1,390.00	33,449.81
North Dakota (10 cents)	533.40	2.00	535.40
South Dakota (10 cents)	2,275.60		2,275.60
Oklahoma (10 cents)	.00	.00	.00
Tennessee (10 cents)			17,649.48
Washington (15 cents)	.00		.00
Wisconsin (15 cents)			5,148.00
Montana ($400 retail license tax)		[1] 11,200.00	11,200.00

[1] Estimated on basis of Federal licensees.

Source: Institute of Margarine Manufacturers. Data was obtained by inquiries addressed to States in question.

NATIONAL COTTONSEED PRODUCTS ASSOCIATION.

EXHIBIT No. 2371

Retail margarine dealers in States taxing cottonseed oil margarine, 1928 and 1938

State	Number of Retail Dealers		Decrease	State	Number of Retail Dealers		Decrease
	1928 [1]	1938 [1]			1928 [1]	1938 [1]	
Idaho	699	7	692	Wisconsin	5,007	50	4,957
Iowa	7,400	3,935	3,465	Montana	[2] 300	28	272
Utah	733	266	467	Vermont	196	451	+255
North Dakota	764	4	760	Minnesota	5,416	2,221	3,195
South Dakota	1,523	51	1,472	Nebraska	3,410	2,959	451
Oklahoma	2,363	716	1,647	Wyoming	275	397	+122
Tennessee	3,498	375	3,123				
Washington	3,986	3	3,983	Total	35,570	11,463	24,107

Estimated annual loss of margarine sales in above States 76,410,000
Estimated annual loss in terms of cottonseed oil 28,500,930

[1] Fiscal year ending June 30.
[2] Average 1922-24. Montana first enacted a retail license tax in 1925 and increased rate in 1928. The year 1928 would therefore not be representative.

Source: U. S. Bureau of Internal Revenue. Annual Reports of the Commissioner.

NATIONAL COTTONSEED PRODUCTS ASSOCIATION.

EXHIBIT No. 2372

Retail margarine dealers in States which do not tax cottonseed oil margarine

State	Retail Dealers 1928 [1]	Retail Dealers 1938 [1]	Increase	State	Retail Dealers 1928 [1]	Retail Dealers 1938 [1]	Increase
Alabama	1,389	2,428	1,039	Michigan	10,516	12,505	1,989
Arizona	531	953	422	Missouri	6,986	9,092	2,106
Arkansas	1,432	2,362	930	Nevada	63	162	99
Colorado	2,362	2,551	189	New Hampshire	699	1,243	544
Delaware	341	437	96	New Jersey	5,817	4,960	−857
District of Columbia	443	978	535	New Mexico	194	671	477
Florida	2,288	4,102	1,814	New York	13,986	13,952	−34
Georgia	1,601	3,491	1,890	North Carolina	821	3,146	2,325
Illinois	15,436	16,642	1,206	Ohio	16,298	16,613	315
Indiana	10,306	9,939	−367	Oregon	2,530	2,693	163
Kansas	7,278	5,464	−1,814	Rhode Island	604	1,057	453
Kentucky	1,954	4,304	2,350	South Carolina	432	1,925	1,493
Louisiana	1,602	3,006	1,404	Texas	2,341	9,150	6,809
Maine	1,435	2,067	632	Virginia	1,824	4,141	2,317
Maryland	1,958	3,519	1,561	West Virginia	2,094	4,875	2,781
Massachusetts	4,629	5,011	382	Total	120,190	153,439	33,249

[1] Fiscal years ending June 30.

Source: U. S. Bureau of Internal Revenue. Annual reports of the Commissioner.

NATIONAL COTTONSEED PRODUCTS ASSOCIATION.

EXHIBIT No. 2373

Lard—Factory production, exports and difference

Year	Production	Exports	Balance for Domestic Consumption	Year	Production	Exports	Balance for Domestic Consumption
	1,000 lbs.	*1,000 lbs.*	*1,000 lbs.*		*1,000 lbs.*	*1,000 lbs.*	*1,000 lbs.*
1929	1,856,862	847,868	1,008,994	1935	781,893	97,359	684,534
1930	1,602,505	656,018	946,487	1936	1,063,155	112,168	950,987
1931	1,681,092	578,296	1,102,796	1937	896,474	136,778	759,696
1932	1,689,873	552,154	1,137,719	1938	1,162,343	204,603	957,740
1933	1,776,120	584,238	1,191,882	1939	1,413,979	277,271	1,136,708
1934	1,427,171	434,892	992,279				

Source: U. S. Department of Commerce. Bureau of the Census.

NATIONAL COTTONSEED PRODUCTS ASSOCIATION.

EXHIBIT No. 2374

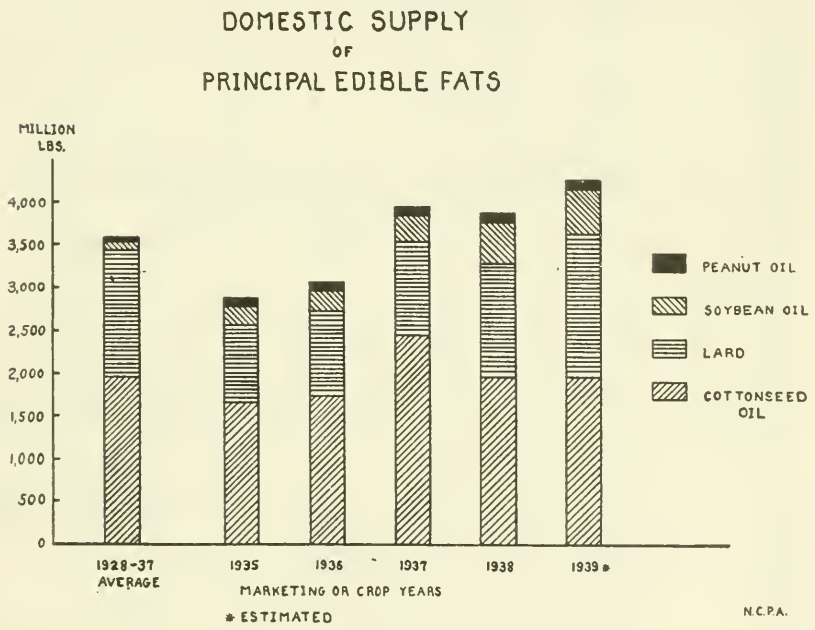


EXHIBIT No. 2375

[Compiled by National Ass'n of Margarine Mfr's from "State and Federal Legislation and Decisions Relating to Oleomargarine," U. S. Dept. of Agriculture]

State excise and license taxes on oleomargarine, years of enactment, and exceptions to excise taxes

	Per Pound Excise Tax			License Taxes			
	Colored	Per Pound Tax (And Year of Enactment)	Exceptions to Tax	Retailers (And Year of Enactment)	Wholesalers	Manufacturers	Restaurants Boarding H. Consumers
Ala	prohibited	10 (35)	Dom				
Ariz							
Ark		10 (35)	Dom				
Calif	"			(23) 5.00	50.00	100.00	2.00
Colo		10 (33)	Dom. S. B.	(31)	25.00	25.00	
Conn	"			(33) 6.00	50.00	100.00	3.00
Del	"						
Fla	"	10 (35)	Dom				
Ga		10 (35)	Dom				
Idaho	"	5 (31)		(29) 50.00	200.00		
Ill	"						
Ind							
Iowa	"	5 (31)					
Kansas		10 (33)	Dom. S. B.				
Ky							
La		12 (34)	Dom				
Maine	"	10 (35)	Dom				
Md	"						
Mass	"			(86) Local sellers registration fee .50¢			
Mich	"						
Minn	"	10 (33)	Dom. (A)	(31) 1.00	1.00		
Miss			Dom	(20) 10.00	(32)100.00		
Mo	"						
Mont	"			(25) 400.00	1,000.00		
Nebr		15 (31)	Dom. (A)	(25) 1.00	25.00	100.00	
Nev							
N. J	"						
N. H	"						
N. Mex		10 (35)	Dom				
N. Y	"						
N. C	"	10 (35)	Dom	(reduced 1929 to)	75.00		
N. Dak	"	10 (31)		(31) 2.00	5.00	15.00	
Ohio	"						
Okla	"	10 (31)		(31) 5.00	10.00	10.00	2.00
Oreg	"						
Pa	"			(1899) 100.00	500.00	1,000.00	10.00 50.00
R. I							
S. C	"	10 (34)	Dom				
S. Dak	"	10 (31)					
Tenn		10 (31)			3.00	5.00	3.00 2.00 1.00
Texas		10 (34)	Dom				
Utah	"	5 (29)		All sellers	5.00		
Vt	"			All sellers	25.00		
Va							
Wash	"	15 (31)					
W. Va	"						
Wis	"	15 & 6 cents (35)		(31) 25.00	500.00	1,000.00	1.00 25.00
Wyo	"	10 (31)	Dom. (A)				

EXHIBIT No. 2376

Retail dealers licensed to sell uncolored oleomargarine: Number before State excise taxes were imposed compared with the number after excise taxes were imposed grouped by different types of tax:

IN STATES HAVING EXCISE TAXES ON ALL UNCOLORED OLEOMARGARINE

State	1927–28 Retail Dealers	1936–37		Percentage Change in Dealers
		Retail Dealers	Excise Tax Per Pound	
	Number	*Number*	*Cents*	*Percent*
Idaho	699	6	5	−99.1
Iowa	7,400	3,989	5	−46.1
Utah	733	286	5	−61.0
Total (5¢)	8,832	4,281		−51.5
No. Dak	764		10	−100.0
So. Dak	1,523	48	10	−96.8
Tenn	2,363	320	10	−86.5
Okla	3,498	344	10	−90.2
Total (10¢)	8,148	712		−91.3
Wash	3,986	11	15	−99.7
Wisc	5,007	3	15	−99.9
Total (15¢)	8,993	14		−99.8
Total	25,973	5,007		−80.7

State and Federal Legislation and Decisions relating to Oleomargarine. Bureau of Agricultural Economics. U. S. Department of Agriculture.

EXHIBIT No. 2377

Numbers of licensed retail dealers and of retail food stores in States taxing uncolored margarine, 1930–93

	Tax law Effective	Licensed Retail Dealers					Total Number Retail Food-Stores—Potential Margarine Dealers
		1930	1932	1933	1935	1939	
5 CENTS							
Idaho	1931	469	66	1	6		1,340
Iowa	1931	7,692	4,513	1,364	3,634	2,302	9,079
Utah	1929	527	315	33	193	252	1,530
		8,688	4,894	1,398	3,833	2,554	11,949
10 CENTS							
North Dakota	1931	1,222	3		1	1	2,233
South Dakota	1931	1,736	553	189	64	27	2,187
Tennessee	1931	3,234	260	379	473	317	11,503
Oklahoma	1931	4,152	2,177	1,200	197	404	7,173
		10,344	3,693	1,768	735	749	23,096
15 CENTS							
Washington	1931	4,740	12	3			6,273
Wisconsin	'32–'35	5,191	911	13	22		10,401
		9,931	923	16	22	00	16,674
		28,963	9,510	3,182	4,590	3,303	51,719

Exhibit No. 2378

Imports of Vegetable Oils and Oil Equivalent of Imported Oil Seeds, of the Kind Used by Industry in the Manufacture of Food Products[1]

Vegetable Oils	Average for Five Years 1932–1937	1938	1939
	Pounds	*Pounds*	*Pounds*
Coconut	633,098,441	687,141,304	607,729,610
Palm	298,098,808	271,324,950	285,416,373
Palm Kernel	63,794,886	13,521,536	5,949,116
Babassu	27,105,758	32,020,957	72,893,792
Cottonseed	162,834,864	77,500,218	29,454,225
Peanut	38,354,782	16,553,395	3,779,416
Soybean	11,273,985	4,283,074	4,146,203
Corn	21,454,634	22,241,765	13,964,861
Sesame	40,693,118	10,243,311	9,273,330
Olive Oil	103,057,822	98,886,135	102,350,440
Rapeseed	37,809,935	9,170,998	11,959,954
Other Vegetables	62,165,388	39,263,840	35,721,623
	1,499,742,421	1,281,151,483	1,183,638,942
SAME FOR ANIMAL AND MARINE FATS AND OILS			
Animal Oils and Fats	12,404,545	4,696,009	3,854,176
Tallow	72,338,018	1,229,194	1,496,474
Fish Oils	2,766,945	531,150	919,985
	87,509,508	6,456,353	6,270,635

[1] From Fats and Oils Trade of the United States in 1939. Food Stuffs Division, U. S. Department of Commerce, February 1940.

Exhibit No. 2379

Factory Consumption of Primary Animal and Vegetable Fats and Oils in the Manufacture of Oleomargarine 1930–39 Incl.

	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939
Cottonseed oil	27,445	16,027	15,096	17,997	54,778	99,505	108,106	173,615	142,857	98,657
Peanut oil	5,785	4,598	2,512	2,635	2,744	4,358	4,140	2,880	3,593	2,445
Coconut oil	177,989	133,117	123,219	150,096	123,678	174,314	150,465	73,806	89,521	38,516
Corn oil	159	52	54	341	4	32	1,238	1,796	566	489
Soybean oil	2,257	623	3	7	24	1,740	14,262	31,793	39,885	70,822
Palm kernel oil	3					425	2,400	7,946	4,746	473
Rapeseed oil							9			
Palm oil	863	2,430	262	544	66	3	1,402	1,063		
Sesame oil	52	251				77	57	1		
Babassu oil						1,838	16,114	14,606	11,545	13,944
Sunflower oil						100	5			
Other vegetable oils	37	36			2	40	442		70	12
Lard	14,905	3,317	9,413	8,959	7,486	3,005	2,198	1,747	1,464	1,355
Edible animal stearine	7,309	4,883	3,684	3,120	3,478	2,612	3,550	3,375	3,278	4,181
Oleo oil	38,914	18,785	12,455	15,095	21,872	18,226	18,331	12,277	13,411	11,865
Butter	1,687									
Total fats and oils used	277,405	190,467	166,698	198,794	214,132	306,275	322,719	324,905	310,936	242,759

In thousands of pounds.
Department of Commerce, Bureau of the Census.

	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939
Number of manufacturing plants	77	67	68	50	47	45	42	41	38	40
Number of wholesale dealers	2,107	2,073	1,336	965	2,407	1,275	1,340	1,471	1,665	1,636

National Ass'n. of Margarine Mfgr's., Columbus, Ohio, March 1, 1940.

EXHIBIT No. 2380

Factory Consumption of Primary Animal and Vegetable Fats and Oils in Food Products, Calendar Year 1938

[Quantities in thousands of pounds]

Kind	Shortening	Oleomargarine	Other Edible Products
Total	1,512,299	310,936	377,055
Cottonseed oil	1,040,162	142,857	198,155
Peanut oil	52,402	3,593	1,920
Coconut oil	26,199	89,521	61,493
Corn oil	399	566	57,104
Soybean oil	143,318	[illegible]	11,280
Olive oil, edible			2,[illegible]
Olive oil, inedible			
Sulphur oil or olive foots			
Palm-kernel oil	614	4,746	13,118
Palm oil	115,033		444
Babassu oil	950	11,545	8,969
Sesame oil	5,435		1,573
Rapeseed oil	297		
Linseed oil	6		
Tung oil			
Perilla oil			
Castor oil			
Other vegetable oils	695	70	6,525
Lard	2,825	1,464	5,518
Edible animal stearin	32,845	3,278	5,074
Oleo oil	291	13,411	40
Tallow, edible	74,251		2,992
Tallow, inedible			
Grease			
Neat's-foot oil			
Marine animal oils	48		
Fish oils	16,529		

From Factory Consumption of Animal and Vegetable Fats and Oils by Classes of Products for 1938. Department of Commerce, Bureau of the Census, preliminary report March 18, 1939.

"EXHIBIT No. 2381," introduced on p. 15862, is on file with the committee.

"EXHIBIT No. 2382," introduced on p. 15863, is on file with the committee.

"EXHIBIT No. 2383," introduced on p. 15863, is on file with the committee.

"EXHIBIT No. 2384," introduced on p. 15864, is on file with the committee.

"EXHIBIT No. 2385," introduced on p. 15866, is on file with the committee.

EXHIBIT No. 2386

Telephone: PLaza 3-4360

MARKET ADMINISTRATOR—NEW YORK METROPOLITAN MILK MARKETING AREA

Federal Order No. 27, Issued by the Secretary of Agriculture, and New York Official Order No. 126, Issued by the Commissioner of Agriculture and Markets.

383 MADISON AVENUE, NEW YORK, N. Y.

COMPUTATION OF THE UNIFORM PRICE NEW YORK METROPOLITAN MILK MARKETING AREA

Following are the details of the computation of the uniform price for the New York Metropolitan Milk Marketing Area from reports as submitted by handlers for January, 1940, as outlined in Article VI of the Orders shown above:

Classes	Pooled				Contribution to uniform price		Not pooled
	Pounds	%	Class Prices	Values	1939	1940	
							Pounds
I	206,965,800	52.75	$2.82	$6,113,184.94	$1.38	$1.49	27,119,269
II-A	74,653,375	19.03	2.05	1,627,748.92	.37	.39	3,841,228
II-B	4,621,079	1.18	2.006	97,189.67	.03	.02	
III-A	25,462,571	6.49	1.606	455,548.30	.08	.10	1,353,630
III-B	8,492,714	2.17	1.670	152,449.37	.02	.04	123,624
III-C	13,929,723	3.55	1.270	189,540.63	.03	.05	372,366
III-D	35,203,828	8.97	1.245	477,660.57	.06	.11	1,286,032
IV-A	22,924,541	5.84	1.170	292,627.56	.05	.07	822,624
IV-B	96,774	.02	1.265	1,273.34	.00	.00	876
Totals	392,350,405	100.00		9,407,223.30	2.02	2.27	34,919,649
Less Adjustments:							
Butterfat			$514,768.04				
Location			101,314.36		−.03	−.03	
			616,082.40				
Less Freight			26,645.69				
				589,436.71			
Handlers Net Pool Obligation				8,817,786.59	1.99	2.24	
Deductions:							
Coop. Assn. Payments			90,273.69		−.02	−.02	
Market Service Pay			333,667.87				
				423,941.56	−.07	−.08	
				8,393,845.03			
Add Cash in Producer Settlement Fund				194,175.08	+.03	+.05	
				8,588,020.11			
Less Reserve				191,721.44	−.05	−.05	
Net Pooled Milk	392,350,405 lbs.						
Uniform Price @	2.14 Cwt.			8,396,298.67	1.88	2.14	

No. of Handlers 144
No. of Plants 490
Approximate No. of Producers 60,000

(Signed) E. M. HARMON,
Market Administrator.

FEBRUARY 14, 1940.

EXHIBIT No. 2387

J. O. GALLEGOS
Commissioner of Revenue

G. S. CARTER
Director

SCHOOL TAX DIVISION

NEW MEXICO STATE BUREAU OF REVENUE

Santa Fe, New Mexico

TRADE BARRIERS

There is so much discussion regarding "Trade Barriers" these days, it occurred to me that you might be interested in reading the attached paper which

was delivered by me at a public forum held at Las Cruces, New Mexico, November 7, 1939.

(Signed) G. S. CARTER,
Director, School, Compensating and Severance Tax Divisions,
Bureau of Revenue.

NOVEMBER 8, 1939.

A PAPER PREPARED AND DELIVERED BY G. S. CARTER, AT A PUBLIC FORUM, LAS CRUCES, NEW MEXICO, TUESDAY EVENING, NOVEMBER 7, 1939

The demands of modern society upon modern government have produced many new kinds of taxes and many varieties of tax propaganda.

When we consider that the people of the United States used to be satisfied with an educational situation wherein only the children of the rich could obtain a complete scholastic education, and that the people were once satisfied with fraternal, family and purely local relief for the needy, and that the same people were satisfied with a road system wherein private individuals or corporations owned the highways and then look at our contemporary society, we can get the first glimpse of the new order of things.

Now, everyone believes that all of us can afford an educational system that provides for the education of all of our children. General thought about relief has changed; even the leading citizens of a community are willing and anxious to have the needy members of their related families on government relief and all agree that relief in its ramified demands is something that the government should provide—all of us again agreeing that all of us can afford relief for all who need it. The highway system of today reaches all parts of the nation, the state and the counties—and we are agreed that that system is better because the profit motive does not determine the location of the highway and that the service motive does; and again we are all agreed that all of us can afford a national highway system for all people. It should be clear to all of us that if we feel we can afford governmental services for all of the people, that all of us must be prepared to assume our place in the army of taxpayers who must . . the taxes to maintain such an extensive government.

All of my time could be taken up with presentation of paralliels in the demands of society upon the government as between yesteryears and today. Owners of farms, real estate, buildings and property generally referred to as real property paid the bills as long as they could and not until they faced the prospect of complete bankruptcy on account of the tax load was there anything done about it by the various legislatures.

New Mexico adopted a 20 mill levy against real property as a protection against bankrupting that part of our society. The excise taxes, some times referred to in the press as special taxes for special purposes, came into being in our own state, and elsewhere, because modern government could not pay, with the old methods of taxation, the bills incurred in its effort to satisfy modern society.

We have a unique situation in New Mexico. We are large in acreage and small in population but the demands of the people on government in this state are no different than in New York where the situation is just the opposite. New Mexico's men and women want good schools, good roads, good public welfare services and all the services of government the people of New York demand and get. A direct tax can be levied against only fifty per cent of our acreage because the remainder is federal government and state owned and therefore, tax exempt. New Mexico's Excise taxes are not political creatures. They are children of necessity.

There is a vast difference between ad valorem tax that is imposed against real property and excise taxes that are usually a direct tax on sales transactions or income. The main difference is that the administration of one is simple and the other is difficult.

You can't beat taxes and death is an old adage that does not apply to our contemporary existence. It is true that you cannot beat ad valorem taxes—they just pile up, like old man river flows on and on, and if you don't pay them your heirs will have to do so or lose the property.

Some of our excise taxes and what they are used for are:

Gasoline Tax—highway construction and maintenance.

School or Sales Tax—public school system.

Compensating Tax—direct aid for needy old folks.

Severance Tax—Department of Public Welfare and general fund.

Income Tax—school system and general fund.
Motor Vehicle Tax—general fund.
Mileage Tax—State road fund.
Liquor Tax—Department of Public Welfare.

The collection of any one or all of this type of tax presents definite administration problems because they are types of taxes that can easily be avoided and evaded. If the tax collection authorities waited for the taxpayers to come in and pay excise taxes, like the county treasurer can wait for the taxpayer to pay ad valorem taxes, the percentage of collection would be well below 30 per cent.

Individuals do not realize that after they pay the school, liquor, compensating, gasoline and similar taxes, that the state's job is to get it from those to whom the individual pays the tax. Collection of these and mileage and motor vehicle taxes requires considerable aggressive administration.

The legislature that adopts a new tax law anticipates 100 per cent collection of the tax and if fair and equitable administration, so that every one will pay on the same tax basis, is to be had—diligent and sometimes aggressive methods, must be pursued.

My opening statement was that the new kinds of taxes have produced many varieties of tax propaganda. History does not record a "happy days are here again" attitude about any taxes. Our own nation's history is studded with opposition to taxes and tax collectors. The natural disposition of a good American is to pay as little tax as possible and none if he can get away with it; he may squawk if he is caught, which is an American taxpayers' privilege, for which we should all be most grateful when we consider the plight of the Russian, German, Italian, and other old country taxpayers today. We believe that those who pay excise taxes divide themselves into about the following groups:

50 per cent who have the disposition and the money to pay;

40 per cent who do not have quite enough money to pay the landlord, the wholesale houses, the government and the rest. The government, not being present when the bills are paid by this 40%, usually is the loser on account of absence.

10 per cent who are pure tax dodgers, chiselers, and cheaters when it comes to payment of taxes.

This sets up the need for field men to check the various taxpayers who report to the state and likewise brought into existence the so-called port of entry system which is the real reason for the so-called trade barrier propaganda that has swept the country during the past few months.

Babies have always shied and been awed by the terrible word "Boo." Adults of our time are being taught to fear the words "Trade Barriers." These magic words seem to suggest Hitler, Mussolini, Stalin, Europe, and the Balkan States. Trade Barrier propaganda keeps a force of propagandists, attorneys, special representatives, associations, organizations, printing presses and mimeographs busy night and day warning the people about the downfall of the United States if trade barriers are not eliminated immediately.

No sensible person, and I lay claim to that title, will long argue the point that when State sets itself up against State, by adopting punitive and discriminatory laws that benefit no one, and only punish people and another state, that we are on the road to destroying the United States. I would be the first to tear down any such barriers, but want to also be among the first to state that the trade barrier propagandists have not always been fair in disseminating their propaganda.

For instance, when the Fourteenth Legislature had before it, consideration of the New Mexico Compensating Tax Act, Governor Miles, Senator A. K. Montgomery, the Senate committee considering the bill and all others concerned, took particular steps to avoid writing into that law any trade barrier. As a result, the New Mexico Use Tax Law is a model of that kind of legislation, and yet when I represented the Governor of New Mexico at San Francisco as his representative on Trade Barriers, I noted and called attention to those present, the fact that a map on display carried the notation that the New Mexico Use Tax was a trade barrier. Mr. Frank Bane, Executive Director of The Council of State Governments, immediately acknowledged my criticism and removed the sticker from the map. He likewise accepted my criticism regarding their reference to New Mexico's Division of Field Administration, and acknowledged that the action of the Fourteenth Legislature had cured the "trade barrier" ills that occurred in our old port of entry set-up. The map also contained a sticker stating

that our oleomargarine tax, which is not actively administered, was a trade barrier, and Mr. Bane acknowledged that it was not a trade barrier because it does not discriminate against cottonseed oil produced in the United States, but against foreign imported oils.

The point I want to make here is that trade barriers are not all-inclusive words, that include all domestic excise taxes, the collection of which is necessary to maintain state government. There are those, however, who claim that purely domestic sales taxes are trade barriers, which, of course, is the extreme attitude of the trade barrier propagandists and is not generally agreed to.

The real points involved in so-called trade barrier propaganda are associated with the problem of transportation. Wide use of the truck for transporting property and the bus for transporting people has brought with it some important tax problems that must be considered as tax problems and not as part of a discussion involving oleomargarine, use taxes, liquor regulations, and a lot of other extraneous subjects. The railroads built and maintain a right of way and road bed for their own use. The trucks and busses did not build their road bed and do not maintain their right of way. The railroads pay ad valorem tax on their road bed, the trucks do not.

The sour and sore spot is that trucks hauled during 1938 about $2,000,000,000.00 of the $5,500,000,000.00 spent for transporting property inter-city, county and state, which means that truck transportation has become a major industry in the United States. There are important influences in the trucking industry who feel that the government having subsidized the shipping industry and loaned money to the railroads should, by federal legislation, throw all highways that have been built with federal aid, open to trucks and busses without regulation and without payment of additional direct taxes when away from their home states. Small and poor states have provided highways for their use and that of their visitors. New Mexico woos the tourist with good roads and delightful scenery. The scenery has always been here but it took the good roads to get the tourists here and the maintenance of what we have and the building of more highways will capture the tourist trade in the years to come. All of which adds up to this: New Mexico cannot afford to throw its highway system open for unlimited truck use. We must have our ton mileage income, our income from license fees, and other direct taxes from out-of-state trucks who use our highways. What is more important we must have control over the weight and size of the trucks that use our highways. Our richer neighbors can build thick, strong, steel enforced highways—they have more money and oftentimes less area. Our highways are the best we can afford, but they will not take unlimited loads, and to throw them open would mean the destruction of what we have and the stopping of future construction, because it would take all we could collect and borrow to maintain a broken down highway system.

New York, Illinois, Texas, Oklahoma and many other neighbors have graciously offered the western states a proposition of reciprocal agreement concerning truck licensing, comparable to the set-up on passenger cars. In other words, they will let all the New Mexico trucks travel in their states without charge and regulation, if we will agree to do the same for them. Like all poor folks, we have a chance to be a good fellow but at prohibitive expense—for every truck we would send to Texas, they would send us 1,000—Oklahoma would send us 500. Our purely western neighbors, excepting California, large in area and short on money, would about equalize our truck use of their highways. It sounds good—the reciprocal idea—and it would be if we had oil and metals in every county in our State so we could collect more tax from those industries to pay the bills. We could then afford to keep up with the Joneses and the rest of our richer friends.

The Governor of Oklahoma and the 1939 legislature recently followed the suggestion of the Trade Barrier propagandists and eliminated their port of entry system. It is interesting to note the following comment from the third biennial report of the Oklahoma Tax Commission:

"The figures given below show the increase in collections of the mileage tax, gasoline tax, motor vehicle license, and beverage tax, over a six-year period from 1933 to 1938. A portion of these increased collections was the result of improved economic conditions; some of these increases were due to changes in the laws, improving the administration and plugging loopholes; but a portion of these increased tax collections also resulted, directly or indirectly, from the work of the ports of entry and General Enforcement Division.

Tax Collections by Fiscal Years

Fiscal Year	Mileage Tax	Gasoline Tax	Motor Vehicle License	Beverage Tax
1932–33	$194,593.19	$9,686,754.22	$3,294,861.07	
1933–34	523,355.52	10,523,418.66	3,032,974.74	$716,309.00
1934–35	613,414.22	11,075,352.71	3,479,365.01	679,664.56
1935–36	892,416.12	13,395,048.46	4,194,586.67	893,529.20
1936–37	1,073,108.15	14,335,291.13	4,519,468.81	1,241,523.38
1937–38	1,393,562.06	15,323,152.65	5,161,250.42	[1] 1,050,749.71

[1] (Rate reduced from $2.50 to $2.00 per barrel.)

"Examining the above figures, it will be seen that the greatest increase in collections was from 1934–35 to 1935–36. The ports of entry first became effective in 1935–36, and their work was partially responsible for the unusually large increase in collections shown for 1935–36 and subsequent years in the above table.

"The following table shows the increase in tax collections from these four sources during the three years following the establishment of ports of entry over collections during the three years before the creation of the ports of entry.

Total collections in 3 years prior to creation of ports of entry:		
Mileage Tax	$1,331,362.93	
Gasoline Tax	31,285 525.59	
Motor Vehicle License	9,807,300.82	
Beverage Tax	1,395,973.56*	(2 Years)
Total collections last 3 years:		
Mileage Tax	$3,359,086.33	
Gasoline Tax	43,053,492.24	
Motor Vehicle License	13,875,305.90	
Beverage Tax	2,292,273.09*	(2 Years)
Increase since establishment of ports of entry:		
Mileage Tax	$2,027,723.40	
Gasoline Tax	11,767,966.65	
Motor Vehicle License	4,068,005.08	
Beverage Tax	896,299.53	

"It is seen that there was a total increase of $18,759,995.66 in these four taxes during the three years immediately following the creation of the ports of entry (beverage taxes shown above are for two years only, as the beverage tax was first enacted in 1933).

"It is not claimed that the ports of entry were responsible for all of this great increase. However, the ports of entry were an important instrument created by the Legislature for the purpose of tightening up what had been a very loose enforcement of certain tax laws, and there can be no doubt that the effective work performed by the ports of entry was responsible, directly or indirectly, for a goodly portion of the increased collections shown above."

The same legislature that wiped out that port of entry system made no provision for the collection of the vast amount of excise taxes they will lose. Keep in mind that the port of entry system collects a lot of taxes indirectly that would not be paid if that force was not present. The stop and go light costs so much money and creates so much inconvenience, but saves so many lives, that no one would seriously consider getting rid of them because we have to stop a moment or two when the light is red.

Again, let us consider the figures which are given below, showing the increase in collections of New Mexico's motor vehicle licenses, mileage tax, gasoline tax, school tax, and driver's licenses, over a five year period from 1934 to 1939, and the first four months of the fiscal year beginning July 1, 1939.

Total Collections by Fiscal Years

Fiscal Year	Motor Vehicle	State Corp. Com. Mileage Tax	Gasoline Tax	School Tax	Driver's Licenses
1934–35 (Before Port of Entry set-up)	820,606.59	$94,227.35	$2,796,680.66	$2,112,190.99	
1935–36	1,072,577.50	102,208.46	3,124,128.56	2,362,514.16	
1936–37	1,308,771.82	129,548.01	3,736,096.21	3,062,274.45	
1937–38	1,599,624.38	171,988.40	4,440,942.11	3,657,774.84	137,945.62
1938–39	1,659,065.11	182,532.26	4,508,132.08	3,450,219.10	155,632.72
1939–40 (First 4 months)	156,770.43	68,279.46	951,628.24	1,243,451.61	20,725.06

While it is not claimed that the Ports of Entry were responsible for all of the increase, it is felt that they were responsible, directly or indirectly, for a large share of same.

The Chicago conference on trade barriers, the two Denver conferences on trade barriers, and the discussion of trade barriers at the Western Conference on Governmental Problems, all passed resolutions acknowledging that where ports of entry operated to collect taxes and did not discriminate against the products and services of units of society of another state, were not trade barriers. Yet the propaganda against the New Mexico ports of entry continues although its function and operation is definitely within the pale of the approved and outside the pale of the damned.

We are driven to consider the possibility that there is something far more important than just getting rid of ports of entry, use taxes, etc., and to ask whether or not those commercial groups, whose interest in the sale of automotive equipment for use on the public highways, are not the motivating sources that pay the tremendous bill that produces the propaganda, prints it, distributes it and provides the fine personnel of highly intelligent and competent lawyers and representatives, and sets up and maintains the associations and organizations that carry the Trade Barrier propaganda into the homes and places of business of every American citizen. To date these propagandists have failed to suggest what the modern state governments who are meeting the demands of modern society are going to do about financing their governments, when, as, and if they are successful in taking from these poorer states the tax incomes required to render the services demanded by modern society.

Always remember that the same members of a civic club who meet tonight to draft resolutions, telegrams, etc., demanding that the government spend a lot of money in their locality, are willing to meet tomorrow night to draft resolutions, telegrams, etc., demanding that government cease spending and cut its expenses.

Modern society wants the world with a tail on it, but objects to acknowledging and assuming their status as taxpayers in the set-up of the modern government that provides the extensive public services of our time.

EXHIBIT No. 2388

A PAPER PREPARED BY G. S. CARTER AND DELIVERED BY WILLIAM A. WATSON, ATTORNEY AT LAW, REPRESENTING MR. CARTER, AT A CONFERENCE OF BUSINESS AND GOVERNMENT AT THE UNIVERSITY OF NEW MEXICO, ALBUQUERQUE, NEW MEXICO, SATURDAY MORNING, DECEMBER 9, 1939

Taxation is not a mysterious political creature. While it is often the wolf-cry of the headline hunter, it is actually an essential to organized civilization. Lack of complete frankness between the legislature, the tax collectors and the taxpayers is the hidden menace that threatens our contemporary existence. This speaker proposes to state frankly the case as he sees it, and hopes that those who approve or criticize his position will be equally frank in their declarations.

Government officials, who are always either the tax collectors or the tax spenders, are natural butts of attack. Their status is fixed. The people, as such, on the other hand, comprising both society and government, have the inherent advantage of being able to be the government today, or the governed tomorrow, dependent upon the point at current issue. This has freed society

of much criticism due it, and has made it the vogue to blame government for all of its mistakes and those that society does not want to carry.

Modern society cannot ignore its changed attitude about governmental service Name the public service that existed a century ago and then note the tremendous increase of that service today. During the past quarter of a century, and in particular during the last decade, old services have been increased and many new kinds of public services have come into existence that undoubtedly will become permanent. Why this increase? There are those who believe that the politicians have brought all of this about and then there are those who recognize the changed demand of society upon government, its servant.

Our contemporary society and government reflect the results of objective propaganda that has, as its ultimate goal, the widest use of public funds for public services. The tragedy is that no certain thought has been developed regarding the financing of the consequent ever-increasing governmental tax bill. Name-calling and propaganda dominate this field of thought that should be led by the financial, economic, and political geniuses of our time.

The few cannot pay today's tax bill. Nor will the few be able to pay tomorrow's tax bill. They simply do not have that much money. The tax obligation will continue to fall directly upon all of the people—those who benefit from this wide-spread paternalistic government. It is sound logic to say that New Mexico cannot look to the future without recognizing excise taxation as a very definite part of its government financing.

When we consider that the people of the United States were once satisfied with an educational system wherein only the children of the rich could obtain a complete scholastic education, and that the people were once satisfied with fraternal, family and purely local relief for the needy, and that the same people were satisfied with a highway system wherein private individuals or corporations owned the highways and then look at our contemporary society, we can get the first glimpse of the new order of things.

Today, everyone believes that all of us can afford an educational system that provides for the education of everyone's child. General thought about relief has changed; even the leading citizens of a community are willing and anxious to have the needy members of their related families on government relief and all agree that relief in its many and ramified demands is something the government should provide—all of us again agreeing that all of us can afford relief for all who need it. Today's highway system reaches all points of the nation, the state and the counties—and we are agreed that that system is better because the profit motive does not determine the location of the highway; and again we are all agreed that all of us can afford a national highway system for all of the people. These three services, education, relief and highway construction and maintenance, usually account for more than 50% of the total expenditures of a given state. Present day attitude regarding these services can be accepted as a guide to our changing thought on what we think we can do, as the collective whole, for the collective whole. Other governmental services have constantly increased to meet public demand. The tax bill has grown along with new demands upon modern government to satisfy its parent, the modern society.

It should be clear to all of us that if we feel we can afford these extended governmental services for all of the people, that all of us must be prepared to assume our place in the army of taxpayers who must pay the taxes to maintain such an extensive government.

All of my time could be taken up with presentation of parallels of the demands of society upon the government as between yesteryears and today. Owners of farms, real estate, buildings and property generally referred to as real property paid the tax bill as long as they could and not until they faced the prospect of complete bankruptcy on account of the tax load, was there anything done about it by the various legislatures.

New Mexico adopted a 20 mill limit levy against real property as protection against bankrupting that part of our society. The excise taxes, something referred to in the press as special taxes for special purposes, came into being in our own state, and elsewhere, because modern government could not pay, by the old method of taxing real property, the bills incurred in its effort to satisfy modern society.

We have a unique situation in New Mexico. We are large in acreage and small in population and short on money. But the demands of the people on government in this State are no different than in New York where the situation

is just the opposite. New Mexico's men and women want good schools, good roads, good public welfare services and all the services of government the people of New York demand and get. A property tax can be levied against only 50% of our acreage because the remainder is federal government and/or state owned and therefore, tax exempt. New Mexico's excise taxes are not political creatures. They are children of necessity.

There is a vast difference between ad valorem tax that is imposed against real property and excise taxes that are usually a direct tax on privileges exercised or sales transactions or money income. Let us define advalorem and excise taxes.

"Ad valorem taxes are charges laid by a taxing authority upon all forms of property at a percentage rate of the assessed value of such property."

"Excise taxes are charges laid by a taxing authority upon privileges exercised; the term includes all forms of exactions, other than ad valorem."

From Jacobs Law Dictionary, published in 1811, we quote a definition of "Excise":

"An inland imposition paid sometimes on the consumption of the commodity, or frequently upon the retail sale, which is the last stage before the consumption."

We hear a great deal these days about excise taxation being a new form of taxation. It is interesting to note that these were the tax laws of Ancient Greece and Rome. Even the earliest tax laws of the territory of what is now known as the State of New Mexico levied a sales tax on the trade caravan.

To my mind the most apt discussion on the excise tax is contained in Blackstone's Commentaries, Book 1, Page 318.

"This is doubtless, impartially speaking, the most economical way of taxing the subject; the charges of levying, collecting, and managing the excise duties being considerably less in proportion than in other branches of the revenue. It also renders the commodity cheaper to the consumer than charging it with customs to be same amount would do. But at the same time, the rigour and arbitrary proceedings of excise laws seem hardly compatible with the temper of a free nation * * * and the proceedings in case of transgressions are summary and sudden to the exclusion of trial by jury.

"Excise taxation was first established in England in 1643, and was placed originally upon those persons and commodities where it was supposed the hardship would be the least perseivable—the makers and vendors of beer, ale, cider, and sherry, and was afterwards imposed on such a multitude of commodities that it might fairly be denominated, general * * *. It has been very judiciously observed, that the grievances of the excise exist more, perhaps, in apprehension than in reality."

Excise taxes generally include all forms of sales taxes, general, retail and selective: Income, Franchise, Succession, Severance, Occupational, or business taxes, Licenses, Fees, Fines, Court Costs, and the like, excluding only capitation or "head" taxes, and ad valorem taxes at a percentage rate of the assessed value of property.

Prior to 1932 the State of New Mexico depended almost entirely upon the time honored property tax for its revenues, the exceptions being the gasoline excise and the fees from motor vehicles licenses which were, as now, used to discharge highway debentures and/or build roads.

Raymond Huff, a thoroughly experienced New Mexican, writing in the April 1932 issue of the New Mexico School Review, said:

"We have in New Mexico, a system of taxation known as a recessive system,—as the tax levies go up, the valuations go down. We have been experiencing that in this state for several years. We depend for about three-fourths of our school revenue on one form of taxation. That is the property tax. The other departments of government also depend largely upon this one form of taxation. As a result, this type is worked to death and becomes burdensome to all owners of property. As the tax becomes heavier the taxpayers feel keenly the load and complain."

As the full force of the "Depression" struck New Mexico, the complaining indicated by Mr. Huff, coupled with the fact that the State was going into the Real Estate business, via Tax Deeds, brought the matter before the people in a Special Election, September 19, 1933. Constitutional Amendment No. 4 was approved.

CONSTITUTIONAL AMENDMENT

"Be it Resolved by the Legislature of the State of New Mexico:

"SECTION 1. That it is hereby proposed to amend Section Two of Article Eight of the Constitution of the State of New Mexico to read as follows:

" 'Taxes levied upon real or personal property for state revenue shall not exceed four mills annually on each dollar of the assessed valuation thereof except for the support of the educational, penal and charitable institutions of the State, payment of the state debt and interest thereon; and the total annual tax levy upon such property for all state purposes exclusive of necessary levies for the state debt shall not exceed ten mills; *Provided, however, that taxes levied upon real or personal tangible property for all purposes, except special levies on Specific classes of property and except necessary levies for public debt, shall not exceed twenty mills annually on each dollar of the assessed valuation taxes to be levied outside of such limitation when approved by at least a majority of the electors of the taxing district voting on such proposition.*'

"SECTION 2. In the event of the passage of the foregoing resolution, the said amendment shall be submitted to the people for their approval or rejection at the general election in November, 1934; *Provided, however*, that in case a special election is held in this state prior to November, 1934, the said amendment shall be submitted to the people at such election."

The special problem at that time, as now, was to equalize the tax burden. Governor Arthur Seligman, in his address before the Taxpayer's Association in 1932, said in part:

"The main task is to equalize taxation, to lessen the burden placed on real estate, livestock, merchants, and upon the comparatively few, by finding ways to make everyone pay a little something and making it an important civic duty to maintain your government adequately and respectably in time of peace as you have made it a test of patriotism to defend it in time of war. Other states have found ways to equalize tax burdens by levying income taxes, taxes on intangible property, by imposing sales taxes on luxuries, on cigarettes, on chewing gum, on cosmetics, or doing as Mississippi and more and more other states are doing, levying general sales taxes."

Since the approval by the people in 1933 of the Limitation Amendment, we have largely turned to excise taxation to finance our obligation to the childhood of New Mexico, to the handicapped and to the underpriviledged, to relief.

Since 1932 the following excise tax laws have from time to time been enacted:

School (sales) Tax—to the Public Schools.
Franchise Tax—to relief and public welfare.
Severance Tax—to public welfare and general fund.
Income Tax—to the public schools and to the general fund.
Liquor Tax—to public welfare.
Mileage Tax—to state road fund.
Compensating Tax—to public welfare.

Prior to 1932 the Gasoline and Motor Vehicle license fee laws had been enacted.

A comparison of the State Treasurer's Receipts statements for the years of 1932 and 1938 proves conclusively that New Mexico has found a practical answer to its fiscal difficulties. During that six year period there was an increase of $7,825,358.60 in receipts from the so-called Business License Taxes, which includes all or practically all of the excise taxes I have outlined above.

The same statement shows a loss of revenue or a decrease of $166,669.86 general and special property taxes, 1938 compared with 1932.

The comparative statement described above, to my mind, conclusively proves that the State Government is moving away from property taxation, which, it is indicated, will strengthen the fiscal position of the local government units.

It is my belief that the natural economics of New Mexico has dictated the fiscal course of the State Government.

New Mexico is one of the grazing states. On its approximate 75,000,000 acres of grazing land,—the greater part non-taxable—graze more than a million cattle and approximately two million sheep. The annual income from livestock is between 30 and 40 million dollars, while the estimated two million acres of cultivated lands, about one half of which is irrigated, yields an annual money income of from 12 million to 15 million dollars.

From the mineral resources of New Mexico there is an estimated annual income in excess of $30,000,000.00, not all of such income is effective in the State however, by reason of the out-of-state situs of many of the operators.

New Mexico is an excellent and attractive vacation land; its tourists business is of great commercial importance.

The 1930 census report credits New Mexico with a total population of 423,317 beings—of which approximately 30,000 are Indians; the report (1930) states that 142,866 persons were gainfully employed—of this number 86,678—more than half—were employed on livestock ranches, farms, or in agricultural pursuits; the natural or mineral resource group—including petroleum, employed some 8,000 persons while the mercantile business, wholesale and retail, employed some 10,000 people.

I have outlined the foregoing for the purpose of indicating that the economics of New Mexico point toward excise taxation as the surest and best way of equalizing taxation, providing tax money for demanded governmental services, and at the same time not interfering unreasonably with operating practices of taxpayers of New Mexico.

At this point I wish to refer briefly to the muchly discussed trade barrier propaganda that is being so highly publicized today.

No sensible person, and I lay claim to that title, will long argue the point that when State sets itself up against State, by enacting punitive and discriminatory laws that benefit no one, and only punish people of another state, that we are on the road to destroying the United States. I would be the first to tear down any such barriers, but want to also be among the first to state that the trade barrier propagandists have been so anxious to favorably present their opposition to excise taxes that they have made no greater contribution than to excite some taxpayers into the belief that the necessary collection of some of our excise taxes is tending toward the destruction of the United States.

The point I want to make here is that trade barriers are not all-inclusive words, that include all domestic excise taxes, the collection of which is necessary to maintain state government. There are those, however, who claim that purely domestic sales taxes are trade barriers, which, of course, is the extreme attitude of the trade barrier propagandists and is not generally agreed to.

The real points involved in so-called trade barrier propaganda are associated with the problem of transportation. Wide use of the truck for transporting property and the bus for transporting people has brought with it some important tax problems that must be considered as tax problems and not as part of a discussion involving oleomargarine, use taxes, liquor regulations, and a lot of other extraneous subjects. The railroads built and maintain a right of way and road bed for their own use. The trucks and busses did not build their road bed and do not maintain their right of way. The railroads pay ad valorem tax on their road bed, the trucks do not.

The sour and sore spot is that trucks hauled during 1938 about $2,000,000,000.00 of the $5,500,000,000.00 spent for transporting property inter-city, county and state, which means that truck transportation has become a major industry in the United States. There are important influences in the trucking industry who feel that the government having subsidized the shipping industry and loaned money to the railroads should, by federal legislation, throw all highways that have been built with federal aid, open to trucks and busses without regulation and without payment of additional direct taxes when away from their home states.

Small and poor states have provided highways for their use and that of their visitors. New Mexico woos the tourist with good roads and delightful scenery The scenery has always been here but it took the good roads to get the tourist here and the maintenance of what we have and the building of more highways will capture the tourist trade in the years to come. All of which adds up to this: New Mexico cannot afford to throw its highway system open for unlimited truck use. We must have our ton mileage income, our income from license fees, and other direct taxes from out-of-state trucks who use our highways. What is more important we must have control over the weight and size of the trucks that use our highways. Our richer neighbors can build thick, strong, steel enforced highways—they have more money and oftentimes less area. Our highways are the best we can afford, but they will not take unlimited loads, and to throw them open would mean the destruction of what we have and the stopping of future construction because it would take all we could collect and borrow to maintain a consequent broken down highway system.

New York, Illinois, Texas, Oklahoma and many other neighbors have graciously offered the western states a proposition of reciprocal agreement concerning truck licensing, comparable to the set-up on passenger cars. In other words, they will let all the New Mexico trucks travel in their states without charge

and regulation, if we will agree to do the same for them. Like all poor folks, we have a chance to be a good fellow but at prohibitive expense—for every truck we would send to Texas they would send us 1,000, Oklahoma would send us 500. Our purely western neighbors, excepting California, large in area and short on money, would about equalize our truck use of their highways. It sounds good—the reciprocal idea—and it would be if we had oil and metals in every county in our State so we could collect more tax from those industries to pay the bills. We could then afford to keep up with the Joneses and the rest of our rich friends.

The Chicago conference on "Trade Barriers", the two Denver conferences, and the discussion on trade barriers at the Western Conference on Governmental Problems, all passed resolutions acknowledging that where ports of entry operated to collect taxes and did not discriminate against the products and services of units of society of another state, were not trade barriers. Likewise it was agreed that use taxes that provided for credit for previous payment of sales or use tax to any other state were not trade barriers. Yet the propaganda against the New Mexico ports of entry and use tax continues although their function and operation are definitely within the pale of the approved and outside the pale of the damned.

To date the trade barrier propagandists have failed to suggest what the modern state governments who are meeting the demands of modern society are going to do about financing their governments, when, as, and if they are successful in taking from these poorer states the tax incomes required to render the services demanded by modern society.

Always remember that the same members of a civic club who meet tonight to draft resolutions, telegrams, etc., demanding that the government spend a lot of money on their locality, are willing to meet tomorrow night to draft resolutions, telegrams, etc., demanding that government cease spending and cut its expenses.

New Mexico cannot ignore the facts. Its people are modern in their demand upon the state government. They want the best in governmental services. The state government, in order to satisfy the demands of the people, must be properly financed. Diligent, conscientious, vigorous, and completely honest administration of our existent tax laws will provide the required finance.

The tax collection authorities must adhere strictly to the sound policy that every taxpayer must be treated on exactly the same tax basis. There can be no special privileges and favors granted taxpayers by the tax collectors.

Equitable distribution of the *tax load* by the legislature and 100% tax collection from those against whom the taxes are imposed is the reasonable demand and expectancy of the taxpayer. It is the service the state government owes the people of New Mexico.

EXHIBIT No. 2389

COLORADO STATE CHAMBER OF COMMERCE

Chamber of Commerce Building, Denver, Colorado

STATEMENT BY THE CONFERENCE CHAIRMAN

The action of the Western States Trade Barrier Conference in adopting specific resolutions regarding ports of entry, use taxes, uniform vehicle and highway regulations, and defining the exact status of a trade barrier is the first current step that has been taken in a series of conferences on this general subject.

The ten States represented, Colorado, Kansas, Nevada, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming, voted unanimously on the resolutions that were submitted by the three group committees appointed during the meeting, namely: Transportation, Taxation, and Agriculture.

With a definite idea as to what constitutes a trade barrier and with a defined attitude regarding ports of entry, use taxes, etc., the next meeting can and will devote itself to concrete work toward the elimination of any objectional laws. It was determined that between now and the time of the next meeting, the various States through the official delegation to the Denver Con-

ference would confer with one another regarding specific points in the laws of the States that are interfering with the free flow of commerce between the affected States.

The next meeting will be held in the middle of February, 1940, in Santa Fe, New Mexico. It is planned to have discussions between two or three States that are affected by some specific point in the law of a given State, rather than to deal with the trade barrier subject in a general way as has been the practice in the past.

G. S. CARTER (New Mexico),
Conference Chairman.

Western States Trade Barrier Conference, held under auspices of Colorado State Chamber of Commerce, Denver, Colorado, September 28–29, 1939

REPORT OF COMMITTEE ON TRANSPORTATION

PORTS OF ENTRY

WHEREAS, The Council of State Governments, at its meeting in Chicago in April, officially went on record to the effect that Ports of Entry, when used as law enforcement and tax collecting bodies, are not in themselves barriers to trade, and;

WHEREAS, The Council of State Governments determined that the only way such agencies could be trade barriers is through enforcement of laws or rules and regulations which are discriminatory against non-resident operators, and;

WHEREAS, no state represented in this conference maintains Ports of Entry to enforce discriminatory laws, and;

WHEREAS, it is imperative that taxes justly levied alike on interstate and intrastate commercial operators for construction and maintenance of the highways be collected, and;

WHEREAS, states in the West where distances are great and populations small have found from experience that the only feasible and economical way to collect these taxes is through Ports of Entry, and;

WHEREAS, The council of State Governments recommended that further study of this question be undertaken in the field to determine if any Ports of Entry are operating as trade barriers.

Now, therefore, Be it resolved that this conference go no record as declaring that Ports of Entry in the states represented here do not constitute trade barriers within the meaning as defined by the Council of State Governments, and

Be it further resolved that this conference go on record as endorsing the operation of Ports of Entry in the several western states represented until such time as a better or more economical system be devised for collecting taxes justly levied against interstate and intrastate operators alike for the maintenance and construction of highways.

MOTOR VEHICLES

WHEREAS, uniformity in state regulations as to the size and weight of motor vehicles is a desirable end, it is recognized that such uniformity in the maximum limits as to the size and weight of trucks is necessarily dependent upon substantial uniformity in the highways over which they operate, and;

WHEREAS, there is no present uniformity in the capacity of roads and bridges in the several states and no uniformity in the ability of the people of such states to construct and maintain roads of such capacity as would be required to accommodate the trucks and trailers now permitted in many of the states.

NOW THEREFORE, Your committee on Transportation proposes to this conference that those of us in attendance frankly admit and recognize the present impossibility of agreement and adoption of uniform regulations as to the size and weight of trucks engaged in interstate commerce and urges the conduct of studies by the respective states bearing upon scientific and proper regulations in that respect.

TRANSPORTATION COMMITTEE: Joe Brennan, South Dakota; Scott A. Fones, Kansas; Joseph Bursey, New Mexico; George Vargas, Nevada; John D. Rice, Utah; Thomas Weadick, Wyoming; Charles Query, Colorado; Jack Patterson, North Dakota; Galen H. McKinney, Texas; Earl Stull, New Mexico; Mose Holbrook, Utah; Earl H. Reid, Wyoming; N. R. Graham, Oklahoma.

REPORT OF COMMITTEE ON TAXATION

Mr. Filo Sedillo of New Mexico, was appointed Secretary by the Chair. The agenda for the meeting was determined to be as follows:

1. The discussion of public purchase preference laws, that is to say, the giving to local firms preference and price differentials in state purchasing and the requiring of local products in purchase contracts for the state.

2. The discussion of liquor laws, that is, laws tending to place restrictions on out-of-state liquor sales within the state by discriminatory taxation or regulation.

3. Taxation, that is to say, use taxes, chain store taxes, tax differentials on local manufactured products.

4. Corporations, that is to say, discriminatory taxation, licensing and regulation of foreign corporations as against domestic corporations. The licensing and regulation of foreign corporations in such a way that it results in discriminatory tax or regulations.

It was moved by Mr. Carter and adopted by the Committee that the following be adopted as the sense of the committee:

"A trade barrier is a state law or regulation that deliberately discriminates against the products or services of units of society of another state, it being recognized however, that domestic taxation and regulations essential to the maintenance of state government and public health and safety can and must be applied to interstate commerce without discrimination."

It was the opinion of the committee that wherever sales tax laws were supplemented by use tax statutes, adoption of offset provisions to compensate differences as between the states would correct any tendency toward the raising of barriers to interstate trade by use taxes.

Your Committee recommends that those States having sales taxes supplemented by use taxes adopt offset provisions to compensate differences that may exist as between states with sales tax statutes.

The matter concerning tax preferences on local manufactured products was not discussed since it was decided that the states represented were not affected by these particular taxes.

The question of discriminatory taxes by different states as against beer, wine, and liquors manufactured outside of a given state was considered to be not a proper matter for this committee to act upon since the Amendment (21) of the Federal Constitution gives to each state the right to regulate liquor as it sees fit; it was felt that this was purely a question for each state and did not result in a trade barrier.

Mr. Mathews contended that a proper approach to removal of taxation resulting in trade barriers necessitated a full discussion of Federal-State taxation, but no action was taken on this. It was resolved on motion of Mr. Mathews that trade barriers arise chiefly because of necessity of raising revenue for governmental purposes and economies of government will tend to eliminate most trade barriers.

A resolution concerning freight rates and truck transportation was presented by Attorney General Williamson of Oklahoma, but no action was taken upon said resolution and it was the sense of the committee that the resolution be filed and a study made of it by this committee.

TAXATION COMMITTEE: G. S. Carter, New Mexico; Mac Q. Williamson, Oklahoma; Byron G. Rogers, Colorado; John D. Rice, Utah; Philip Tocker, Texas; W. T. Mathews, Nevada; Filo Sedillo, New Mexico; Earl Wright, Wyoming; M. G. Williamson, Colo.; Ewing T. Kerr, Wyoming.

REPORT OF COMMITTEE ON AGRICULTURE

Your Committee recommends that laws enacted to prevent the free flow of commerce between the states of agricultural and food products under the guise of quarantines which are not enacted for the public health and protection against infestation of plant and animal diseases should be repealed, and that all trade barriers be removed so that the agricultural and food products of one state meeting the public health requirements and true quarantine provisions, and the federal and state pure food laws, shall have the right to compete with the products of the respective states.

We recommend that quarantine measures adopted by the respective states should be limited to provide revenue only for the purposes of the reasonable costs of such quarantines.

We recommend that uniform laws should be enacted providing for the reasonable regulation and licensing of itinerant merchants and truckers engaged in intrastate and interstate commerce, to protect the consuming public and competitors.

As an example of restrictions between the states, the representative of the State of Texas complained against the discrimination against their manufactured oleomargarine processed from cotton seed, and your committee recommends that serious consideration be given by the several states to this problem. It appears that prohibitive tax laws prevent the sale of this product.

AGRICULTURAL COMMITTEE: Col. H. M. Milton, New Mexico; Raymond Gary, Oklahoma; Mose Holbrook, Utah; Sen. J. Manley Head, Texas; Carl Dallam, Wyoming; Alvin C. Strutz, North Dakota; Geo. A. Crowder, Colorado.

"EXHIBIT No. 2390," introduced on p. 15957, is on file with the committee.

"EXHIBIT No. 2391," introduced on p. 15957, is on file with the committee.

EXHIBIT No. 2392

JOHN E. MILES
Governor

GUY SHEPARD
Secretary

STATE OF NEW MEXICO

EXECUTIVE DEPARTMENT

Santa Fe

Honorable JOSEPH O'MAHONEY,
U. S. Senator and Chairman, Temporary National Economic Committee,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR: This will introduce to you, Mr. G. S. Carter, Director of the School, Severance, and Compensating Tax Division, New Mexico Bureau of Revenue.

Mr. Carter is authorized to represent me in presenting testimony before your National Economic Committee on March 18th.

Any courtesies extended to Mr. Carter will have my personal appreciation.

Cordially yours.

(Signed) JOHN E. MILES, *Governor.*

MARCH 7, 1940

SIGNATURE:

(Signed) G. S. Carter.

EXHIBIT No. 2393

REPORT OF SUBCOMMITTEE ON EFFECT OF SCHULTE BILL—H. R. 7085—ON SANITARY AND HEALTH REGULATION OF MILK IN DISTRICT OF COLUMBIA

Mrs. C. J. Coe, Chmn., Mrs. Alfred Kastner, Miss Frances Rice, Mrs. Walter S. Ufford, Mrs. Harvey Wiley, Mrs. Ernest Howard.

The subcommittee does not bring in a recommendation on the Schulte Bill as such. In the course of our discussions three separate questions were raised. Some of these involve considerable discussion which we did not have the time to cover sufficiently.

1. The question was raised: Is the Schulte Bill the type of approach we wish to take in correcting the milk situation in the District of Columbia? Mrs. Ufford was of the opinion that we should not permit Congressmen with no interest in the District to play politics with our problems and therefore felt that we should not come out for the Schulte Bill at all whatever its merits, particularly since Dr. Ruhland of the District Health Dept. had not been consulted in the drafting of the bill. Three other members of the subcommittee—Mrs. Kastner, Miss Rice and I were of the opinion that the bill should be considered on its merits, regardless

of the reasons for its introduction. Consequently, we concluded that the Schulte Bill should be supported with certain minor amendments.

2. The question was raised: Will the Schulte Bill be a step towards reducing prices in the D. C.? We did not have time to explore this problem adequately and so are not taking a position on this point.

3. The chief question with which we concerned ourselves was a comparison of the sanitary and health regulations of the U. S. Public Health Service Milk Ordinance and Code and the 1925 District Health Act and the regulations and scoring system based upon it. All the members of the subcommittee with the exception of Mrs. Wiley and Mrs. Howard, who were previously committed to oppose the Schulte Bill and the PHS Milk Ordinance, agreed that the Milk Ordinance is superior to the present regulations of milk production and pasteurization.

This report will concern itself chiefly, therefore, with the third point on which a majority of the subcommittee were agreed. No question has been raised before us that the Milk Ordinance will affect the nutritive qualities of the milk and milk products consumed in the District. Our concern is with the effect of the adoption of the PHS Milk Ordinance on the sanitary qualities of milk and milk products in the District.

In this discussion we believe that comparison should be made of the Ordinance with present legal requirements and not with present practice. Present practice is on the whole better than legal requirements and there is no reason to believe that the same condition will not hold under the Ordinance.

Our findings are that the Ordinance is in general equal to and in some cases superior to the present regulations for the production and pasteurization of milk in the District of Columbia.

The scoring system for dairy farms of our Health Dept. gives excessive weight to construction items on the farm and results in scores not being directly related to the quality of milk. General cleanliness on the farm is rated chiefly on the basis of physical equipment present.

For example, Mr. W. W. Burdette, Assistant Chief Food Inspector of the District, admitted during the 1936 AAA hearings on a milk marketing agreement for the District that the District Health Dept. has made no attempt to see if milk coming from 98 score farms is better than milk coming from 85 score farms. The *Report of a Survey of the Health Dept. and Other Health Agencies in the D. C. Made in 1937–1938 by the U. S. Public Health Service & Collaborators* concluded: "A dairy or plant may obtain a high score even if an important item of sanitation is violated," whereas the Ordinance requires that every item be observed in order to meet the requirements. In the survey it was found on the one hand that every high score farm did not necessarily pass the Public Health Ordinance requirements and, on the other hand, that a farm might meet every requirement of the Ordinance and still not score 70 under the present scoring system because of the excessive weight given rigid construction items.

In the 1937–1938 survey, the Public Health Service reached the following rating of District milk:

1. Retail raw milk	83%
2. Raw milk sold to plants	91.4%
3. Pasteurization plants	75.4%
4. Pasteurized milk	83%

Part of the reason for the very low rating given pasteurization plants was the excessive weight given in the District scoring to bacterial count of milk. The Public Health Service regards Bacterial count as only one of the 25 or so items that must be met in the establishment of grade.

"It is widely accepted that the bacterial count of milk is an index of the sanitary quality of milk. A high count does not necessarily mean that disease organisms are present, and a low count does not necessarily mean that disease organisms are absent; but a high bacterial count does mean that the milk has either come from diseased udders, has been milked or handled under undesirable conditions, or has been kept warm enough to permit bacterial growth. * * * On the other hand a wrong interpretation of the significance of low bacterial counts should be avoided, since low-count milk may be secured from tuberculous cows, may have been handled by typhoid carriers, and may have been handled under moderately unclean conditions."

For the information of the committee we are listing here the sanitary requirements for Grade A pasteurized milk under the Ordinance which the Public Health Service found violations of in its 1937–38 survey.

Over 10% of the farms producing such milk failed on the following: All openings of milk house effectively screened and doors open outward and self-closing; toilets operated and constructed according to code; water supply properly located, constructed and maintained; utensils in good repair; cleaning of utensils and containers; clean outer garments for milkers. Over 25% of farms violated the requirements for: adequate hand-washing facilities for milkers and over 50% of the farms violated the requirement that milkers' hands be rinsed in standard chlorine solution before milking each cow.

Violations on the part of the pasteurization plants were much more extensive:

In over 25% of the plants failure was in following respects: toilet rooms kept clean; easily cleanable smooth, noncorrodible surfaces for containers and equipment; supplementary treatment for parts of equipment not reached by general bactericidal treatment; installation and checking of automatic milk flow stops where required; air heating on milk products pasteurizers; coolers covered or in separate rooms. Over 50% of the plants failed on: smooth-finish floors, no pools; trash kept in covered containers; over 75% of the plants violated the following: covers for strainers used in dump vats; record of biweekly temperature check of recording against indicating thermometer by inspector; health examination for drivers.

The Public Health Service recommended adequate official sampling of shipper's milk at collecting station or plants and more frequent sampling of cream. Raw-to-plant supplies were found to be sampled for bacterial count far less than the minimum frequency of eight times per year required by the U. S. Public Health Service Milk Ordinance.

In comparing requirements for milk by the Milk Ordinance and by the D. C. Health Dept. two factors must be kept in mind. First, over 99% of milk and milk products sold in the District are pasteurized. Secondly, the Ordinance deliberately contains only requirements that are considered of significant public health value. Any additional requirements beyond these increase the cost of milk without significantly improving its quality.

One of the things to be noted about District regulations is that as far as cooling milk on the farm and medical inspection of farm workers are concerned, no distinction is made between milk to be consumed raw and milk to be pasteurized. Consequently, pasteurized milk in the District must meet the requirements which the Ordinance thinks necessary only for raw milk even though over 99% of milk and milk products consumed in the District are pasteurized.

The Dept. of Agriculture's *Barriers to Internal Trade* has a significant comment in this connection:

"When it is found, for example, that refinements in regulatory procedure cause milk to sell regularly at one or two cents a quart more than in other nearby well-regulated cities (as in the case of the District of Columbia), the ordinary consumer may wonder if this additional item of protection is justified in terms of public health. Low-income families who can afford little and frequently no milk for their children might bear witness to the adverse public-health effects of an inspection program that helps to hold milk out of their reach."

Because the Ordinance is less rigid on construction items and permits cheaper methods of maintaining adequate farm conditions, so long as the resulting milk is pure and clean, it should lower farmers' costs of production for the same quality of milk.

It is true that at present prices there is a sufficient supply of fluid milk in the District except for certain price discrimination against independent distributors. But if we succeed in lowering retail milk prices in the District the Ordinance provides an easy means for increasing the supply of milk in the District without in any way lowering the standards of quality for such milk.

Some 2,156 communities in 33 states of the U. S. have adopted the U. S. Public Health Service Milk Ordinance, including 19 cities with populations over 100,000 in 1930. Of the total 147 had a rating of 90% or better. The Health Officer of the District has the power, under the Ordinance, to admit milk produced under conditions equivalent to the Milk Ordinance if he "shall satisfy himself that the Health Officer having jurisdiction over the production and processing is properly enforcing such provisions."

The point has been raised that the District Health Officer does not have a sufficient staff of inspectors at present to satisfy himself of enforcement in other states. That problem will have to be met by Congress if shippers of

milk produced under the Ordinance cannot gain admittance to the District because our Health Officer does not have the staff to check on milk inspection outside of the present milkshed.

Leslie Frank, Senior Sanitary Engineer, testified: "Since 1923 the Public Health Service has been conducting annual studies of the incidence of milk-borne outbreaks of disease * * * for the period 1923 to 1927, inclusive, there were 639 outbreaks, with 25,863 cases and 709 deaths. These outbreaks were the result of inadequate milk control. It should be noted that not one outbreak of milk-borne disease has been reported as having been traced to any Grade A pasteurized milk supply in any community which has adopted the Public Health Service Ordinance since 1923."

Before proceeding to a detailed reply to the objections raised in Mrs. Wiley's mimeographed comparison on the Milk Ordinance, I should like to indicate the modifications of the Schulte Bill which three of us thought necessary before we could support it.

The Schulte bill selects one of two alternatives proposed in the Code as punishment for minor infractions of the ordinance. We believe that perhaps the second alternative is preferable simply because there is general fear that inadequate enforcement of the first will permit the sale of inferior milk without sufficient warning to the consuming public. H. R. 7085 permits violators of the Code to continue selling their milk for 30-day periods if their milk is labelled Grade B or Grade C as the case may be. The feeling of your sub-committee was that it might be better to prohibit the sale of any milk which did not come up to Grade A requirements even if this means temporarily eliminating minor offenders from the market.

A second point on which there was general agreement was the length of time after the adoption of the Code before final grades become effective. The Code permits a 12-month period of adjustment during which Grade B and C could be sold on the market. But we felt that since many of the District standards are already on a high level a 30 to 60 day period of adjustment should be quite adequate.

A number of Mrs. Wiley's criticisms of the Public Health Service Ordinance are based on a comparison of the Ordnance with present practice in the District rather than with present legal requirements. We believe that is fallacious to make a comparison on such a level and are simply not considering these points.

1. The merits of scoring versus grading can be discussed on principle without discussing the practical basis for each method the Public Health Service survey of the District finds:

"(1) The present milk scores are distributed only to about 0.5% of the families, whereas a grade label on each bottle cap would serve every milk consumer as a guide to the sanitary quality of the milk.

"(2) Even if milk scores were known to all consumers, they would not serve as useful a purpose as grades on bottle caps. The public is apt to exaggerate the significance of small differences in the milk scores of two dairies, and would be tempted to change each month from the last high-score dairy to the new high-score dairy * * *. In effect, this is equivalent to official recognition of a large number of grades, with each score representing a different grade." Grades are less misleading because they are based on significant public health value whereas scores are not.

2. The Public Health Service sets a minimum bacteria count for raw milk before pasteurization whereas the 1925 Milk Act does not. The Public Health Service sets a minimum of 30,000 bacterial per cc for Grade A pasteurized milk whereas the 1925 Act sets a 40,000 minimum for the same.

3. The Public Health Service minimum butterfat content for any whole milk is 3.25% as compared with 3.5% in the 1925 Act, but the Ordinance has a minimum of 8% solids not fat whereas the 1925 Act has only an 11½% minimum for total solids including fat.

4. Mrs. Wiley criticizes the Ordnance for accepting the modified tuberculosis-free accredited area plan of the U. S. Bureau of Animal Industry as a substitute for annual tuberculin testing by local health officials. This plan has been adopted by the U. S. Livestock Sanitary Association together with the Bureau. It provides in general that:

"If, as a result of one complete tuberculin test within the designated area, the total number of reactors is less than one-half of one percent of all the cattle within the area, the area shall then be declared an official modified tuberculosis-free accredited area for a period of three years by the cooperating State and Federal officials."

Mr. Fuchs of the Public Health Service is of the opinion that this plan is adequate from the public health point of view and cheaper than annual testing. Moreover, tuberculosis germs are destroyed in pasteurization.

5. Mrs. Wiley criticizes the Ordinance for not requiring that cow udders, flanks and tails be clipped and for not requiring one towel per teat per cow per milking. The Ordinance states that these parts of the cow "shall be free from visible dirt at the time of milking" and says clipping is helpful. But more important, it provides for rinsing udders in standard chlorine solution before milking and for milkers to rinse their hands in such a solution as well.

6. The Ordinance has dropped its provisions for medical inspection of all employees on dairy farms. Many cities have now given it up because its value is problematical. To be effective such inspection should be made monthly or more frequently. The Ordnance has adopted a policy of requiring medical inspection only for those who handle milk as it goes to the final consumer, that is, for employees of retail raw milk dairies and of distributors—those who are employed in pasteurization plants and milk drivers. When milk is to be pasteurized, as 99% here is, bacteria of milk-borne diseases acquired on the farm will be destroyed in pasteurization.

7. Regulations for dairy barn and the milk house are much more rigid under present D. C. methods than under the Ordinance. This does not mean, as has been charged, that the Ordinance is vague. It is quite specific but permits alternative and less expensive methods for reaching the same objectives—a clean, well-ventilated, well-lighted, well-drained barn and milk house. Because of the inflexible provisions for measurements and construction materials in the D. C. regulations, farms may be penalized for items which the Public Health Service does not consider of significant public health value.

8. On the care of milk and equipment the Ordinance permits several alternative methods of bactericidal treatment whereas the D. C. regulations permit only live steam sterilization, the most expensive method and not more foolproof than the alternatives in the Ordinance.

The Ordinance permits milk which is to be pasteurized to be stored at a higher temperature than raw milk. Since bacteria counts are taken at the pasteurization plant after storage the Health Service believes that if the milk meets the minimum bacteria count the expense of storing at 50° or less instead of at 70° or less can be reduced without endangering the quality of the milk. District regulations require milk for pasteurization and milk for consumption raw to be handled in an identical manner.

9. Regulation of distributors.

Mrs. Wiley does not mention the fact that pasteurization plant standards are higher under the Ordnance than under District Regulations. In the 1937–38 survey pasteurization plants here rated only 75%. Senior Sanitary Engineer Leslie Frank testified before the House recently:

"The District of Columbia requirements do not now include any important requirements which are omitted from the Public Health Service Code. In fact, the Public Health Service includes numerous specific mandatory requirements not included in the District regulations. This is primarily the case with reference to the process of pasteurization, which nearly all health officers now agree is the most important element in the prevention of milk-borne outbreaks of disease."

Mrs. Wiley criticizes the Ordinance for not prohibiting repasteurization of milk. Mr. Fuchs pointed out that fluid milk rarely needs repasteurization and if it does the milk is safer for it. On the other hand, cream shipped for any distance often needs repasteurization and cream for ice cream purposes should be repasteurized on receipt at its destination because it is impractical for most health officers to inspect cream for manufacturing purposes at the point of origin.

Ice cream is not covered in the Milk Ordinance at all. The Public Health Service is at present at work on a code for ice cream and we might well at some later time look into the advisability of recommending their ice cream code in the District.

It has occurred to us that it might be useful to recommend the appointment of an advisory committee on milk to the health officer of the District; such a committee to be composed of one producer who is a member of the Md.-Va. Milk Producers Assn., one producer who is an independent, two consumers, and a distributor, and to have the power to hold hearings on milk when requested to do so by the public. Since we do not have suffrage in the District we have no forum for discussion such as a municipal legislature and must wait on a

Congressional committee to create one. Such an advisory committee might help to bring the question of milk before the public and also assist the health officer in solving his various problems.

"EXHIBIT No. 2394" introduced on p. 15985, is on file with the committee.

EXHIBIT No. 2395

[From the Louisville Times, March 1, 1940]

STATE ROAD NEEDS HELD $130,000,000

CUTLER CITES WEAK SPOTS OF NETWORK—SAYS 6,000 MILES TOO NARROW, HUNDREDS OF SPANS DANGEROUS

Thomas H. Cutler, Kentucky highway engineer, estimated today it would cost $130,000,000 to bring the State's present highway system "to a safe standard adequate for present traffic."

Mr. Cutler, in an address to the Kentucky Association of Highway Contractors at the Kentucky Hotel, added that in view of present highway needs, further increase in traffic and available annual funds, "we are never going to be through building roads."

SEES LAXNESS ON DATA

The engineer added the highway department has been "lax * * * in acquainting the public with the real road situation in our State."

Discussing the condition of the State's highways, Cutler said there are approximately 23,931 curves which are sharper than 6 degrees; 24,180 locations with inadequate sight distances for modern, safe traffic; 1,500 miles of inadequate surface types; 6,000 miles of surface too narrow for present safe traffic, and "several hundred bridges which are not only inadequate, but dangerous."

Mr. Cutler said the figures were based on the 1938 traffic over State roads and estimated that by 1950 traffic over the same highways will have increased by 60 per cent.

"To take care of this increased traffic, in addition to modernizing our present system, we will need 400 additional miles of four-lane high type roads, 2,500 miles of high type two-lane roads and 3,000 miles of medium type two-lane roads," the State Engineer said.

The cost for this additional road mileage would approximate $60,000,000, he estimated.

FUND ESTIMATE GIVEN

Mr. Cutler asserted the State had approximately $7,000,000 available annually for road construction at the present rate of gas tax, automobile license fees, and Federal aid. This, he said, did not count the $2,000,000 set aside annually for rural highway construction.

The State engineer said that if the present revenue continued for the next 10 years only $70,000,000 would be available as an "offset for our needs of $190,000,000 ($130,000,000 to modernize present system plus $60,000,000 to meet 1950 traffic)."

Mr. Cutler said the heavier-traveled roads "need to be modernized to maintain competition with through routes in other States, in order to get our share of the Nation's travel."

"Our local roads need extensions as far as possible with funds which will be produced by these heavier-traveled, revenue-producing roads."

PROGRAM OUTLINED

The department's road construction program for this year, which he said had not been approved finally, calls for expenditure of $10,000,000.

The program provides for construction of 160.7 miles of medium and high-type roads; 172.3 miles of grading, draining and low-type surfacing, and $172,000 in separate bridge projects not connected with other road projects.

"EXHIBIT No. 2396," introduced on p. 16004, is on file with the committee

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"EXHIBIT No. 2397," introduced on p. 16004, is on file with the committee

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"EXHIBIT No. 2398," introduced on p. 16004, is on file with the committee

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"EXHIBIT No. 2399," introduced on p. 16005, is on file with the committee

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"EXHIBIT No. 2400," introduced on p. 16005, is on file with the committee

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"EXHIBIT No. 2401," introduced on p. 16005, is on file with the committee

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"EXHIBIT No. 2402," introduced on p. 16006, is on file with the committee

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"EXHIBIT No. 2403," introduced on p. 16006, is on file with the committee

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"EXHIBIT No. 2404," introduced on p. 16006, is on file with the committee

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"EXHIBIT No. 2405," introduced on p. 16007, is on file with the committee

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"EXHIBIT No. 2406," introduced on p. 16009, is on file with the committee

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"EXHIBIT No. 2407," introduced on p. 16009, is on file with the committee

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"EXHIBIT No. 2408," introduced on p. 16030, is on file with the committee

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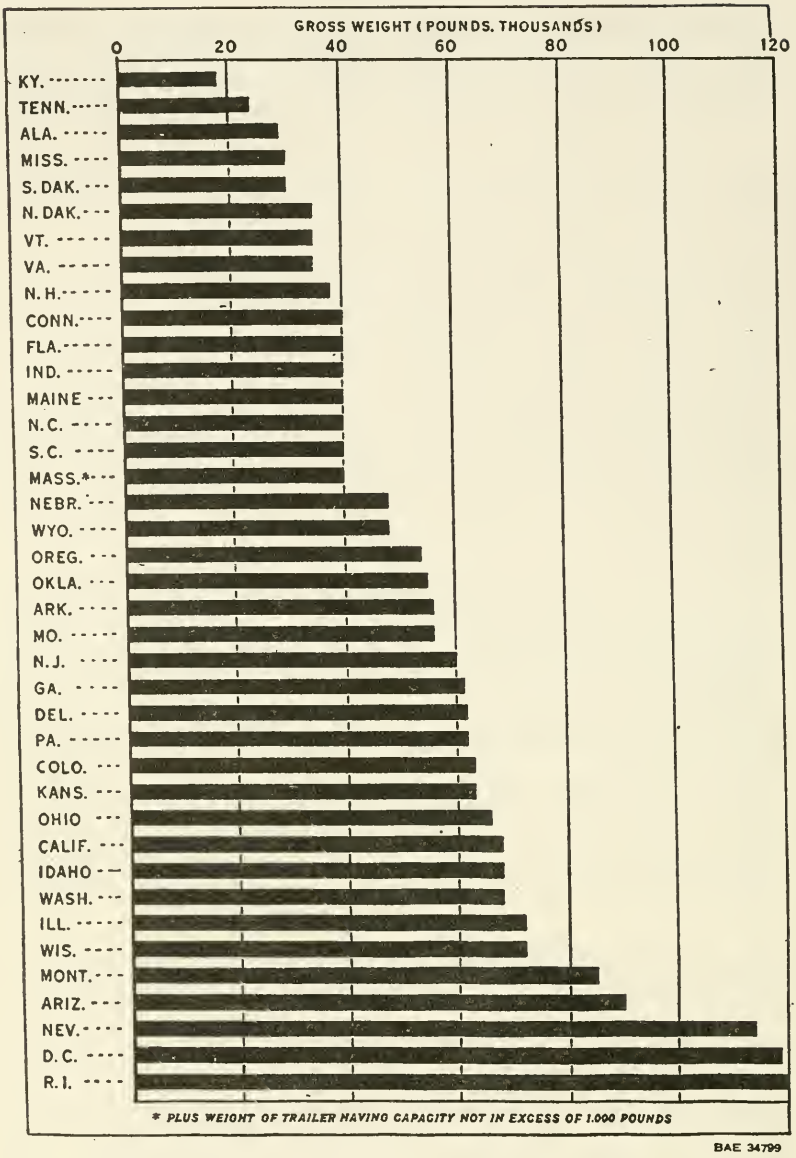
"EXHIBIT No. 2409," introduced on p. 16031, is on file with the committee.

EXHIBIT No. 2410



MAXIMUM GROSS WEIGHT OF PERMISSIBLE COMBINATION OF MOTOR VEHICLES, BY STATES

The maximum gross weight permitted by the different States varies all the way from 18,000 pounds in Kentucky and Tennessee to 120,000 pounds in Rhode Island. (States not shown on this chart limit gross weight in accordance with formulas which take into account the distance between the first and the last axle.)

Source: U. S. Department of Agriculture "Barriers to Internal Trade in Farm Products" (corrected to date)

EXHIBIT No. 2411

SUMMARY OF EXCERPT FROM INVESTIGATION & SUSPENSION DOCKET M-404

18 MCC 265

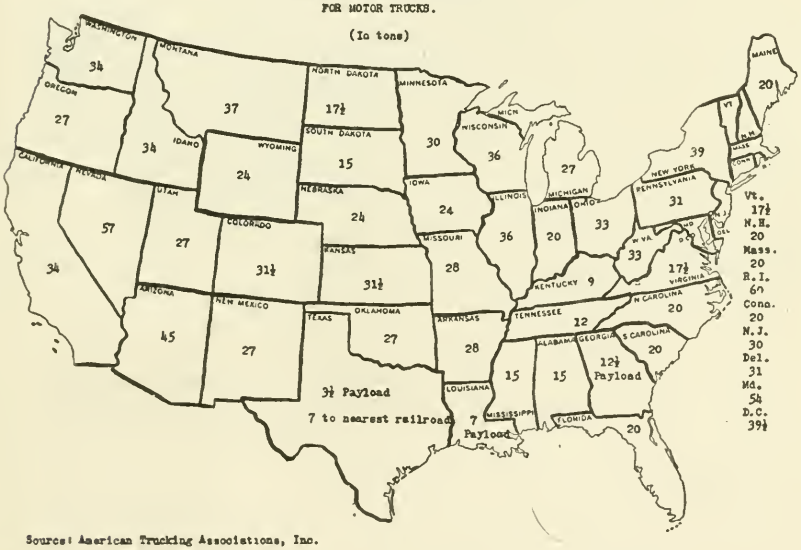
Leather from Middlesboro, Ky., to Chicago, Ill.
Decided by Division 5, Interstate Commerce Commission, Sept. 13, 1939. (Combined by additional calculations of witness)

Truck Mileage from Middlesboro to Louisville (2 trucks @ 219 miles each)	438 miles.
Truck Mileage from Louisville to Chicago (1 truck)	301 "
Truck Mileage from Middlesboro to Chicago	739 "
20,000 pounds at proposed rate of 47¢ per cwt	$94.00.
Revenue per truck mile $94.00÷739 miles	$0.127.
Respondent's average cost per truck-mile	$0.199.
What would be the full rate to meet average cost, using 2 trucks in Kentucky?	
$\frac{12.7}{19.9}=\frac{47}{X}$ or $12.7X=935.3$ or $X=$	$0.736 per 100 lbs.
If one truck could be used all the way through Mileage, Middlesboro to Chicago, would be	520 miles.
Per truck-mile revenue would thus be	$0.181 per truck-mile.
Increase over proposed rate required to meet full average cost per truck-mile on 2 truck basis	$0.266 per 100 lbs.
Percent of increase	56.6%.
Increase over proposed rate required on basis of one-truck all-the-way-thru operation	$0.047 per 100 lbs.
Percent of increase	10%.

EXHIBIT No. 2412

STATE GROSS WEIGHT AND PAYLOAD LIMITS FOR MOTOR TRUCKS.

(In tons)



Source: American Trucking Associations, Inc.

EXHIBIT No. 2413

Representative Commercial Vehicle Accident Rates (July, 1937, to June, 1938)

Type of Vehicle and Operation	No. of Fleets	No. of Vehicles	No. of Vehicle-Miles (000)	No. of Accidents	Rate [1]
Trucks	1,121	59,060	818,993	23,510	2.87
Retail Stores	94	4,237	54,743	3,450	6.30
Newspapers	20	1,134	21,293	1,019	4.79
Meat packing	33	904	13,192	574	4.35
Beverages	11	296	3,076	129	4.19
For-hire city trucking	72	2,367	31,011	1,142	3.68
Laundries	89	1,879	22,739	729	3.21
Bakeries	138	5,601	88,936	2,846	3.20
Private city trucking	66	3,485	41,222	1,247	3.03
Fuel	15	414	4,597	133	2.89
Public Utilities	153	17,009	173,173	4,895	2.83
Dairies	51	4,441	55,138	1,518	2.75
Ice	19	725	6,820	187	2.74
Ice Cream	24	1,068	14,595	363	2.49
Petroleum	162	10,196	153,611	3,291	2.14
Buses	89	4,896	268,521	7,794	2.90
Taxicabs	5	405	15,896	939	5.91

[1] The rate is the number of accidents per 100,000 vehicle-miles.

Source: "Accident Facts, 1939," (page 87) published by the National Safety Council, 20 N. Wacker Drive, Chicago, Illinois.

EXHIBIT No. 2414

Motor Vehicle Accidents Per 100,000 Vehicle Miles Traveled, in the Petroleum Industry, 1933 to 1938, Inclusive [1] [2]

Year	No. of Trucks Operated	No. of Vehicle Miles Traveled	No. of Accidents	No. of Accidents Per 100,000 Vehicle Miles
1938	24,143	375,589,000	5,409	1.45
1937	23,773	344,831,000	6,138	1.78
1936	24,111	335,979,000	7,019	2.09
1935	21,510	293,351,000	6,109	2.08
1934	11,524	129,556,000	3,065	2.37
1933	6,224	72,322,000	1,831	2.53

[1] A motor vehicle accident in the petroleum industry includes an accident involving any damage or injury whatsoever.

[2] Statistics for 1939 not yet available.

Source: American Petroleum Institute.

EXHIBIT No. 2415

Gross Weight Statutes Indirectly Limiting Gasoline Truck Capacities

State	Gross Weight Limit	Load Limit	Maximum Gallonage of Load to Which Restricted
Georgia	22,000 lbs. (2 axles—4 wheels)		1,800
Florida	16,000 lbs. (2 axles—4 wheels)		1,100
	18,000 lbs. (3 axles—6 wheels)		1,300
Kentucky	18,000 lbs. (2 axles—4 wheels)		1,300
	18,000 lbs. (3 axles—6 wheels)		1,300
	18,000 lbs. (tractor and semi-trailer).		1,300
Louisiana		8,000 lbs. (2 axles—4 wheels)	1,310
		14,000 lbs. (3 axles—6 wheels)	2,130
		10,000 lbs. (4 wheel—trailers)	1,470
		14,000 lbs. (6 wheel—trailers)	2,130
Texas		7,000 lbs. (2 axles—4 wheels)	1,110
		7,000 lbs. (3 axles—6 wheels)	1,110
		7,000 lbs. (tractor and semi-trailer and other combinations).	1,110

Source: American Petroleum Institute.

EXHIBIT No. 2416

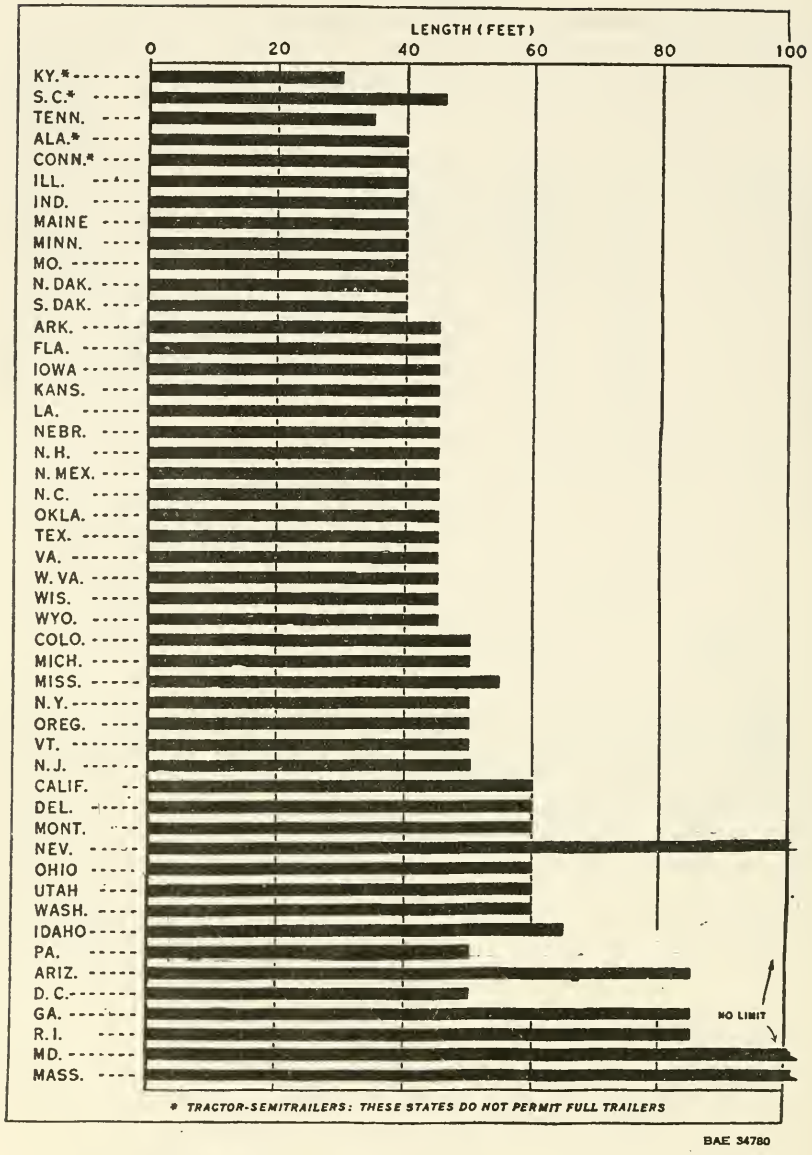
Comparative Costs in Operation of Tank Trucks of Different Capacities

Capacity	One Mile	20 Miles
600 gals	$0.0025 per gal	$0.0075 per gal.
2,000 gals	0.0016	0.0031.

For trips of one mile it will be noted that the truck with a capacity of 2,000 gallons is 36 percent more efficient than the truck with a capacity of only 600 gallons. When the trip is increased to 20 miles, however, the efficiency of the larger truck is increased to 59 percent.

Source: American Petroleum Institute.

EXHIBIT No. 2417



MAXIMUM LENGTH OF COMBINATIONS OF VEHICLES

The maximum length of combinations of motor vehicles permitted by the different States varies from 30 feet in Kentucky to 85 feet in four States, while Maryland and Massachusetts have no limit at all.

Source: U. S. Department of Agriculture "Barriers to Internal Trade in Farm Products" (corrected to date).

EXHIBIT No. 2418

Varying State Requirements Governing Lighting and Other Safety Appliances

State	Clearance Lamps		Side Marker Lamps		Identification Lamps (Cluster)		Direc-tional	Reflectors Front & Rear		Flags
	Front	Rear	Front	Rear	Front	Rear		Front	Rear	
I. C. C	2 A	2 R	2 A	2 R					2 R	2
Ala	1 W	1 R					R			2
Ariz	2 W	2 R					R			3
Ark	1 G	1 R	2 G	2 R	3 G	3 R	X		1 R	
Calif	2 A	2 A					R		2 R	
Colo	2 A G	2 R	2 A G	2 R	3 G A	3 R	R		1 R	3
Conn	2 W A	2 W R A					X	2 W A	2	X
Del	2 W	2 R					R			
D. C									1 R	
Fla										
Ga	2	2						X	X	
Ida	2 A	2 R	2 A	2 R			R Y		2 R	2
Ill					3 A	3 R	R Y	1 Y	1 R	3
Ind	2 A	2 R	2 A	2 R			R Y		2 R	2
Iowa	2 W Y A	2 R	2 W Y A	2 R	3 W Y A	3 R			2 R	
Kans	1 A	1 R	2 A	2 R	3 A	3 R			1 R	3
Ky	1 W G	1 R								
La	1 A	1 R	2	2	3 A		R			2
Me										2
Md	1 Ex R	1 R								
Mass	1 G	1 R					X		1 R	
Mich	2 A	2 R	2 A	2 R	3 G	3 G	X		2 R	2
Minn	2 W A	2 R	2 A	2 R			R Y		1 R	3
Miss	1 G	1 R	2 G	2 R	3 G	3 R	X		1 R	X
Mo							X			
Mont	2 C W Y	2 R							2 R	
Nebr	1 A G	1 R					R		1 R	2
Nev	2 A	2 R	2 A	2 R					2 R	
N. H	1 G							1 G		
N. J							X		2 R	
N. M	1 A	1 R	2 A	2 R			R Y		1 R	3
N. Y							X	2 Y	2 R	
N. C	2 A	2 R					X		1 R	X
N. D	1 W	1 R					R			
Ohio									1 R	2
Okla	1 W	1 R Y							1 R	
Ore	2 A	2 R	2 A	2 R			A		2 R	3
Penna	1 A	1 R	2 A	2 R	3 A	3 R	R Y		1 R	3
R. I								1 W A	1 R	
S. C	2 W Y		2 W Y	2 R	3 A	3 R	R Y		1 R	3
S. D	1 W	1 R			3 G	3 R	R Y		1 R	
Tenn	1 W	1 Y R						1 W	1 Y R	2
Tex	1 W	1 Y R						1 W	1 Y R	
Utah	1 G	1 R	2 G	2 R	3 G	3 R	R Y		1 R	
Vt	1 G	1 R						X	X	2
Va	2 A	2 R					X			2
Wash	2 Y	2 R					Y		1 R	
W. Va	1 W									
Wis	1 G B A	1 R						1 G B A	1 R	
Wyo	1 G	1 R	2 G				X	1 G	1 R	

Source: National Highway Users Conference.

EXHIBIT No. 2419

Extent of Reciprocity on Motor Carrier Traffic Among the States

State	Yes	No	Other Fees	State	Yes	No	Other Fees
Ala	X	R	$5.50	Ill	X		
Ariz		X		Ind	X		Free
Ark		X		Iowa	X		$5.00
Calif	X			Kans		X	
Colo	X		$20.00	Ky		X	
Conn	X		$5.00	La	X	R	
Del	X			Me	1½	X	
D. of C	X			Md	X		
Fla	X			Mass	X		
Ga	X	R		Mich	X		$5.00
Idaho	X			Minn		X	

Extent of Reciprocity on Motor Carrier Traffic Among the States—Continued.

State	Yes	No	Other Fees	State	Yes	No	Other Fees
Miss		X		Penna	X		
Mo	X		X	R. I	X		$1.00
Mont		X		S. C	X	R	
Nebr	X			S. D		X	
Nev	X		Free	Tenn		X	
N. H	3	X		Tex		X	
N. J	X			Utah	X		
N. M		X		Vt	X		
N. Y	X			Va	X	R	
N. C	X	R		Wash	X		
N. D	X	R		W. Va	X	R	
Ohio	X			Wisc	X	R	
Okla		X		Wyo		X	
Oreg	X		Free				

NOTE.—1½=vehicles up to 1½ tons only
3=vehicles up to 3 tons only
R=regular route operators

Source: American Trucking Associations, Inc.

EXHIBIT No. 2420

State Bodies Charged With Handling Motor Carrier Reciprocity

State	Reciprocity Board	Commission	Highway Department	Vehicle Division	Other Official	By Statute
Ala					Pr. Ct.	
Cal						X
Colo		X				
Conn		X		X		
Del				X		
D. C		X				X
Fla		X			X	
Ga		X		X		
Idaho		X				
Ill			X	X		
Ind		X				
Iowa		X				
La		X				
Md				X		
Mass				X		
Mich	X					
Mo		X				
Neb		X		X		
Nev		X			X	
N. H				X		
N. J				X		
N. Y				X		
N. Car		X		X		
N. Dak		X				
Ohio		X		X		
Ore		X			X	
Pa		X			X	
R. I		X		X		
S. Car		X		X	X	
Utah		X	X			
Vt		X		X		
Va		X		X		
Wash		X			X	
W. Va		X	X	X		
Wis		X		X		

Source: American Trucking Associations, Inc.

Exhibit No. 2421

Trucks Pay 21 Different Taxes in Virginia

FEDERAL TAXES

1. Capital Stock Tax
2. Excess-Profit Tax
3. Normal Income Tax
4. Surtax on Undistributed Profits
5. Social Security Taxes
6. Stamp Taxes
7. Excise Taxes

STATE TAXES

1. Annual Registration Fee
2. Annual Francise Tax
3. Income Tax
4. Tax on Capital
5. Tax on Money in Bank
6. Road Tax
7. Special Tax on Gross Earnings
8. License Tax on Vehicles
9. Tax on Rolling Stock
10. Tax on Motor Vehicle Fuels
11. Social Security Taxes

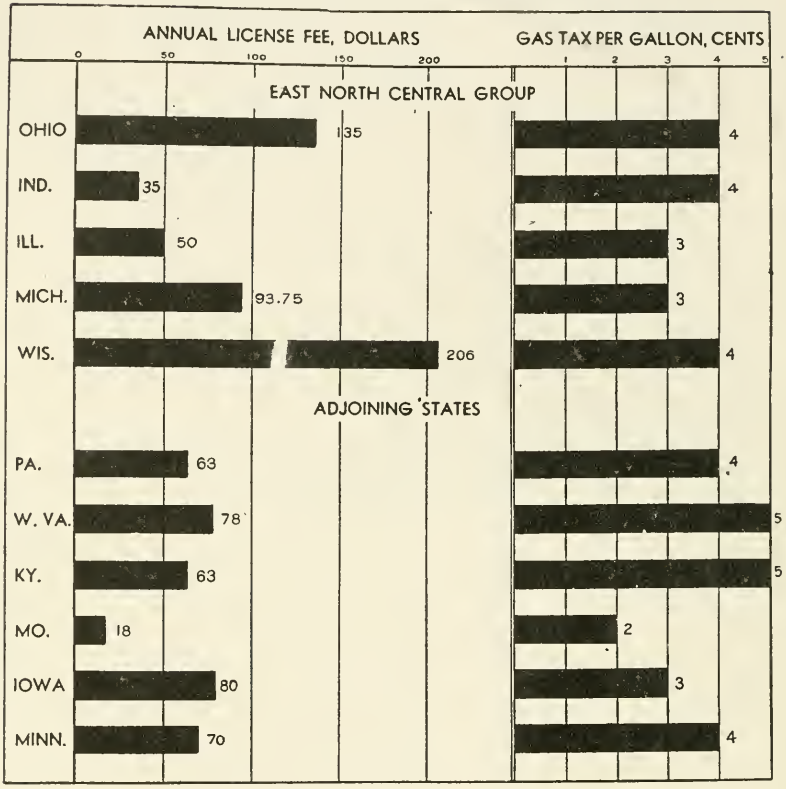
LOCAL TAXES

1. Cities and Towns
2. Real Estate Tax
3. Tangible Personal Property Tax

Authority: Hon. Thos. W. Ozlin, Chairman, State Corp. Commission
Arranged by: American Trucking Associations, Inc.

EXHIBIT No. 2422–1

EAST NORTH CENTRAL GROUP - AND ADJOINING STATES



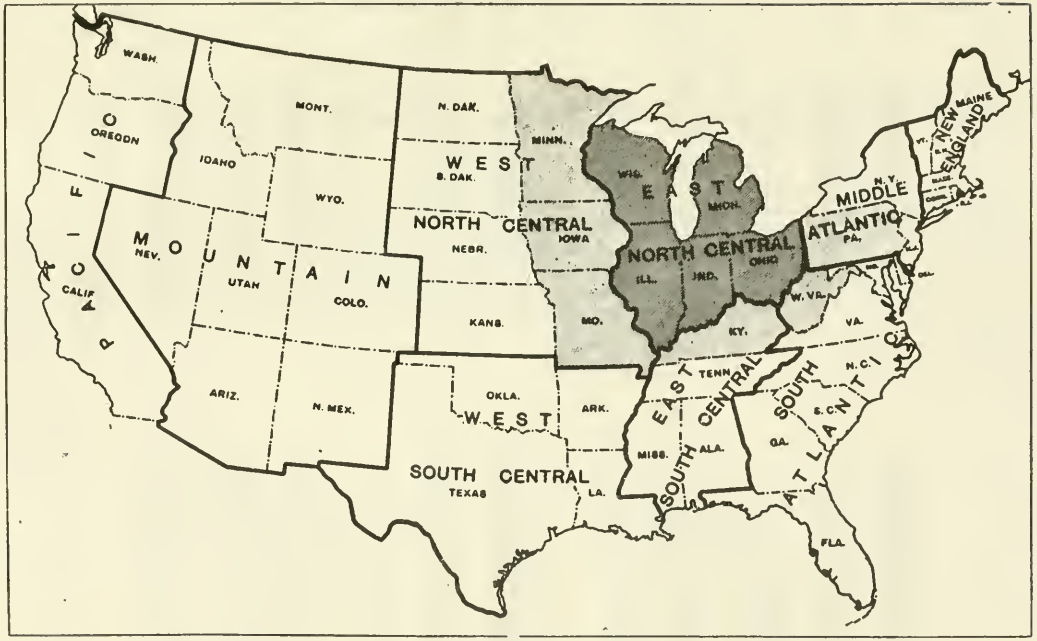
Source: Compilation of State Laws
by
NATIONAL COUNCIL OF PRIVATE MOTOR TRUCK OWNERS, Inc.
Exhibit presented T. N. E. C. hearing on
Interstate Trade Barriers, March 20, 1940

Witness:

LEON F. BANIGAN

EXHIBIT No. 2422–2

EAST NORTH CENTRAL GROUP – AND ADJOINING STATES



Source: U.S. Bureau of Census

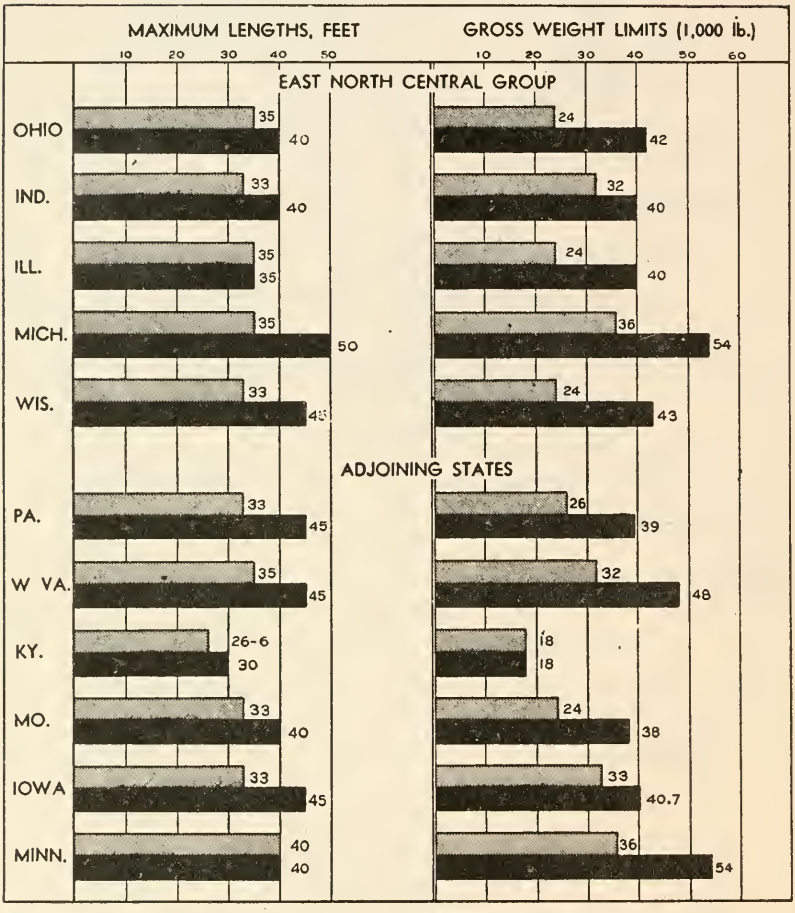
NATIONAL COUNCIL OF PRIVATE MOTOR TRUCK OWNERS, Inc.
Exhibit presented T. N. E. C. hearing on
Interstate Trade Barriers, March 20, 1940

Witness:

LEON F. BANIGAN

EXHIBIT No. 2423-2

EAST NORTH CENTRAL GROUP - AND ADJOINING STATES

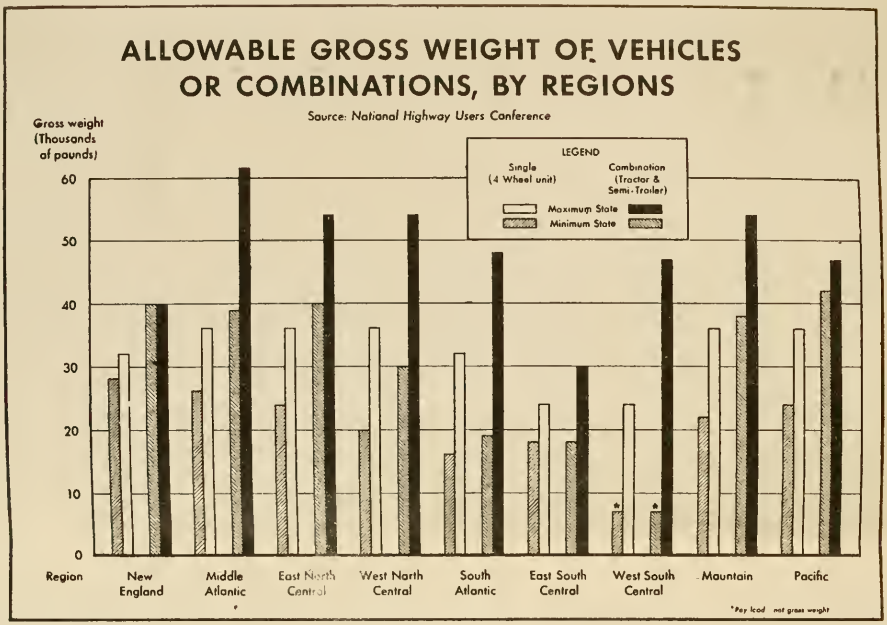


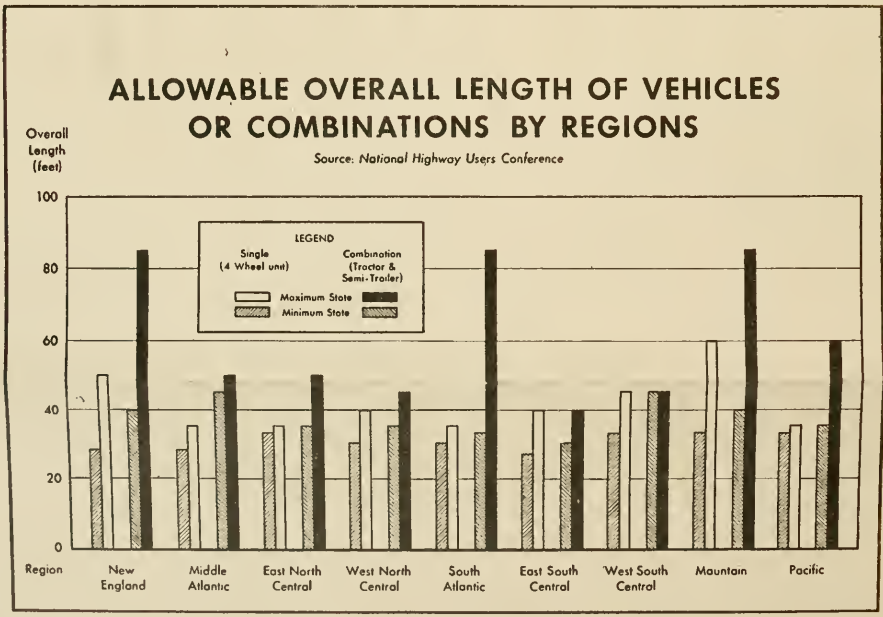
Source: Compilation of State Laws

By - NATIONAL COUNCIL OF PRIVATE MOTOR TRUCK OWNERS, Inc.
Exhibit presented T. N. E. C. hearing on
Interstate Trade Barriers, March 20, 1940

Witness:

LEON F. BANIGAN





Compiled By:
R.E.Plimpton,
Transportation Engineer

NATIONAL COUNCIL OF PRIVATE MOTOR TRUCK OWNERS, Inc.
Exhibit presented T. N. E. C. hearing on
Interstate Trade Barriers, March 20, 1940

Witness: LEON F. BANIGAN

EXHIBIT No. 2424

Weight Limitations by State Laws for Motor Buses Permissible Gross Weights and Axle Weights According to 20' Axle Spacing, 10½'' Tire Width, Dual Rear Wheels, With a Maximum of ⅔ of Gross Weight on One Axle.

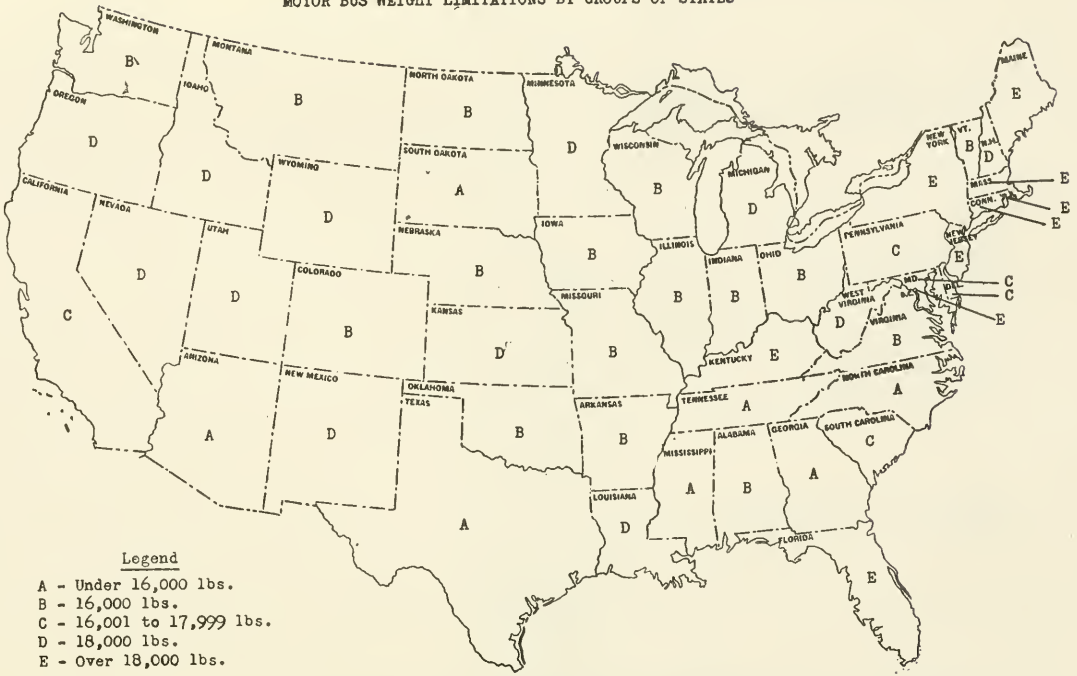
	Axle Load	Gross Load		Axle Load	Gross Load
	Lbs.	*Lbs.*		*Lbs.*	*Lbs.*
Alabama	[1] 16,000	30,000	Montana	[3]	[1] 24,000
Arizona	18,000	[1] 23,000	Nebraska	[1] 16,000	32,000
Arkansas	[1] 16,000	42,000	Nevada	[1] 18,000	[3]
California	[1] 17,000	26,000	New Hampshire	[1] 18,000	28,000
Colorado	18,000	[1] 24,000	New Jersey	[2]	[1] 30,000
Connecticut	26,000	[1] 32,000	New Mexico	[1] 18,000	36,000
Delaware	18,000	[1] 26,000	New York	[1] 22,400	36,000
District of Columbia	24,640	[1] 30,800	North Carolina	18,000	[1] 22,500
Florida	[2]	[1] 30,000	North Dakota	[1] 16,000	35,000
Georgia	17,600	[1] 22,000	Ohio	18,000	[1] 24,000
Idaho	[1] 18,000	28,000	Oklahoma	25,200	[1] 24,000
Illinois	[1] 16,000	[1] 24,000	Oregon	[1] 18,000	54,000
Indiana	[1] 16,000	36,000	Pennsylvania	18,000	[1] 26,000
Iowa	[1] 16,000	33,000	Rhode Island	22,400	[1] 32,000
Kansas	[1] 18,000	28,000	South Carolina	18,000	[1] 25,000
Kentucky	[2]	[2]	South Dakota	[2]	[1] 20,000
Louisiana	[1] 18,000	[2]	Tennessee	[2]	[1] 18,000
Maine	22,000	[1] 30,000	Texas	[2]	[1] 22,000
Maryland	20,000	[1] 26,000	Utah	[1] 18,000	42,000
Massachusetts	[2]	[1] 30,000	Vermont	[1] 16,000	28,000
Michigan	[1] 18,000	[2]	Virginia	[1] 16,000	[1] 24,000
Minnesota	[1] 18,000	[2]	Washington	18,000	[1] 24,000
Mississippi	18,000	[1] 22,000	West Virginia	[1] [4] 16,000–18,000–22,000	
Missouri	[1] 16,000	[1] 24,000	Wisconsin	[5] 12,000–19,000	[1] 15,000–[1] 24,000
			Wyoming	[1] 18,000	36,000

[1] Indicates whether axle or gross weight is restricting factor.
[2] Blank space indicates State does not have a specified axle load.
[3] Blank space indicates State does not have a specified gross load.
[4] West Virginia allows 16,000 lbs. on secondary roads, 18,000 lbs. on primary roads, and 22,000 lbs. on city streets.
[5] Wisconsin allows 12,000 lb. axle load on secondary roads, 19,000 lbs. on primary roads, 15,000 lb. gross load on secondary roads, and 24,000 lbs. on primary roads.

Source: Compilation from State Motor Vehicle Laws by National Association of Motor Bus Operators.

EXHIBIT No. 2425

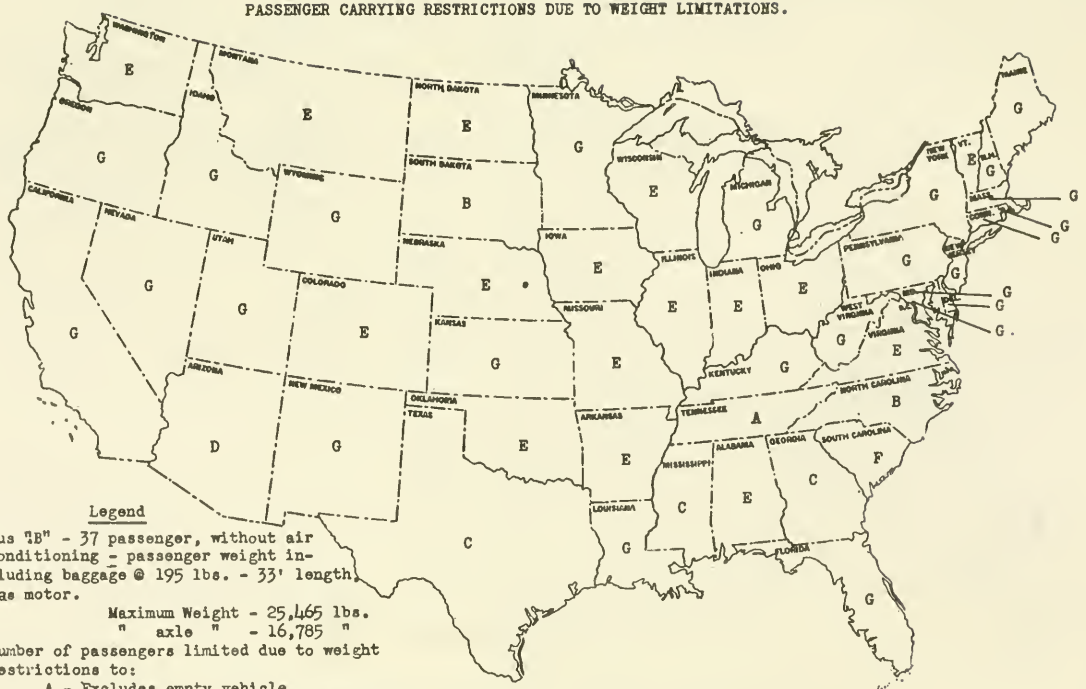
MOTOR BUS WEIGHT LIMITATIONS BY GROUPS OF STATES



SOURCE: Compiled by National Association of Motor Bus Operators from State Motor Vehicle Laws.

EXHIBIT No. 2426-1

PASSENGER CARRYING RESTRICTIONS DUE TO WEIGHT LIMITATIONS.



Legend

Bus "B" - 37 passenger, without air conditioning - passenger weight including baggage @ 195 lbs. - 33' length, gas motor.

Maximum Weight - 25,465 lbs.
" axle " - 16,785 "

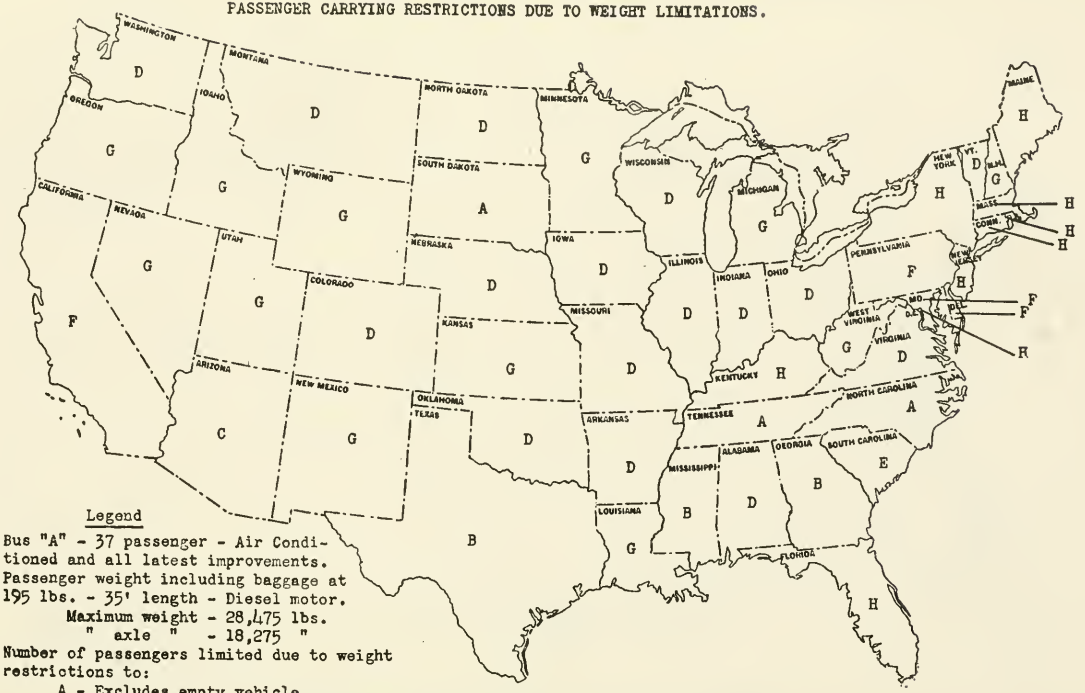
Number of passengers limited due to weight restrictions to:

A - Excludes empty vehicle
B - 10 passengers
C - 20 passengers
D - 25 passengers
E - 30 passengers
F - 35 passengers
G - Full load

SOURCE: Compiled by National Association of Motor Bus Operators from State Motor Vehicle Laws.

EXHIBIT No. 2426-2

PASSENGER CARRYING RESTRICTIONS DUE TO WEIGHT LIMITATIONS.



Legend

Bus "A" - 37 passenger - Air Conditioned and all latest improvements. Passenger weight including baggage at 195 lbs. - 35' length - Diesel motor.
Maximum weight - 28,475 lbs.
" axle " - 18,275 "

Number of passengers limited due to weight restrictions to:

A - Excludes empty vehicle
B - 8 passengers
C - 14 passengers
D - 19 passengers
E - 24 passengers
F - 27 passengers
G - 34 passengers
H - Full load.

SOURCE: Compiled by National Association of Motor Bus Operators from State Motor Vehicle Laws.

EXHIBIT No. 2427

State Law Provisions Regarding Permissible Lengths of Vehicles

State	Allowable Length in Feet	State	Allowable Length in Feet
Alabama	33	Nebraska	35
Arizona	33	Nevada	
Arkansas	35	New Hampshire	33
California	35	New Jersey	35
Colorado	35	New Mexico	35
Connecticut	40	New York	35
Delaware	33	North Carolina	35
District of Columbia	35	North Dakota	40
Florida	35	Ohio	35
Georgia	35	Oklahoma	45
Idaho	35	Oregon	35
Illinois	35	Pennsylvania	35
Indiana	33	Rhode Island	
Iowa	33	South Carolina	35
Kansas	35	South Dakota	[2] 28
Kentucky		Tennessee	35
Louisiana	33	Texas	35
Maine	40	Utah	45
Maryland		Vermont	50
Massachusetts	[1] 28	Virginia	35
Michigan	35	Washington	35
Minnesota	40	West Virginia	35
Mississippi	40	Wisconsin	33
Missouri	33	Wyoming	40
Montana	35		

[1] 33 feet on designated ways.
[2] Greater length may be authorized by Board of Railroad Commissioners after hearing on public convenience and necessity and investigation of traffic conditions.

Source: Compilation from State Motor Vehicle Laws by National Association of Motor Bus Operators

SUPPLEMENTAL DATA

EXHIBIT No. 2427-A

SUMMARY OF TESTIMONY SUBMITTED TO THE TEMPORARY NATIONAL ECONOMIC COMMITTEE

By Dr. W. Y. Elliott, School of Government, Harvard University, at the hearings on Interstate Trade Barriers, March 23, 1940

Prepared with the assistance of Mr. Hubert Nexon, of the Harvard Law School

LEGAL ASPECTS OF TRADE BARRIERS AND SOME POSSIBLE REMEDIES

Recent decisions by the Supreme Court of the United States have gone far toward convincing students of the problem that no sweeping relief from the barriers to interstate trade can be hoped for from the present Court. In effect that Court has been developing in a series of cases that had to do with taxation, motor vehicle control, and some inspection laws, the proposition that Congress and not the Court was the appropriate agency to defend interstate commerce from state action. Justices Frankfurter, Black and Douglas have made this philosophy explicit in the following language in their dissenting opinion [1] in the

[1] In voicing this new judicial humility, the dissenting opinion says (p. 509): "It is not for us to approve or disapprove" and quotes from a 1938 case, *South Carolina State Highway Dept. v. Barnwell* (303 U. S. 177) language that shows that the Court had been tending for several years to give wide latitude to state action, *in the absence of congressional action aimed at preempting the field under its interstate commerce power.* The language quoted from the Barnwell case is: "Courts do not sit as legislatures, either state or national. They cannot act as Congress does when after weighing all the con-

very recent case of *McCarrol (Commissioner of Revenues, Arkansas) v. Dixie Greyhound Lines* (60 Sup. Ct. 504 at p. 510):

"Judicial control of national commerce—unlike legislative regulation, must from inherent limitations of the judicial process, treat the subject by the hit or miss method of deciding local controversies upon evidence and information limited by the narrow rules of litigation. Spasmodic and unrelated instances of litigation cannot afford an adequate basis for the creation of integrated national rules which alone can afford that full protection for interstate commerce intended by the Constitution. We would therefore leave the question raised by the Arkansas tax for consideration of Congress in a nation-wide survey of the constantly increasing barriers to trade among the states. Unconfined by 'the narrow scope of judicial proceedings' (Taney, C. J., dissenting, Penn. v. Wheeling etc. Bridge Co. 12 How. 518, 592) Congress alone can in the exercise of its plenary constitutional control over interstate commerce not only consider whether such a tax as now under scrutiny is consistent with the best interests of our national economy, but can also on the basis of a full exploration of the many aspects of a complicated problem devise a national policy fair alike to the states and the Union. Diverse and interacting state laws may well have created avoidable hardships. * * * But the remedy, if any is called for, is within the ample reach of Congress."

In some ways this may be sound enough doctrine. It goes upon a long line of cases in which the Court has said that so long as Congress does not act positively the states will be allowed to occupy an area in control of commerce, by taxation or other means, that may have incidental effects upon interstate commerce. But as a matter of emphasis at least, it is tantamount to saying that the Court refuses more and more to occupy the difficult role that it has previously maintained (with a few exceptions), of being an umpire of the federal system in this much disputed area. It invites Congress to remedy the evil.

The burden upon the Court of such perpetual umpiring would be a very severe one, since it is called on to decide upon the effects of many administrative actions as well on the constitutionality of statutes passed by the state governments. But it is difficult to see in the last analysis, how these administrative actions can be dealt with by federal statute. It is not even easy to draw adequate legislation in the several fields that will be flexible enough and yet meet the Court's requirements. However, undoubtedly the attempt must now be made if the Court washes its hands of the problem, as it seems to be doing. Is there political backing sufficiently strong to undertake it in Congress? How much can state action along cooperative lines accomplish? Are there other methods of attack?

It is in the light of such questions that the hearings of the Temporary National Economic Committee on this problem assume great importance. A full week of the T. N. E. C.'s time has now been devoted to listening to evidence from the main parties in interest who cared to appear at the hearings and some expert testimony from Government departments. This testimony has covered a broad economic range that has yet left untouched the highly controversial but very important field of local and other restraints on freedom in the building trades. It has dealt with specific analyses of existing conditions by the truckers' associations, milk marketing agencies of the Department of Agriculture, health and plant quarantines, licenses and standards, and similar problems in oleomargarine and in alcoholic beverages. But it has not considered, I regret to note, the effects of local regulations and of state laws, as well as of contractors' and trade union practices, in the field of building, where the evidence was to have been presented by Dr. Corwin Edwards of the Department of Justice. Nor has it had any adequate presentation of the complex and important problems centering about use taxes, business taxes like those on chain stores, "foreign" (out-of-state) corpo-

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flicting interests, state and national, it determines when and how much the state regulatory power shall yield to the larger interests of national commerce."

Though the language quoted from the *Dixie Greyhound Bus* case comes from the joint dissenting opinion of Justices Black, Frankfurter and Douglas, it represents the majority attitude of the Court in most of the recent cases: See *Madden* v. *Kentucky* (60 Sup. Ct. 406) flatly overruling *Colgate* v. *Harvey*, 296 U. S. 404 (1935) and *McGoldrick* v. *Berwind-White Coal Co.* (60 Sup. Ct. 388). In the latter case Justice Hughes dissented vigorously, joined by McReynolds and Roberts: "We (the Supreme Court) have the duty of maintaining the immunity of interstate commerce as contemplated by the Constitution * * *." And at p. 402–403: "It would seem extraordinary if a state could escape the restrictions against direct action within interstate commerce by first laying exactions upon its own trade and then insisting that to make its own policy completely effective it must be allowed to lay similar exactions upon interstate trade." The Chief Justice felt that the tax (sales or excise tax in question) could have cumulative effect and could serve as a barrier.

rations, and others that tremendously hinder trade by raising prices to consumers and by red tape and multiplication of administrative nuisances: Barriers to trade, less publicized but very important, may be found in the growth of prohibitions on corporations practicing "professions," the licensing and examining of applicants for certain trades and professions, restaurant restrictions limiting food activities of drug, variety, and department stores; and finally those municipal ordinances which levy discriminating fees on itinerant merchants and prohibit door-to-door selling.

If I may humbly suggest it to this Committee, taxation cases like *Ford Motor Company* v. *Beauchamp*, 60 Sup. Ct. 273, sanctioning what looks to be possible double or extra-territorial taxation, are economically speaking as important as all the rest put together.

From the testimony given it is clear that the problem has very deep roots and is not susceptible of any superficial analysis. Retaliatory action tends to grow in the same way as it does in international relations. The avenues are very various, and the pressure groups always active. Sometimes a state will apply what amounts to impossible regulations or will require local licenses in retaliation against the laws of states at a great distance as well as those close at hand. This is particularly true in the field of the regulation of motor vehicles and trucks, but it affects the flow of many agricultural and dairy products in a very severe way. Not only the state acts themselves but their methods of administration may be rendered of almost impossible severity. Ports of entry where trucks must be examined limit the routing of trucks to definite roads and sometimes have almost the effect of tariff barriers. The action of the inspecting officials may sometimes smack of the arbitrary and may introduce delays and punishments of a quite unreasonable character.

What can be done about this development? There are several lines of attack: (1) It looks as if in the field of quarantine, for instance, federal regulation might possibly be drawn in such a way as to make more uniform the problem of plant and animal quarantine. But as the states would probably find new methods of evasion, it is strongly suggested that an extension of the joint federal and state action already practiced in some areas may be necessary in this sphere. (2) The same reasoning applies to the application of taxes, licenses, and other discriminatory proceedings in dairy products. Where states persistently refuse to permit equal entry for products of this character there is small doubt that federal action will be necessary in setting negative standards, at least. Congress may have to forbid where it does not prescribe. (3) It may well be that those states who refuse to allow purchases of materials from outside the states by their public purchasing agencies can be dissuaded by federal action in withholding certain grants-in-aid. Joint state-federal action, federal action, negative and affirmative, and grants-in-aid—all these methods may be used.

The grant-in-aid itself is a device which is capable of much more standardization in its use. It has dangers, particularly if its applications are political and unstandardized, but it may come into use as a sanction against states whose persistent attitude is one of blocking the flow of trade which has made this American system so economically powerful. It is a matter of general agreement even among the advocates of a protective tariff against foreign products that our great domestic area of free trade has been the basis of American prosperity. The effort to defend this freedom of passage against unnecessary and arbitrary restrictions must be made, but it will run counter to local pressures and to state action in many parts of the country.

The first line of trenches in this defense is undoubtedly the Council of State Governments, ably led by Mr. Bane. The efforts of this organization to prevent the growth of these barriers have been unusually successful in the past year or two and some efforts at repeal have also succeeded. The testimony of Mr. Bane looked toward the creation of a permanent and joint committee of the state governments and the Federal Government to look into administrative as well as statutory state action that hinders the flow of commerce. If there were a more effective and judicious use of the grant-in-aid to states granting reciprocal privileges and the withholding of these grants (in certain areas like agricultural quarantine and road building) from those states that such a joint committee found to be adopting an unreasonable attitude, it would have a very useful effect, I think, in discouraging the alarming rate of growth of this type of economic Balkanism in the United States. Perhaps the hearings of the T. N. E. C. will serve to educate the sources of enlightened opinion in the country as to the roots of the problem and some methods of attack. We must hope that the recommendations of this great National Commission of Inquiry will aid in the process.

With this prologue let me turn directly to the legal aspects of trade-barriers as indicated by recent Supreme Court decisions. In our system the Supreme Court sets the terms of limit if not of reference for every attack on economic problems. Some things can and some things cannot be done by the state governments, without regard to congressional action. Others can be done in the absence of congressional action. What does the Court say?

SOME LEGAL ASPECTS OF INTERSTATE TRADE BARRIERS

The foundation on which relief from barriers to interstate trade is founded is the constitutional principle that no state may lay a burden on interstate commerce.[2] But in the normal exercise of its police or tax powers the state may "indirectly affect" interstate commerce. The question with which we are concerned is the extent to which the present state of the law permits state regulation or taxation to produce disrupting effects in interstate commerce. In the examination of the problem it must be remembered that in many cases when state action demonstrably offends the commerce clause of the Constitution the ordinary scope of case-by-case privately financed litigation is too slow a process to give satisfactory relief; federal action is called for to aid in the elimination of the offending statutes or administrative practices.

Motor Carriers—Flat License Fees

The parent cases for the taxation of motor vehicles traveling interstate are *Kane* v. *N. J.*, 242 U. S. 160 (1916) and *Hendrick* v. *Maryland*, 235 U. S. 610 (1915). Both cases approved small, non-discriminatory license and registration fees, graduated according to horse-power; the taxing statute devoted the revenues thus raised to the administration and maintenance of the state highway system. Although there was no attempt to test the fee involved by the level of road expenditures or by the extent to which the opponent of the tax used the highways, both cases rest to a considerable extent on the ground that the charge made was a reasonable one for the service rendered by the taxing state.[3] Formally at least, in testing the validity of flat fees, the Supreme Court and the lower federal courts have adhered to the requirement that the fee be a reasonable charge for the use of the highways.

In the determination of the consistency of a given tax with the formula, the Supreme Court has used a system of presumptions most clearly set out in *Interstate Transit Co.* v *Lindsey*, 283 U. S. 183 (1931):

"As such a charge is a direct burden on interstate commerce, the tax cannot be sustained unless it appears affirmatively in some way that it is levied only as a compensation for the use of the highways or to defray the expense of regulating motor traffic. * * * Where it is shown that the tax is so imposed, it will be sustained unless the taxpayer shows that it bears no reasonable relation to * * * the use of the highways or is discriminatory."[4]

The same approach is indicated by *Sprout* v. *City of South Bend*, 277 U. S. 163 (1928)[5] although the system of presumptions is not so clearly articulated.

At first glance the fact that the state must make "appear affirmatively" that the tax is levied as compensation for highway use would appear to decrease materially the chances that burdensome state legislation would be sustained. But the burden of coming forth with an affirmative showing is easily satisfied.

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[2] *Allen* v. *Pullman's Palace Car Co.*, 191 U. S. 171 (1903); *Michigan Public Utilities Commission* v. *Duke*, 266 U. S. 570 (1925).

[3] There were other factors in each case as well—the requirement that the Secretary of State be appointed an agent for the service of process and that the drivers get licenses indicating competency. They need not concern us here.

[4] That case held invalid a fee of five hundred dollars exacted by a general taxing statute which laid a variety of privilege taxes on unrelated businesses. The vehicle tax was graduated according to the number of seats in each vehicle. There was no attempt to relate the tax to miles travelled nor were the funds specifically allocated to use on the highways. The court held that the tax was a direct tax on the privilege of doing an interstate business as indicated by its place in the taxing scheme and the graduating of the tax according to seating—and therefore earning—capacity.

[5] There a fee of fifty dollars was levied on the protesting carrier. The tax was levied on all busses, the amount graduated according to seating capacity. There was no indication on the face of the statute or the facts adduced to show use for maintenance. The court pointed out that the city busses, which used the streets much more than the opponent of the tax paid the same fee. Although there was heavy reliance on this fact, subsequent decisions make it clear that mere failure to allocate the tax according to actual use is not fatal. See *infra*.

Thus in *Morf* v. *Bingaman*, 298 U. S. 407 (1936),[6] a statutory statement that the tax was levied for the privilege of using the roads and the fact that the tax was collected at ports-of-entry were held to create a sufficient showing of the compensatory nature of the tax and to shift the burden of proof to the taxpayer.

When the burden of proof has been shifted to the taxpayer, just what he must prove is far from clear. In the most recent case in which the Supreme Court struck down a regular entry fee, *Ingles* v. *Morf*, 300 U. S. 290 (1937),[7] the invalidity of the fee was predicated on its lack of relation to the purpose announced in the statute—the policing of the road.[8] But where the announced purpose of the statute is the maintenance of the roads, it is almost impossible to show that the flat fee is unreasonable. Thus in *Dixie Ohio Express Co.* v. *State Revenue Commission of Ga.*, 306 U. S. 72 (1939) a trucking company sought to contest a tax of fifty to seventy-five dollars depending on the weight of its trucks, over and above fairly heavy license fees and gas taxes. The court in supporting the tax talked to a certain extent about the tax cost per mile (which seemed fairly low) but then went on to discuss the worth of the *privilege* of using the roads, indicating perhaps that the value of the privilege and not the use of the roads was what mattered. The same idea is reflected in *Aero Mayflower Transit Co.* v. *Georgia Public Service Commission*, 295 U. S. 285, 289 (1935):

"The appellant urges the objection that its use of roads in Georgia is less than that by other carriers engaged in local business, yet they pay the same charge. The fee is not for the mileage covered by a vehicle. There would be administrative difficulties in collecting on that basis. The fee is for the privilege of a use as extensive as the carrier wills that it shall be. There is nothing unreasonable or oppressive in a burden so imposed. * * * One who receives a privilege without limit is not wronged by his own refusal to enjoy it as freely as he may."[9]

Despite the strong language about relation of charge to use in the *Interstate Transit Co.* and *Sprout* cases, *supra*, it would seem that the Court is committed to a policy which makes possible the levy of any type of graduated fee consistent with the due process clause, provided only that the enacting statute specifies that receipts are to be devoted to the maintenance and policing of the highways.

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[6] A tax of $7.50 on lead cars and $5.00 on cars in tow in "caravans", apparently collected at a port of entry, was held valid in the absence of a showing by the taxpayer [that the charge in fact bore no relation to highway cost. The device ordinarily used to shift the burden to the taxpayer] is allocation of collections to the highway fund. That has almost invariably been held sufficient. In addition to the *Kane* and *Hendrick* cases, and the *Dixie Ohio* case, see *Clark* v. *Poor*, 274 U. S. 554 (1927).

[7] A tax of fifteen dollars on cars in interstate caravans where the statute specifically stated that the charge was made for police purposes was held invalid where the police cost was only five dollars per car and no showing of any other use of the fund for highway purposes was made. *Cf. Bingaman* v. *Golden Eagle Western Lines*, 297 U. S. 626 (1936).

[8] Cf. *Paul Gray Inc.* v. *Ingels*, 23 F. Supp. 946 (S. D. Calif., 1938). After *Ingels* v. *Morf*, *supra*, struck down the old California statute on entry fees for caravans, the state passed a new one, splitting the fifteen dollar fee in half and allocating half to policing and half to highway maintenance. The case was tried below before a three judge district court. Two of the judges felt that the situation was ruled by the earlier case in the Supreme Court. The third dissented and fined up an impressive array of authorities on flat fees to show that the mere change of name was enough to save the tax. That the change in the avowed purpose of the statute made any difference in fact cannot be asserted. On appeal to the Supreme Court the lower court's decision was reversed and the dissenting judge's position supported. *Clark* v. *Paul Gray*, 306 U. S. 583 (1939).

[9] See also in this connection *Clark* v. *Poor*, 274 U. S. 554 (1927); *Hicklin* v. *Coney*, 290 U. S. 169 (1933). It was on this group of cases that the dissenters relied in *McCarroll* v. *Dixie Greyhound Lines*, U. S. Sup. Ct. Feb. 12, 1940 (majority holding that an entry fee levied on the amount of gas in the tank of an interstate carrier is bad, citing cases like the *Interstate Transit Co.* and *Sprout* cases, *supra*). Cf. *Aero Mayflower Transit Co.* v. *Watson*, 5 F. Supp. 1009 (E. D. Ark., 1934), *Roadway Express* v. *Murray*, 60 F. (2d) 293 (W. D. Okla., 1932), and the dissent in the *McCarroll* case, which cite *Carley & Hamilton* v. *Snook*, 281 U. S. 66 (1930) as a ground for approving a flat tax. That case is a due process case on classification for a graduated excise tax. It holds (without discussion of interstate commerce problems, which were not raised in the Supreme Court) that a flat fee is valid no matter what the use of roads. If the criterion there adopted is the test of reasonableness in interstate commerce as well as in due process questions, there can be substantial practical discrimination against heavy interstate carriers. There is some indication in a different connection in *So. Carolina Highway Department* v. *Barnwell Bros.*, 303 U. S. 177 (1938) (weight limitations) that the test of reasonableness under the 14th amendment and the commerce clause are the same. But cf. the *Interstate Transit case*, which makes an explicit distinction between due process and commerce clause cases where a *tax* is involved—declaring a classification good as to one bad as to the other. *Accord*, *Prouty* v. *Coyne*, 55 F. (2d) 289 (D. S. D., 1932) (reversed on the ground that the question was moot, 289 U. S. 704 (1933) invalidating a large tax graduated according to weight and independent of mileage although admitting that the classification was valid for taxation of intra-state vehicles.

In fact we know that the interstate carrier pays more for the use it makes of the roads than does the intra-state carrier. The inability of any single litigant to prove that he is paying an unreasonable sum for the use of the roads may make federal intervention necessary.

Mileage taxes

In view of the approval of flat fees imposed on interstate carriers as "compensation" for the use of highways in the state, it is natural to expect that mileage fees are generally approved. Perhaps the most important case in this connection is *Interstate Busses Corporation* v. *Blodgett*, 276 U. S. 245 (1928). That case approved a tax of one cent per mile on all interstate carriers travelling on the state highways, the receipts to go into the highway fund; the tax was valid even though a different method had been adopted for the taxation of intra-state carriers, since it was reasonable on its face and the taxpayer couldn't prove that the method adopted produced an unjust discrimination. The lower federal courts have consistently followed the lead of the Blodgett case,[10] even where taxes collected were not used directly for the highway fund.[11]

Gasoline taxes

The place of the gas tax in this study is of small importance, principally because the extent to which it is likely to be a burden on interstate commerce is very small. If an interstate carrier buys gasoline in a state, the excise tax on gasoline must of course be paid, but there is no discrimination and the tax paid is likely to bear a very close relation to the use of the roads. (In the case of a heavy commercial carrier the rate of tax may be below what the carrier ought to be taxed, since it will pay the same rate as the private motorist who is responsible for much less wear and tear on the roads.)

An apparent method of evasion of gas taxes was set up by *Helson & Randolph* v. *Kentucky*, 279 U. S. 245 (1929) which held that an interstate ferry could not be taxed on the gasoline it used (but had not bought) in the taxing state on the ground that the tax so levied would constitute a direct burden on interstate commerce. But if the carrier brings the gasoline into the state in bulk and then distributes it to its own vehicles, the distribution or storage is a taxable event, notwithstanding the fact that the gasoline is to be used solely in interstate commerce.[12] And, if a carrier by road attempts to bring enough gasoline in its tanks to avoid the tax so levied, it can easily enough be caught by a mileage tax.[13] It would seem therefore that it is practically impossible to avoid a gasoline tax or its equivalent, but since intra-state carriers cannot avoid the tax under any circumstances, there is no problem of discrimination against interstate carriers to create difficulties.

Non-tax regulation of Motor Carriers

The chief danger of the erection of trade barriers in this field arises from two types of state regulation of highway use, the requirement of a permit to operate from various kinds of state administrative boards, and weight and length limitations.

Perhaps the most vexing problem with which interstate carriers have had to deal is the variation in the weight and size provisions of various state laws.

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[10] *Crolbert* v. *Board of Railroad Commissioners*, 60 F. (2d) 321 (S. D. Iowa, 1932) (ton-mile tax not allocated to the road fund); *Alkazin* v. *Wells*, 47 F. (2d) 904 (S. D. Fla., 1931) (mileage tax allocated to roads, with additional requirement of seventy-five dollars deposit to insure payment); *Johnson Transfer & Freight Lines* v. *Perry*, 47 F. (2d) 900 (H. D. Ga., 1931) (mileage tax not allocated to the roads held good notwithstanding the fact that it was labelled an occupation tax).

[11] *Morf.* v. *Bingaman*, 298 U. S. 407 (1936) in approving the New Mexico "caravan" tax said that, as long as the charge was a reasonable one for using the roads, it was not for the taxpayer to protest if the state used other funds for the highways and put the tax collected from him into the general fund.

[12] *Edelman* v. *Boeing Air Transport, Inc.*, 289 U. S. 249 (1933) (tax on gasoline withdrawn from storage in the state for use in an interstate journey held valid); *Nashville, Chattanooga etc. Ry. Co.* v. *Wallace*, 288 U. S. 249 (1933) (same).

[13] It may not even be necessary to resort to a mileage tax. In the *McCarroll* case, *supra*, n. 1, p. 5, even the majority intimates that if the challenged tax had been levied on gasoline *to be used* in the state the tax would have been approved. Such a holding would of course be possible in the face of the *Helson* case since there was no highway use in that case for which compensation could be demanded.

But here Congressional legislation is clearly necessary for the elimination of the difficulty. The case that settles the law is *South Carolina State Highway Department* v. *Barnwell Bros.*, 303 U. S. 177 (1938). There the lower court decision from which appeal was taken was based on comprehensive findings of fact based on expert testimony. The findings showed that it was probably unnecessary to have the stringent regulations enacted by the state either to maintain the highways in good condition or to keep operating conditions safe. It was further shown that the restrictions imposed were more exacting than those of the other states along the main arteries of interstate traffic and that the existence of the restrictions was a material burden on interstate commerce. In the face of those facts the Court followed its previous decisions and held that the regulations were valid. The test of reasonableness was applied (as though the case were a "due process" case) and by the standard of reasonableness the regulations were found not so clearly bad as to permit the court to strike down the state's legislation.

The second vexing problem that faces the carriers is the necessity of acquiring operating permits which are not issued as of course by state authorities. It is generally true that carriers-for-hire must apply to an administrative board for their licenses. These boards then issue licenses which are in the nature of certificates of necessity and convenience. In the case of intra-state carriers it is quite clear that the controlling consideration is the competitive situation, but it was early settled that competitive considerations could not be made the foundation of state issuance or denial of permission to operate over interstate highways. *Bush & Sons Co.* v. *Maloy*, 267 U. S. 317 (1925); *Buck* v. *Kuykendall*, 267 U. S. 307 (1925). It was in large part the inability of the states to regulate competition between interstate motor carriers which led to the passage of the Motor Carriers Act. However, at no time were the states completely divested of power to discriminate in favor of their own carriers. They could still regulate interstate carriers for reasons of intra-state safety—specifically by denying a permit to operate over given routes where the refusal was founded on the "congested" condition of the roads. *Bradley* v. *Public Utilities Commission*, 289 U. S. 92 (1933). Naturally an administrative finding that roads are too congested to bear additional truck or bus traffic safely is fairly hard to upset.[14] If the state still has the power to deny permission to operate to holders of certificates of necessity and convenience under the Motor Carriers Act of 1935, a considerable field of discrimination against interstate carriers may still exist. The Supreme Court declined to rule on the question in the only case which has so far presented the problem to it,[15] and the adjudication of other courts are conflicting and indefinite on the point.[16]

Ports of entry

There is language in a good many of the early cases which would seem to indicate that, although a state might tax certain phases of interstate commerce, it could not make payment of the tax a condition of carrying on the commerce but must use the ordinary creditor's remedies. Thus it has been held that an interstate telegraph company cannot be forced to discontinue operations pending payment of a tax concededly legal. *Western Union Telegraph Co.* v. *Attorney general*, 125 U. S. 530 (1888); see *St. Louis Southwestern Ry. Co.* v. *Arkansas*, 235 U. S. 350 (1914). Those cases would seem to indicate that denial of the right to use the roads until payment had been made at a port-of-entry would be illegal. The question was expressly left open in *Interstate Busses Corporation* v. *Blodgett*, [276 U. S. 245 (1928) but the opinion in *Morf* v. *Bingaman*, 298 U. S. 407] (1936) casually accepts the existence of ports-of-entry. The nature of the subject matter and the difficulty of collection in any other way probably makes the port-of-entry method of regulation immune to attack on constitutional grounds.

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[14] *Texport Carrier Corporation* v. *Smith*, 8 F. Supp. 28 (S. D. Texas, 1934) (finding of state board sustained despite the fact that other permits to operate had been granted subsequent to the denial of plaintiff's request); *Magnuson* v. *Kelly*, 35 F. (2d) 867 (E. D. Ky., 1927) (action of state board found to rest in fact on competitive considerations and reversed).

[15] *McDonald* v. *Thompson*, 305 U. S. 263 (1938).

[16] *See, e. g., Thompson* v. *McDonald*, 95 F. (2d) 937 (C. C. A. 5, 1938) (reversed on another ground, 305 U. S. 263); *Commonwealth* v. *Kennedy*, 129 Pa. Super. 149, 195 Atl. 770 (1937); *State ex rel, L&L Freight Lines* v. *Douglass*, 124 Fla. 579, 169 So. 389 (1936); *Railroad Commission* v. *Southwestern Greyhound Lines*, 92 S. W. (2d) 296; (Tex. Civ. App. 1936), reversed, 128 Tex. 560, 99 S. W. (2d) 263 (1936).

Interstate Trade Barriers—Liquor Laws

The question of the constitutionality of state trade barriers against interstate trade in liquor seems to be completely foreclosed by two Supreme Court decisions under the twenty-first amendment, *State Board of Equalization* v. *Young's Market*, 299 U. S. 59 (1936) and *Indianapolis Brewing Co.* v. *Liquor Control Commission*, 305 U. S. 391 (1939). Although the earlier case approved a tax which discriminated between in-state and out-of-state dealers, there seemed to be some possibility of justification of the tax on the ground of differences in necessity for policing, etc., but any chance of Supreme Court disapproval of retaliatory legislation has disappeared with the decision in the *Indianapolis Brewing Co.* case. There the Court approved a state statute *prohibiting* the importation of beer from those states that discriminated against Michigan in any way.

Interstate Trade Barriers—The Itinerant Merchant

Even without consideration of any special discriminations against the itinerant merchant, it must be remembered that the burden imposed upon him by flat fee motor vehicle taxes[17] places him at a disadvantage which may be fatal. However, vehicle taxes do not exhaust the list of fees which he must pay—fees approved by the courts. Furthermore, many of the fees exacted by the states, although clearly illegal in view of past decisions of the Supreme Court, are as burdensome as though they were legal, since the itinerant merchant is not in a position to contest them. Therefore, any consideration of the legal restrictions on state action against itinerant merchants is largely academic unless some means is discovered for aiding the small dealer conduct justifiable litigation which he could not otherwise afford.

One of the basic cases operating against the continuous existence of itinerant merchants is *Singer Sewing Machine* v. *Brickell*, 233 U. S. 304 (1914). That case sustained a discriminatory tax of considerable size on sales at retail by itinerant vendors of sewing machines; there was no tax at all on vendors of sewing machines selling in fixed stores and the sewing machines were of course manufactured outside the state.[18] The Court ruled that the only question involved was a "due process" question under the Fourteenth Amendment and that, with respect to that question, the classifications involved were not so clearly unreasonable as to warrant overthrowing the statute.[19]

The other side of the picture appears in two cases condemning discrimination against merchants on the ground of their non-residence in the state or their sale of out-of-state goods. In *Ward* v. *Maryland*, 12 Wall. 418 (1870), the Court struck down the state's attempt to tax merchants who were not permanent residents of Maryland at a higher rate than those merchants who were.[20] The Court based its decision on Art IV, § 2 of the Constitution and made no reference to the problem of interstate commerce in its main opinion.[21] In *Welton* v. *Missouri*, 91 U. S. 275 (1875), a state statute required a license and license fees only from those peddlers who sold out-of-state goods; the statute was held invalid as a burden on interstate commerce.[22] Notwithstanding these two cases, I have some doubts about the ability of the non-resident trader to avoid dis-

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[17] In *Barriers to Internal Trade in Farm Products*, p. 58, fn. 1, it is stated that itinerant merchants are so generally truckers that the terms itinerant merchants and merchant truckers may be used interchangeably.

[18] The itinerant vendor here delivered a machine he had in his possession within the state. That will of course be the normal situation of the merchant trucker, since he will sell goods directly from his truck. Therefore the long line of cases stemming from *Robbins* v. *Shelby County Taxing District*, 120 U. S. 489 (1887), condemning flat taxes on the soliciting of orders for goods to be delivered from outside the state is of no particular significance here. The Supreme Court in the *Berwind-White* case, decided this term, accepts the *Robbins* case as still law; to the extent that such taxes are dangerous, interstate traders have a clear remedy.

[19] To the same effect see *Emert* v. *Missouri*, 156 U. S. 296 (1895).

[20] In addition to the discrimination against non-residents there was also a discrimination against foreign goods; no license was required even of non-residents if they dealt solely in domestic goods.

[21] There was a concurring opinion which approved of the opinion of the Court but also condemned the statute under the commerce clause.

[22] This case has been followed by a long line of similar cases, all reaching the same result, e. g., *Cook* v. *Pennsylvania*, 97 U. S. 566 (1877); *Webber* v. *Va.*, 103 U. S. 344 (1880); *Brennan* v. *Titusville*, 153 U. S. 289 (1894). But the states apparently don't give up trying to enact this kind of legislation. See *Barriers to Internal Trade*, pages 61, 62. As remarked in the text, even a statute patently illegal will have an important effect in keeping out foreign merchants and foreign goods, because of the costs and dangers of litigation.

crimination based on non-residence. In *La Tourette* v. *McMaster*, 248 U. S. 465 (1919),[23] a state statute denying to non-residents the right to get licenses as insurance agents was upheld despite the interposition of the claim of privileges and immunities under Art. IV, § 2. The Court distinguished cases like the *Ward* case on the ground that this statute made a distinction between citizens and residents; the right to get a license was not denied to citizens of other states—merely to non-residents. The validity of discriminatory taxes on persons without permanent places of business within the state may be *a fortiori* case.[24]

Interstate Trade Barriers—Grading and Labelling

The difficulties presented by state regulations on labelling and grading arise not so much from direct exclusion of products or taxation which produces a discriminatory effect but from state regulation of labels so as to give domestic products an unjustified advantage in the local market.[25] To some extent the techniques used, once approved by courts, are almost impossible to remove. In other cases, however—and these are the cases where the effect of the state regulation is likely to create the chief trade barriers—it appears that the state has transgressed the rules laid down by the interpretation of the commerce clause.

It seems reasonably clear that a state may legally require its producers to mark their product with the name of the home state. The basis of the state's power is its right to promote home industry so long as there is no direct interference with the commerce power of the federal government, and none has so far been found in the labelling cases.[26]

A more uncertain situation exists with respect to the power of the state of destination to go beyond the admitted power to label its own products (and of course forbid the false labelling of others). In several cases it has been held that the state of destination may require that all packages of certain commodities be labelled with the name and address of the producers.[27] While this kind of require-

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[23] In *Douglas* v. *N. Y., N. H., & H. R. R.*, 279 U. S. 377 (1929) a New York Court refused to entertain the suit of a Conn. citizen against the R. R., a Conn. corporation, based on a cause of action arising in Conn., following the authority of a statute of the state which gave it the power to reject such suits when brought by "non-residents." The Supreme Court rejected a claim that there had been a denial of rights assured by Art. IV, § 2, on the ground of the distinction made in *Latourette* v. *McMasters*, *supra*, The *Douglas* and *Latourette* cases may be explained on the ground of the special interest of the state in each case—the special nature of the insurance business and the power of the state to regulate its own courts so as to avoid clogging the docket. In neither case is interstate commerce involved.

[24] There is a dictum in *Walling* v. *Michigan*, 116 U. S. 446 (1886), that an attempt to discriminate between persons with and persons without established places of business in the city would be invalid. (The decision in the case was ruled by *Welton* v. *Missouri*, supra.) In *O'Connell* v. *Koutojohn*, 179 So. 802 (Fla. 1938), a city license fee based on the absence of an established place of business within the city was held not to apply to a retail bakery cart coming in from out of state to do business in the city when it was shown that those bakeries which did do business in the city transacted their business by means of carts of the same type. The court based its decision on the repugnance of the statute to the commerce clause. Even if this case is rightly decided, the out-of-state trader may be subjected to considerable annoyance. Thus in *Ex parte Hartmann*, 25 Cal. App. (2d) 55, 76 P. (2d) 709 (1938), a city ordinance requiring persons without established places of business in the city to report to the chief of police (no fee charged) was held valid.

[25] Of course if the cost of labelling is high, as it might be for example with eggs, the labelling requirement will be an effective tariff if applied only to eggs from other states.

[26] The parent case is *Turner* v. *Maryland*, 107 U. S. 38 (1882), which sustained a Maryland state statute requiring the inspection and labelling of tobacco before it could be shipped out of the state. The ground for supporting the statute was the inspection power. Cf. *Sligh* v. *Kirkwood*, 237 U. S. 52 (1915), approving a Florida statute forbidding the shipment of immature or unripe fruit out of the state. The power of Florida to require the labelling of Florida fruit before shipment has been sustained in *Noble* v. *Carlton*, 36 F. (2d) 967 (S. D. Fla. 1930); *Polk Co.* v. *Glover*, 22 F. Supp. 575 (S. D. Fla. 1938). However, the question of labelling without inspection may not be foreclosed. On appeal from a denial of an injunction against state action in the *Polk* case (which came up on demurrer to a bill to enjoin), the Court sent the case back to the district court, holding that a constitutional question ought not be decided without full presentation of fact (rather than by admission of fact by demurrer to the bill to enjoin), 305 U. S. 5 (1938). Mr. Justice Black dissented vigorously on the ground that the plaintiff could make no case against the constitutionality of the statute even if he proved all the facts in his bill (which specified that the state authorities were seeking to make him label his cans of citrus fruit in such a manner as to cause him great expense). The chief attack in the *Polk* case was on the due process aspects of the statute.

[27] *Savage* v. *Jones*, 225 U. S. 501 (1912) (fertilizer); *Standard Stock Food* v. *Wright*, 225 U. S. 540 (1912) (stock food); *Armour & Co.* v. *North Dakota*, 240 U. S. 510 (1916) (lard); *State* v. *McKay*, 137 Tenn. 280, 193 S. W. 99 (1917). In each of these cases, the quantities involved (i. e. the package to be labelled) were fairly large or the cost of labelling was very low. Furthermore, the requirement of statement of origin was obviously subsidiary to more important provisions of the statute—inspection, specification of ingredients, etc.—and apparently the statutes were *bona fide* police statutes, not designed to produce discrimination against out-of-state products. In all cases the inspection requirements as well as the labelling requirements applied to in-state goods.

ment is, on its face, non-discriminatory, it may produce serious barriers to trade if used in connection with an aggressive state marketing practice.

A second class of cases involves the requirement of labelling of foreign products to indicate that they do not have a local origin and does not require any labelling of domestic products. In one sense there is no more discrimination here (assuming the cost of labelling to be small) than there is in the case of an indiscriminate labelling requirement since the foreign origin of the out-of-state product is demonstrated to the purchaser in either case. On the other hand, the fact that no label is required of domestic products indicates that the purpose of the statute is neither to provide a method of inspection nor to aid the purchaser to discriminate between a good and bad product; its single purpose is an appeal to the purchaser's prejudice. This line of argument becomes even more convincing when statutes require no statement of the shipper's name so that the purchaser really gets no information at all about the product. He knows neither its quality nor its producer—only the fact that it is imported.

There has been no Supreme Court decision on the point, and the lower courts which have dealt with the problem of a state statute requiring the imprint of the word "foreign" and no more on given commodities have split.[28] Those courts approving the state requirement have done so on the ground that the state may regulate sales within it in the interest of the health and safety of its citizens and that the word "foreign" gives citizens some information about the healthfulness of the product.[29] Other courts have pointed out that the word "foreign" is not even an indication that the product is less fresh than other products (since domestic products may be kept on hand, may in some cases have to travel longer distances than foreign products) and that the proper way to protect the public is by adequate inspetcion laws, not by incomplete labelling requirements.[30]

A third class of cases present out-and-out discrimination against out-of-state products by denying to such products the right to use accurate descriptive terms[31] or by providing that out-of-state products must use descriptive terms likely to limit their market while exempting in-state products made under exactly the same conditions from the same requirement.[31] Since there is a clear discrimination in the use of the state's police power here, these statutes seem bad,[32] but it may not be desirable to await or depend upon court action. Some commodities at least present a favorable case for the enactment of uniform federal labelling and grading statutes which, even if they do not eliminate state stamping, will provide the consumer with accurate knowledge to balance the appeal to local pride.

Interstate Trade Barriers—Inspection Laws

Admitting the legitimate interest of the several states in maintenance of standards of health and safety with which other states may not agree, the courts have provided a wide range within which individual states may set up barriers to interstate trade without court interference on constitutional grounds. To some extent the differences in standards set by the states make such barriers unavoidable; in some cases however, state power has been abused to protect the state from economic competition, while in others the pursuit of legitimate objectives by the individual state governments has produced interstate trade barriers the disappearance of which is quite consistent with the maintenance of the standards desired by the various states.

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[28] Cases approving the requirement: *Amos Bird Co.* v. *Washington*, 274 Fed. 702 (W. D. Wash. 1921); *Parrott & Co.* v. *Benson*, 114 Wash. 117, 194 Pac. 986 (1921). Cases disapproving the requirement; *Ex parte Foley*, 172 Cal. 744, 158 Pac. 1034 (1916); *State* v. *Jacobson*, 80 Ore. 648, 157 Pac. 1108 (1916).

[29] The statutes involved in the cases of the previous footnote were all apparently directed against Chinese eggs, which gave the courts supporting the legislation some foothold for approving it. However, in the *Amos Bird* case, the eggs had apparently passed a federal inspection. The *Parrott* case defends the statute on the ground that there was no regulation of commerce involved—the sales regulated were after the original package had been broken. But it is quite clear that that fact will not justify discrimination (although it may permit *equal* taxation)—*Darnell & Sons* v. *Memphis*, 208 U. S. 113 (1908) (discriminatory taxation of property of out-of-state origin).

[30] The objections to labelling increase and the probabilities of the reasonable relation of the labelling provisions to health and safety diminish when the transfer of goods from state to state instead of from a foreign country is involved.

[31] In *State* v. *Goodhue*, 63 Ore. 117, 126 Pac. 986 (1912), the Oregon court condemned a statute which required that out-of-state producers must label tub butter as such while in-state producers need not. The ground for condemnation was the equal protection clause of the Oregon constitution.

[32] Cf. the cases on discriminatory inspection laws, treated in the inspection law memorandum, *infra*, p. 16187, and footnote 36.

The most obvious kind of interference with interstate trade in this field is the levying of an inspection tax. But the door to discrimination *via* such a tax seems to be pretty definitely closed. The latest Supreme Court decision on the point came in *Hale* v. *Bimco Trading Co.*, 306 U. S. 375 (1939) where a tax of fifteen cents on each hundred pounds of foreign cement [33] was struck down even though it was purportedly levied only for purposes of inspection.[34] The court held the fee invalid because it was excessive in amount and because it imposed only on foreign cement [35] but the clear implication of the opinion is that the latter argument would have been sufficient to condemn the tax.[36] Therefore it would seem that, unless there were a substantial equivalent for inspection of domestic products, no tax, even though reasonable in view of the inspection, will be permitted on the introduction of goods into a state.

The single danger of practical discrimination against interstate goods by means of an inspection fee would appear to arise from an entirely legitimate desire of the state to protect its citizens by inspection of out-of-state products before sale, when a similar inspection of in-state products was unnecessary because of state inspection at the place of production. Thus State A might inspect all milk produced within it on the farm and thus dispense with further inspection or fee, while it might legitimately require inspection of state B's milk on entrance into A's market, even though the producer in state B had already paid for inspection by his own state inspectors at his farm.[37] The resulting double tax would seriously hinder the introduction of B's milk into the market of A. The problem of giving effect to the original inspection in B is one which cannot be solved by B alone; the solution would appear to depend on the same consideration later to be discussed in connection with deliberate administrative discrimination.

The second problem, the problem of inspection laws apart from taxes, presents a somewhat more difficult problem, from both the legal and administrative points of view. As the law now stands there is a very wide field within which discriminatory laws can operate if they meet certain minimum formal requirements. Thus a statute which forbade transit of cattle through the state from certain areas during eight months of the year was held bad as an unreasonable burden on interstate commerce,[38] but a statute which gave the governor power to investigate

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[33] The tax in question applied to foreign cement, not to cement introduced from another state. But the case's result would seem to apply equally to cement introduced from another state.

[34] 306 U. S. 375 at 379: "According to the uncontested allegation of the bill of complaint, this inspection fee is 'sixty times the actual cost of inspection' ".

[35] There are a good many cases which hold that an inspection tax which raises revenue in excess of the cost of inspection, even though it is applied equally to domestic goods, is invalid if levied before the first sale in the state. Thus in *Foote & Co.* v. *Stanley*, 232 U. S. 494 (1914) a Maryland tax laid indiscriminately on all oysters at the time of landing for sale was held bad as to oysters shipped from other states. If this case is still law, there is a clear *advantage* for interstate over intra-state trade. However the effect of this and other decisions has probably disappeared to a considerable extent with Supreme Court approval of non-discriminatory use taxes and non-discriminatory taxes on "interstate" sales in the *Berwind-White* case.

[36] This point of view is supported by *Voight* v. *Wright*, 141 U. S. 62 (1891), and *Brimmer* v. *Rebman*, 138 U. S. 78 (1891). In the latter case a state statute provided for an inspection fee on all meat which travelled over 100 miles, the fee to be paid to the inspector as his compensation (thus obviating any objection to excess of fee over cost of inspection). The statute was held unconstitutional on the ground that its effect was discrimination against out-of-state meat. The court said that there was nothing to show that Virginia meat within the 100 mile radius was less in need of inspection than meat coming from outside the area; in the absence of such a showing, requirements of inspection had to be applied indiscriminately to all meat or to none.

[37] Although it is generally true that a state may not require *more* of out-of-state products than it requires of its own, it need not do exactly the same things to its own products as it does to others to insure equality of treatment. Compare with the hypothetical case set out in the text the case of *New Mexico ex rel. E. J. McClean* v. *Denver and Rio Grande R. R.*, 203 U. S. 38 (1906). There a state statute required inspection at a fee of all hides sent out of the state (for purposes of indentifying the brand). In answer to the charge that the tax was a discriminatory tax on exports the Court said that there were alternative methods of checking up on sales domestically. Therefore the method for sales out of the state was non-discriminatory. See also *Boyd* v. *City of Louisville*, 178 Ky. 354, 198 S. W. 927 (1917), where effect was given to a state statute which required that all meat be slaughtered in the city (and then inspected) or, if brought in from outside the city, pay an inspection tax on arrival. (The statute here was of a desirable type however. As alternative to the fee requirement a federal inspection stamp or that of the state of slaughter was permitted.) In *Langendorf* v. *Reno*, 16 F. Supp. 442 (D. Nev. 1936) the court held that a city ordinance could not require inspection of out-of-state bakery products inspected at their source by another state, even though it inspected its own bakeries. Even if the case is good law, a federal statute designed to generalize its result might well allow the state of destination to set up its own standards of healthfulness without regard to those of other states.

[38] *Railway Co.* v. *Husen*, 95 U. S. 465 (1877)

the existence of disease among cattle in other states and then declare a quarantine against them for unlimited periods was held a perfectly reasonable exercise of the state police power because, on its face, it related directly to health and struck at an apparent danger.[39] But it is clear that the use of the quarantine power in so substantially uncontrolled a fashion as is made possible by this decision may produce serious problems when pressure groups begin to work on the executive officer in cases where any kind of *prima facie* validity is given to their arguments as to disease. Furthermore, once such a restriction as was envisaged by the statute in the *Rasmussen* case is clamped on, the chances of its being taken off when the danger passes are fairly small; it is likely to linger on for purposes of market protection.

A use of the inspection power less obvious than absolute quarantine[40] but perhaps as dangerous is the use of administrative powers to produce effective discrimination against the out-of-state producer. The extent to which the inspecting authority may legally sanction this kind of market protection is not clear. As pointed out in footnote 39, the Supreme Court in *Minnesota* v. *Barber*, there cited, refused to allow the enforcement of a statute which in terms prevented out-of-state producers from getting their products inspected in any way and then rejected uninspected products. But the case may perhaps be explained on the ground that the state could have protected itself adequately by inspecting the meat on arrival. It is doubtful whether the mere fact that a statute otherwise reasonably directed toward protection of health would be invalidated because it failed to provide an inspection mechanism which permitted out-of-state producers to ship into the market,[41] but the provision of a compulsory federal substitute for some types of local inspection seems equally desirable whether or not the state must, in the absence of statute, accept substitute inspection. Such legislative steps seem even more desirable since the state of destination need not bear the cost of inspection so long as it provides for other methods of acceptable inspection.[42] Of course if the state of destination pays for the inspection of home products and the inspection facilities open to foreign producers are furnished only at a price, that fact alone will be sufficient to cause some discrimination between domestic and foreign producers.

An illuminating picture of the problems which are likely to face an out-of-state producer is presented by *Miller* v. *Williams*, 12 F. Supp. 236 (D. Md. 1935). In

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[39] *Rasmussen* v. *Idaho*, 181 U. S. 198 (1901). Cf. *Must Hatch Incubator Co.* v. *Patterson*, 32 F. (2d) 714 (D. Ore. 1927), where a state statute refused entrance to eggs for hatching purposes unless they were certified free of disease by the state of origin. The statute was upheld in a case where the eggs were excluded, even though the state or origin provided no facilities for the required certification and the inspection (of the original source of the eggs) could not be made by the state of destination. The situation was eliminated subsequently in the case of eggs by passing a federal quarantine statute which completely superseded state authority over the subject matter but did not provide for an inspecting mechanism. Therefore in *Must Hatch Incubator Co.* v. *Patterson*, 27 F. (2d) 447 (D. Ore. 1928), it was held that the state could not exclude uninspected eggs. The application of such a solution to situations now confronting us seems unsatisfactory. The principal difficulty in the first case was the unwillingness of the state of destination to perform inspection services at the source, where inspection was necessary if at all, subsequent exclusion of the product on the ground of non-inspection. However the state had permitted an alternative in the *Must Hatch* case, so the exclusion was supported; whether the state must provide some practical alternative for the shipper when it is not willing to perform inspection services itself is doubtful. In *Minnesota* v. *Barber*, 136 U. S. 313 (1890), a state statute required that all meat sold be inspected at the time of slaughter but failed to provide for any inspection of slaughtering points outside the state. The statute was held invalid; its practical operation excluded meats other than Minnesota meats from the local market. See the discussion of *Miller* v. *Williams*, 12 F. Supp. 236 (D. Md. 1935), *infra*.

[40] Of course the use of quarantine laws for economic purposes which are apparent to the court will be condemned. In *Baldwin* v. *Seelig*, 294 U. S. 511 (1935), the state of N. Y. attempted to prevent the sale of milk purchased in Vermont at a price lower than that supposed to be paid to producers under N. Y. law. The Court refused to allow the limitation on interstate trade. Where the attempted justification of the statute under the police power of the state is clearly flimsy, the courts will step in to eliminate enforcement of the discrimination. Thus in *Asher* v. *Ingels*, 13 F. Supp. 654 (S. D. Calif. 1936), the federal court struck down a California statute which denied the right to sell used cars for ninety days after their entrance into the state. The theoretical justification of the statute was that the prohibition was designed to prevent defrauding California purchasers. The court held that the regulation was unreasonably strict and really designed to protect California interests and therefore held the statute unconstitutional.

[41] A standard device used by state authorities to avoid bearing the cost of inspection of out-of-state products is to require that the inspection be conducted by some state or federal body before the products will be admitted. *Mintz* v. *Baldwin*, 289 U. S. 346 (1933); *Must Hatch Incubator Co.* v. *Patterson*, 32 F. (2d) 714 (D. Ore. 1927). Other statutes permit inspection of the product on arrival or an inspection by other satisfactory authorities at the source. *State* v. *Maheu*, 115 Me. 316, 98 Atl. 819 (1916); *Boyd* v. *Louisville*, 178 Ky. 354, 198 S. W. 927 (1917).

[42] So held in *Mintz* v. *Baldwin*, *supra*.

that case a regulation of the health commissioner of the City of Baltimore was involved. It provided *inter alia* that no milk could come into Baltimore unless inspected by city inspectors, that the inspectors would issue two classes of permits, regular permits to farms within fifty miles of the city and emergency permits to farms outside that area, that except in the time of "emergency" (insufficient supply) no milk could be shipped in on emergency permits, and that emergency permittees would have to pay the expenses of inspection (including the cost of travel of a Baltimore inspector to the producing farm). The emergency permittees could not get inspection at all if, in the judgment of the health commissioner, his staff was not sufficiently free from local duty to provide inspection at distant points. The only point actually at issue in the case was whether an emergency permittee (i. e. one whose farm had been inspected in the recent past) could ship milk into Baltimore on a parity with regular producers. The Court held that he could on the ground that the issuance of the emergency permit by the city was an indication that it considered his plant up to standard and that his milk could not be excluded when it was agreed that it was sufficiently sanitary.

Even granting the holding of the court, the interstate operator still worked at a disadvantage—he had to pay the costs of inspection where the local producer did not. Furthermore the existence of a discretionary power in the commissioner to deny inspection when his staff was busy with local matters may cause the exclusion of all foreign milk from the local market. A state may trust only its own inspectors and may reasonably restrict their availability. But if the pressure of local interests in a situation like that in the *Müller* case produces an abuse of discretion, a really serious barrier to interstate trade is created. Furthermore the distant farmer ought not to bear the risk of having a perfectly *bona fide* shortage of municipal funds create instability in the market for his product. Availability of substitute federal inspection keyed to the standards of the state of destination seems a desirable end toward which legislation might be directed.

PROPOSED LEGISLATION

Inspection Laws

A. An immediate federal certificate of inspection that would serve as an interstate passport for inspected goods

It is conceivable that the federal government might proceed immediately to eliminate interstate trade barriers in some fields by providing that a product inspected at the proper stage of production (this of course will depend on the nature of the article) require no further inspection for transportation across state lines and entrance into any state. This type of legislation has been used under the guidance of the Bureau of Animal Industry for the interstate shipment of cattle. Where the industry is so set up that almost all the product moves across state lines and the only sale is an interstate sale, this kind of legislation will probably be satisfactory; it has probably worked pretty well in the case of shipments of cattle where the product moves from various states to a common center—e. g. Chicago—and where the only sale is an interstate sale—e. g. from commission merchant to the packer, who is the ultimate consumer as far as the movement of cattle as such is concerned.

Where there is a considerable traffic intra-state as well as interstate and where there is a considerable retail trade which develops only after the interstate purchaser has processed the goods, the use of general federal standards is not by itself sufficient to meet the problem. In the case of milk for example, a low federal standard would be completely unsatisfactory, while if a high federal standard were instituted, some states might discriminate against the interstate dealer by lower, but still satisfactory domestic inspection laws (or by lax administration). Furthermore, it seems to me desirable that the states be given some leeway in the choice of health standards which they choose to enforce if practical administrative mechanisms can be devised. Finally, if a low federal standard should be adopted, considerable disruption might be caused by a state requirement for a higher standard for retail sale. (*Quaere* whether the federal government could eliminate state inspection before the second sale in the state or after the original package has been broken when the requirements were applied alike to inter and intra-state products.)

B. A federal passport conditioned on compliance with state law.

To remedy the basic difficulties suggested by the application of a uniform standard to products like milk, it would seem to be possible to construct a statute

which would permit of differences in standards between the states and at the same time remove the difficulties of administrative discrimination created by inability or refusal of in-state inspectors to make inspection of milk and other products coming from out-of-state. The first step would be to enact a blanket law permitting all milk (or other products) meeting low standards set up by the federal government to enter every state. (The operation of this statute should be postponed for a considerable period; its primary purpose is to serve as a sanction to force effective state compliance with a workable federal law.) Second, the statute should forbid any further inspection of milk so introduced to the state under federal certificate unless and until there was an identical and contemporaneous (i. e. at same stage of production) inspection of domestic milk. Third, the statute should provide for criminal penalties for any state official who wilfully discriminated between domestic and foreign products in conducting his inspections. The issuance of federal certification of the product coming from out of state might well be taken over by state authorities (in state of origin) provided they met federal standards of competence, checked by frequent federal inspections. The cost of such a program for the federal government would be fairly low, since in most cases state agencies will probably be functioning already and since only small grants-in-aid will be necessary to force [state of origin action. The economic interest of the state of origin should suffice to induce active cooperation. However, some grants-in-aid should probably be used since they make easier the use of careful federal checks on the work done at the state of origin.]

The apparent flaw in the plan created by permissible state inspection after entrance does not seem to me to be very important, although it might be bothersome if there were much inspection. However, two factors seem to militate against much inspection or red-tape arising from this source. In the first place, effective inspection of some products must be made at the source and the state of destination will ordinarily have to maintain most of inspection of home products at the source. But the federal passport will cover the inspection of out-of-state products at their source. In the second place, the likelihood of in-state inspection at later stages in which the producer is still interested (and our interest of course is confined to [consideration of the out-of-state pro]ducer) is small since home forces would seriously resent bearing the cost and annoyance of double inspection.

The second step in the scheme is the establishment of a series of simple and standard grades of strictness of inspection by the federal agency in charge of the product. Each state will then be permitted to select whichever of the standards it chose, and thereafter, a federal passport would provide admission for the product in question into that state only if it specified that the state's requirements were met. However, as a condition of exclusion of products not meeting the specified standard (at whatever level above the minimum is chosen) the state would have to offer proof to the proper agency that substantially equivalent inspection of in-state sources of supply was being made. Furthermore, the right of the state to continue exclusion would exist only so long as it satisfied the federal agency that domestic standards were being maintained.

The adoption of a statute drafted to meet the suggestions made above would seem to eliminate the possibilities of discrimination inherent in the present system of state inspection. Furthermore, by making each state's requirements matters of public record with the federal government, the task of the distant producer would be considerably simplified. Incidentally, once the state's requirements as to inspection of source are met, the possibility of subsequent inspections within the state seems fairly small since satisfactory original safeguards will have been provided. In view of the original sanctions provided by the basic statute which is to operate if the state does not select its own standards, the states should comply with the provisions of the statute designed to operate permanently without much persuasion.

Motor Carriers

Just what form motor vehicle regulation is to take it is difficult to say. The problem of power to make regulations might be difficult in the absence of grants-in-aid. (There are no cases squarely on the subject of the right to force the state to stop exacting compensation or to allow given weights to pass over roads in which it has property interests. On the size and weight problems, I believe that Commissioner Eastman has expressed doubt as to the constitutionality of federal legislation—presumably on the ground of state property interests—but there is dictum in the *Barnwell Bros.* case which strongly supports the opposite view. On the question of exaction of compensation for the use of state roads

there is an early dictum indicating that the state had an indefeasible right to compensation for the use of roads as against the Western Union Co. which was operating under a federal license to use roads which had been designated as post roads. However, assuming the property rights of the state to be like private property rights—but they may be an attribute of sovereignty—there is no reason to say that the federal government may not make reasonable regulations on the ground of the commerce power as it has with respect to the railroads). However, with grants-in-aid used for the road system, there is no reason why the federal government should not make whatever regulations it chooses. There is already a statute on the books denying grants to such states as fail to maintain their present proportion of appropriations from vehicle taxes to road uses.

Roughly indicating the course of legislation, it seems to me that regulation of charges should be directed toward the regular carriers operating under the Motor Carriers Act now and that they should be governed by the ton miles of travel. Trucks that only rarely move within a given foreign state should be given exemptions from payment of state taxes since the state will derive a considerable amount of revenue from gasoline taxes. The extension of a limited period of free movement in a state would not create any serious difficulties for the states by causing disappearance of revenues, since, to the extent that high fees are now exacted, the revenue collections available must be very small because the cost of entrance to the state is prohibitive for persons making only occasional trips.

The question of safety equipment has already been dealt with under the Motor Carriers Act for carriers subject to regulations under it; they, in effect, are given passports for interstate travel when they have complied with the federal act. Issuance of corresponding certificates after appropriate inspection and provision of standard safety equipment would seem to be a simple matter for trucks not subject to the act.

The simplest solution of the weight problem would seem to be a specification for each road touched by the grant-in-aid system. The adjustment of size and weight to each road as it is rebuilt with federal money would seem to provide a relatively quick and safe way of keeping the main avenues of interstate traffic open. While this solution would not provide for regulation of state weight and size provisions on the roads other than main arteries frequented by the itinerant trucker, his truck will ordinarily be relatively small and not seriously hampered by low weight limits.

If the grant-in-aid machinery is not considered adequate for the purpose of inducing appropriate state legislation, the federal government might raise its excise on gasoline and refund portions collected to such states as enact satisfactory legislation.

Itinerant Truckers

To the extent that the federal government relieves itinerant truckers of burdens common to all motor carriers their position will of course be improved. Furthermore the combination of federal inspection of his truck and his produce (if the proposed extension of federal quarantine legislation be made) will largely eliminate the usefulness of the port-of-entry device and to that extent his mobility will increase.

However, the case of the itinerant merchant (and the same comment may be made in the cases of liquor and products subject to special excises on their face non-discriminatory) is far from hopeful. The state may make any reasonable classification it likes for purposes of taxation—itinerants, margarine, etc.,—and the fact that the burden falls principally on persons from out of state makes this kind of legislation the more likely to be passed. But the fact that the legislation looks like nothing more than a reasonable classification makes it immune from court attack, and I can see no conceivable Congressional attack—politically or legally.

CONCLUSIONS

A survey of the cases as well as a recapitulation of testimony shows that trade barriers often grow from legitimate concerns of the states to protect health or prevent the spread of plant pests or to raise adequate revenue. But what begins as a legitimate exercise of the states' police power often ends by being perverted into the protection of local interests against out-of-state competition. That the cumulative and total effects of state barriers, as defined by Dr. Melder and Mr. Bane, are very injurious to our national economy has been amply shown in testimony and could be developed by further consideration of building restrictions

and public purchasing and ramifications of state tax laws and discriminatory practices of many other types.

From the cases and the evidence submitted, the demonstrated needs are:

(1) For continued and increased co-operative efforts in the states and by the states themselves to halt retaliation and to check further legislation of a discriminatory type. Mr. Bane has shown the increasing success of the Council of State Governments and of other organizations in this area. Repeal of existing barriers can be hoped for.

(2) For Federal statutes to lay down reasonable standards both for plant, animal and dairy inspection and for the inter-state passage of motor vehicles, chiefly trucks. It is true that the larger problem of complete national standards of uniformity can not be directly effected in this way. No doubt, the effort to get states to adopt the Uniform Motor Vehicle Code, advocated in the testimony of Mr. Park M. Smith is admirable. But for the smaller problem of getting reasonable standards that can be enforced for inter-state passage throughout the country, at least on roads supported by Federal grants-in-aid, a Federal statute is constitutional, and seems to be the most feasible and the most effective method.

(3) For the creation of a permanent joint *Federal-State Committee* on intergovernmental problems, particularly trade barriers. Such a committee, with a small permament staff, would have three functions in the area of special concern to this inquiry:

(a) Reporting and research on this problem,

(b) Acting as a focal center for hearing and sifting complaints against the operation of barriers to inter-state trade.

(c) Referring these complaints, if justified, to the states or to the Federal agencies who might appropriately act on them.

(4) Federal action of a negative and restraining character has been envisaged by recent language used in the *McCarroll* v. *Dixie Greyhound Lines* case cited. Conceivably statutory action by Congress, after mature study, might be recommended by the Federal-State Committee.

(5) For making available the assistance of the Attorney General of the United States to aid in bringing to trial doubtful or unconstitutional acts of the states, congressional action being absent.

(6) For Federal action in conjunction with state action through

(a) The use of grants-in-aid,

(b) The further development of *joint or alternative inspection.*

Federal action has been frequently viewed with alarm in previous testimony. Sweeping centralization may well be both dangerous and unnecessary. But to bring the positive power of the Congress over inter-state commerce into play is, on the Court's own reasoning, increasingly shown to be necessary. To do do alters the presumption of proof and makes possible an end to the international character of present inter-state relations. Congress, as constituted, is in no danger of over-riding legitimate state interests. It is a body of elected representatives with states equally weighted in a powerful Senate.

Federal power is not likely to suffer from abuses more serious than those of the states. In limited fields, it seems, on the record, to be necessary to end a growing chaos. Constitutionally, it can act with plenary power in most of the fields touching interstate commerce, subject to the state's retention of their own police and taxing power. In working out more uniform and less onerous taxes, it may rebate some of its own funds or use grants-in-aid.

The Joint Federal-State Committee (appointed along the lines suggested by Mr. Bane) ought to bring from its studies a new light on the twilight zone of inter-governmental relations. Cooperation could be encouraged and the wise limits of federal action recommended.

But to assist the "little man" who most often is the innocent victim of trade barriers, the long and expensive course of individual litigation is not enough. It is outside his reach. Perhaps, on the recommendation of the Federal-State Committee, the Attorney General of the United States might be authorized to intervene and a statute, carefully drafted on the analogy of that of August 24, 1937, could empower such intervention in Federal courts, whenever, in the judgment of the Attorney General constitutional issues or issues of public interest were seriously involved. In State courts, he could be authorized to aid in seeking injunctions and defending suits, though not in defending claims for damages.

Enforcement and clarification of law are large problems in the area of interstate trade barriers. Cooperative state and federal action are necessary to this end.

The following table is included at this point in connection with the testimony of C. H. Janssen, supra, p. 15842.

[From The National Provisioner, July 22, 1939]

FATS CONSUMED PER CAPITA

Per capita consumption of lard and butter has shown some decline in the past few years, margarine consumption has been somewhat greater and the use of compounds and vegetable fats has increased materially in this period compared with the earlier years.

Consumption of lard, butter, oleomargarine, compounds and vegetable cooking fats in the United States during 1938, on a per capita basis, compared with each of the preceding 25 years, is reported by the U. S. Department of Agriculture as follows:

	Lard lbs.	Butter lbs.	Margarine lbs.	Comps. and vegt. fats lbs.	Total lbs.
1938	11.3	16.9	3.0	12.0	43.2
1937	10.6	16.7	3.1	12.3	42.7
1936	11.2	16.6	3.0	12.4	43.2
1935	9.6	17.3	3.0	12.1	42.0
1934	12.8	18.3	2.1	9.5	42.7
1933	13.9	17.9	1.9	7.6	41.3
1932	14.3	18.3	1.6	7.5	41.7
1931	13.5	18.1	1.9	9.4	42.9
1930	12.7	17.3	2.6	9.8	42.4
1929	12.9	17.4	2.9	9.9	43.1
1928	13.4	17.2	2.6	9.4	42.6
1927	12.8	17.5	2.3	9.8	42.4
1926	12.4	17.5	2.1	9.6	41.6
1925	12.5	17.7	2.0	9.8	42.0
1924	14.5	18.1	2.0	7.1	41.7
1923	14.5	17.9	2.0	6.6	41.0
1922	13.5	17.1	1.7	6.8	39.1
1921	11.1	16.2	2.0	7.1	36.4
1920	12.2	14.8	3.4	6.7	37.1
1919	11.0	15.3	3.4	11.7	41.4
1918	12.3	13.9	3.3	10.6	40.1
1917	10.5	16.0	2.8	11.0	40.3
1916	12.0	17.5	1.8	9.7	41.0
1915	11.8	17.4	1.4	10.2	40.8
1914	10.9	17.2	1.4	11.0	40.5
1913	10.9	16.6	1.6	9.6	38.7

The following data are included at this point in connection with the testimony of Dr. P. G. Agnew, see supra, p. 15987.

TRADE BARRIERS AND STATE LAWS ON BEDDING AND UPHOLSTERY

Among the many examples of state laws which tend to constitute "barriers to interstate trade" are the laws regulating the manufacture and sale of bedding and upholstery. The principal respect in which these laws may be regarded as trade barriers is the existence of extensive variations, from state to state, in the labeling, sanitation and other requirements imposed. This lack of uniformity, and consequent obstruction to the free flow of interstate trade has apparently resulted not from the intention of state legislatures to discriminate against bedding and upholstery from other states, but simply from the uneven and haphazard growth of these legislative enactments in the states.

There is variation among the states on almost every major element of the laws of the 37 states (including the District of Columbia) involved.[1] All of these laws apply to mattresses; 30 to comforters, quilts, or quilted pads; 28 to cushions or pillows; and 11 to upholstered furniture in general, with some additional laws

[1] The 37 laws are analyzed in *Survey of State Laws and Judicial Decisions on Bedding and Upholstery*, prepared by S. Mermin and J. M. Mayer, under the direction of S. P. Kaidanovsky, Technical Director, Consumer Standards Project, Consumers' Counsel Division, Agricultural Adjustment Administration, U. S. Department of Agriculture, Washington, D. C. (January 1940), 230 pp. + 3 charts. (In manuscript form.)

applying only to specified types of furniture, such as "upholstered springs," "lounges," and "sofas."

Sanitation requirements regarding the use of materials in the manufacture of bedding are of more than one kind. There are prohibitions to be found in about 13 states against the use of second-hand or shoddy material (despite some court decisions holding provisions of this kind unconstitutional) while the laws of 21 states specifically permit the use of such material if it has been sterilized. Similarly, in 17 states with bedding laws, the use of contaminated material is specifically prohibited, while in 8 states the use of such material when sterilized is permitted.

One source of trouble here, from the point of view of interstate barriers, is that the processes of sterilization may have to be approved not only by the state in which the article is manufactured but also by the state in which is it sold. This happens where the law contains such provisions as those in Maine, Maryland, and Oregon, to the effect that any articles covered by the law which are filled with previously used material cannot be sold in the state unless such material has been sterilized by a process approved by the administrative body in that state. Further, a sterilizing permit may have to be obtained in the state of sale as well as the state of manufacture. The Pennsylvania law, for example, requires a permit for sterilization of any bedding and upholstery which is sold in the State, and even in the case of manufacturers outside the State, a personal inspection of the sterilizing apparatus by a Pennsylvania official is required prior to the granting of any sterilization permit.

General powers of inspection are provided for in the bedding and upholstery laws of 26 states and, 2 of these, Maryland and Pennsylvania, specifically mention inspection as applied to sources outside the state. The Maryland law, for example, provides that there be either a physical inspection of the nonresident manufacturer's plant, or examination of his product, or some other method deemed adequate. Inspection stamps are required in New York, and inspection stamps of the same value issued by another state are accepted by New York only if reciprocal privileges are accorded and the quality and inspection requirements are substantially equal to those of New York.

The many variations in labeling requirements constitute the most striking of the "barriers" in these laws. Thirty-three states have laws requiring a statement as to whether the materials used are new or second-hand, but the required method of expressing this information varies widely from state to state, for example, "new," "new material," "manufactured of new material," "all new material," "second-hand," "second-hand material," "previously used material," and so forth. In 13 states it is provided that the label must indicate whether material required to be sterilized, has been sterilized; but, depending on the state involved, the date of sterilization or the number of the sterilizing permit, or both may also have to be indicated. In California this information would have to appear on a separate sterilization label.

Thirty-two states have requirements, variously worded, that the label give a "description," or the "names," or the "kind," or the "contents" of the materials used; some require only the names of the materials used in the filling. A few states are more specific relating to this type of label information. Alabama, Ohio, Tennessee, and Wisconsin, for instance, have laws requiring that a statement regarding "quality" of the materials used be given. California, Oregon, Texas, and Wisconsin have laws providing that the "grade" of filling materials be specified.

Information regarding the quantity of material used, as distinguished from the preceding disclosure of quality, is also required to be indicated in some states. California, Ohio, Oregon, and Tennessee laws provide that the quantity or amount of each material appear on the label, and nine states have laws requiring a statement of the "proportion" or "percentage" of materials. The size of the article must be specified in California and Oregon; and these States, in addition to Alabama, Indiana, Michigan, and Washington have laws which require that the total weight of the article be given.

Identification of the manufacturer or vendor is required in seven states, the address as well as the name of the manufacturer or vendor is to be specified in nine other states, name and address of only the manufacturer in five states; name and address of only the vendor in one state; and name of the manufacturer or vendor and successive vendors in three states.

The registry number of the manufacturer is an additional identifying mark required in 11 states, and shall appear on an adhesive stamp attached to the label, as in the case of 4 states, or shall appear otherwise on the label.

The date of delivery from retailer to customer must be given on the label in Connecticut and New York; the Massachusetts' law requires that the date of delivery within the State by a nonresident be specified.

In nine states the label must show that the article complies with the state law. In California, Connecticut, New York, and North Carolina the label must be approved by a State administrative body. In the District of Columbia, Pennsylvania, and Texas labeling information is to appear in such manner as is administratively prescribed. On the labels in Delaware, Maryland, and New Jersey no information may appear other than that specified in the law.

In addition to the differences among the states as to what shall appear on the label, there is a large number of variations in the specific matters of form, size, and color of labels. There are 10 different minimum sizes of labels prescribed in the various laws: 4 inches by 8 inches, 4 inches by 5 inches, 4½ inches by 3 inches, 4 inches by 3 inches, 3 inches by 3 inches, 3½ inches by 2½ inches, 3 inches by 2½ inches, 3 inches by 2 inches, 3 inches by 1½ inches, and 6 square inches. The most common minimum size prescribed is 3 inches by 2 inches, which occurs in 8 state laws, there being 22 states which have laws providing for labels of not less than a specified minimum size.

A specific sample form of the required label is given in the laws of nine states.

The color of the label is to be white in Texas; it is to be white in California, New York, North Carolina, and Pennsylvania only if the material used is all new. If the material is second-hand, the label must be red in California, but yellow in New York, North Carolina, Oregon, and Pennsylvania. A yellow (separate) label in California signifies that the material has been sterilized.

There is generally a requirement in the state laws that the label be made of some durable material. The laws of 8 states specify "cloth"; in 13 states a choice is permitted between a "cloth" label and some other kind, usually a "cloth lined" or "cloth backed" label. "Muslin or linen" labels are required in the laws of 15 states, in 7 of which the choice of some other material, usually paper in the case of upholstered furniture, is permitted. The use of a paper tag is permitted in Kentucky, Ohio, Tennessee, and Wisconsin, and is permitted on upholstered furniture in Massachusetts, Rhode Island, and Vermont. A few state laws require the labels to be "cloth lined," "cloth backed," "permanent," or of "durable material," or not paper-faced. New Hampshire and New Jersey laws permit stamping or printing on the article itself in lieu of a separate label.

The most common provision regarding the lettering on the label is the provision in 16 states that the letters be not less than ⅛-inch. In 5 of these states, this applies to all statements on the label, but in the remaining 11 states it applies only to certain statements concerning the filling material, such as statements indicating that the material is new or second-hand. Headings are to be in 24-point type in California; and the same is true in Washington in cases where the phrase "second-hand material" is required on the label. The minimum size of letters in phrases indicating the presence of second-hand or shoddy material is ¼-inch in Oregon, ½-inch in Texas; 20-point type in Kentucky and 24-point type in Vermont.

The laws of most of the states contain prohibitions against deception in labeling. Twenty-nine states have enacted laws prohibiting misleading labels. The laws of 32 states prohibit the tampering with labels. In addition to the foregoing general prohibition against misleading labels and tampering, a provision that the term "felt" is not to be used unless the material has been processed by a felting machine is common to 13 states, and in 7 states other terms such as "hair," "curled hair," "silk," and "floss" may be used only if their meaning is that as specified in the statute. New York laws permit no variance when such terms as "all," "pure," "100%" et cetera, are used, while the Connecticut law permits commercially accepted tolerances when these terms are employed on the label.

Finally, attention should be called to the fact that the various state requirements are even more numerous and tangled than appears from our summary. This is due not only to the omission of some miscellaneous requirements, but also to the fact that for some of the state provisions mentioned, various qualifications are made in the laws, respecting exemptions under certain circumstances, applicability only to bedding or only to upholstered furniture, and so forth.

Lack of uniformity is to be found not only among state laws but between a state law and the ordinances of municipalities within that state. For example, an ordinance of Detroit, Michigan, requires that the label on mattresses shall be white in color, at least 3 inches by 4 inches in size, shall bear the name and address of the manufacturer or vendor, and that information as to new and second-hand material be in type of specified size and color; whereas the Michigan State law has none of these requirements.

The desire for uniformity in bedding and upholstery laws and for regulation in areas where none existed, has led the Advisory Committee on Ultimate Consumer Goods of the American Standards Association to recommend to the Standards Council of this Association, the authorization of a committee to develop such standards. The committee has been authorized and includes representatives of manufacturers, retailers, consumers, and state officials. This project includes:

"Development of standards covering the identification and disclosing the percentage composition of filling material; grades of such filling material; identification of the finished article to show whether it is in whole or in part made from new or second-hand material; and methods of labeling to make this information available to distributors and consumers." [a]

The following document is included at this point in connection with testimony, supra:

TRADE BARRIERS, by PHILIP TOCKER

[Reprinted from the Texas Law Review, vol. XVIII, No. 3 (April 1940)]

TRADE BARRIERS *

The Articles of Confederation preserved unto the states most of their commercial powers, including the powers of taxing and restricting commerce with the sister states and with foreign nations.[1] The free use of these powers produced a series of "trade wars" between some of the states. Among those recorded is one between New York, on the one hand, and Connecticut and New Jersey, on the other.[2] Connecticut firewood and New Jersey farm products found a ready and profitable market in New York. To keep New York money from leaving that state and finding its way into the pockets of "detested Yankees and despised Jerseymen," a New York legislative enactment compelled Connecticut sloops and New Jersey market boats to pay entrance fees and obtain clearances at the custom house. The New Jersey Legislature retaliated by imposing an annual tax of $1,800 per year on a lighthouse maintained by New York upon a small piece of ground it had purchased in New Jersey. The merchants in Connecticut signed an agreement not to send any goods whatever into New York for a period of twelve months, under penalty of $250 for the first offense. But for the good work done by the Federal Convention, "another five years," says the recorder, "would scarcely have elapsed before shots would have been fired and seeds of perennial hatred sown on the shores that look toward Manhattan Island." [3]

The Annapolis Convention, which led to the Constitutional Convention, was called—

"* * * to take into consideration the trade of the United States; to examine the relative situation and trade of the said States; to consider how far a uniform system in their commercial relations [might] be necessary to their common interests and their permanent harmony; and to report to the several States such an act relative to [that] great object as, when unanimously ratified by them, [would] enable the United States in Congress assembled effectually to provide for the same * * *" [4]

The constitutional denial to states of the right to discriminate against the commerce and citizens of sister states [5] must have contemplated the "trade war" above recited, for Madison, in commenting upon the commerce clause of the Constitution, said:

"To those who do not view the question through the medium of passion or of interest, the desire of the commercial states to collect, in any form, an indirect revenue from their uncommercial neighbors must appear not less impolitic than it is unfair, since it would stimulate the injured party, by resentment as well as

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[a] "A. S. A. Authorizes Work on Bedding Standards." *Industrial Standardization and Commercial Standards Monthly* 9. April 1938, p. 93.

*The writer gratefully acknowledges valuable assistance rendered by the writings and publications on the subject by Dr. F. E. Melder, Clark University, Worcester, Massachusetts, and the Council of State Governments.

[1] ARTICLES OF CONFEDERATION, ARTS. 2 AND 6.

[2] FISKE, THE CRITICAL PERIOD IN AMERICAN HISTORY (1901) 145.

[3] *Ibid.*

[4] 1 ELLIOT, THE DEBATES ON THE ADOPTION OF THE FEDERAL CONSTITUTION (1827) 115–116.

[5] U. S. CONST. Art 1, § 10, (2) (3); amend. XIV, § 1.

interest, to resort to less convenient channels for their foreign trade. But the mild voice of reason, pleading the cause of an enlarged and permanent interest, is but too often drowned before public bodies, as well as individuals, by the clamors of an impatient avidity for immediate and immoderate gain." [6]

Alexander Hamilton wrote:

"The interfering and unneighborly regulations of some States, contrary to the true spirit of the Union, have, in different instances, given just cause of umbrage and complaint to others, and it is to be feared that examples of this nature, if not restrained by national control, would be multiplied and extended till they became not less serious sources of animosity and discord than injurious impediments to the intercourse between different parts of the Confederacy." [7]

The Constitution does not expressly forbid a state from taxing importations, but the United States Supreme Court in a long line of decisions, beginning with *Brown* v. *Maryland*,[8] has prevented the use of such a tax to escape the constitutional prohibition against imposing a duty on imports. While the Maryland statute involved in that case imposed a tax of $50 upon importers of foreign goods and other persons selling the same at wholesale, the doctrine announced by the court embraced importation of goods from sister states, for in *Guy* v. *Baltimore* [9] Justice Harlan said:

"No State can, consistently with the Federal Constitution, impose upon the products of other States, brought therein for sale or use, or upon citizens because engaged in the sale therein, or the transportation thereto, of the products of other States, more onerous public burdens or taxes than it imposes upon the like products of its own territory.

"If this were not so, it is easy to perceive how the power of Congress to regulate commerce with foreign nations and among the several States could be practically annulled, and the equality of commercial privileges secured by the Federal Constitution to citizens of the several States be materially abridged and impaired." [10]

The traditional powers of the states include:

1. The power of taxation.
2. The police power in the protection of public health, public safety, and morals.
3. The sovereign proprietary powers to conserve natural resources and to own and control public works and property.

Until recently, our system of government seemed to insure a free national market, and, at the same time, preserve the rights of the states to perform their traditional functions. To the fact that the United States constituted the largest free market in the entire world, despite the presence of forty-eight political state units, was attributed our high standard of living and great technological progress. But, of late, disquieting trends toward the situation that confronted the framers of our Constitution have been manifested in the form of a great variety of so-called trade barriers. The term "trade barrier" is usually applied to "a statute, regulation, or practice which operates or tends to operate to the disadvantage of persons, products, or commodities coming from sister states, to the advantage of local residents and industries." Their existence and adverse effect have attracted nation-wide attention and created an economic problem of national significance. In this connection President Roosevelt said:

". . . The last few years have seen the rise of virtual tariff barriers along State lines—damaging restrictions that have hindered the free flow of commerce among the several States. Business, agriculture, and labor have all suffered because of State and regional discriminatory measures adopted in the vain hope of protecting local products from the hazards of economic fluctuations.

"Interstate trade barriers, if allowed to develop and multiply, will, however, constitute social and economic problems even more serious than international tariffs. It is a matter which demands the immediate attention of all the people of our country, . . ." [11]

The increase of state laws which set up barriers to trade among the states received impetus during depression years; new tax sources were sought; local commercial and industrial enterprises were ailing. States sought to "protect" their citizens and local articles from "outside competition." This, says a promi-

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[6] (March 1939) STATE GOVERNMENT 45, 46.
[7] De Courcy, *State Trade Barriers to Interstate Commerce* (1939) 2 Comp. L. Ser. 172.
[8] 12 Wheat. 419 (U. S. 1827).
[9] 100 U. S. 434 (1879).
[10] *Id.* at 439.
[11] Letter dated April 1, 1939, to the Hon. Robt. L. Cochran, President, Council of State Governments.

ment writer on the subject, is "protectionism turned inward . . . [12] "It is an exact counterpart," says another, "of the international situation, where each country aims to isolate itself economically to its advantage and to the disadvantage of other nations." [13]

Trade among the states may be embargoed and restricted by any state in only two articles of commerce—intoxicating liquors [14] and prison-made goods.[15] The Twenty-first Amendment provides that the transportation or importation into any state of intoxicating liquors, in violation of the laws of such state, is prohibited. This, said the Supreme Court of the United States, means just exactly what it says.[16] "But," says United States Solicitor General Robert H. Jackson, "the power thus given to protect their social policy many States turned, under pressure from local interests, to the protection of home industry. . . . The States thus discriminated against have then responded with all of the weapons of modern tariff reprisal, such as retaliatory taxes and inspections and partial and complete embargoes. A beer war has involved many States and perverted the purpose of the Amendment." [17] The Marketing Laws Survey of the Works Progress Administration [18] has charted laws of twenty-three states imposing license fees that prefer manufacturers of alcoholic beverages using a stated proportion of state-grown crops and laws of twenty-seven states that grant exemptions or preferences to local brewers and distillers. A statute in Pennsylvania provides that an excise tax on exports is to be refunded in an amount equal to the lax levied by the state of destination on imports from Pennsylvania if such state is in substantial competition with Pennsylvania.[19]

Congress accomplished, by statute, as to convict-made goods about the same result as that accomplished by the Twenty-first Amendment. According to the statute, which has been upheld by the United States Supreme Court,[20] such goods are subject to the law of the state of destination.

But what of the many other articles of commerce? "Trade barriers," under the guise of revenue, police, and health measures, have effectively divested them of their interstate character.[20a] And, by no means consistently, in more cases than

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[12] Buell, *Death by Tariff* (Aug. 1938) 18 Fortune 32.

[13] Oppenheim, *The Nature and Extent of State Trade Barrier Legislation,* Proceedings National Conference on Interstate Trade Barriers (1939) 23.

[14] U. S. Const. Amend. XXI.

[15] 49 Stat. 494 (1935), 49 U. S. C. §§ 61 and 62 (Supp. 1938).

[16] State Board of Equalization of California v. Young's Market Co., 229 U. S. 59 (1936). See also Mahoney v. Joseph Triner Corp., 304 U. S. 401 (1938). Prior to the amendment to the Constitution and these decisions, the Supreme Court held that state laws prohibiting the sale within state borders of what was recognized to be a legitimate article of commerce, were an unconstitutional interference with interstate commerce when enforced against a sale in the original package. Leisy v. Hardin, 135 U. S. 100 (1890).

[17] Jackson, *Trade Barriers—A Threat to National Unity,* Proceedings National Conference on Interstate Trade Barriers (1939) 75.

[18] *Comparative Charts of State Statutes Illustrating Barriers to Trade Between States,* Proceedings National Conference on Interstate Trade Barriers (1939) 65–71.

[19] Pa. Sat. (Purdon, 1936) tit. 47, § 765.

[20] Kentucky Whip & Collar Co. v. Illinois Central R. R., 299 U. S. 334 (1937).

[20a] It would appear, at first glance, that Congress, by statute, has "divested" various other articles of their interstate character. These include goods that fail to meet the requirements of state quarantine and health laws, 1 Stat. 474 (1796), slaves, 2 Stat. 205 (1803); nitroglycerin, 14 Stat. 81 (1866); oleomargarine, 32 Stat. 193 (1902); 21 U. S. C., § 25 (1934); and game killed in violation of state laws, 35 Stat. 1137 (1909), 18 U. S. C., § 392 (Supp. 1938). However, the writer believes it is erroneous to conclude that in all such cases the articles mentioned have been divested of their interstate character. It is important to examine carefully the terms of the statute. In passing upon the Wilson Act, originally designed to "divest" liquor of its interstate character, the Supreme Court in Louisville & N. R. R. v. F. W. Cook Brewing Co., 223 U. S. 70 (1912), observed that despite the Wilson Act, until the transportation of the article is concluded by delivery to the consignee, it does not become subject to state regulation restraining its sale or disposition. Later, the Supreme Court in Sonneborn Bros. v. Cureton, 262 U. S. 506 (1923), laid down the rule that whether or not an article of commerce originated in interstate commerce is immaterial and that once the article arrives in the state, and comes to rest there, the article is subject to a nondiscriminatory property tax. Theretofore, the "original package doctrine" was tempered by the United States Supreme Court in American Steel & Wire Co. v. Speed, 192 U. S. 500, 521 (1904), which recognized the question as depending not on whether "interstate commerce was to be considered as having completely terminated" but on whether a particular exertion of taxing power by a state "so operated on interstate commerce as to amount to a regulation thereof, in conflict with the paramount authority conferred upon Congress." In effect, therefore, what the Wilson Act did for liquor the Supreme Court now allows the states to do to all articles of commerce. This unintended shortcoming in the Wilson Act led to the enactment of the Webb-Kenyon Act, 37 Stat. 699 (1913), 27 U. S. C., § 122 (Supp. 1938), which prohibits the shipment of liquor in interstate commerce into a state whose law forbids such product. But, the Supreme Court in Clark Distilling Co. v. Western Maryland Ry., et al., 242 U. S. 311, 332 (1917), definitely stated that "the exceptional nature of the subject here regulated is the basis upon which the exceptional power exerted must rest and affords no grounds for any fear that such product may be constitutionally extended to things which it may not

not, court decisions uphold the exercise of the enumerated powers even though the effect is to discriminate against out-of-state products in favor of the home market for the home producers. It is plain that all such laws and the court decisions thereunder cannot be analyzed in this writing. There are reputed to be over three hundred principal types of interstate discrimination.[21] A discussion of the more prominent examples will serve the purpose.

Under the taxing power, the classic example of a trade barrier is found in the prohibitive taxes, license fees, and restrictive regulations against the use and sale of oleomargarine, even though made exclusively of American farm products, designed to "protect" the dairy industry. Generally, those favoring oleomargarine legislation have been frank to say that their object is to "protect" the dairy industry.[22] As to oleomargarine made exclusively of American farm products, nine states have excise taxes on all uncolored oleomargarine varying from five cents to fifteen cents per pound, three states impose an excise tax from ten to fifteen cents per pound on oleomargarine not containing a specified amount of animal fat, and sixteen states impose an annual license fee, varying from $1 to $1,000, on manufacturers, wholesalers, retailers, etc. About one-half of the states prohibit the serving of margarine in state institutions, and thirty-one states prohibit outright the sale of colored margarine. In practically all instances, the use and sale of the product is thereby destroyed and no revenue is obtained.[23]

This discrimination, because oleomargarine is the second largest outlet for cottonseed oil, an important Southern product, has resulted in retaliatory measures as evidenced by a bill introduced in the 1939 Regular Session of the Arkansas Legislature to impose a tax of "twenty-five percent against the agricultural products, including milk, butter, cheese, and apples, grown, produced, and manufactured in the States of Washington, Minnesota, Wisconsin, and Iowa, which States have levied tax on the agricultural products of Arkansas, including cottonseed oil, its byproducts and derivatives." [24]

The legal history of oleomargarine legislation should be carefully noted at this point in an effort to reconcile it, if possible, with the court decisions on trade barrier legislation. A Pennsylvania act prohibiting the manufacture and sale of oleomargarine within the state was upheld in 1888[25] as a valid exercise of the police power on the ground that the necessity for such legislation must be determined by the state. This decision was followed in *Plumley* v. *Massachusetts*,[26] upholding a Massachusetts statute prohibiting the sale of colored oleomargarine, even when brought into the state from another state and sold in its original package. A later case, also arising in Pennsylvania,[27] denied the right of Pennsylvania to prohibit the sale of margarine in that state when offered in the original package. It distinguished the *Plumley* case by the fact that in the latter only the sale of the colored product was prohibited. While the court had upheld the earlier statute because of the susceptibility of margarine to fraudulent sale as butter, it invalidated the second statute on the theory that it was a direct burden on interstate commerce and was not based on the possibility of fraud or misrepresentation. Shortly thereafter, a New Hampshire statute which prohibited the sale of oleomargarine except when colored pink was invalidated[28] on the theory

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consistently with the guarantees of the Constitution embrace." In other words, this type of legislation would depend upon the public welfare or morals and is in support of police powers of the state; the Federal Government is one of delegated powers which does not include a police power. The writer, therefore, believes that a statute like the Wilson Act gives the states no additional powers. And, unless a state has the power to prohibit absolutely the use and sale of an article of commerce, a statute of the Webb-Kenyon type would confer no additional power upon the state.

[21] Dr. F. E. Melder, of Clark University, recognized authority on the subject, has classified the national trade barriers as follows: (1) local residents favored in public employment, (2) local products favored in public purchase, (3) local printing companies favored in public printing, (4) discriminatory taxes on foreign corporations, (5) discriminatory taxes on foreign life insurance companies, (6) discriminatory taxes on foreign fire insurance companies, (7) discriminatory taxes favoring life insurance companies with local and state investments, (8) state barriers to highway transportation, (9) chain-store taxes, (10) oleomargarine taxes, (11) excessive length of time required for legal settlement, (12) use taxes, and (13) liquor laws tending to place restrictions on out-of-state liquor.

[22] *Barriers to Internal Trade and Farm Products*, A Special Report to the Secretary of Agriculture by the Bureau of Agricultural Economics (United States Department of Agriculture), p. 19.

[23] *Id.* at 17–30. The Federal Government imposes an excise tax of ten cents per pound on the sale of colored oleomargarine.

[24] Ark. H. B. No. 37 (1939).

[25] Powell v. Pennsylvania, 127 U. S. 678 (1888). The Pennsylvania law involved in this case was passed in 1885. During the same year, New York passed a similar law. It was invalidated by the New York Court of Appeals in People v. Marx, 99 N. Y. 377 (1885), on the theory that it was intended not as a regulatory but as a prohibitory measure.

[26] 155 U. S. 461 (1894).

[27] Schollenberger v. Pennsylvania, 171 U. S. 1 (1898).

[28] Collins v. New Hampshire, 171 U. S. 30 (1898).

that it constituted an interference with interstate commerce under the guise of a police regulation to prevent fraud. An Ohio statute forbidding the use of artificial coloring in oleomargarine, although permitting it in butter, was upheld on the theory that equal protection of the law was not denied and the commerce clause was not violated.[29] In 1925 a Wisconsin statute was enacted prohibiting the use of any dairy products in the manufacture of oleomargarine. The Supreme Court of Wisconsin held that, inasmuch as oleomargarine was a wholesome food product and was sold on its merits, the act was unconstitutional because it had the effect of completely prohibiting the manufacture and sale of olemorgarine in Wisconsin.[30] It is to be observed that this state court refused to follow the decision in *Powell* v. *Pennsylvania*.[30a] In effect, it looked behind the exercise of the state's police power, which the Supreme Court of the United States refused to do. In *Magnano Co.* v. *Hamilton*[31] the validity of a prohibitive excise tax enacted to prevent the sale of the product came before the Supreme Court of the United States for review. The sponsors of this act candidly stated that their purpose was to help the butter industry, and they made their arguments on that basis. The statute involved imposed an excise tax of fifteen cents per pound on the sale of oleomargarine in Washington. The court, speaking of this purpose, and yet upholding the act, said:

"Collateral purposes or motives of a Legislature in levying a tax of a kind within the reach of its lawful power are matters beyond the scope of judicial inquiry."

Under the inspection and quarantine power, laws restricting the importation of dairy products are numerous. Our advanced refrigeration and transportation facilities have made it possible for the dairy farmer of the Midwest to sell his milk in the East and elsewhere in competition with the dairy farmers in those sections. The Constitution specifically provides that the states may not levy impost duties on products from sister states, but may levy inspection fees when absolutely necessary. This has not prevented the erection of high and sometimes insurmountable standards of inspection; for example, inspection may even be refused because of the prohibitive expense or inconvenience of sending inspectors to out-of-state dairies.[32]

At an earlier date, the Supreme Court invalidated a Virginia statute that required all flour brought into the state to be inspected and have the state inspection mark thereon while exempting flour manufactured in Virginia from the same requirements.[33] The milk industry has been beset by a rapid development of state milk control laws, particularly since the decision of the Supreme Court of the United States in *Nebbia* v. *People of New York*,[34] which held that the milk industry is affected with a public interest and states have the power to regulate it. In that case, the plaintiff's license as a dealer had been revoked because he gave away a loaf of bread with every two quarts of milk purchased. This procedure was in disobedience to the commissioner's retail price order. The Supreme Court upheld the action of the commissioner by declaring the pertinent portions of the New York Control Act valid. Yet a provision of the same statute was declared unconstitutional by the Supreme Court in *Baldwin v. G. A. F. Seelig*.[35] There the plaintiff attacked as a burden on interstate commerce that portion of the statute forbidding New York dealers to sell milk produced outside the state at prices lower than those charged for milk produced within the state. This decision divested the Milk Control Authority of the power to prevent out-of-state milk from undercutting the price fixed for "native" milk. The language of Mr. Justice Cardozo, who wrote the opinion, should be noted in view of the lack of criteria by which to judge the validity *vel non* of the so-called trade barrier statutes:

"It is the established doctrine of this Court that a State may not, in any form or under any guise, directly burden the prosecution of interstate business. . . . Nice distinctions have been made at times between direct and indirect burdens. They are irrelevant when the avowed purpose of the obstruction, as well as its necessary tendency, is to suppress or mitigate the consequences of competition between the States. Such an obstruction is direct by the very terms of the

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[29] Capital City Dairy Co. v. Ohio, 183 U. S. 238 (1902).
[30] John F. Jelke Co. v. Emery, 193 Wis. 311, 214 N. W. 369 (1927).
[30a] 127 U. S. 678 (1888).
[31] 292 U. S. 40 (1934).
[32] See *Comparative Charts of State Statutes Illustrating Barriers to Trade Between States, op. cit. supra* note 18, at 22–29.
[33] Voight v. Wright, 141 U. S. 62 (1891).
[34] 291 U. S. 502 (1934).
[35] 294 U. S. 511 (1935).

hypothesis. We are reminded in the opinion below that a chief occasion of the commerce clauses was 'the mutual jealousies and aggressions of the States, taking form in customs barriers and other economic retaliation.' . . . If New York, in order to promote the economic welfare of her farmers, may guard them against competition with the cheaper prices of Vermont, the door has been opened to rivalries and reprisals that were meant to be averted by subjecting commerce between the States to the power of the nation." [35a]

The opinion continued:

"It [the Constitution] was framed on the theory that the peoples of the several States must sink or swim together, and that in the long run, prosperity and salvation are in union and not division.

. . .

"What is ultimate is the principle that one State in its dealings with another may not place itself in a position of economic isolation. Formulas and catchwords are subordinate to this overmastering requirement. Neither the power to tax nor the police power may be used by the State of destination with the aim and effect of establishing an economic barrier against competition with the products of another State or the labor of its residents. Restrictions so contrived are an unreasonable clog upon the mobility of commerce. They set up what is equivalent to a rampart of customs duties designed to neutralize advantages belonging to the place of origin. They are thus hostile in conception, as well as burdensome in result. The form of the packages in such circumstances is immaterial, whether they are original or broken. The importer must be free from imposts framed for the very purpose of suppressing competition from without and leading inescapably to the suppression so intended." [35b]

The decision of the Supreme Court in the *Baldwin* case, concerning, as it does, the regulation of the dairy industry, strikes a hopeful note, because prior thereto regulatory milk legislation was consistently upheld.[36]

Livestock and horticultural products are substantially restricted through an exercise of the inspection power. The application of the general laws is left largely to the discretion of administrative bodies. Twenty-eight states require evidence from the state of origin certifying to the disease-free condition of stock and, in addition, practically all of the states require further inspections after reaching their destination.[37] In most instances, the products are perishable and delay results in a total loss. In *Minnesota v. Barber*,[38] the Supreme Court of the United States invalidated a Minnesota statute requiring all meat to be inspected within twenty-four hours after slaughter—a law that naturally prohibited the sale of out-of-state meat. In reaching this conclusion, the court observed that although this type of law might, under other circumstances, be regarded a rightful assertion of the police power, it would be held invalid if the inspection prescribed was of such a character as would prevent altogether the introduction into the state of sound meats slaughtered in other states.[39]

General foods are not free of restrictive legislation. For example, a Georgia statute empowers the Commissioner of Agriculture to embargo fruits, vegetables, and truck crops coming into the state when Georgia crops are sufficient for state markets.[40] Louisiana has a retaliatory statute which forbids the sale in Louisiana of products from a state which prohibits the importation of such products from Louisiana.[41]

Under the regulatory power of the state, motor vehicle legislation is the most noteworthy example. The lack of uniformity is appalling. The Texas statute

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[35a] *Id.* at 522.

[35b] *Id.* at 523, 527.

[36] See Melder, *State and Local Barriers to Interstate Commerce in the United States*, (Nov. 1937) 40 Maine Bulletin, No. 4, pp. 117, *et seq.* It is the writer's observation that the courts are more apt to uphold regulations protecting the consumer than those protecting the producer.

[37] *Comparative Charts of State Statutes Illustrating Barriers to Trade Between the States, op. cit. supra* note 18, at 48–54.

[38] 136 U. S. 313 (1890).

[39] The Federal Livestock Inspection and Quarantine Acts of 1903, 32 Stat. 791 (1903), 21 U. S. C. § 111 (1934), and of 1905, 33 Stat. 1264 (1905), 21 U. S. C. § 123 (1934), have been held to supersede the right of a state to require an inspection certificate if a federal inspector has issued a certificate. Asbell v. Kansas, 209 U. S. 251 (1908). The same is true with reference to federal quarantine authority regarding diseased trees and plants. Oregon-Washington R. R. & Navigation Co. v. Washington, 270 U. S. 87 (1926). It is to be observed, however, that under the plant quarantine act, the Secretary of Agriculture automatically assumes complete jurisdiction, thus excluding state action, whereas under the Animal Quarantine Act of 1905, action of the Federal Government under specified conditions only is made exclusive.

[40] Ga. Laws 1935, No. 44, § 8.

[41] La. Acts 1938, No. 299.

establishes a truck load limit of 7,000 pounds.[42] Rhode Island permits a limit of 120,000 pounds.[43] The other states also vary widely, even as between adjoining states. Kentucky allows only 18,000 pounds gross weight,[44] while Illinois allows 72,000 pounds.[45]

The leading case on this type of regulation is *South Carolina State Highway Department v. Barnwell Bros.*[46] The lower court invalidated the weight and width restrictions on the theory that they burdened interstate motor traffic. The decree enjoined the enforcement of the weight provision on specified highways and the width limitation of ninety inches. Certain highways where the construction of bridges made it unsafe to operate vehicles of the greater width or weight were exempted from the injunction contained in the decree. The Supreme Court of the United States reversed the lower court and said despite the constitutional grant to Congress of power to regulate interstate commerce, all state action affecting interstate commerce was not forestalled. The court specifically points out in this decision that the problem of state barriers is one for the consideration and solution of the legislative and not the judicial branch of government. It places the issue squarely before Congress and the Legislatures of the various states.

An amusing incident of confusion is reported in a popular magazine:[47]

"There is the famous case of the melon farmer in Iowa, who drove to St. Louis with a load of cantaloupes. In Iowa, he was stopped by the State police, who ordered him to put three green lights on his truck, while in Missouri, he was stopped by police and ordered to tear off the lights, on the ground that they violated Missouri law. In 1932, this sort of disagreement led to a legal border war between Indiana and Kentucky. Four years later, there was a similar war between Wisconsin and Iowa and Illinois, while Pennsylvania has frequently engaged in 'hostilities' arising out of such disputes with its neighbors."

The most interesting development in motor vehicle regulation is the port-of-entry law. First adopted in Kansas in 1933, such statutes are now in existence in about nine states.

Under an exercise of the proprietary powers, we find practically all of the states giving preferences to resident laborers by either requiring all or a high percentage of laborers on public works to be residents. The required period of residency varies from three months to five years. In other instances, bids of resident contractors are preferred if they do not exceed those of nonresidents by more than three to five percent. Mandatory use of domestic products in the construction or operation of public works is required in Indiana (limestone),[48] Maryland (green marble),[49] and Missouri (products of its quarries).[50] This type of legislation has been upheld on the following basis:

"The construction of public works involves the expenditure of public monies. To better the condition of its own citizens, and it may be to prevent pauperism among them, the Legislature has declared that the monies of the State shall go to the people of the State." [51]

The Supreme Court of the United States has stated it thus:

"It belongs to the State, as guardian and trustee for its people, and having control of its affairs, to prescribe the conditions upon which it will permit public work to be done on its behalf or on behalf of its muncipalities." [52]

It appears difficult to formulate a set of legal principles by which one may determine the validity of "trade barriers." However, impelling Mr. Justice Cardozo's dictum in *Baldwin* v. *Seelig* may be, the student is still confronted with decisions difficult to reconcile. It is clear on the one hand that tariff barriers, as such, cannot legally exist between the states or a state and a foreign nation. On the other hand, the free flow of commerce between states is restricted by the states' exercise of traditional powers.

Inspection measures, despite the amount of the fee, that do not impose the same requirements on intrastate commerce as are imposed on interstate com-

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[42] Tex. Pen. Code (Vernon, 1936) art. 827a, §§ 5, 5b.
[43] R. I. Gen. Laws (1938) c. 89, §§ 2 and 3.
[44] Ky. Stat. (Carroll, Sup. 1933) § 2793g–82.
[45] Ill. Ann. Stat. (Smith-Hurd, Supp. 1938) c. 95½, §§ 221–230.
[46] 303 U. S. 177 (1938).
[47] (Aug. 1938) 18 Fortune 88.
[48] Ind. Acts Spec. Sess. 1938, c. 7.
[49] Md. Laws 1933, J. R. 8 and 9, p. 1353.
[50] Mo. Laws 1937, p. 368.
[51] People v. Crane, 214 N. Y. 154, 108 N. E. 427 (1915), *aff'd*, 239 U. S. 195 (1915).
[52] Atkin v. Kansas, 191 U. S. 207 (1903).

merce are void.[53] But, if the law is on its face an inspection measure, the excessiveness of the fee cannot concern the court and is not a judicial question,[54] and the extent of its burden, short of altogether barring a commodity from introduction into a state,[55] is a complaint properly to be directed to the legislature and not the courts.

To impose fees for the use and maintenance of highways, even where interstate commerce is involved, is within the constitutional exercise of a state's power.[56] As to the power to regulate vehicles, a statute not designed to protect public safety but rather to prevent competition has been held invalid,[57] but regulations of load, height, weight, width, etc., are valid despite their consequent burden on interstate commerce.[58]

The fact that a tax is so high and oppressive as to prohibit the sale of an article does not render the statute subject to judicial review if the tax on its face is otherwise valid.[59]

A tabulation shows that statutes based on the inspection power are susceptible to closer judicial scrutiny than those based on the taxing power. For example, in *A. Magnano Co.* v. *Hamilton*, the Supreme Court sustained a prohibitive tax, notwithstanding a frank admission of discrimination and the recognition by the Court that the food product involved was "a nutritious and pure article of food, with a well-established place in the dietary."[60] It is submitted that there is no substantial basis for a different approach, whatever the power purportedly exercised, where the purpose to be achieved is the same. When the action of the legislature is found to be within the scope of its power, the reasonableness, wisdom, and propriety of such action the courts have been reluctant to determine.

Public interest in this important problem has been aroused only recently by the activity of the Council of State Governments, official and unofficial conferences, national, regional, and state, and by the attendant editorial comment. Fortunately, the attention of the United States Supreme Court has been attracted. Timely, but not entirely reassuring, have been several recent pronouncements by the United States Supreme Court in cases involving trade barriers.

A unanimous decision by the United States Supreme Court at its last term was hailed as an indication that statutes of the nature discussed will hereafter bear more critical judicial examination. In *Hale* v. *Brimco Trading, Inc.*,[61] the constitutionality of a Florida statute providing for the inspection of all "cement imported or brought into the State of Florida from any foreign country" and requiring inspection fees in connection therewith at the rate of fifteen cents per hundred pounds was at issue. The United States Supreme Court affirmed the decree of the District Court restraining the enforcement of the act. Since the cases have consistently held that a state statute which by its necessary operation directly interferes with or burdens foreign commerce is invalid, regardless of the purpose for which it was passed,[62] the Florida decision merely added to the numerous expressions upon this subject. But, it was considered significant because of the reasoning employed by Mr. Justice Frankfurter, who wrote the opinion of the court. He pointed to the obvious and intended discrimination against foreign commerce, and observed that, although the preamble of the act stated that it was of paramount importance to the public safety that only cement measuring up to a minimum standard should be sold or used in Florida, only imported cement was required to be inspected.[63] That no Florida cement needed inspection while all foreign cement required it at a cost of fifteen cents per hundredweight was, he declared, "too evident an assumption to justify the discrimination here disclosed." The second justification for the statute—the competitive effect of foreign cement in the Florida market—was found to be a candid admission that the very purpose of the law was to keep out foreign

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[53] Voight v. Wright, 141 U. S. 62 (1891), wherein the fee provided for was only two cents. See also Brimmer v. Rebman, 138 U. S. 78 (1891), declaring invalid a Virginia meat inspection law, the fee being one cent.

[54] Patapsco Guano Co. v. North Carolina Board of Agriculture, 171 U. S. 345 (1898), sustaining the validity of an inspection fee of twenty-five cents per ton on all fertilizer in the State of North Carolina, and New Mexico *ex rel* E. J. McLean & Co. v. Denver R. R., 203 U. S. 38 (1906).

[55] Minnesota v. Barber, 136 U. S. 313 (1890).

[56] Hendrick v. Maryland, 235 U. S. 610 (1915).

[57] Buck v. Kuykendall, 267 U. S. 307 (1925).

[58] South Carolina State Highway Department v. Barnwell, 303 U. S. 177 (1938).

[59] A. Magnano Co. v. Hamilton, 292 U. S. 40 (1934).

[60] *Ibid.*

[61] 306 U. S. 375 (1939).

[62] *See* Shafer v. Farmers Grain Company, 268 U. S. 189 (1925).

[63] The act recited that "The importation * * * and use of foreign cement not only jeopardizes public safety, but amounts to unfair competition being forced on this great industry in Florida." Fla. Laws 1937, c. 18995.

goods. The opinion was therefore regarded as important because it declared invalid a state statute that "discriminated" against foreign products in order to protect home industry and because it intimated that in determining the validity of an "inspection law" under the Federal Constitution the Supreme Court will consider the excessive character and amount of the "inspection fees." As pointed out above, prior to this decision, the principle appeared to be firmly established with regard to "inspection fees" as well as with regard to "excise taxes" that in determining the validity of the particular statutory charge in question under the due-process clause, the amount thereof was not subject to judicial review if the tax or fee was on its face otherwise valid. This recent decision, therefore, may well become a judicial mark for a "proper" interpretation of the due-process clause by reason of Mr. Justice Frankfurter's reference to the Florida inspection fee as "sixty times the actual cost of inspection." [64]

During the present term, two decisions delivered within a few days of each other have likewise accentuated thought as to what relief can be expected from the courts. In *McGoldrick* v. *Berwind-White Coal Mining Co.*[65] it was held that coal purchased from Pennsylvania sellers and shipped by them to New York buyers was subject to the New York City sales tax. The statute under which the tax was assessed defined the term "sale" as "any transfer of title or possession, or both * * * in any manner or by any means whatsoever for a consideration or any agreement therefor." [66] In reaching this conclusion, the majority opinion, written by Mr. Justice Stone, announced the following principles:

1. It was not the purpose of the commerce clause to relieve those engaged in interstate commerce of their just share of state tax burdens, merely because an incidental or consequential effect of the tax is an increase in the cost of doing their business.

2. A tax on interstate commerce which imposes a burden which intrastate commerce does not have to bear is invalid.

3. With equality as its theme, such a tax has no different effect upon interstate commerce than a tax on the "use" of property which has just been moved in interstate commerce.[67]

4. As guides, the court will look to the purpose of the commerce clause to protect interstate commerce from discriminatory or destructive state action, and at the same time to the purpose of the state taxing power under which interstate commerce "admittedly must bear its fair share of state tax burdens," and to the necessity of judicial reconciliation of these competing demands.

5. So far as validity is concerned, there is no distinction between a tax on property, the sum of all the rights and powers incident to ownership, and the taxation of the exercise of some of its constituent elements. It is immaterial whether the purchase order or contract precedes or follows the interstate shipment in considering a tax laid generally upon all sales to consumers within the State.[68]

The dissenting opinion by Chief Justice Hughes, joined in by Justices McReynolds and Roberts, insisted that from any point of view, the tax involved was laid directly upon interstate sales. It was pointed out that "in confiding to Congress the power to regulate interstate commerce, the aim was to provide a free national market—to pull down and prevent the re-erection of state barriers to the free intercourse between the people of the States." The Chief Justice admitted that in the past the application by the Court of principles designed to maintain the proper balance between state and national power had led to close distinctions, albeit short of providing good reason for sustaining a direct tax on interstate commerce. And, by way of a reminder that there is no way back, he directed attention to the court's earlier holding in *A. Magnano Company* v. *Hamilton*. Under the authority of that case, once the jurisdiction of the state to tax is established, the size of the tax lies within the discretion of the state and not the court. It was further urged that the power of a state to lay a direct tax upon interstate commerce should not be held to follow from the fact that it is free to tax its own commerce in a similar way. It may or may not be in the interest of the state to promote domestic trade in a given commodity; the state

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[64] The fifteen-cent fee imposed by the Florida law was also compared with the duty of six cents per hundred pounds fixed by the Hawley-Smoot Act of 1930 and the four and one-half cent duty fixed by the Belgian Trade Agreement of 1935.

[65] 60 Sup. Ct. 388 (1940).

[66] N. Y. Local Laws 1937, No. 20, § 1.

[67] The "use" tax has been implied by the United States Supreme Court in Henneford v. Silas Mason Co., 300 U. S. 577, 583 (1937).

[68] The court admitted that the contrary of this statement has the support of a statement obiter in Sonnenborn Bros. v. Cureton, 262 U. S. 506 (1923).

may seek by its taxing scheme to restrict such trade. The mere equivalency of a tax upon domestic business would not prevent the injurious effect resulting from the application of the tax to interstate transactions. Moreover, he said, "the point is not that the delivery in New York is an event which cannot be taxed by other States [and hence there is no danger of multiple taxation], but that the authority of New York to impose a tax on that delivery cannot properly be recognized without also recognizing the authority of other States to tax the parts of the interstate transaction which take place within their borders."

In concluding, he warned:

"The tax as here applied is open to the same objection as a tariff upon the entrance of the coal into the State of New York, or a State tax upon the privilege of doing interstate business, and in my view it cannot be sustained without abandoning principles long established and a host of precedents soundly based."

Also important in this connection is *McCarroll* v. *Dixie Greyhound Lines, Inc.*[69] It was there held that an Arkansas statute prohibiting entry into the State of any automobile or truck "carrying over twenty gallons of gasoline in the gasoline tank of such automobile or truck or in auxiliary tanks of said trucks to be used as motor fuel in said truck or motor vehicles until the State tax thereon [6½ cents per gallon] has been paid" was unconstitutional as to an interstate bus company operating between Tennessee and Missouri and passing through Arkansas. This was held to constitute a direct and unreasonable burden upon interstate commerce. The statute required the company, as a condition precedent to the use of the highways, to pay a gasoline tax on all the gasoline in excess of twenty gallons in the tank at the time the bus entered the State, although probably not more than sixteen gallons would be consumed in the State. The majority opinion written by Mr. Justice McReynolds approved the following observation of the lower court:

"We are unable to comprehend how the use of the highways of one state can appropriately be measured by the amount of gasoline carried in the fuel tank of an interstate carrier for use upon the highways of another state."

Mr. Justice Stone, concurring on behalf of himself, Chief Justice Hughes and Justices Roberts and Reed, pointed out that it must appear on the face of the tax or be demonstrable that the tax as laid is measured by or has some fair relationship to the use of the highways for which tthe charge is made. The tax could not be justified, as a compensation measure, on the theory that it was the equivalent of one that could be laid on gasoline cohsumed within the State because the statute measured the tax by the consumption of gasoline moving and used in interstate commerce which occurs outside the State.

Mr. Justice Black, on behalf of himself and Justices Frankfurter and Douglas, in writing the dissenting opinion, observed that Arkansas could validly levy a gallonage tax on any gasoline withdrawn from storage within the State and placed in the tanks, "notwithstanding that its ultimate function is to generate motive power for carrying on interstate commerce."[70] He then restated the oft-repeated rule that the legislatures and not the courts must provide the relief by the following language:

"Striking a fair balance involves incalculable variants and therefore is beset with perplexities. The making of these exacting adjustments is the business of legislation—that of state legislatures and of Congress. . .

"This case again illustrates the wisdom of the founders in placing interstate commerce under the protection of Congress. The present problem is not limited to Arkansas, but is of national moment. Maintenance of open channels of trade between the states was not only of paramount importance when our Constitution was framed; it remains today a complex problem calling for national vigilance and regulation.

"Our disagreement with the opinions just announced does not arise from a belief that Federal action is unnecessary to bring about appropriate uniformity in regulation of interstate commerce. Indeed, state legislation recently before this Court indicates quite the contrary."[71]

"Spasmodic and unrelated instances of litigation cannot afford an adequate basis for the creation of integrated national rules which alone can afford that full protection for interstate commerce intended by the Constitution. We would, therefore, leave the questions raised by the Arkansas tax for consideration of Congress in a nation-wide survey of the constantly increasing barriers to trade

[69] 8 U. S. L. Week 299 (U. S. 1940).
[70] Quoting, Edelman v. Boeing Air Transport, 289 U. S. 249, 252 (1933).
[71] 8 U. S. L. Week 299, 301. The Justice was referring to the court's decision in South Carolina State Highway Department v. Barnwell Bros.

among the states. Unconfined by 'the narrow scope of judicial procedings.' Congress alone can, in the exercise of its plenary constitutional control over interstate commerce, not only consider whether such a tax as now under scrutiny is consistent with the best interests of our national economy, but can also on the basis of full exploration of the many aspects of a complicated problem devise a national policy fair alike to the States and our Union. Diverse and interacting state laws may well have created avoidable hardships. See, Comparative Charts of State Statutes Illustrating Barriers to Trade Between States, Works Progress Administration, May, 1939; Proceedings, The National Conference on Interstate Trade Barriers. . . . The remedy, if any is called for, we think is within the ample reach of Congress." [72]

These decisions are important because they are the reconstituted court's first recognition of the growing evil of state trade barriers. Even the dissenting Justices took notice of the dangerous legislative trend.

In conclusion, the reader should be warned that those advocating the elimination of trade barriers do not advocate unregulated trade but rather free trade. It is believed desirable for each state and each market in each state to admit any healthful and honestly described product from any part of the country without any kind of discrimination on account of the location of the producer or dealer. Free trade does not require that commerce and transportation go unregulated.

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[72] 8 U. S. L. Week 299, 302.

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