United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 81st CONGRESS, FIRST SESSION

SENATE

WEDNESDAY, JUNE 1, 1949

(Legislative day of Monday, May 23, 1949)

The Senate met at 12 o'clock meridian, on the expiration of the recess.

The Chaplain, Rev. Frederick Brown Harris, D. D., offered the following prayer:

Our Father God, from the shams and shadows of mere things which are of the earth earthy, in this sacred moment, set apart at the beginning of the day, we turn unfilled to Thee praying for strength for our burdens, wisdom for our problems, insight for our troubled times, and vision which sets its eyes on far horizons. For the preservation of liberty, for the defeat of all tyranny, for the redemption of democracy from its failures, for the establishment of a just and lasting peace for all the earth, we lift our hearts to Thee, O God of our salvation. Amen.

THE JOURNAL

On request of Mr. LUCAS, and by unanimous consent, the reading of the Journal of the proceedings of Tuesday, May 31, 1949, was dispensed with.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Swanson, one of its reading clerks, announced that the House had passed a bill (H. R. 834) to amend the Contract Settlement Act of 1944 so as to authorize the payment of fair compensation to persons contracting to deliver certain strategic or critical minerals or metals in cases of failure to recover reasonable costs, and for other purposes, in which it requested the concurrence of the Senate.

ENROLLED BILL SIGNED

The message also announced that the Speaker had affixed his signature to the enrolled bill (H. R. 1357) to authorize the establishment of the St. Croix Island National Monument, in the State of Maine.

CALL OF THE ROLL

Mr. LUCAS. I suggest the absence of a quorum.

The VICE PRESIDENT. The Secretary will call the roll.

The roll was called, and the following Senators answered to their names:

Aiken	Ellender	Hill
Anderson	Ferguson	Hoey
Baldwin	Flanders	Humphrey
Brewster	Frear	Hunt
Bricker	Gillette	Ives
Byrd	Graham	Jenner
Capehart	Green	Johnson, Tex.
Cordon	Gurney	Johnston, S. C.
Donnell	Hendrickson	Kefauver
Kem	Maybank	Taylor
Kilgore	Murray	Thomas, Okla.
Langer	Neely	Thomas, Utah
Lucas	Reed	Thye
McCarran	Robertson	Tydings
McCarthy	Russell	Vandenberg
McClellan	Saltonstall	Watkins
McFarland	Schoeppel	Wherry
McGrath	Smith, Maine	Wiley
McKellar	Sparkman	Williams
Magnuson	Stennis	Withers
Martin	Taft	Young

Mr. LUCAS. I announce that the Senator from Kentucky [Mr. CHAPMAN] is absent on public business.

The Senator from Georgia [Mr. GEORGE], the Senator from Idaho [Mr. MILLER], and the Senator from New York [Mr. WAGNER] are necessarily absent.

The Senator from Oklahoma [Mr. KERR] is absent on public business.

The Senator from Florida [Mr. PEPPER] is absent by leave of the Senate.

The Senator from New Mexico [Mr. CHAVEZ], the Senator from Texas [Mr. CONNALLY], the Senator from Illinois [Mr. DOUGLAS], the Senator from California [Mr. DOWNEY], the Senator from Mississippi [Mr. EASTLAND], the Senator from Arkansas [Mr. FULBRIGHT], the Senator from Arizona [Mr. HAYDEN], the Senator from Florida [Mr. HOLLAND], the Senator from Colorado [Mr. JOHNSON], the Senator from Louisiana [Mr. LONG], the Senator from Connecticut [Mr. MCMAHON], the Senator from Pennsylvania [Mr. MYERS], the Senator from Maryland [Mr. O'CONOR], and the Senator from Wyoming [Mr. O'MAHONEY] are detained on official business in meetings of committees of the Senate.

Mr. SALTONSTALL. I announce that the Senator from Nebraska [Mr. BUTLER] and the Senator from South Dakota [Mr. MUNDT] are absent by leave of the Senate.

The Senator from Oregon [Mr. MORSE] is absent on official business.

The Senator from New Jersey [Mr. SMITH] is absent because of illness.

The senior Senator from New Hampshire [Mr. BRIDGES], the Senator from Washington [Mr. CAIN], the Senator from Montana [Mr. ECTON], the Senator from Iowa [Mr. HICKENLOOPER], the Senator from California [Mr. KNOWLAND], the Senator from Massachusetts [Mr. LODGE], the Senator from Nevada [Mr. MALONE], the Senator from Colorado [Mr. MILLIKIN], and the junior Senator from New Hampshire [Mr. TOBEY] are detained on official committee business.

The VICE PRESIDENT. A quorum is present.

Mr. MCMAHON subsequently said: Mr. President, I should like to have it appear in the RECORD that the Joint Committee on Atomic Energy started its hearings at 10 o'clock this morning on the investigation of the Atomic Energy Commission, and we finished at 1 o'clock this afternoon. The senatorial members of the joint committee were in attendance at the hearing, and it was impossible for us to answer the quorum call. I expect that the committee will be in more or less continuous session, at least so far as the mornings are concerned, and it will probably be that the Senators who are members of that joint committee cannot come to the Senate Chamber before 1 o'clock or 1:15 on any day.

Mr. President, I ask unanimous consent that on the days when the committee is meeting, an announcement to that effect appear at the end of the quorum call.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. LUCAS. Mr. President, will the Senator advise the Senate where the joint committee is meeting?

Mr. MCMAHON. The joint committee is meeting in the caucus room in the Senate Office Building.

TRANSACTION OF ROUTINE BUSINESS

Mr. LUCAS. Mr. President, I ask unanimous consent that Senators be permitted to introduce bills and joint resolutions and also incorporate routine matters in the body of the RECORD and in the Appendix, without debate.

The VICE PRESIDENT. Is there objection? The Chair hears none, and it is so ordered.

EXTENSION OF AUTHORITY OF ADMINISTRATOR OF VETERANS' AFFAIRS RESPECTING CERTAIN LEASES

The VICE PRESIDENT laid before the Senate a letter from the Administrator of the Veterans' Administration, transmitting a draft of proposed legislation to extend for 2 years the authority of the Administrator of Veterans' Affairs respecting leases and leased property, which, with the accompanying paper, was referred to the Committee on Finance.

MISSOURI VALLEY AUTHORITY—RESOLUTION OF MINNEHAHA COUNTY, S. DAK., FARMERS UNION

Mr. HUMPHREY. Mr. President, I present for appropriate reference a resolution adopted by the Minnehaha County, S. Dak., Farmers Union, relating to the establishment of a Missouri Valley Authority, and I ask unanimous consent that it may be printed in the RECORD.

There being no objection, the resolution was referred to the Committee on Public Works, and ordered to be printed in the RECORD, as follows:

We the members of the Minnehaha County Farmers Union, representing 1,025 farm families, in convention assembled, this 2d day

of May 1949, by resolution reaffirm our favor for a Missouri Valley Authority unanimously, and

We are mindful of the 200 delegates representing some 40,000 voters from South Dakota, who impressed you previously and personally on our stand on the MVA and you were not openly opposed to our appeal for your support thereof; and be it further

Resolved, That we disapprove of the action taken by our Congressmen in opposing the MVA. The farmers union is now and always has been a strong supporter of the Missouri Valley Authority; it is further

Resolved, That a copy of this resolution be sent to each of our Congressmen and to other interested parties.

MRS. FRANK STEER,
Corresponding Secretary, Minnehaha County Farmers Union, Renner, S. Dak.

CONVERSION OF CERTAIN WAR SURPLUS VESSELS—RESOLUTION OF CITY COUNCIL OF DULUTH, MINN.

Mr. HUMPHREY. Mr. President, I present for appropriate reference a resolution adopted by the City Council of Duluth, Minn., favoring the enactment of House bill 2336, to authorize the Maritime Commission to convert certain vessels to types suitable for use on the Great Lakes, and I ask unanimous consent that it may be printed in the RECORD.

There being no objection, the resolution was referred to the Committee on Interstate and Foreign Commerce, and ordered to be printed in the RECORD, as follows:

Whereas there has been introduced in the Congress H. R. 2330 and S. 1771, which would authorize the conversion and sale of certain war surplus vessels owned by the United States at prices to be determined by the use of a formula provided in such bills; and

Whereas the enactment of such legislation would make it possible for vessel operators to acquire ships of a type suitable for use in the operation of a package-freight line; and

Whereas the existence of such a package-freight line operating between Duluth and ports on the lower lakes is now and will continue to be essential and necessary to the economic welfare of Duluth, the State of Minnesota, and adjacent States; will serve to furnish substantial employment in the transfer of goods from vessel to land transportation lines; and restore to Duluth, Minn., and adjacent Northwestern States the advantages of cheap water transportation enjoyed by them for many years until the requisition of vessels employed in the package-freight trade in July 1942: Now, therefore, be it

Resolved, That the City Council of the City of Duluth urges the enactment of H. R. 2336 and S. 1771; and further

Resolved, That certified copies of this resolution be transmitted to Members of the Senate and House of Representatives from Minnesota, and to the Subcommittee on Maritime Affairs of the House Committee on Merchant Marine and Fisheries.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. MCKELLAR, from the Committee on Appropriations:

H. R. 4046. A bill making appropriations to supply deficiencies in certain appropriations for the fiscal year ending June 30, 1949, and for other purposes; with amendments (Rept. No. 432).

By Mr. MCCARRAN, from the Committee on Appropriations:

H. R. 4016. A bill making appropriations for the Departments of State, Justice, Commerce, and the Judiciary, for the fiscal year ending June 30, 1950, and for other purposes; with amendments (Rept. No. 435).

By Mr. ROBERTSON, from the Committee on Banking and Currency:

S. 1559. A bill for the establishment of the National Monetary Commission; without amendment (Rept. No. 431).

By Mr. MCCLELLAN, from the Committee on Expenditures in the Executive Departments:

S. 1745. A bill to authorize the transfer to the Attorney General of a portion of the Vigo plant, formerly the Vigo ordnance plant, near Terre Haute, Ind., to supplement the farmlands required for the United States prison system; without amendment (Rept. No. 433); and

S. 1746. A bill to authorize the transfer to the Attorney General of the United States of a portion of the Vigo plant, formerly the Vigo ordnance plant, near Terre Haute, Ind., for use in connection with the United States Penitentiary at Terre Haute; without amendment (Rept. No. 434).

INCREASE IN LIMIT OF EXPENDITURES BY COMMITTEE ON LABOR AND PUBLIC WELFARE—REPORT OF A COMMITTEE

Mr. THOMAS of Utah. Mr. President, from the Committee on Labor and Public Welfare, I report favorably, without amendment, Senate Resolution 117. It authorizes the expenditure of an additional $10,000 by the Senate Committee on Labor and Public Welfare in carrying out its essential activities during the remainder of the Eighty-first Congress. The required budget estimates and other necessary supporting data have already been filed with the Committee on Rules and Administration.

I request that the resolution be referred to the Committee on Rules and Administration.

The VICE PRESIDENT. Is there objection to the request of the Senator from Utah? The Chair hears none, and it is so ordered.

ST. LAWRENCE SEAWAY—JOINT RESOLUTION INTRODUCED

Mr. LUCAS. Mr. President, on behalf of myself, the Senator from New York [Mr. WAGNER], the senior Senator from Michigan [Mr. VANDENBERG], the senior Senator from Wisconsin [Mr. WILEY], the senior Senator from North Dakota [Mr. LANGER], the junior Senator from Illinois [Mr. DOUGLAS], the Senator from Vermont [Mr. AIKEN], the Senator from Kentucky [Mr. WITHERS], the junior Senator from Michigan [Mr. FERGUSON], the senior Senator from Minnesota [Mr. THYE], the junior Senator from North Dakota [Mr. YOUNG], the junior Senator from Minnesota [Mr. HUMPHREY], the Senator from New Hampshire [Mr. TOBEY], the Senator from Oregon [Mr. MORSE], the Senator from California [Mr. KNOWLAND], the Senator from Iowa [Mr. HICKENLOOPER], the Senator from Washington [Mr. MAGNUSON], the junior Senator from Wisconsin [Mr. MCCARTHY], the Senator from Utah [Mr. THOMAS], and the Senator from Tennessee [Mr. KEFAUVER], I introduce for appropriate reference a very important joint resolution, in which we are vitally interested, approving the agreement between the United States and Canada relating to the Great Lakes-St. Lawrence Basin with the exception of certain provisions thereof; expressing the sense of the Congress with respect to the negotiation of certain treaties; providing for making the St. Lawrence seaway self-liquidating; and for other purposes. I ask unanimous consent that the joint resolution be printed in the RECORD, together with a short statement I should like to make, following the joint resolution.

The VICE PRESIDENT. The joint resolution will be appropriately referred, and, without objection, the joint resolution and statement, will be printed in the RECORD.

The joint resolution (S. J. Res. 99) approving the agreement between the United States and Canada relating to the Great Lakes-St. Lawrence Basin with the exception of certain provisions thereof; expressing the sense of the Congress with respect to the negotiation of certain treaties; providing for making the St. Lawrence seaway self-liquidating; and for other purposes, introduced by Mr. LUCAS (for himself, Mr. WAGNER, Mr. VANDENBERG, Mr. WILEY, Mr. LANGER, Mr. DOUGLAS, Mr. AIKEN, Mr. WITHERS, Mr. FERGUSON, Mr. THYE, Mr. YOUNG, Mr. HUMPHREY, Mr. TOBEY, Mr. MORSE, Mr. KNOWLAND, Mr. HICKENLOOPER, Mr. MAGNUSON, Mr. MCCARTHY, Mr. THOMAS of Utah, and Mr. KEFAUVER), was read twice by its title, referred to the Committee on Foreign Relations, and ordered to be printed in the RECORD, as follows:

Resolved, etc., That, as provided by article XIII of the Boundary Waters Treaty of 1909 between the United States and Great Britain, the agreement made by and between the Governments of the United States and Canada, dated March 19, 1941, published in House Document No. 153, Seventy-seventh Congress, first session, is hereby approved, with the exception of article VII, article VIII, paragraph (c), and article IX thereof, and the President is hereby authorized and empowered to fulfill the undertakings made on behalf of the United States in said agreement, with the exception of article VII, article VIII, paragraph (c), and article IX, upon the receipt by him of satisfactory evidence of the approval of said agreement with the exceptions provided above, by reciprocal or concurrent legislation of Canada: *Provided,* That the President before said agreement enters into force, obtains satisfactory assurances, by exchange of notes or otherwise, that the Government of Canada agrees to the principle of making the new deep water navigation works on the St. Lawrence River herein authorized self-liquidating by charging reasonable tolls, this principle to be implemented through the conclusions of arrangements satisfactory to both Governments pursuant to section 3 of this joint resolution.

SEC. 2. It is the sense of the Congress that it would be desirable for the President to negotiate with Canada a treaty or treaties with reference to the matters provided for in articles VII and IX of the agreement of March 19, 1941, including provisions with respect to perpetual navigation rights on the Great Lakes, on the connecting channels and canals and in the wholly Canadian sections of the St. Lawrence River, and the provisions for the amendment of the Boundary Waters Treaty of 1909 with respect to diversion of waters at Niagara River; and to submit such treaty or treaties for the advice and consent of the Senate of the United States.

SEC. 3. (a) During the period of construction the President is authorized and directed to negotiate a further agreement with the Government of Canada, under the provisions

of the Boundary Waters Treaty of 1909, defining the rates of charges or tolls to be levied for the use of the new deep-water navigation facilities on the St. Lawrence River, authorized in this joint resolution: *Provided,* That (1) the total charges shall be fair and equitable and shall give due consideration to encouragement of increased utilization of the navigation facilities, and to the special character of bulk agricultural, mineral, and other raw materials; (2) that tolls shall vary for ships in ballast and according to the character of cargo with the view that each classification of cargo will so far as practicable derive relative benefits from the use of these facilities; (3) that in no event shall the total charges exceed the equivalent of $1.25 per short ton of laden cargo, and may be less, depending on character of cargo; (4) that tolls shall apply only on traffic utilizing the new deep-water navigation works on the St. Lawrence River, with such exception of local or way or Government traffic as may be agreed upon by the two countries: *Provided further,* That such agreement shall become effective only after approval by the Congress of the United States and the Parliament of Canada.

(b) The President may, at his discretion, appoint a St. Lawrence Advisory Commission, to cooperate with similar representatives of the Government of Canada, for the purpose of studying and, after public hearings, making recommendations to their respective Governments on the administrative, technical, and economic aspects of a toll system on the proposed 27-foot St. Lawrence Canals, as a basis for the agreement on tolls proposed in this section.

SEC. 4. (a) There are hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be required to carry out the provisions of this joint resolution and to enable the United States to carry out the undertakings hereby authorized.

(b) Unless Congress by law authorizes such action, no amendment of the agreement, and no exchange of notes under article I, section 4 thereof, shall impose additional financial or other obligations on the United States.

SEC. 5. The President is hereby authorized and directed to negotiate an arrangement with the government of the State of New York for the transfer to the appropriate agency of that State of the power facilities on the United States side of the International Rapids constructed pursuant to this joint resolution, the cost to be determined in accordance with the method of allocation included in the joint recommendation of the Corps of Engineers, United States Army, and the Power Authority of the State of New York, dated February 7, 1933, presented at public hearings of the Committee on Foreign Relations, February 10, 1933, Seventy-second Congress, second session: *Provided,* That such arrangement is consistent with the laws of the United States and protects the interests of the United States and of other States: *And provided further,* That such arrangement will be effective only after approval by the Congress of the United States and the Legislature of the State of New York.

The statement presented by Mr. LUCAS is as follows:

STATEMENT BY SENATOR LUCAS IN CONNECTION WITH GREAT LAKES-ST. LAWRENCE SEAWAY PROJECT

The joint resolution introduced today proposes to authorize the St. Lawrence seaway and power project in the same terms as the resolution introduced in 1947 by Senator VANDENBERG and 15 other Senators and reported favorably by the Foreign Relations Committee in January 1948.

The present joint resolution provides, as did the earlier resolution, for the establishment of the project on a self-supporting, self-liquidating basis.

The question of the desirability and feasibility of this project has been extensively examined by Congress on four previous occasions. The resolution authorizes the construction of the United States share of the St. Lawrence project, principally the International Rapids section, and the dredging of connecting channels in the Great Lakes, as provided by the existing Canadian-American agreement of March 19, 1941. Certain conditions are laid down as a prerequisite to the carrying out of the project as follows:

1. That the Canadian Parliament also approve the agreement.

2. That in approving the agreement, the Canadian Government agrees to the deletion of articles VII and VIII (c) and article IX of the Canadian-American agreement.

3. That the Canadian Government agrees to the principle of self-liquidation of the deep-water navigation works on the St. Lawrence River.

The articles in the Canadian-American agreement referred to are concerned with the following matters:

Article VII provided perpetual navigation rights to the two Governments in boundary waters and connecting channels and canals where those navigation rights are now terminable with the life of existing treaties.

Article VIII (c) established an arbitration procedure in the case of damages resulting in either country in consequence of unilateral diversion of water from the Great Lakes by the other country. This was specifically applicable to the so-called Chicago diversion and is permanently deleted from the agreement. The deletion of this provision is in accord with the amendment to an earlier resolution on the St. Lawrence seaway introduced in the Senate on May 22, 1946, by Senator LUCAS. The elimination of paragraph (c) of article VIII will not interfere with the main object of the St. Lawrence agreement. It will, however, do away with the limitations on the diversion of water from the Great Lakes system and the international section of the St. Lawrence River contemplated in the agreement. This amendment was adopted by the Foreign Relations Committee on June 5, 1946.

Article IX amended the provisions of the Boundary Waters Treaty of 1909, increasing the amount of diversion of water allowed to each country at Niagara River.

Articles VII and IX were eliminated because it was felt in some quarters that they required the advice and consent of two-thirds of the Senate, because they were considered to be matters which could only be dealt with by means of treaties. With the elimination of these articles, the remaining provisions authorize the construction of the St. Lawrence seaway and power project.

Section 2 of the joint resolution authorizes the President to negotiate necessary treaty agreements to achieve the purposes of article VII and IX, which are deleted from the resolution by section 1.

Section 3 of the joint resolution authorizes the President to negotiate a further agreement with Canada defining the rates of tolls to be levied for the use of the new deep-water navigation facility on the St. Lawrence so as to make the project self-liquidating. The principles on which self-liquidation is to be worked out as provided by the resolution are that the total charges will be fair and give consideration to encouragement of increased use of the navigation facilities; that the special character of bulk agricultural, minerals, and other raw materials will be recognized; that the maximum charge on any type of cargo shall not exceed the equivalent of $1.25 per short ton of laden cargo; and that toll shall apply only on traffic using the new deep-water navigation works on the St. Lawrence River, with such exception of local or way or Government traffic as may be agreed upon by the two countries.

The joint resolution gives the President the power to appoint a St. Lawrence Advisory Commission to cooperate with similar representatives of Canada to study and, after hearings, to make recommendations on the whole problem of the toll system.

Finally, the joint resolution authorizes the President to negotiate an agreement with the State of New York for the transfer of the power facilities to an appropriate State agency, under a formula worked out by New York State and the United States Corps of Engineers. This formula provides that the State of New York will pay for the cost of the powerhouse and equipment plus one-quarter of works common to navigation and power at the International Rapids section charged to the United States. This arrangement with New York must be consistent with the laws of the United States and protect the interests of the United States and of other States. Moreover, the agreement will also be subject to the approval of the Congress of the United States and the Legislature of the State of New York.

INTERIOR DEPARTMENT APPROPRIATIONS, 1950—AMENDMENT

Mr. MURRAY submitted an amendment intended to be proposed by him to the bill (H. R. 3838) making appropriations for the Department of the Interior for the fiscal year ending June 30, 1950, and for other purposes, which was referred to the Committee on Appropriations and ordered to be printed.

SECOND DEFICIENCY APPROPRIATIONS, 1949—AMENDMENTS

Mr. THYE submitted amendments intended to be proposed by him to the bill (H. R. 4046) making appropriations to supply deficiencies in certain appropriations for the fiscal year ending June 30, 1949, and for other purposes, which were ordered to lie on the table and to be printed.

HOUSE BILL PLACED ON CALENDAR

The bill (H. R. 834) to amend the Contract Settlement Act of 1944 so as to authorize the payment of fair compensation to persons contracting to deliver certain strategic or critical minerals or metals in cases of failure to recover reasonable costs, and for other purposes, was read twice by its title, and ordered to be placed on the calendar.

REALISTIC LIBERALISM—ADDRESS BY SENATOR IVES

[Mr. IVES asked and obtained leave to have printed in the RECORD an address entitled "Realistic Liberalism," delivered by him at the commencement exercises of the New School for Social Research, New York City, May 31, 1949, which appears in the Appendix.]

ADDRESS BY SENATOR KILGORE AT COMMENCEMENT EXERCISES AT WEST VIRGINIA STATE COLLEGE

[Mr. NEELY asked and obtained leave to have printed in the RECORD excerpts from a commencement address delivered by Senator KILGORE at the West Virgina State College on May 29, 1949, which appear in the Appendix.]

THE LAWYER'S ROLE IN THE WESTERN HEMISPHERE—ADDRESS BY SENATOR CHAVEZ

[Mr. CHAVEZ asked and obtained leave to have printed in the RECORD an address entitled "The Lawyer's Role in the Western

Hemisphere," delivered by him before the Inter-American Bar Association at Detroit, Mich., on May 22, 1949, which appears in the Appendix.]

FUNCTIONS AND RESPONSIBILITIES OF THE MODERN LAWYER—ADDRESS BY WILLIAM T. GOSSETT BEFORE INTER-AMERICAN BAR ASSOCIATION

[Mr. CHAVEZ asked and obtained leave to have printed in the RECORD an address delivered by William T. Gossett, vice president and general counsel of the Ford Motor Co., at a luncheon in honor of the delegates to the sixth conference of the Inter-American Bar Association, at Dearborn, Mich., on May 24, 1949, which appears in the Appendix.]

STATEMENT BY HON. LINDSAY C. WARREN BEFORE SENATE APPROPRIATIONS COMMITTEE

[Mr. O'MAHONEY asked and obtained leave to have printed in the RECORD a statement made by the Honorable Lindsay C. Warren, Comptroller General of the United States, before the Independent Offices Subcommittee of the Senate Appropriations Committee on June 1, 1949, which appears in the Appendix.]

ADULT EDUCATION—LETTER AND ARTICLE BY HUGH J. BETTS

[Mr. KILGORE asked and obtained leave to have printed in the RECORD a letter and an article by Hugh J. Betts, principal of the Knoxville, Tenn., Evening High School, on the subject of adult education, which appear in the Appendix.]

I SPEAK FOR DEMOCRACY—ADDRESS BY RICHARD HOLLINGER

[Mr. MARTIN asked and obtained leave to have printed in the RECORD an address entitled "I Speak for Democracy," delivered by Richard Hollinger, of the graduating class of the Annville High School, Annville, Pa., at the high-school commencement exercises on May 25, 1949, which appears in the Appendix.]

DISMISSAL OF ROY JAMES—EDITORIAL FROM WASHINGTON DAILY NEWS

[Mr. MARTIN asked and obtained leave to have printed in the RECORD an editorial entitled "Something's Rotten," published in the Washington Daily News of May 24, 1949, which appears in the Appendix.]

BONUS FOR NORTH DAKOTA VETERANS—EDITORIAL FROM BISMARCK (N. DAK.) LEADER

[Mr. LANGER asked and obtained leave to have printed in the RECORD an editorial entitled "Good News for North Dakota Veterans," published in the Bismarck (N. Dak.) Leader of May 26, 1949, which appears in the Appendix.]

UNITED STATES LOYALTY PROBES—ARTICLE FROM CHRISTIAN SCIENCE MONITOR

[Mr. LANGER asked and obtained leave to have printed in the RECORD an article entitled "United States Loyalty Probes: Do They Violate Basic Rights?" published in the Christian Science Monitor of May 28, 1949, which appears in the Appendix.]

THE BRANNAN PLAN FOR FARM PRICE SUPPORT — EDITORIAL AND NEWS COMMENT

[Mr. KEFAUVER asked and obtained leave to have printed in the RECORD an editorial entitled "The Brannan Plan," published in the Memphis (Tenn.) Commercial Appeal of May 16, 1949, and a portion of an article entitled "Brannan Plan Has Its Merits But Its Price Supports Hold Grave Threat, Expert Claims," written by William H. Nicholls and published in the Memphis Commercial Appeal of May 14, 1949, which appear in the Appendix.]

FREEDOM MANIFESTO—ARTICLE FROM MEMPHIS (TENN.) PRESS-SCIMITAR

[Mr. KEFAUVER asked and obtained leave to have printed in the RECORD an article entitled "A 'Freedom Manifesto'," written by Edward J. Meeman and published in the Memphis Press-Scimitar of January 15, 1949, which appears in the Appendix.]

NEED FOR REDUCTION OF GOVERNMENT MACHINERY — LETTER FROM JACOB BILLIKOPF

[Mr. BYRD asked and obtained leave to have printed in the RECORD a letter from Jacob Billikopf to the editor of the Richmond (Va.) Times-Dispatch, published in that newspaper on May 9, 1949, which appears in the Appendix.]

LEAVE OF ABSENCE

Mr. CAIN asked and obtained consent to be absent from the sessions of the Senate from Thursday, June 2, until Friday, June 10.

COMMITTEE MEETINGS DURING SENATE SESSION

On request of Mr. BALDWIN, a subcommittee of the Armed Services Committee conducting the Malmedy investigation was granted permission to hold a hearing this afternoon.

On request of Mr. CONNALLY, the Committee on Foreign Relations was granted permission to meet during the session of the Senate this afternoon.

DR. MARTHA ELIOT

Mr. SALTONSTALL. Mr. President, it seems appropriate today to comment briefly on the public service of a Massachusetts citizen for 25 years an employee of the Federal Government. Dr. Martha Eliot has been in the Children's Bureau for all these years. During much of this time I have watched her work with children. It has always been sympathetic and helpful, with the best interest of the child always in her mind. How can government properly and efficiently assist our children, the next generation, to be more healthful and so more useful citizens to themselves and to their country—is the basis on which her work has been accomplished. She has done much to help those objectives become realities. Her reputation has become Nation-wide.

Now she is leaving the Children's Bureau to become Assistant Director General of the World Health Organization. She will carry with her a broad experience and a wise intellect with which to cope with her new problems. She will solve them wisely, I am sure, and be an administrator of whom we shall all be proud. We wish her continued success in her new undertaking.

DISMISSAL OF ROY E. JAMES—EDITORIAL FROM WASHINGTON EVENING STAR

Mr. WATKINS. Mr. President, I have before me an editorial entitled "The Commission Is on the Spot," published in the Washington Evening Star of Monday, May 23, 1949. It deals with the Roy James case, which has received such wide attention here in Washington. It should receive even wider attention.

Roy E. James, a Navy veteran, conducted a vigorous campaign for election to Congress. That is the way we like it in America, where we have a two-party system.

After the returns were in Mr. James telegraphed congratulations to his successful opponent and wished him success in his ninth consecutive term in Congress. That, too, is the way we like it in America, where we pride ourselves on our good sportsmanship.

To this day Roy James has received not even so much as an acknowledgment of receipt of his telegram. Instead he has been harassed and hounded. He has been smeared as disloyal to his country. He has been gunned out of his civil-service job. His career has been ruined.

What was it this man did to merit such persecution? He ran for public office in postwar America—as a Republican.

Mr. President, I ask unanimous consent to have printed in the body of the RECORD as a part of my remarks the editorial referred to.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

THE COMMISSION IS ON THE SPOT

There are circumstances surrounding the firing of Roy E. James, a career Government employee of unusual attainments, that have a very peculiar appearance. Indeed, the circumstances are so peculiar, as far as they have been divulged, as to call for a searching, nonpartisan investigation of the facts.

On the basis of the facts so far uncovered, with some difficulty, by the Star, the suspicion is justified that Mr. James has become the objective of some of the most brazen political-pressure tactics which Washington has seen in many a day. The political pressure was applied by Representative FRANCIS E. WALTER, Democrat, of Pennsylvania, against whom Mr. James waged an unsuccessful campaign for Congress last year, after resigning his Federal job. Mr. WALTER, who happens to be Democratic patronage chief for the House, is refreshingly frank about his part in the case. He admitted to the Star that (1) he did not like the idea of his Republican opponent's being appointed to an $8,500 specialist job in the Army Department after the election; (2) that he had raised a question as to Mr. James' loyalty (as a result of which, incidentally, Mr. James was cleared for the second time of any suspicion of disloyalty); (3) that he had written a letter to the Civil Service Commission questioning Mr. James' fitness for the CAF-14 position he held.

Representative WALTER told the Star quite candidly that his basic objection to Mr. James is that he is a Republican. It is a fair assumption, therefore, that the Democratic patronage guardian gave scant, if any, consideration to the fact that the Army is well satisfied with Mr. James' work, to the fact that he had held permanent civil-service status for 18 years, or to the fact that he had an outstanding record with the Navy in military government matters comparable in nature and responsibility to those he was handling for the Army.

The Civil Service Commission has been put on the spot by the disturbing revelations in the James case. If it was as firm in resisting political pressure in this strange affair as it is supposed to be, if its decision to disqualify Mr. James was arrived at in a purely routine manner, it will welcome a thorough public airing of all the aspects of the case—to clear its good name. And it will take a thoroughgoing objective inquiry to satisfy the public that everything was routine about the Civil Service Commission's order for Mr. James' summary dismissal.

THE HOOVER COMMISSION RECOMMENDATIONS

Mr. WILEY. Mr. President, in comments which I have previously made in the Senate I have indicated the very deep interest of the people of my State in enactment of the Hoover Commission recommendations. I have inserted in the RECORD resolutions from various organizations urging Government streamlining in line with the excellent suggestions made by the Hoover Commission. We see in the Commission's approach the long-awaited answer to the tremendous problems of overhauling our $42,000,000,000 Government with its present sprawling, chaotic, confused mess and mass of agencies, bureaus, divisions, and so forth.

In this connection I have written on open letter to our colleague, the able Senator from Arkansas [Mr. MCCLELLAN], who is chairman of the Senate Committee on Expenditures in the Executive Departments, and one of the conferees on the reorganization bill. I indicated to our brother Senator my feeling that if necessary this Congress should continue its session into August if that will be necessary to adopt the Hoover Commission reports.

I ask unanimous consent that the text of my open letter to our colleague be printed at this point in the body of the CONGRESSIONAL RECORD, and that following it there be printed several quotations from grass-roots organizations in my State endorsing the Hoover Commission suggestions. These quotations could be multiplied indefinitely, particularly if I were to quote from individuals speaking solely for themselves rather than in part for organized groups.

There being no objection, the letter and statements were ordered to be printed in the RECORD, as follows:

UNITED STATES SENATE,
COMMITTTEE ON THE JUDICIARY,
May 31, 1949.

Re: Implementing of Hoover Commission Reports; extension of Congress session beyond July 31.

Hon. JOHN L. MCCLELLAN,
Chairman, Senate Executive Expenditures Committee, Senate Office Building, Washington, D. C.

DEAR JOHN: I am writing to you concerning a matter of deep interest to us and to our colleagues in the Senate and House, namely, the final passage of the reorganization bill, S. 526 (H. R. 2361), for the purpose of giving the President ample legal authority for application of the Hoover Commission's recommendations.

I understand that at present there is a stalemate between the Senate and the House conferees as to a final version of the reorganization authority bill. Since Congress is expected to adjourn around July 31, and since any bill for reorganization of a Government agency could not take effect until after 60 days (during which period it might be vetoed by either or both Houses), it looks as though unfortunately this Congress might adjourn its first session without any major reorganization bill being enacted into law.

This would deeply disappoint the American people, because so far as I can determine, they are wholeheartedly behind the Hoover Commission and its approach to Government economy and efficiency.

I am writing this letter to present a suggestion that every effort be made by the conferees in order to work out a final satisfactory version of the reorganization-authority bill as soon as possible.

I feel that it would even be desirable for the Congress not to quit on July 31 but to extend its first session into August if necessary, in order to assure ample time during which government reorganization bills could be scrutinized and if found satisfactory allowed to become public law.

The July 31 deadline for Congress as set up in the Reorganization Act is certainly not sacred. While you and I recognize that it is desirable for the Members of Congress to get back to the grass roots in order to talk things over with the home folks, still it is just as necessary to apply government reorganization efforts.

A wave of regret will sweep the American people unless this first session of Congress fulfills its promises to help reorganize the Government. You and I recognize how essential it is that the momentum that we now have achieved through the Hoover Commission be maintained. If we were to allow the whole subject to lapse for the period from August 1 to January when presumably the second session would convene, the initiative and momentum would be lost. Moreover, Congress would be made a scapegoat for criticism as to its alleged lack of interest in government reorganization.

I present these thoughts to you merely as an indication of one Senator's view of the situation. I know how hard you have worked on this subject along with our other colleagues, and I shall be following developments closely as I am sure our brother Senators will, and as the American people will.

With every good wish, I am,

Sincerely yours,

ALEXANDER WILEY.

The secretary of the board of directors of the Women's Court and Civic Conference of Milwaukee County writes to me:

"The board of directors of the Women's Court and Civic Conference wishes to inform you that it approves the report of the Hoover Commission's study of governmental reorganization. We would appreciate your putting your support behind any movement which would bring this report before the proper legislative committee at once, so that action could be taken upon it as soon as possible."

An able member of a junior women's club in Wauwatosa, Wis., adds this excellent word:

"As a member of the current affairs department of the Junior Women's Club of Wauwatosa I have become increasingly aware of what is taking place in this field today. After reading recent articles in the Readers Digest, Colliers and Saturday Evening Post about the billions of dollars that are being needlessly spent every year due to inefficiency, overlapping of governmental departments, etc., I have decided to write to ask you to do your utmost to see that the Hoover Commission's findings are acted upon as soon as possible. You will probably receive many requests asking you to vote against this report, but in the interests of good government, I truly hope that you will cast your ballot for the econmies suggested."

An official of the Wisconsin Conference of the Methodist Church and part of the commission on World Service and Finance adds this word of endorsement:

"I have been very much interested in the report of the Hoover Commission for the reorganization of the Federal Government. Our Government has not had a thorough overhauling for many years and it certainly needs it. Therefore, we are banking on you to do all that you can in order to bring this to pass. I am confident that enough money can be saved in that way so that no extra taxes need be levied at the present time."

An official of Lawrence College, the alma mater of my wife and four children in Appleton, Wis., writes:

"I am writing to express the hope that you and your associates in the Senate may succeed in achieving a greater degree of economy in Government expenditures.

"Surely the conclusions and recommendations of the Hoover Commission relative to the reorganization of Federal agencies and to the more efficient operation of them, must be accepted by the Congress as warranted."

An able official of the Superior Association of Commerce presents another endorsement:

"It is very important to support the recommendation for retrenchment made in the Hoover Report to Congress. I think the thing to do about the Hoover Report is to adopt it in its entirety. If Congress starts to make changes, we shall never be able to recognize it when Congress gets through with it."

An official of the National Affairs Committee of the Beloit Association of Commerce writes:

"We would have you know that Beloit business strongly favors the adoption of the Hoover Commission report on reorganization of the executive branch of the Government.

"It appears to us that willful disregard of the recommendations made by the commission can only be accepted as disinclination to respect the wishes of American taxpaying constituents."

PRICING PRACTICES—MORATORIUM

The Senate resumed the consideration of the bill (S. 1008) to provide a 2-year moratorium with respect to the application of certain antitrust laws to individual, good-faith delivered-price systems, and freight-absorption practices.

Mr. LANGER. Mr. President, at the time I obtained unanimous consent yesterday to yield the floor to the distinguished Senator from Oregon [Mr. MORSE], I was discussing the matter of the new words and sentences which have been placed in Senate bill 1008, the bill which we are now considering. I made the assertion that in my opinion four different phases were placed in the bill deliberately to tie up the enforcement of the antitrust statutes.

I have previously shown that at the time when the Supreme Court of the United States held that the insurance companies had a monopoly in the southeastern part of the United States, the insurance companies promptly rushed to Congress for new legislation and got it. I further showed that when the distinguished Senator from Iowa [Mr. GILLETTE] protested against the monopoly on oil, and when it was proved in the courts in Washington that three big oil companies had combined to create a monopoly, later, a day or two before Christmas, 18 other oil companies were indicted, being served with a summons at 10 o'clock in the morning and at 2 o'clock pleading nolo contendere. When earnest efforts were made by the junior Senator from Iowa to have something done about it, the record shows that he failed, but the oil monopoly rushed to the Congress in order to get legislation to help it.

Later I alleged that when the Supreme Court of the United States decided the California Tidelands case in favor of the Government of the United States, again a bill promptly was introduced in this body looking toward the setting aside of that decision on the part of the Supreme Court.

Likewise, Mr. President, I showed that after the railroads had entered into an agreement that in exchange for receiving every odd section of land for a distance of 10 miles on either side of their right-of-way, they would transport freight for the United States Government free of charge, they later rushed to try to obtain from this body the enactment of legislation to protect them from that agreement or permit them to fail to live up to the agreement into which they had entered.

Mr. President, as I stated yesterday, in the pending bill there are four terms which are going to mean millions and even hundreds of millions of dollars to lawyers, before the courts all over the United States will arrive at definitions of those terms.

Let us consider just one of them, appearing in Senate bill 1008. As I have stated in my minority views, the bill includes the term "engaging in competition." Mr. President, what does that term mean? It has never been defined by the Supreme Court of the United States or, so far as I know, by any other Federal court. None of the four terms to which I have called attention have ever been tested in the courts. It is uncertain whether "engaging in competition" will be held to include (a) only the behavior characteristic of businessmen in a competitive industry, (b) also the tactics of enterprises that seek more business by discriminations that destroy their small competitors, or (c) also the limited rivalry for orders that exists under price formulas which produce identical delivered prices. That the latter constitutes "engaging in competition" has been the fundamental and persistent defense of many of the respondents in the Federal Trade Commission's price-fixing cases.

Mr. President, the proper definition of that term is uncertain, so there is the possibility that before the definition of "engaging in competition" is finally settled by the courts, the lawyers will have earned tremendous fees and will have engaged in very large amounts of litigation. Already the lawyers are arguing three different ways as to what that term means; and I have no doubt that the fertile brains of the lawyers will figure out some other avenues of argument to the courts in order to attempt to win their respective cases.

Or, Mr. President, let us consider the term "absorb freight," as used in this bill.

Mr. ROBERTSON. Mr. President, will the Senator yield?

Mr. LANGER. I yield.

Mr. ROBERTSON. Has the Senator from North Dakota had an opportunity to examine the amendment in the nature of a substitute which was offered yesterday by the Senator from Wyoming [Mr. O'MAHONEY]?

Mr. LANGER. Yes; I have examined it, and I find it very satisfactory.

Mr. ROBERTSON. I was hoping the Senator from North Dakota would discuss the substitute before he concludes his remarks.

Mr. LANGER. I shall do so toward the end of my remarks.

Mr. ROBERTSON. Mr. President, I wish to say that I share the sentiments of the Senator from North Dakota in regard to the danger of opening up the antitrust laws to potential monopolistic practices. Certainly we have the consumer to consider, as well as to try to work out a plan to make adjustments in connection with the recent decision of the Supreme Court on the basing-point principle. We do not wish to disrupt proper distribution methods, nor do we wish to open the door to improper monopolistic practices.

The Senator from Wyoming, who through the years has devoted much time and attention to that principle, told us yesterday, without taking time then to go into the details, that he felt satisfied that his amendment in the nature of a substitute would do what most of us would like to have done, namely, not unduly to disrupt established business practices, but not to do violence to the antitrust laws. So I hope the Senator form North Dakota will go into that point, because I am rather inclined to join with him in support of the O'Mahoney amendment; but I should like the Senate to be fully advised as to the difference between the two and as to what is involved in one and what is involved in the other.

Mr. LANGER. Let me call the attention of the distinguished junior Senator from Viriginia to page 5 of my minority views.

Mr. ROBERTSON. I have read the minority views.

Mr. LANGER. The distinguished Senator from Wyoming has taken the next to the last provision appearing on page 5, namely:

Provided, however, That nothing herein shall legalize any act or practice now unlawful because of bad faith, discrimination, coercion, oppression, or a tendency to injure, suppress, or eliminate, competition.

And as the distinguished Senator from Virginia knows, the Senator from Wyoming has made that a part of his substitute for the bill we are now considering.

Mr. ROBERTSON. That is correct.

Mr. LANGER. I might as well say now, instead of later, that in my opinion if the amendment in the nature of a substitute is adopted, everything the Senator from Virginia and I are worrying about in connection with this matter will be taken care of.

Mr. ROBERTSON. I thank the Senator very much.

Mr. LANGER. Mr. President, as the Senator from Virginia has pointed out, there has been no better friend of the poorer people of this country, when it comes to protecting them against the big monopolies, than the Senator from Wyoming [Mr. O'MAHONEY]; and I wish to compliment the distinguished Senator from Virginia for joining in this battle to protect the rights of the common ordinary man and the rights of small business against the large monopolies, and particularly against the large cartels. When one considers monopolies such as the one I referred to yesterday, by way of example—a large concern, operating in this country, which controls 516 large firms dealing in soap, oils, and margarines, in 40 countries, what chance has a veteran, for instance, who spent months in a fox hole, to come back to this country and set up a business in competition with a large cartel of that sort?

Mr. President, I repeat that I am delighted the junior Senator from Virginia takes the view which is shared by the Senator from Wyoming and myself.

Mr. ROBERTSON. I thank my colleague from North Dakota.

Mr. LANGER. Mr. President, let us refer now to the second of the four phrases used in Senate bill 1008 which have yet to be defined. The second one is the term "absorb freight." If today we ask any lawyers in the United States what the term "absorb freight" means, we find that the lawyers have several answers. It is uncertain whether "absorbing freight" will not be interpreted by one group of lawyers as reducing a delivered price by an amount not greater than the freight cost actually incurred upon the particular shipment. Another group of lawyers—also getting a large fee, of course—will argue, no doubt, that the term "absorb freight" means that the delivered price shall be reduced by an amount not greater than the applicable rail-freight charge, even when goods are shipped more cheaply by water or truck. Then, Mr. President, there would be another group of lawyers, being paid hundreds of thousands or perhaps millions of dollars in order to tie up all this proposed legislation to wipe out the enforcement of the antitrust statutes, who would argue that the term "absorb freight" means the reduction of a delivered price by an amount not greater than the freight cost from the seller's plant nearest the point of delivery, even if shipment is made from a more remote point. Then there would be a fourth group of lawyers who would argue that "absorb freight" means the reduction of a delivered price by an amount not greater than the freight cost from the seller's most remote plant, even if shipment is made from a nearer plant.

So, Mr. President, there will be four groups of lawyers arguing what the phrase "absorb freight" means, and there will be no definite determination of its meaning until the question goes to the Supreme Court of the United States. As I said yesterday, 15 years ago in the State of North Dakota we began enforcement of the antitrust statute against motion-picture producers who were operating their own theaters. It required 15 years in order to obtain a final decision from the Supreme Court. I have in my hand a report of the Supreme Court decision in that case, which I ask unanimous consent to have printed in the RECORD as a part of my remarks.

There being no objection, the report of the decision was ordered to be printed in the RECORD, as follows:

RE UNITED STATES *v.* PARAMOUNT PICTURES, INC., ET AL.

On Monday, May 3, the Supreme Court sustained the findings of a three-judge district court, in *United States* v. *Paramount Pictures, Inc., et al.,* that the eight major film distributors have engaged in a Nation-

wide conspiracy to violate the antitrust law. Upon the Government's appeal from the failure of the court below to order divestiture of the theaters owned by five of the major distributors, the Supreme Court vacated the findings of the court below to the effect that these defendants had no exhibition monopolies and ordered the court to reexamine its conclusions in this respect. The Supreme Court flatly rejected the district court's conclusion that a system of competitive bidding would give adequate relief against the violations found and ordered this provision of the judgment vacated. It directed the district court to grant theater divestiture of the kind sought by the Government, but the extent of the divestiture is left to the lower court for determination in accordance with a further inquiry into the monopolistic aspects of the defendants' theater holdings.

The decision of the Supreme Court also affirmed the district court's injunctions against block booking, price fixing, and unreasonable clearance. The holding that all clearance agreements made by the major distributors are presumptively invalid is affirmed and this particular practice may no longer be used in the future as it has in the past to protect theaters affiliated with the distributors and large theater circuits from the competition of independents.

The trial court's determination that the pooling of theaters is illegal, regardless of the form in which the pooling occurs, whether by agreement, ownership of stock in theater corporations, or otherwise, was also affirmed. The trial court was directed to dissolve these pools by a sale of theater interests acquired from independents, except where such an acquisition was an investment unrelated to the defendants' illegal practices. This ruling alone should go far toward breaking up the largest affiliated theater circuits, which were put together and maintained in large part by pooling arrangements with independents.

In short, while Monday's decision could not itself be the ultimate victory for which the Government has striven, since the Supreme Court did not itself undertake to write or specify the details of the final decree, it represents assurance that the final decree, when written, will conform to the basic principles advocated by the Government in this litigation.

Mr. LANGER. In other words, for 15 long years the producers of motion pictures, by owning the theaters, by freezing out independent operators, charged the little children and the common people of my State much more in order to see a motion picture than they would have charged had there been free and open competition. They frankly came into a town, went to an independent producer, and said to him, "We have here 52 films. You will either take them all or you will take none." If the independent refused, the motion-picture producer would build his own theater. He would first make an offer to the independent, saying to him, "If you do not sell us your theater at our price, we will build a theater of our own to operate in competition with you. That theater will get all the good pictures. You will get only 'seconds,' with the result that you will be forced out of business."

Coming now to the third new, undefined phrase in the pending bill "in any and all markets," I ask any Member of the Senate who is a lawyer what the word "market" means, and how he would define it. It has never been defined by the Supreme Court. It is uncertain whether the term "market" will be interpreted as a local area subject to a single freight rate, so that within any one such area a single seller would obtain no immunity for variations in his delivered prices or whether smaller areas might be regarded as markets so that, by different degrees of freight absorption, a seller might establish more than one delivered price even within an area covered by a single freight rate.

Another group of lawyers will be found arguing the interpretation of "delivered prices." It is uncertain whether "delivered prices" will be interpreted to mean only prices in transactions in which, under the general law of sales, ownership passes to the buyer at the delivery point, or whether they will be interpreted to include prices like those of the cement industry, in which the seller quoted a price at the buyer's place of business but passed legal title to the buyer at the seller's mill.

If the pending bill becomes law, it will be seen that the big monopolies will begin at least four different law suits involving the interpretation of "engaging in competition." They will begin at least four law suits in order to get a definition of "absorb freight." They will institute at least two law suits to decide the meaning of "in any and all markets." There will be at least two other law suits to decide the meaning of the words "delivered prices." In other words, if the pending bill is passed, it will open up endless litigation and will mean simply that the antitrust statutes are not going to be enforced for a good many years to come.

Mr. President, the Senator from North Dakota says that in view of these uncertainties the meaning of the bill depends almost wholly upon judicial interpretation of the broad and inherently ambiguous term "good faith."

The ambiguity of these phrases is reinforced by lack of clarity in the use of them. It is uncertain whether the phrase "for the purpose of engaging in competition in good faith in any and all markets" is intended to be applicable only to freight absorption or also to quotation and sale at delivered prices.

It is submitted that a proposed bill which inserts into an established body of law new words and phrases which are undefined and may be subject to widely varying interpretations not only represents poor draftsmanship but, of more importance, will necessarily muddle the law instead of clarifying it, and should not become the law of the land.

S. 1008 will, in practical reality, permit monopolistic practices to develop which the supporters of the legislation undoubtedly do not intend should be permitted. Congress must consider not only a bill's theoretical effects but also its practical results.

I notice that yesterday, just before the Senate recessed, the distinguished Senator from Pennsylvania [Mr. MYERS] had this to say:

I am delighted that the Senator from Wyoming has not only introduced his bill, but has indicated that confusion exists and that there is need for the Congress to take action. I am only sorry the Senator from Wyoming was not present earlier in the afternoon, when those of us who have advocated that something be done were told that we were the pawns of the propagandists, the steel companies, and the great monopolists.

Mr. President, who is to blame if the distinguished senior Senator from Pennsylvania puts four phrases into the bill we are considering, that have never been defined by the Supreme Court of the United States and, so far as I know, not even by any other Federal court anywhere in the United States? Certainly it must be possible to do what the Senator from Wyoming has done, namely, draft a bill which is going to accomplish the purpose the Senator from Wyoming says is intended by those who introduced the pending bill in the Senate.

In practice, business enterprises will be free to disregard the limitations which the supporters of the bill intend to retain. This is so because the bill's ambiguous language will need to be interpreted by the Supreme Court and proceedings for this purpose cannot be decided until several years after the moratorium expires.

Mr. President, when the moratorium proposed by the bill expires the distinguished Senators who are advocating the pending bill will be here advocating an extension. They will say, if this bill is passed, "The law is in litigation, and we want to wait until we can get a decision by the Supreme Court of the United States."

Aware of this obvious fact, business enterprises will be able to interpret the bill as they choose and thus to justify a variety of monopolistic practices that are now illegal. When the Supreme Court decides against them the moratorium will have expired, and the Court's affirmation of a cease and desist order will provide no punishment or relief.

It is submitted that a bill which throws the gate open to monopolistic practices not contemplated by its supporters should not become the law of the land.

Senate bill 1008 sets the clock back many years in the enforcement of the antitrust laws against discrimination by replacing the test of effect with the test of purpose or intent. The antitrust laws can be effectively enforced when they forbid activities which have monopolistic effects. Effects can be observed and proved. But when the legality or illegality of a practice depends not on its effect but on its purpose, the law cannot be effectively enforced unless the enforcement agencies become mind readers. To avoid the obstacles which such a legal standard created was one of the principal reasons for the enactment of the Robinson-Patman Act. It would be tragic if this test of intent, which for many years constituted the principal means by which monopolistic firms were able to evade the purpose of the antitrust laws and which was specifically taken out of those laws by congressional enactment, should now be placed back into the law as the test of violation.

To be specific, price discriminations which injure competition are now forbidden by the Clayton Act unless the price differences can be justified by differences in cost. But under Senate bill

1008 a price discrimination through absorbing freight would be lawful no matter how seriously it might injure competition, provided its purpose was to engage in competition in good faith.

Mr. President, I repeat that. Under the measure which we are considering, a price discrimination through absorbing freight would be lawful no matter how seriously it might injure competition, provided its purpose was to engage in competition in good faith.

Thus, no violation of law could be proved unless the Government could prove that the hearts of the discriminators are not pure. Even the orders of the Federal Trade Commission terminating violations of law by the conduit producers and by the United States Steel Corp. would be suspended insofar as they limit the right of these concerns to absorb freight, unless the Government could show that those who disregarded these orders acted with a bad purpose.

It is submitted that a bill which reintroduces the mystical and psychic concept of intent as the test of violation would put antitrust enforcement back into the Dark Ages and therefore should not become the law of the land.

Senate bill 1008 will legalize, through the use which can be made of freight absorption, certain monopolistic acts and practices which have been specifically held to be illegal by the courts.

The basing-point system: Since each firm in an industry will be able to absorb freight from its own mill, all mills will be able to quote identical delivered prices at any delivery point by suitably varying the amounts of their respective freight absorptions.

Mr. President, every Senator who has been Governor of his State knows that when a State advertises for adding machines, for example, or for tires, at least eight different companies bid. Their bids are identical to the very last penny. When I was Governor of my State, the tire companies would bid $10.08 each for tires. In other words, collusion was shown. Under the bill which we are now considering, collusion, instead of being outlawed, is, as a matter of fact, sought to be made lawful, unless the Government can show a bad motive in the hearts of those who are a part of the monopoly, or, in the case which I have cited, those who do the bidding.

I repeat, Mr. President, that since each firm in an industry will be able to absorb freight from its own mill, all mills will be able to quote identical delivered prices at any delivery point by suitably varying the amounts of their respective freight absorptions.

That is a perfect set-up for the monopolies of the United States of America. If the big monopolies had drawn this bill in order to rob the people of the United States, they could not have done a better job. When the bill came before the committee, Mr. President, I protested. I submitted minority views, because if this bill becomes the law of the land there will be a bad situation. The bill should be defeated, and the substitute bill introduced by the Senator from Wyoming, in my opinion, should be passed.

The amount of any mill's freight absorption to any destination will become whatever is required to equal the sum of the mill price at the governing mill plus the freight from that governing mill to the destination. What more than that could a monopoly want?

The result will be a complete basing-point system, with every mill a base and all delivered prices identical, by formula, at every delivery point in America. The participating mills can then defy the antitrust agencies to prove that this result is due to conspiracy, since the means by which it is achieved have been specifically sanctioned by law.

Mr. President, I come to another phase of the bill, known as "phantom freight." Neither the bill nor the present law imposes any limit upon the height of a seller's factory price, nor is it practicable or desirable to impose any such limit. Under the basing-point system, phantom freight was charged when a mill distant from a base included freight from the basing point in the delivered price to a nearby customer.

Under the bill the name of the practice must be changed, but the practice will continue. Now the mill may quote a factory price, as high as the former delivered price at the factory door; and when it sells to a nearby customer at the same delivered price as before, it will say it is absorbing freight instead of charging phantom freight. Phantom freight meant price discrimination between customers and a handicap to industrial development in the areas where prices were high.

Mr. President, I see the distinguished senior Senator from New Hampshire present, and I know he has been in this fight for a long time.

Mr. TOBEY. Mr. President——

The PRESIDING OFFICER (Mr. GILLETTE in the chair). Does the Senator from North Dakota yield to the Senator from New Hampshire?

Mr. LANGER. I yield.

Mr. TOBEY. I regret that I cannot let the Senator qualify me as the senior Senator from New Hampshire. I am the junior Senator from New Hampshire, for whatever distinction that may mean.

Mr. LANGER. The senior Senator from New Hampshire [Mr. BRIDGES] is right behind the Senator. I am glad both the Senators are present, because both of them, as the distinguished Presiding Officer knows, are ornaments to the United States Senate, whether we disagree or agree with their points of view.

Mr. TOBEY. I wish the Senator would use some other appellation than "ornament." I have been charged with a good many things, but never with being an ornament, either in face or form. I will ask the Senator to use some other description.

Mr. LANGER. In view of the recent marriage of my distinguished friend, I am satisfied some will agree that he is an ornament.

Mr. TOBEY. I thank the Senator, but his compliment should be applied to the other member of the family.

Let me ask the Senator whether in his judgment, if this bill were enacted in its present form, it would hurt the interests of small business people in America.

Mr. LANGER. I think it would.

Mr. TOBEY. I concur.

Mr. LANGER. I thank the Senator. I felt that the distinguished junior Senator from New Hampshire would concur, judging from the very fine record he has made in the Senate and in the House of Representatives. I am certain that when the pending bill is thoroughly understood by Senators, in spite of the fact that it was reported by a vote of 7 to 2, they cannot in all honesty help feeling that the substitute offered by the distinguished Senator from Wyoming [Mr. O'MAHONEY] is the bill which should be passed in place of the pending measure.

Now, Mr. President, I come back to phantom freight. Phantom freight meant price discrimination between customers, and a handicap to industrial development in the areas where prices were high. Consequently, by nearly all the courts in the land the practice has been condemned. Now there is an effort to bring it back, by the pending bill. It has been condemned in Congress, in the courts, and elsewhere.

I repeat, changing the name of the practice will not change its result. Phantom freight by any other name would smell the same. Ask any small-business man who has been put out of business by it, and he will tell how rotten it smells, how it has wrecked innumerable small businesses, from one end of the country to the other.

The Senator from North Dakota submits that a bill which legalizes monopolistic acts and practices, particularly such practices as the basing-point system and phantom freight, which have specifically been held to be illegal by the courts, should not become the law of the land by an act of Congress now. The proponents of the bill are now trying to get something through the Senate which they could not get in court. They could not get it after years and years of fighting in the courts, trying to get something which has been universally condemned.

Mr. President, the pending bill constitutes an unwarranted encroachment on the normal functions of the judiciary. Notwithstanding the memorandum on the constitutionality of the bill which forms appendix A to the committee's report, the bill does impose an arbitrary rule of determination upon the courts. It tells the courts how the statutes in question are to be construed and also tells them that they would not be construed as the courts have construed them in the recent past.

In other words, Mr. President, the Supreme Court of the United States decides a case in behalf of the little fellow, and the proponents of the bill come along and say, "We are going to pass it," and the Court says, "In the statute it is said we must no longer decide these antitrust suits in favor of the small man, that we must construe them in favor of the big monopolies." That is what the bill means. It tells the courts how the statutes in question are to be construed, and also tells them that they should not be construed as the courts have construed them in the recent past.

The Supreme Court of the United States, in the case of United States against Klein, quoted in the committee's report, held that "the Court is forbidden to give the effect to evidence which in its own judgment such evidence should have and is directed to give it an effect precisely contrary."

For 35 years the construction and application of the statutes forbidding unfair methods of competition and price discrimination which promote monopoly or injure competition have been undergoing a gradual process of judicial inclusion and exclusion. That process has been continuing since amendment of the Clayton Act by the Robinson-Patman Act in 1936 and since amendment of the Federal Trade Commission Act by the Wheeler-Lea amendment of 1938.

The theory of the Federal Trade Commission Act from its beginning in 1914 has been to prevent restraints of trade in their incipiency.

The time to get them is when they are being organized. As I said yesterday, a GI comes home, he has a wife and two or three children, who are hungry, and he goes out and steals a few loaves of bread. For that he is put in jail. But three or four big companies get together, form a trust, raise the price of milk and the price of bread, and instead of being sent to jail their officers are appointed to high offices, in charge of some large departments in the United States Government.

The citation I gave yesterday of one outfit illustrates that statement. Charles Luckman, who is connected with a cartel which owns 516 firms in 40 countries, a few months ago was appointed by the President of the United States to head one of the departments of our Government.

As I said yesterday, only a few months ago we were considering an oleomargarine bill. The people wanted oleomargarine because they said it was cheaper than butter. What happened? The same monopoly of which Mr. Luckman is a part, three big concerns got together and in a matter of a few days raised the price of oleomargarine 28 cents a pound. It was 23 cents and they added 28 cents, making it 51 cents, almost the price of butter. And they got away with it. They are doing business in 40 countries. They own 516 firms or concerns in those countries.

This situation is similar to that existing in the dairy industry, which I described some time ago. One dairy monopoly controls more than 300 branches in the United States alone. It increases the price of cream, milk, and butter. What difference does it make to such a monopoly whether little children and women are or are not able to secure cream or butter or milk? That monopoly is out to make profits. With those who control it it is a question of how much the traffic will bear. They raise the price to the very last penny they can get for a quart of milk. Yet those same persons piously say they do not want communism in the United States. The surest way, the quickest way of bringing communism about is to pass such a bill as is before the Senate today. If such a law is passed the citizen may lose all faith in us, the men elected to Congress from all over the country. Yet as I previously said, the Committee on the Judiciary has reported a measure of this kind by a vote of 7 to 2.

Mr. President, the antitrust statute was passed back in 1891, 58 years ago; yet not a single person has ever been put in jail for violating that statute. Men are put in jail now simply for what they think. But in 58 years not one man has been put in jail for violating the antitrust law. I placed the fact in the RECORD yesterday that one concern owns 516 firms in 40 countries.

A little while ago the Government finally won the Cement case. Yet those affected by that decision are trying to get away from that decision.

The theory of the Federal Trade Commission Act from its beginning in 1914 has been to prevent restraints of trade in their incipiency.

The Supreme Court expounded the theory of incipient restraint in the Cement Institute case decided a year ago. It said that a major purpose of the Federal Trade Commission Act—

> as we have frequently said, was to enable the Commission to restrain practices as unfair which, although not yet having grown into Sherman Act dimensions would most likely do so if left unrestrained. The Commission and the courts were to determine what conduct, even though it might then be short of a Sherman Act violation, was an "unfair method of competition." This general language was deliberately left to the "Commission and the courts" for definition because it was thought that "There is no limit to human inventiveness in this field"; that consequently, a definition that fitted practices known to lead toward an unlawful restraint of trade today would not fit tomorrow's new inventions in the field; and that for Congress to try to keep its precise definitions abreast of this course of conduct would be an "endless task." (See *Federal Trade Commission* v. *R. F. Keppel & Bro.* (291 U. S. 304, 310–312), and congressional committee reports there quoted (333 U. S. 683, 708–709).)

It is submitted that a bill which represents an invasion into the proper sphere of the judiciary and thus tends to weaken the traditional separation of the powers provided for by the Constitution should not become the law of the land.

Mr. President, in my judgment the bill, Senate bill 1008, should not be passed for a variety of reasons. It should not be passed because (1) it represents poor and slipshod draftsmanship—the bill is very poorly drawn—introducing new and undefined phrases into the antitrust laws; (2) it will have the practical effect of immunizing numerous monopolistic acts and practices which the supporters of the bill undoubtedly do not believe should be permitted; (3) it will make the antitrust laws against discrimination almost impossible of effective enforcement by substituting intent and purpose for effect of the test of violations; (4) it will legalize, through the use that can be made of freight absorption, certain monopolistic acts and practices, namely, the basing-point system and phantom freight, which have been specifically held to be illegal by the courts; and (5) it represents an unwarranted intrusion by the legislative branch of Government into the proper sphere of the judiciary.

The fundamental effect of Senate bill 1008 is to make it impossible for the antitrust laws to keep abreast of the changing forms and disguises of monopoly. As the Yale Law Review stated in its issue of February 1949:

> The cases culminating in the New Cement decision have caught up with delivered-price systems and recognized them for what they are. The courts have thus informed business once more that the antitrust laws are concerned with illegal results, and not with the techniques employed to achieve them. The cases may make businessmen uncomfortable, but the peace of mind of monopoly is not yet a recognized reward for economic endeavors.

What could be plainer than that language, Mr. President?

Finally, it must be remembered at all times that the world today is undergoing a battle of ideas between Communist collectivism on the one hand and individual free enterprise on the other. It is a known fact that the Communist propagandists regard the existence of monopolies in this country as the Achilles heel in our defense of free enterprise. Any action which we take which surrenders the power of the people to the power of monopoly will immediately be seized upon by the Communist propagandists and spread throughout the world as proof of the fact that America is not a land of individual free enterprise but is actually under the control of monopolistic big business.

Why should it not? Take the case of a young man coming home from the Army. If one had a son, what kind of business would he be able to enter, in which he would be his own boss? If he went into a town of any size, the drug stores would be under a monopoly. The clothing stores are under a monopoly. The banks are under a monopoly. In one State there are 14 banks, 12 of them owned by one organization. What chance has a veteran going into the banking business in competition with that kind of situation?

Some time ago I introduced Senate bill 1709, which would remedy that situation. So far I have been unable to get it out of the committee. It is a bill to clarify and formulate a consistent and coordinated national policy with respect to the manufacture and distribution of goods; to strengthen small business in its economic struggle for survival; to promote competition by prohibiting a manufacturer from engaging in the retail field and by prohibiting a retailer from engaging in manufacturing; and for other purposes.

Why should a manufacturer be permitted to do as manufacturers do throughout the western part of the country? Senators from that section of the country are familiar with the situation. A manufacturer sets up a retail store for the sale of his own goods. The veteran or small businessman is not given a chance to go into business for himself and sell those goods. The retail business is entirely owned by the manufacturer. He puts the men in the store on salary. The distinguished occupant of the Chair [Mr. GILLETTE] is familiar with the situation in the State of Iowa, and all over the Middle West. The oil companies set up oil stations which they own, and lease them. That means that the owner

can put out at will the young man who takes over an oil station.

It seems to me that if we are to have free enterprise, free enterprise should be defined, so that any young man would know that he could go into business for himself without having to go up against a monopoly.

He ought to be able to go into a business in which, by hard work, he could build up a business of his own, and not be deprived of the fruits of his labor by some monopoly which absorbs freight, or does any of the other things which the pending bill, if passed, would permit. I was amazed when the bill was reported by the Judiciary Committee. I can only assume that it was reported before it was thoroughly understood by the members of that committee, because, on the whole, it is a good committee.

Coming back to the bill which I introduced some time ago, I invite attention to the fact that almost every single word in it is defined. It does away with any chance of litigation. In that respect it is entirely different from Senate bill 1008.

For example, let me read subparagraph (b) of section 3, on page 3:

(b) The term "independent dealer," as used herein, means a person who is, or may become, engaged in the selling, servicing, or repairing of any goods; except that the term "independent dealer" does not include any person engaged in manufacturing any article, and does not include any corporation a majority of the voting stock of which is directly or indirectly owned or controlled by another corporation which is not an independent dealer; and such term does not include any person who is required to sell any brand of article exclusively, or is prohibited from selling any brand of article, as a condition upon being able to buy or sell any other product or as a condition upon the lease or use of any property; and such term shall not include any person who directly or indirectly owns or controls 10 percent or more of the voting stock of any other corporation which is engaged in manufacturing a similar article.

That is a definition which, in my opinion, ought to be adopted. That is what an independent dealer is. How many are there in the United States today? What chance has a veteran to be an independent dealer, as that term is defined?

When I introduced Senate bill 1709 it was referred to the Committee on Interstate and Foreign Commerce. My bill makes clear that it is designed to clarify and formulate a consistent and coordinated national policy with respect to the manufacture and distribution of goods; to strengthen small business in its economic struggle for survival; to promote competition by prohibiting a manufacturer from engaging in the retail field and by prohibiting a retailer from engaging in manufacturing. It is designed to promote individual initiative in the American system of distribution. It is the kind of bill which I believe would give the veterans the kind of Government they thought they were fighting for in the last war, the kind of Government to which they thought they were returning from the fox holes.

In Philadelphia 98 veterans who had returned home wanted to drive taxicabs. There were nearly 3,000,000 people in the city and surrounding territory, and only 1,500 cabs. When they started in the taxicab business the taxicab monopoly got an injunction against them, and they could not obtain licenses. They came to Washington to protest. They appeared before a subcommittee of which I was chairman. Do Senators suppose that they could get licenses? No. The Yellow Cab Co. had Philadelphia tied up. Even though a veteran had lost a limb in the war, he could not get a license to drive a taxicab. When those boys offered to drive for nothing and live on the tips, the taxicab monopoly got an injunction against them. The monopolists did not care whether the wives and children of those veterans starved to death or not. The huge monopoly in Philadelphia took charge of the taxicab business. When our committee tried to take action, we were told, "You cannot do anything. It is a matter for the State of Pennsylvania." All we could do was to stop them from driving those cabs over to Camden, N. J. They quit driving across the State line. That is all the help we could give those 98 veterans.

When I introduced Senate bill 1709 I pointed out that the term "goods" applies to many items, as well as to foods. I wish specifically to call attention to a recent decision of the Court of Appeals for the Seventh Circuit, in the case of United States against the New York Great Atlantic & Pacific Tea Co. and others. The opinion was written by Mr. Justice Sherman Minton, who was formerly a distinguished Member of this body from the State of Indiana. The defendants had been indicted, charged with conspiracy to monopolize and restrain trade in food and food products by controlling the terms and conditions upon which the defendants and their competitors might do business, and by oppressing the competitors of the defendants through the abuse of the defendants' mass buying and selling power.

There you have it, Mr. President. If a veteran starts a drug store and is in competition with a great, powerful monopoly which has a thousand drug stores, what chance does the veteran have? Or if a veteran goes into the automobile sales business and is in competition with one concern with which the Senator is well acquainted, a concern which has 2,200 automobile sales agencies or outlets or stores, what chance does such a veteran have in competition with that large monopoly which can buy automobiles or other merchandise at perhaps half the price at which the veteran can buy them? Yet, Mr. President, that system is called "the great American system of free enterprise." As a matter of fact, all that system does is to give the monopolists the power to loot the taxpayers and citizens of the United States, the power to keep the individual from engaging in that particular business, unless he will work on salary for that monopoly.

I say that the founding fathers did not intend to establish that kind of government in the United States of America. I think one of the most misused terms in the United States today is the term "free enterprise." The only thing that is free about it is that the monopolists are free to gouge and rob the people all over the country.

Mr. President, in the lawsuit decided by Judge Minton, the Government made it clear that it was not a prosecution because of the size of the Atlantic & Pacific Tea Co., or because of its integration, but that the Government was making an attack upon the abuse of the power of the defendants. There are 14 corporations in the Atlantic & Pacific system. Twelve of those corporations were named defendants in that action. Of them, three were acquitted. The Atlantic & Pacific system is engaged in the food industry as a buyer, manufacturer, processor, and broker, and in addition carries on the business of food retailer through some 5,800 retail stores in 40 States, and the District of Columbia. The top holding company is the defendant Atlantic & Pacific Co., a New York corporation. This top holding company owns and controls everything in the system, and, in turn, is owned by the George H. Hartford trust, of which John A. Hartford and George L. Hartford are the trustees, holding about 90 percent of the Atlantic & Pacific stock.

Judge Minton pointed out that the ultimate control of buying is centralized in the headquarters of the Atlantic & Pacific, the top holding company, which fixes buying policies, fixes purchase prices, fixes advertising programs, and fixes label and bag allowances. The buying policy of the Atlantic & Pacific was to fix a two-price level, in which the company used its power to obtain a lower price on its needed merchandise than was permitted to its competitors.

Mr. President, what chance would a veteran have to compete against that kind of a set-up, when the company used its power to obtain a lower price on its needed merchandise than was permitted to a veteran competitor? In other words, the price for the Atlantic & Pacific was lower, but the price for the veteran or other competitor was higher. The Atlantic & Pacific used its large buying power to coerce suppliers to grant it a lower price than that granted to competitors, on the threat that it would put such suppliers on a private blacklist if they did not conform, or that the Atlantic & Pacific would itself go into the manufacturing business in competition with the recalcitrant suppliers.

Mr. President, what do you suppose the supplier did in that case? He did not want the A & P to go into competition with him, so of course he gave the goods to the Atlantic & Pacific at a lower price than that at which the independent merchant could possibly hope to get the goods.

The Seventh Circuit Court of Appeals, through Judge Minton, outlined some of the methods used by the A & P to get a lower price than the price its competitors could obtain.

As early as about 1925, and, Mr. President, where had our Attorneys General, either Republican or Democratic, been until Tom Clark came along and tried to put some of those robbers and gougers into jail? As early as about 1925, the Atlantic & Pacific, Judge Minton said, sent its buyers into the field to buy merchandise. Their primary object was to

get the merchandise as cheaply as possible for themselves. For that purpose the supplier was compelled, if he obtained the business, to pay Atlantic & Pacific a seller's brokerage of from 1 to 5 percent.

A brokerage, Mr. President. Where did the brokerage fees go? The A & P was in competition with independent merchants, yet the A & P got brokerage fees of from 1 to 5 percent, away back in 1925.

Judge Minton disclosed where that brokerage went. He said that those so-called brokerage fees went to Atlantic & Pacific, and were tantamount to a further reduction in price. Except on brokerage received from meat packers, which was outlawed in 1934, that system continued until 1936, when it was made illegal by the Robinson-Patman Act.

So, Mr. President, for 11 years the A & P violated the Sherman antitrust law. Was anyone ever arrested for that? Not one person was arrested for that violation. It was not until the Robinson-Patman Act specifically outlawed such methods and practices—just as they had been outlawed by the Sherman antitrust law—that that practice was stopped. It never was stopped by an enforcement of the Sherman antitrust law or of the Clayton Act, or even by action of the Federal Trade Commission.

Oh, Mr. President, big business has seen to it that even the Federal Trade Commission, after spending hundreds of thousands of dollars in a case, cannot put anyone in jail. When the Federal Trade Commission gets through spending all that money, it can report its findings to the Attorney General; but by that time the acts which have been committed have long since been outlawed; and then all the Federal Trade Commission can do is issue a "cease and desist" order, which means "please, please, please, Mr. Monopolist, do not do it anymore." Then if the monopolist violates the law again and takes millions of dollars out of the pockets of the poor people in that way, he can be fined $5,000.

Mr. President, it is so ridiculous as to be unbelievable that in a great country like the United States of America we could have that kind of law enforcement.

Of course the big companies have tried to make Attorney General Tom Clark a great deal of trouble. Two years ago, as soon as he announced that he would put people in jail for such practices, and started to make arrests, the Attorney General became a marked man, and he is a marked man today, because he has been making an honest, conscientious effort, for the first time, to use the criminal statutes of the United States to put some of these scoundrels in jail. Of course, he cannot put them in the penitentiary, under the existing law. The most that can be given a man for robbing the common people of millions of dollars is 12 months in jail. In contrast to that, Mr. President, consider the case of the North Dakota farmer who sold a calf on which the Government held a mortgage, and who was given 3 years in the penitentiary. We hear a great deal about the movement to head off communism. The Congress appropriates billions upon billions of dollars to almost every other country on the face of the globe. At the same time there is a failure to see that the Federal Trade Commission and the Attorney General's office enforce the law, and that they get sufficient money with which they can really enforce it.

A search of the newspaper files will disclose that Frank B. Kellogg, the trust buster, did not put in jail one single officer of a firm found guilty of violating the antitrust law. There was beautiful propaganda in the newspapers, but that was all there was to it. As a reward for his trust busting, Mr. Kellogg was made Ambassador to the Court of St. James's. If it were not so pathetic, Mr. President, and if it did not mean so much to the rank and file of the people of the country, we could indeed laugh at the very ridiculousness of calling such a man as the late Frank B. Kellogg a trust buster.

After 1936, when the Robinson-Patman Act was passed, the Atlantic & Pacific Tea Co. had to alter its method of operation. After that year the buyers did not get credit for brokerage. How did they get around it? They hired some more good lawyers. They said, "How can we skin the American people still more?" They had been skinning them between 1925 and 1936, 11 years. The Robinson-Patman Act was passed. That did not bother the Atlantic & Pacific Tea Co. a bit. They hired other lawyers, just as the big companies will hire many lawyers, if the Senate is foolish enough to pass the pending bill. As I have pointed out, there are 12 different points at which an attack may be made in court upon the pending bill, merely in the matter of the definition of terms. That means they will be in court for the next 10, 12, or 15 years. What did the lawyers do immediately following the passage of the Robinson-Patman Act? They said to their client, "You have got to stop taking brokerage commissions." What were the commissions? They amounted to 5 percent. After 1936, instead of getting credit for brokerage, the buyers of the A & P Co. were educated through their lawyers to induce suppliers to reduce their price further to the Atlantic & Pacific, by an amount equal to what the brokerage fee had previously been. The allowance thus became a mark-down on the price shown on the invoice, and this was called net buying. That is what the lawyers did in 1936.

A few years went by, and the Government stepped in again. The Federal Trade Commission issued a cease-and-desist order outlawing the practice, and the Third Circuit Court of Appeals, after long litigation, upheld the Federal Trade Commission.

After that, the Atlantic & Pacific Tea Co. once again had to consult its lawyers. They developed a new technique. They thereupon adopted a policy of direct buying. Thereafter, the Atlantic & Pacific Tea Co. would buy from no one who sold through a broker. Not only did it not buy from suppliers or brokers who offered to sell to it through brokers, but it would not buy from a supplier who sold to anyone else through brokers. This policy also affected competitors in the trade generally who were unable to buy directly. Suppliers were told in effect that if they did not sell directly to all customers, the Atlantic & Pacific would withdraw its patronage. Thus the A & P continued as usual to get its lower price, which was supposed to be justified by cost savings, and also because the Atlantic & Pacific bought in large quantities.

Whatever the alleged justification, the Atlantic & Pacific always wound up with a price advantage, and the supplier had to make his profit out of his other customers, at higher prices. The suppliers who sold to the A & P and to other people had to make the most of their money out of the other people, in charging them higher prices than they charged the Atlantic & Pacific. According to Judge Minton, they charged higher prices, which were passed on to A & P competitors. I quote directly from Judge Minton's opinion, and I call attention again to the fact that nobody went to jail. The North Dakota farmer who sold a mortgaged calf got 3 years in the penitentiary. The big fellows get nothing but rewards, by being placed at the head of Government departments. Quoting now from the court's opinion, I read:

> One cannot escape the conclusion on the very substantial evidence here, as one follows the devious manipulations of A & P to get price advantages, that it succeeded in obtaining preferential discounts not by force of its large purchasing power and the buying advantage which goes therewith, but through its abuse of that power by the threats to boycott suppliers and place them on its individual blacklist, and by threats to go into the manufacturing and processing business itself, since it already possessed a considerable establishment and experience that would enable it to get quickly and successfully into such business if a recalcitrant supplier, processor, or manufacturer did not yield. The A & P organization was urged to keep secret whatever preferences it received. These predatory discounts and other preferences amounted to 22.15 percent of A & P's total profits in 1939, 22.47 percent in 1940, and 24.59 percent in 1941.

Mr. President, what are we to think of that? One-fourth of all the money they made was made by violating the law. They made it by getting preferences over competitors. That is an example of the great free-enterprise system of the United States of America about which we hear so much on the Senate floor.

Of course, Mr. President, I think I am very fortunate in coming from a State such as North Dakota, in which the Republican and Democratic Party machines do not amount to anything, and where the common people run their own affairs. They meet in convention, which is not a political convention at all; it is a meeting of citizens who are Democrats and Republicans, and, who, regardless of race, color, creed, or national origin, want good government. They meet in their voting places and, by secret ballot, elect delegates who meet on George Washington's birthday in every one of the 53 county seats. The delegates also meet in a State convention in which they nominate men who they believe are honest and are men of ability. They nominate them for the office of governor and all the other offices under the State government, and also for the Congress of the United States. So when a Senator is elected by a group such as

that, running on whichever ticket the people think is best, a Senator from North Dakota does not have to call up any banker or monopolist in North Dakota to be told how to vote; he votes to please the common people of the State.

Mr. President, in my opinion, when there is that kind of organization in all the other States of the Union, I do not believe there will be any danger of the kind of legislation we are debating today being passed by the Senate of the United States.

Of course, what this nonpartisan arrangement accomplishes in North Dakota is misrepresented. We heard the distinguished junior Senator from Missouri [Mr. KEM] last week rise on the floor and say that in North Dakota the people had lost a great deal of money in the operation of industries owned by the State. What pleasure it was this morning, Mr. President, to put into the RECORD an editorial from the North Dakota Leader showing that last week, from mill and elevator profits alone, half a million dollars had been received and placed in the general fund of the State of North Dakota to help pay the veterans' bonus.

As attorney general of the State, I helped to organize the Bank of North Dakota. It opened for business on the 19th day of August, 1919. Today it is the largest bank between Minneapolis, Minn., and Seattle, Wash. Every deposit in that bank was guaranteed long before the New Deal came into power. There has never been a time when the bank has not made half a million dollars profit.

In further reference to the mill-and-elevator operation, in 1937 it cost $3,000,000. We saved the farmers more than $12,000,000 in the matter of wheat alone.

As a man who does not bother about being called a radical, I am perfectly aware that I am talking to the RECORD, Mr. President. I am perfectly willing to talk to the RECORD. It does not make any difference to me whether my Republican colleagues are upon the floor or where they may be. In losing the last election we were shown what the people of the United States thought about the record of the Republican Party. My distinguished colleague and I have stood on the floor in favor of bills which should be passed for the benefit of the common people. The record shows what sort of a reception we met.

I know, Mr. President, that if this bill shall pass, it will please every thug, crook, and monopolist in the entire United States of America. They will rejoice in its passage. It is the kind of legislation which never, under any consideration, should be upon the statute books of the United States.

When there is a decision against the Great Atlantic & Pacific Tea Co., such as the decision to which I have referred, and it is rendered by one of the highest courts in the land, and we note that a farmer in North Dakota was sentenced to 3 years in the penitentiary for selling a mortgaged calf, and these great monopolists went scot free, except that they had to pay a miserable little fine of $5,000, after robbing people all over the United States in retail stores, we begin to wonder what is meant by the expression free enterprise in the United States of America. All that expression means is that it gives liberty to some great monopolists to rob anyone they can possibly rob, and to do it under the guise of such a law as is being contemplated at the present time.

We have got the A & P up to 1941, Mr. President. Everyone connected with it is out of jail. They went along robbing people from 1925 to 1936, when the Robinson-Patman Act was passed, which told them how to rob the people in some other way, and they continued robbing them until 1941. In 1941 the A & P adopted a device called cash buying. The law caught up with them again, so they invented a new scheme. This was always on a lower basis than term buying, because cash buyers put up the money at once and took the merchandise, while term buyers paid on delivery. The A & P, through its cash-buying rate, gained an advantage without assuming risks between the point of shipment and the destination.

The Atlantic & Pacific Tea Co. also created a subsidiary which was called the Atlantic Commission Co., which was to have many uses. Equipped with this subsidiary, the Atlantic & Pacific Co. adopted a sales-arrival basis.

Their lawyers are smart, Mr. President. When the Attorney General's office catches up with them they devise some other way to rob the common people. They have been doing that all these years, and no one has gone to jail as a consequence. If we had put 50 or 60 of these so-called great industrialists in the penitentiary, where they belong, they would not have been devising all these new schemes by which to rob the consumers in this Nation.

Equipped with this subsidiary, A & P adopted a "sales-arrival basis," under which its subsidiary did not obligate itself either to purchase certain goods or to pay a stated price until the goods arrived at their destination. Apparently the subsidiary was able to place an order for goods which various suppliers would ship under direction of the subsidiary. Then the Atlantic Commission Co. would wire a price offer to the shipper on a take-it-or-leave-it basis. Thus, Mr. President, when falling markets were anticipated the subsidiary would make "sales arrival" purchases, and the shipper was compelled to assume the risk of price change from the date of shipment of the ordered goods to the date of their arrival. A & P was always protected, but the shipper either had to take a loss or look for another buyer.

The subsidiary commission company was also used in the dual role of buyer and seller, all to the advantage of A & P. The subsidiary had the opportunity to advance the interests of A & P first by its selection of the choicest produce to be offered in the market, and then, as buyer, to obtain that produce at the lowest price. The balance of the merchandise might be, and, the court noted, often was, of an inferior grade. The inferior produce thus was sold to the trade and at the highest price A & P could get in the market. Therefore, it not only bested its competitors in the quality of the produce to be offered to the public, as well as in the price A & P paid for it, but competitors had to buy inferior grades and also pay a higher price for what they got.

This A & P subsidiary exploited suppliers and competitors in other ways. It took merchandise on consignment which gave it the advantage of a choice as to whether it would accept the shipment for A & P or sell it in the open market. If the produce was taken for A & P, a preferential price was obtained. If not, the subsidiary got a brokerage fee for selling the goods in the market and was representing only the seller when it did so, but the brokerage fee went to the subsidiary, and hence was an additional benefit to A & P. The brokerage fee, so charged, also increased the price to A & P's competitors, while the fees went into the coffers of A & P.

Mr. President, this amazing aggregation under the domination of A & P also controlled and owned various corporations which were engaged in the manufacture and processing of merchandise for sale in the A & P stores. For example, the Quaker Maid Co., Inc., the White House Milk Co., Inc., the Nakat Packing Corp. manufactured many items sold by A & P, ranging all the way from canned milk to canned fish. The products of these satellites were sold only to A & P stores, and at a mark-up, in fact, these operations yielded an enormous percentage of the total profits of A & P.

Mr. President, I am certain that some of the suppliers in North Dakota will be interested in the methods employed by this organization. The recital of the facts seems almost like the output of a fiction writer, but there they are in the court's opinion. The judges took note that the price advantage which A & P enjoyed through the coercive use of its power not only enabled it to undersell its competitors but also to pick and choose the locations in which it would use its price advantage. If the A & P officials found that in a particular area the stores were having difficult competition, they could lower the gross profit percentage in that area, and thus seek to increase their volume of business. If this practice in a particular area resulted in a possible decline in net profits, the company simply raised the gross profit rate and the retail prices in some other area where its competitive position enabled it to do so. Consequently, some areas might sustain heavy losses over a number of years, yet the combined earnings of the company from all areas made it possible for A & P to earn $7 per share income on its stock.

It was obvious to the court that the A & P had actively encouraged its suppliers to violate the Robinson-Patman Act. Maybe A & P in receiving these price discriminations I have mentioned was not in violation of that act, but its suppliers certainly were, and the court had no difficulty in finding that the advantage which A & P obtained over its competitors was an unlawful restraint of trade.

Let me point out further just exactly what the court said as I quote directly from the opinion as it appears in 17 United States Law Week at page 2406:

> No court has yet said that the accumulation and use of great power is unlawful, per se. Bigness is no crime, although "size is

itself an earmark of monopoly power. For size carries with it an opportunity for abuse." *United States* v. *Paramount Pictures* (334 U. S. 131, 174, (16 LW 4389)). That there was an accumulation of great power by A & P cannot be denied. How it used that power is the question. When A & P did not get the preferential discount or allowance it demanded, it did not simply exercise its right to refuse to contract with the supplier. It went further and served notice on the supplier that if that supplier did not meet the price dictated by A & P, not only would the supplier lose the business at the moment under negotiation but it would be put on the unsatisfactory list or private blacklist of A & P and could expect no more business from the latter. This was a boycott and in and of itself is a violation of the Sherman Act. * * *

While it is not necessary to constitute a violation of sections 1 and 2 of the Sherman Act that a showing be made that competitors were excluded by the use of monopoly power, *American Tobacco Co.* v. *United States* (328 U. S. 781 (14 LW 4409)), there is evidence in this record of how some local grocers were quickly eliminated under the lethal competition put upon them by A & P when armed with its monopoly power. * * * A & P received quantity discounts that bore no relation to any cost savings to the supplier. While A & P tried to rig up various contracts with its suppliers that would give the suppliers a semblance of compliance with the Robinson-Patman Act, by colorably relating the discriminatory preferences allowed to cost savings, the primary consideration with A & P seemed to be to get the discounts, lawfully, if possible, but to get them at all event. The conclusion is inescapable on this record that A & P was encouraging its suppliers to violate the Robinson-Patman Act. The unlawful discounts were to be received by A & P as its due, regardless. Whether or not A & P in inducing and knowingly receiving these price discriminations was in violation of the Robinson-Patman Act, as its suppliers certainly were, the advantage which A & P thereby obtained from its competitors is an unlawful restraint in itself. * * * The purpose of these unlawful preferences and advantages was to carry out the avowed policy of A & P to maintain this two-price level which could not help but restrain trade and tend toward monopoly.

Furthermore, to obtain these preferences, pressure was put on suppliers not by the use but by the abuse of A & P's tremendous buying power. The means as well as the end were unlawful. * * * With the concessions on the buying level acquired by the predatory application of its massed purchasing power, A & P was enabled to pressure its competitors on the selling level even to the extent of selling below cost and making up the loss in areas where competitive conditions were more favorable. The inevitable consequence of this whole business pattern is to create a chain reaction of ever-increasing selling volume and ever-increasing requirements and hence purchasing power for A & P and for its competitors hardships not produced by competitive forces, and, conceivably, ultimate extinction. Under all the cases this is a result which sections 1 and 2 of the Sherman Act were designed to circumvent.

I have sought, Mr. President, to point out to the Senate the kind of situation I had in mind when I introduced S. 1709. I notice that there is already before the Judiciary Committee a bill identified as S. 640. It seems to me that the latter bill is correctly before the Judiciary Committee, which clearly has jurisdiction of measures involving antitrust legislation. In title I of the Legislative Reorganization Act of 1946, in the section dealing with the Committee on the Judiciary, it is provided that to that committee "shall be referred all proposed legislation * * * relating to the following subjects: 7. Protection of trade and commerce against unlawful restraints and monopolies."

Therefore, Mr. President, I am offering an amendment to S. 640 in the nature of a substitute. I intend to propose that all matter after the enacting clause of S. 640 be stricken out and that there be inserted in lieu thereof the substance of my bill. In that way, the Judiciary Committee can properly explore this field, for my bill also includes the subject matter of S. 640.

I think the Senate will share my satisfaction that the Circuit Court of Appeals for the Seventh Circuit affirmed the conviction obtained in the A & P case. It is a landmark in the struggle against monopoly.

In conclusion, Mr. President, I ask unanimous consent that the letter of Mr. James G. Patton, president of the National Farmers Union, to Speaker RAYBURN, dated March 2, 1949, be inserted at this point in my remarks.

The PRESIDING OFFICER (Mr. KNOWLAND in the chair). Is there objection?

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

MARCH 2, 1949.

Hon. SAM RAYBURN,
House Office Building,
Washington, D. C.

DEAR SPEAKER RAYBURN: My attention was called to the approval of a bill by the House Judiciary Committee which provides, in effect, that all anti-trust-law legislation relating to base-point pricing, which was outlawed by the Supreme Court last year, be suspended for the next 15 months. This bill, according to my information, was reported favorably by the full committee, before organizations such as the National Farmers Union had the opportunity to present their views. Such hasty and ill-considered action is the negation of the democratic process and strikes at the heart of our democracy.

Furthermore, the approval of this legislation without public hearings is particularly obnoxious because the bill threatens our economic and political democracy.

The action of the House committee is part of a pattern which has been developed since last April when the Supreme Court outlawed the base-point pricing system as a monopoly device. The Court found that this system had been used to strangle competition and that it was incompatible with the development of free enterprise in our country. The Court also found that the cement trust had over a period of years used certain elements of the base-point pricing system, such as freight absorption, phantom freight, and uniform pricing, to keep out competition. The Court also declared that such methods when used to such ends were direct violations of our antitrust laws.

Fast on the heels of the Supreme Court decision came a great outcry of the monopolists. A great deal of pressure was put on Congress to undo the Supreme Court decision and to undermine the Federal Trade Commission which was conscientiously attempting to carry out the decision. Partly as a result of this campaign by big business, an investigation was instituted in the Senate body by the Trade Practices Subcommittee of the Interstate Commerce Committee. This committee, headed by Senator CAPEHART, conducted lengthy investigations, all designed to show that the Supreme Court decision would not promote competition and would, in effect, encourage monopoly. Numerous representatives of big business were appointed on the advisory council, set up by Senator CAPEHART'S subcommittee, and using the committee as a mouthpiece, conducted a great campaign calculated to undo the Supreme Court decision.

As a member of Senator CAPEHART'S advisory council, I protested against such tactics and wrote a minority report which was published along with the majority report of the advisory council. In this report I emphasized the fact that outlawing freight absorption when it was used to stifle competition in no way prevented businessmen from absorbing freight when necessary to meet competition. I also pointed out that no new legislation was needed at this time and that the whole campaign was designed to weaken and undermine our antitrust laws and pave the way for monopoly. The very fact that those who were most vociferous in condemning the Supreme Court decision were representatives of the Cement Trust, U. S. Steel, and other big business indicates that the Supreme Court decision was a just one. It is natural that those who have violated our laws would protest their enforcement and conversely, those who had suffered from such violations would be in favor of their adequate enforcement.

Accordingly, when public hearings were held on the base-point-pricing system and the Supreme Court decision, representatives of big business and those dependent on big business appeared to testify that our antitrust laws were in need of revision. On the other hand, organizations of little-business men, farmers and others, including the National Farmers Union, appeared to testify that no new legislation was needed and that the antitrust laws, if changed in any way, should be strengthened and not weakened.

The result of public airing of these views apparently prevented the approval of a bill by a Senate committee which would undo the Supreme Court decision. No action to my knowledge has been taken on S. 236 on which public hearings were held. We feel that had public hearings been held on H. R. 2222, which was approved by the House Judiciary Committee, that the result would have been the same. Apparently, approval of this bill is all a part of the general campaign to give the green light to monopoly by outlawing the Supreme Court decision.

We urge, therefore, that you use your great influence to see that the true facts regarding this campaign to weaken our antitrust laws be made known to the Members of the House. We strongly urge that you and other Members of the House vote against this pernicious legislation which strikes at the heart of our free-enterprise system.

Sincerely yours,

JAMES G. PATTON,
President.

Mr. LANGER. Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Anderson	Gillette	Langer
Bricker	Gurney	Long
Bridges	Hayden	Lucas
Byrd	Hickenlooper	McCarran
Capehart	Hill	McCarthy
Connally	Holland	McClellan
Cordon	Humphrey	McFarland
Donnell	Ives	McKellar
Douglas	Jenner	Magnuson
Ecton	Johnson, Colo.	Martin
Ellender	Johnston, S. C.	Maybank
Ferguson	Kefauver	Millikin
Frear	Kilgore	Myers
Fulbright	Knowland	O'Conor

O'Mahoney	Taft	Watkins
Reed	Thomas, Utah	Williams
Russell	Thye	Young
Saltonstall	Tydings	
Schoeppel	Vandenberg	

The PRESIDING OFFICER. A quorum is present.

THE NORTH ATLANTIC TREATY

Mr. WATKINS. Mr. President, at the beginning of my remarks I wish to say that I shall decline to yield for questions until I have finished my speech. At that time I will be very glad to yield for questions.

Mr. President, there seems to be a great deal of confusion respecting the extent of our commitments under the North Atlantic Treaty, and particularly as set forth in article 5. The meaning of this article has been variously interpreted.

It is said, on the one hand, to commit us to war in the event of an all-out armed attack on any of the nations party to the treaty. On the other hand, this interpretation is denied—that we are not bound to fight, to wage war, under such circumstances; that Congress still has a free choice to say "No," to refuse a declaration of war. This is the contrary contention.

Then there are the middle grounders who argue "maybe" we are bound to fight; we "sorta" have a commitment, but when the occasion arises we can determine the extent of our assistance; whether in our judgment we shall use force and how much, and so forth; or in the words of Secretary Acheson, a Senator who votes for the treaty ratification will be able "to exercise his judgment less freely than he would have exercised it if it had not been for this treaty."

James Reston, international political writer, in an article in the New York Times, Thursday, May 19, summarized the general feeling in the United States with reference to what we are committing ourselves to. Said Mr. Reston:

> At the same time, even in the university communities, there is less information and understanding of the full implications of the United States commitments under the treaty than one had expected to find.
>
> There is widespread assumption that signing the treaty now is all right, but that we will be free to do more or less as we please about implementing it if and when an armed attack comes.
>
> Specifically, there is little realization that if the treaty is ratified, the President, in accordance with his constitutional obligation to see that the laws of the land are faithfully executed, will be free to meet an armed attack on another treaty member with armed force if he deems such an action necessary in order to restore and maintain the security of the North Atlantic area.
>
> Thus, while there seems to be an acceptance of the idea of collective security, there also seems to be ignorance of the vital parts of the treaty combined with indifference about obligations that may or may not have to be met at some time in the future.

Personally, I have participated with others in the general confusion. Study of the arguments pro and con on this article has brought me to a personal decision as to its meaning. I want to share this decision and the reasons for it with my constituents and the American people generally. I am convinced that I should do it now while there is still time for the people to make their wishes known to their Senators.

I am also fortified in doing this because of the numerous letters which I have received from American citizens over the country, which reveal that our people generally do not realize the heavy burdens we are assuming under this treaty. The commitments are theirs to carry out. They should have all the help possible in understanding them. They have never had the treaty before them as an issue in any election. There has been no great national debate on this issue. No mandate of the people on this momentous change in our foreign policy has ever been given. It is unfortunate that this is so. No policy so vital to this country should ever be decided without the people's express sanction.

If this pact should be ratified "the ultimate value"—in the words of the senior Senator from Michigan—"will largely depend upon the extent to which the country wholeheartedly accepts the concepts of defensive unity in the North Atlantic community against any armed aggressions which may threaten world war III."

With this I agree; but how can the American people give wholehearted support unless they understand the commitments that are being made in their name by their representatives?

I shall not argue today whether it is wise or unwise to ratify this treaty. That will come later. I now should like to analyze or interpret article 5 of the treaty in the light of views expressed by official advocates for its ratification.

For convenience in this discussion, the text of article 5 is quoted:

> The parties agree that an armed attack against one or more of them shall be considered an attack against them all; and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defense recognized by article 51 of the Charter of the United Nations, will assist the party or parties so attacked by taking forthwith, individually and in concert with the other parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.
>
> Any such armed attack and all measures taken as a result thereof shall immediately be reported to the Security Council. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.

Breaking the article down to its component parts, we find that it solemnly binds the members of the treaty, insofar as it is material to the present discussion, to the following commitments:

First. That an armed attack against one or more of them in Europe or North America shall be considered an attack against them all.

Second. Each of them will assist forthwith the party or parties so attacked.

Third. The assistance, individual, or in concert with other parties, shall be such action as each nation shall deem necessary, including the use of armed force to restore and maintain the security of the North Atlantic area.

To help understand the meaning of this article, we should keep in mind the following:

There now exists a great dictatorship in Asia and Europe which is considered a more dangerous threat to the liberties of democratic nations than the dictatorships which were overthrown in World War II.

The free nations of Europe are convinced that this dictatorship will by armed aggression conquer them one at a time and destroy their liberties. They fear another world war. To act as a preventive of this war and to assure them of independence and security, they feel that there should be organized now a strong alliance of powers including the United States, which is prepared to act immediately, with certainty, and with such overwhelming might that any aggressor nation or combination of such nations will halt their designs for conquest. Thus, war will be stopped before it starts. This is their argument, their thesis.

Many Americans, including the present administration, feel the same way and respond to the thinking of the European leaders with full agreement both as to the necessity and the remedy.

In trying to determine the meaning of the article which seems to have stirred up so much dispute, we shall have to consider the divergent points of view of those who were responsible for negotiating the treaty as well as those who are its present proponents.

President Truman in his inaugural address last January, declared:

> If we can make it sufficiently clear in advance that any armed attack affecting our national security would be met with overwhelming force, the armed attack might never occur.

The phrase "an armed attack against one or more of them in Europe or North America should be considered an attack against them all" should not be difficult to understand, but it has raised numerous questions. This statement is generally interpreted to mean that an attack on any one or more of the European nations parties to the treaty would be the same as an attack upon the United States and should be treated the same way.

In the testimony given before the Foreign Relations Committee on the meaning of this particular provision, there was considerable straddling. There were, however, several authorities who disagreed with the interpretation I have just outlined. One of those who disagreed was Robert Lovett, former Under Secretary of State, who initiated and helped carry on negotiations for the treaty until the time of his resignation. He declared:

> It does not say it will be the same thing. It says it will be considered as an attack against them all, and, then, in those circumstances, if the hypothetical case you put occurs, we have the obligation which I referred to previously, and that is to assist the parties so attacked by taking forthwith, individually and in concert with the other parties, such action as this Government deems necessary, including the use of

armed force, to restore and maintain the security of the North Atlantic area. * * *

I am confident in my own mind that that is not the understanding in general terms, because we have here set up the rule which leaves to the Congress the determination as to whether or not the facts are such as to require, for example, a declaration of war.

John Foster Dulles, well-known authority on international law, a member of the United States delegation to the UN Assembly, and an adviser to the Secretary of State at numerous international conferences, gave his view of the meaning of this commitment from article 5. Said Mr. Dulles:

The proposed treaty poses clearly the issue of certainty and immediacy. It says that an armed attack against one of the parties in the North Atlantic area "shall be considered an attack against them all." That seems to me to be reasonably plain English. It means, I take it, that an armed attack upon Denmark, for example, is hereafter to be treated by the United States as an attack upon it. If there is an attack upon the United States, then something happens, and it happens surely and quickly.

I fully agree with Mr. Dulles' interpretation. I think he is indisputably correct. A major attack upon the United States by a foreign power immediately creates a state of war. The Japanese strike at Pearl Harbor was such an attack.. It was the first battle in an all-out war followed immediately by the attack on the Philippines. It created a state of war which Congress recognized in its declaration, but in the meantime, before Congress had an opportunity to act, whatever forces we had in the area were, under direction of the Chief Executive, ordered into action against the aggressor. In the words of Mr. Dulles, something happened "surely and quickly." That something was an all-out war. This was true even before Congress got around to declaring what already existed.

Obviously, Mr. Dulles recognizes the power of the President of the United States, as Commander in Chief of our armed forces, to direct such forces in the protection of this Nation.

Again, it is obvious that this treaty extends to the President as Commander in Chief, the power to order our armed forces into action if an armed attack is made on any of the treaty nations. An attack on one is an attack on all. This is the fundamental principle of the treaty and the one principle upon which the European pact members base their support for the treaty.

Under the treaty, an attack of similar magnitude on Denmark or on any other or all the European nations parties to the treaty would create a state of war between the United States and the aggressor in identically the same way as if the aggressor attacked the United States. We would be at war surely and quickly, even if not automatically. That is the inescapable conclusion of Mr. Dulles' interpretation of our obligations under the proposed treaty.

However, minor incidents—warlike in character, but not amounting to the waging of war—such as the *Panay* affair in China where the Japs struck an American warship under the American flag, and at Yugoslavia where the fighter planes of that nation shot down United States planes crossing from Austria to Italy—do not necessarily mean war. They are acts short of war which might lead to war unless taken care of by negotiation.

Minor incidents of this kind affecting European nations, parties to the treaty, would not necessarily involve them in war and for the same reason they would not automatically involve us in war even though the treaty binds us to defend the European parties to this treaty.

But an all-out attack, a major attack, the waging of war such as an armed invasion of France, Denmark, England, or Norway, would create a state of war in the same sense and with the same obligation on our part to render armed assistance as far as our Nation is concerned as would a major attack or invasion of Alaska or any part of the continental United States.

So Mr. Dulles' statement in his testimony immediately following the quotation I read a few moments ago, that "what happens is not necessarily war," and "there have been many armed incursions into the United States territory and armed attacks on United States ships which have been successfully countered and security restored by measures short of war," does not contradict his conclusion of the general nature of our obligations, but emphasizes that minor incidents short of a major attack do not necessarily mean war. He distinguishes between warlike incidents and an armed invasion where conquest by the invader is clearly the purpose of the invasion.

To remove all doubt on this point, Mr. Dulles under cross-examination made perfectly clear his interpretation of the treaty obligation in the event of a major attack. Said Mr. Dulles:

If there is any doubt what we are going to do under those conditions, I think the time to debate that is now. We can afford the time to do it now. Once war starts we can't afford to have that great debate because it is too costly and the enemy gains too great an advantage.

That language means, Mr. President, if it means anything, that we are settling the issue now—not when trouble occurs in the future—that in the event of a war on any one or more of our allies, we act "certainly," "surely," and with "immediacy." Those are Mr. Dulles' words.

Putting it another way, the President and two-thirds of the Senate, in the event the Senate ratifies the treaty, declare war in advance on any nation or nations which shall in the future make war on any one or more of our allies. Under this procedure, the House of Representatives, contrary to the Constitution, has nothing to say on this matter. It is completely bypassed. We shall be at war without its action. The President can order our armed forces to resist the enemy the same as he would do if our own territory were under attack. Can there be any doubt that the Dulles interpretation of article 5 means just that?

(At this point there occurred colloquy between Mr. WATKINS and Mr. MALONE, which, on request of Mr. MALONE and by unanimous consent, was ordered to be printed at the conclusion of Mr. WATKINS' remarks.)

Mr. WATKINS. Mr. President, Mr. Dulles was praised by members of the committee for his clear-cut, forthright statement. I heard no dissent then or since, either from committee members or from the State Department.

In this connection I should in fairness call attention to the fact that Mr. Dulles also said, on cross-examination, that war would not come automatically, since only Congress could declare war.

The statements of Mr. Acheson, Secretary of State, and the senior Senator from Michigan [Mr. VANDENBERG] strongly support Mr. Dulles' main thesis of the meaning of article 5. Let me be specific.

Said Secretary Acheson in his radio broadcast on the North Atlantic Treaty:

The United States is waging peace by throwing its full strength and energy into the struggle, and we shall continue to do so. * * * But we must do even more. We must make it clear that armed attack will be met by collective defense, prompt and effective.

There is nothing in that language that leaves the issue to a future Congress to exercise a free choice as to whether we fight or do not fight when the need for armed assistance on our part arises. Mr. Acheson is almost as emphatic concerning our future action in the event of war on our allies as is Mr. Dulles. He says we must make it clear now—not some time in the future—that our full strength and energy will be thrown into the struggle against armed attack. And I submit "full strength and energy" means very definitely our armed might.

Secretary Acheson speaks for the administration. He conducted the final negotiations for the treaty. His words are in full harmony with and add greater force to President Truman's words uttered in his inaugural address, to which I have already referred.

By the treaty we now have said the security of our allies is identical with our own. An attack on them is an attack on us; their territory for the purposes of this treaty is our territory. Let any nation invade it at their peril.

I do not wish to unduly belabor this point, but its extreme importance and the fact, as newsmen have reported it, that it is generally believed by the American people that even though we enter the treaty, we can do pretty much as we please about it if and when trouble comes, justifies me, I am convinced, in stressing this issue to the utmost.

The senior Senator from Michigan [Mr. VANDENBERG] recently told the Conference of Mayors in Washington, D. C.:

This pact will mean what it says or it is devoid of war-preventing authority. It means that if another armed aggressor threatens any or all of us with World War III—God save the mark—all of us will forthwith unite to stop the aggression before it becomes universal and to defeat it before it becomes a universal conquest. All of us must take that pledge in good faith or it were better that we do not take it at all. * * * Let me be specific so far as we are concerned. The Neutrality Act of 1939 told Hitler that the United States would keep out of any such conflict; would keep our vessels out of belligerent ports; would refuse credits to

warring nations. The North Atlantic Pact—wholly to the contrary—will tell any aggressor in 1949 that from the very moment he launched his conquest in this area he will face whatever united opposition, including that of the United States, is necessary to beat him to his knees. I reassert that this is the greatest war deterrent ever devised.

The thesis of certainty beyond all doubt, leaving nothing to future decision except to determine the degree or the measure of "the opposition necessary to beat the aggressor to his knees," is the warp and woof of the Senator's eloquent definition of the meaning of the treaty. It can be of small aid in stopping war if it means anything less than that.

Where is there in this statement anything that indicates in the slightest degree that a future Congress, when trouble occurs, will have the right, or the option, as far as the meaning of this treaty is concerned, to refuse armed assistance to any one or more of the treaty nations, if such nation or nations are subjected to an all-out armed attack?

If the all-out use of our armed might is necessary—and who can doubt that in a major attack, an invasion of conquest, it will be necessary—we are bound expressly, impliedly and morally to use such force as would be necessary just as we would do certainly, quickly, if and when our own territory were made the subject of a similar major attack.

That is the basis, the yardstick, by which we have agreed to determine the measure of necessity for the armed help we shall give our allies.

But the Senator, advocate of the treaty as "the greatest war deterrent ever devised,"—and the same is true of all other advocates using this line of argument—get into deep trouble, in my opinion, when he tries to resolve the difficult and embarrassing dilemma which has confronted them all, to wit:

How can the United States guarantee for the next 20 years certain and prompt armed assistance to our allies in the event of a war against them—without stopping to debate the matter because it is said there will not be time—and at the same time preserve the right, under our Constitution, of the Congress in office at the time the need for action arises to debate freely, and finally, with complete freedom of action, to decide whether or not we shall declare war or employ our armed forces to aid and assist in defending one or more of the treaty nations?

Before the Senator from Michigan uttered the ringing words of contrast between our position under the proposed treaty as compared with 1939 when the neutrality law was in force, he made this prefatory statement:

I ask you to note that this (the treaty) is not an automatic commitment to war. I ask you to note that we reserve unto ourselves the option to decide precisely what contribution we shall make against any such armed attack by an aggressor. There are many defensive recourses short of war as defined in the United Nations Charter. I ask you to note that in another paragraph of the pact we categorically assert that "this treaty shall be ratified and its provisions carried out in accordance with our constitutional processes." We are signing no blank check. But I ask you also to understand that we are signing no mere scrap of paper.

Does this statement just quoted resolve the dilemma? It is clearly intended to do so.

This argument attempts to reassure the American people that somehow, and notwithstanding the positive commitments of article V that give our European allies the definite assurance of our certain, prompt, and effective help, including armed force in the event of a war on them by an aggressor, we still have preserved our freedom of action.

Let us see what these assurances really amount to.

First. It is not an automatic commitment to war. Is not this a mere play on words? What difference does it really make whether we are automatically committed to go to war so long as the commitment calls for certain, prompt, and effective action including the use of armed force, in the event of war upon our allies by an aggressor? If it commits us to war, it is of little importance whether we go in automatically or some other way.

Second. We reserve unto ourselves the option to decide precisely what contributions we shall make against any such armed attack by an aggressor.

Article V provides: "Each of them will assist forthwith, the party or parties so attacked." This sentence is a direct positive commitment to assist our allies under the circumstances named. But how shall we assist them?

It is said we have reserved unto ourselves to determine precisely what contribution or assistance we shall give. But have we? Remember, we have agreed that an armed attack against an ally is the same as an attack against ourselves and should be treated the same way.

How do we treat attacks against ourselves?

If a minor incident happens that clearly is not intended as the beginning of an all-out war, we settle it by diplomatic methods. So in the event of such a minor incident, an attack short of war, we would undoubtedly assist our ally in making a settlement by negotiation or other methods short of war.

If a major all-out attack occurs on United States territory, we immeditaely respond by throwing against the enemy all the force we deem necessary to defeat the aggressor and restore our security. We are bound by our agreement to use the same kind of judgment or discretion in the event of a major all-out attack on any one or more of our allies; our allies are bound to the same thing in the event of a major attack on us.

The precise way of rendering that assistance—or in other words, how we shall fight—and the exact amount of help we will give we shall decide according to our circumstances at the time the event occurs.

But we have not reserved to ourselves the right to decide whether or not we will take action. We make that decision the moment the treaty is ratified and it is a positive, affirmative decision which commits us to take the same kind of action we would take if the attack were directly on our own territory.

Third. We categorically assert in another paragraph in the pact that this treaty shall be ratified and its provisions carried out in accordance with our constitutional processes.

This is supposed to be our great safeguard. No matter what we may seem to have committed ourselves to in any other part of the treaty, it is not a firm commitment because we still reserve to our Congress the right to declare war. This is the argument.

This is the popular conception of the meaning of the treaty. It undoubtedly accounts for the feeling among the American people as reported in the New York Times by James Reston, that we can do pretty much as we please when the time comes for action, notwithstanding other provisions of the treaty.

Former Supreme Court Justice Owen Roberts, former Secretary of War Robert Patterson, Mr. Dulles, and others testifying at the foreign-relations hearing took very much the same position.

This treaty shall be ratified and its provisions carried out in accordance with our constitutional processes.

Just what does that mean?

First, the treaty shall be submitted to the Senate for ratification. It is now before the committee. If and when it is ratified by us and the other nations, it becomes the law of the land, all in accordance with our Constitution.

It is the duty of the President to enforce the laws of the land. The Constitution makes this clear. Under the treaty, then, it becomes the law of the land that an attack on Denmark, for instance, is an attack on the United States.

When an all-out armed attack is made on the United States, such as at Pearl Harbor, the President in the performance of his constitutional duty, orders our armed forces to resist immediately the armed attack. The armed forces are ordered into action because the President deems that action necessary. This is all done before Congress can act.

With the treaty as the law of the land, what will likely happen should an all-out attack be made on Denmark?

The President, under the treaty, has the power, and probably will order the armed forces of the United States into action to defend Denmark even before Congress can act. In doing so he will be following constitutional processes. Can there be any doubt about it? That is providing, of course, we can enter a treaty which in effect makes us the guarantor of the security of nations other than our own.

The attack occurs. The President sends whatever forces he deems necessary to resist the armed attack, and we find ourselves waging war. And then Congress is apprised of the situation by the President.

Is there anything left for Congress to do but go through the motions—and I mean only motions—of declaring war and authorizing the employment of our armed forces?

It should be clear by this time that the treaty creates such a situation that

Congress will have no other choice under such circumstances than to declare war. It has been robbed by the treaty of its war-making powers.

And that is true, even though the President should ask Congress for a declaration of war before sending our armed forces into action, because the treaty binds us to treat an attack on any one or more of our allies as an attack on ourselves. Would any Congress dare refuse under such circumstances? Legally and realistically, could it refuse? It should be obvious the answer is "No."

The New York Times evidently had this in mind when it declared editorially last January:

> The North Atlantic Pact contains promises not even dreamed of by Woodrow Wilson. President Wilson, indeed, in his war speech of April 2, 1917, looked forward to "a universal dominion of right by such a concert of free peoples as shall bring peace and safety to all nations and make the world itself at last free." But Mr. Wilson in time of peace would not have dared ask the Senate to commit itself, as Mr. Truman and his advisers are now doing, to go to war if any one of eleven or more nations is attacked. We should not quibble on this point. The defense pact means that or it means nothing.

The language of the treaty is tricky and deceptive. On the one hand, it assures our European allies of certain, sure, and prompt support. It satisfies them that in the event of war we will be in it certainly and promptly. On the other hand, it seems to assure the American people that they will not be required to send their armed forces into battle to protect and maintain the security of nations other than our own, unless the Congress in office when the occasion arises, by its freely made decision decides to do so by a declaration of war.

My firm conviction is that the treaty violates the Constitution by robbing Congress of its freedom of action in deciding whether or not this country shall wage war when our allies are attacked. As the editor of the Deseret News of my State put it, "the pact virtually defines war by treaty instead of war by declaration of Congress, as provided in the Constitution." And it does this by action of two-thirds of the Senate and the President of the United States.

I am not questioning the good faith and sincerity of those supporting this treaty. I have no doubt there are many in and out of the Senate who believe that we can give positive assurance of our help to our European allies and at the same time preserve freedom of action by Congress.

Those who have this belief, then, should be willing to support reservations to article 5 of the treaty which I shall offer at the appropriate time and which will be in language substantially as follows:

> The United States understands and construes article 5 of the treaty as follows:
>
> "The United States assumes no obligation to restore and maintain the security of the North Atlantic area or to assist any other party or parties in said area, by armed force, or to employ the military, air, or naval forces of the United States under article 5 or any article of the treaty, for any purpose, unless in any particular case the Congress, which under the Constitution, has the sole power to declare war or authorize the employment of the military, air, or naval forces of the United States, shall by act or joint resolution so provide.
>
> "The United States further understands and construes article 5 to the effect that in any particular case or event of armed attack on any other party or parties to the treaty, the Congress of the United States is not expressly, impliedly, or morally, obligated or committed to declare war or authorize the employment of the military, air, or naval forces of the United States against the nation or nations making said attack, or to assist with its armed forces the nation or nations attacked, but shall have complete freedom in considering the circumstances of each case to act or refuse to act as the Congress in its discretion shall determine."

That is the end of the reservation I shall offer to article V at the appropriate time.

Mr. President, these reservations should point up more strongly than any argument may do the real issues that are involved in article 5 of the treaty. In my judgment, if adopted, they will protect a most vital part of the Constitution, that of the Congress to declare and make war.

I also have in mind reservations to other articles of the treaty. I may discuss them at a later time, even before the treaty becomes the pending business before the Senate.

I have tried to approach the problems which I think are involved with the spirit of objectivity. I am convinced there is great need to get before the people of the United States all the implications of the important articles in this treaty well in advance of the final debate on the treaty. This is my justification, if any should be needed, for presenting this matter today.

During the delivery of Mr. WATKINS' speech,

Mr. MALONE. Mr. President, will the Senator yield for a question?

Mr. WATKINS. At the beginning of my speech I announced that I wished to keep it in order, for the sake of continuity, for reproduction purposes.

Mr. MALONE. Mr. President, I ask unanimous consent that any colloquy which I may have with the Senator may appear at the conclusion of his remarks.

Mr. WATKINS. Under those circumstances, I yield for a question.

The PRESIDING OFFICER (Mr. BRICKER in the chair). Without objection, it is so ordered.

Mr. MALONE. Mr. President, I should like to ask the Senator from Utah whether I correctly understood him to say that the Constitution of the United States might be modified by our acceptance, as a treaty, of the North Atlantic Pact, to the extent that, although, technically, the Senate and the House of Representatives would have to act jointly in declaring war, yet in practical effect under the treaty, in case of attack against any signatory, we would automatically be in war? Do I correctly understand the Senator to mean that to that extent the Constitution will be modified by the pact?

Mr. WATKINS. Mr. President, I say that in my judgment this pact is in direct violation of the constitutional provision that the Congress shall have the power to declare war, or, in other words, make war and authorize the employment of our armed forces in war. I think that constitutional provision is violated by the proposed pact or treaty, when it says that an attack upon any one of the countries signatory to the pact is to be construed as an attack upon all of them, meaning, of course, that an attack on Denmark, for instance, will be an attack upon the United States, and will have to be treated exactly as if an enemy had struck the territory of the United States.

If I correctly understood the Senator's question, I reply by stating that the proposed treaty would put the Congress in the position, in the event the Senator has described, of having nothing left to do, but declare war. The pact would rob the Congress of the right to decide whether to declare war.

Mr. MALONE. In other words, the Constitution would be modified to that extent; would it not?

Mr. WATKINS. Yes; that would be an amendment of the Constitution in a way completely foreign to anything provided in the Constitution.

Mr. MALONE. Mr. President, will the Senator yield further?

Mr. WATKINS. I yield for a question.

Mr. MALONE. Then, if I correctly understand the position taken by the distinguished junior Senator from Utah, it is that by this pact we would be changing the policy we always have held in the United States, namely, that the Congress is the judge as to when the ultimate peace or safety of the United States is threatened. Of course, we have gone to war only when we considered that our ultimate peace or safety was threatened. However, under this pact, as I understand the situation, a change would be made, according to my understanding of the Senator's statement, in that after ratifying the pact or the treaty, we would go to war or would automatically be in war at any time that a European nation's ultimate peace or security was threatened; and as to that situation, that nation would be the judge. Am I correct?

Mr. WATKINS. What I mean is that by agreeing that an attack on any one or more of the signatory nations is an attack on ourselves and must be treated as such, we have changed any commitment we have ever had in the past. There is no doubt if United States territory were subjected to a major attack, not a mere warlike incident, that the President of the United States would have full authority even before Congress could meet, to repel the attack and to order our forces into action. Under the Atlantic Pact we expand that idea not only to our own territory but to the territory of any one of our allies. That in itself is a departure from American policy. In other words, we are now saying to our boys who will be drafted, "You will be drafted not only to defend the territory of the United States, but by this agreement you are drafted to defend the individual territory of the 11 states in Europe that will be parties to the North Atlantic Pact."

Mr. MALONE. Mr. President, will the Senator yield further?

The PRESIDING OFFICER. Does the Senator from Utah yield to the Senator from Nevada?

Mr. WATKINS. I yield.

Mr. MALONE. Then the foreign policy of the United States ceases to conform, for example, to the Monroe Doctrine, announced in 1823 when certain nations of the Western Hemisphere were threatened with domination by some European empire-minded nations. At that time President Monroe announced it as our foreign policy that if any nation sought to extend its system of government to the Western Hemisphere it would be considered dangerous to the peace and safety of the United States. Such an act on the part of a European country, of course, meant war, and as the result of the Monroe Doctrine the countries of the Western Hemisphere are still free, and as a result they are not today dominated by any empire-minded European nation.

Under the Monroe Doctrine, and also under the open-door policy in the Far East, we were the judge when our peace and safety was threatened. It is proposed now to abandon such principles as the Monroe Doctrine and the open-door policy in the Far East, instead of announcing and naming the nations in Europe and Asia that are deemed to be important to the ultimate peace and safety of the United States, and simply in effect extending the Monroe Doctrine principle or open-door policy, we are now placing such decision in other hands. In other words, if there were what may be called a minor disturbance resulting from an attack by one of the nations of Europe on another or on the border of Asia, and we did not judge that our ultimate peace and safety were threatened, under our present doctrine, we would not necessarily have to act; but under this treaty, if I understand the Senator from Utah correctly, we have changed the situation completely, so that now, regardless of our desires, we are no longer to be the judge; we become involved whenever such an attack is made. Is that not true?

Mr. WATKINS. Under the Monroe Doctrine we announced a policy. It was announced by President Monroe that if any other country attempted to wage a war of conquest upon the Western Hemisphere, we would consider it inimical to our safety, and would construe it as an unfriendly act. But we did not sign any agreement with anybody, particularly with any of the North American countries, that in the event that happened, we would immediately respond with our armed forces and our contributions, and would go to war.

In this particular instance we sign an agreement. We are in effect declaring a Monroe Doctrine for these 11 nations, and, in addition to that, we go one step further and say in effect, "That is our territory, over there, for the purposes of the agreement, and if anybody attacks it, it is an attack upon the United States, and whatever we do over here when our country is attacked, we shall do under those circumstances." I may put it in this way: If the United States were attacked, the President would immediately resist the attack by ordering the armed forces into action even before he could reach the Congress, and he would under the Constitution, I think, have full authority to do it. But it will be seen that what we are doing now is to commit ourselves by an agreement. The other signatories to the pact are agreeing to do certain things, and we likewise agree that their territory shall be made the same as a part of the United States.

Mr. MALONE. We are, then, in effect abandoning the former policy, under which we were the judge as to when our ultimate peace and safety were threatened, and by the North Atlantic Pact we are pledging ahead of time that we give full authority to the other signatories to say when the peace and safety of any of the signatories is attacked, and we have nothing further to say about it. Is that correct?

Mr. WATKINS. We are in effect saying, here and now, as I just quoted Mr. Dulles a moment ago.

He said:

> If there is any doubt what we are going to do under those conditions, I think the time to debate that is now. Once war starts we can't afford to have that great debate because it is too costly and the enemy gains too great an advantage.

If that means anything it means to me that we are settling by the ratification of the treaty the proposition that, in the event an attack occurs on any one of those nations, it is decided now that we shall immediately join with them, and we shall resist certainly and surely with whatever force is necessary to beat the aggressor to his knees, to use the words of the distinguished senior Senator from Michigan [Mr. VANDENBERG]. That is what it means. We are declaring in advance of war, what will happen, if and when certain circumstances happen, and that is being done now by two-thirds of the Senate, if we ratify the pact, and by the President of the United States, with the House of Representatives having not a word to say about it.

Mr. MALONE. If the Senator will permit, I should like to ask him, what is the position of Mr. Dulles that allows him to speak so authoritatively on matters of this kind.

Mr. WATKINS. He spoke before the Committee on Foreign Relations. I was present and heard his testimony. He said he spoke as an individual. But he is the official adviser to the Secretary of State, who is now in Paris at the Big Four conference. He has been attending nearly all the conferences that have taken place since the war, as adviser to the State Department. He is our official representative to the United Nations, one of them at least.

Mr. MALONE. Was he appointed by the Secretary of State?

Mr. WATKINS. He was appointed either by the Secretary of State or by the President of the United States. He occupies all these positions, and he is generally regarded as an authority on the matter. I am stating what he said on cross examination. He said, in substance: "There isn't any doubt about it. It means what it says. It is certain and sure, and that is why it is a great deterrent to war, because any aggressor will be told in advance just as sure as you make that attack, this will happen, you will meet with overwhelming force."

Mr. MALONE. If the Senator will yield further, I should like to ask another question.

Mr. WATKINS. I yield.

Mr. MALONE. Does the Senator from Utah consider that under the pact as now written, Mr. Sean MacBride, who holds a very important position, that of Minister of External Affairs in Ireland, was correct when he said in answer to a direct question as to why Ireland did not approve of the pact:

> If we do approve the pact, then we approve and guarantee the integrity of the colonial part of Ireland that is is now connected with and under the dominance of England.

Mr. WATKINS. I think he is right in that, because the agreement binds us to secure the integrity of our allies—to secure their integrity, and to restore that security if it is once interrupted. We go that far.

Mr. MALONE. Mr. President, will the Senator yield for one further question?

Mr. WATKINS. I yield.

Mr. MALONE. If that be true of Ireland, would it also be true of the other colonial possessions, such as those of the British Empire, which includes now in the sterling bloc 58 or 59 nations, and entities, and also the Empire of the Netherlands, including Indonesia, and the Empire of France, including French West Africa, French Morocco, Indochina and New Caledonia in th Pacific? Does the Senator consider that these empires, whose integrity we are guaranteeing, are a part of the obligation? In other words, we are to furnish arms from time to time—as I understand from newspaper reports, it is too big a dose to give us all at once so we first vote for the pact and then for shipments of arms to them and those nations can use the arms to defend the colonial system. If, while they are using our arms and munitions to defend the colonial system, they should get in trouble, is it the Senator's opinion that we shall be in trouble also?

Mr. WATKINS. The Senator has asked me several questions in one.

Mr. MALONE. The question is, Do we guarantee the integrity of the colonial system?

Mr. WATKINS. There is not any express guaranty of the territorial integrity of any of the nations outside the North Atlantic area, certain parts of northern Africa belonging to the French Republic, everything north of the Tropic of Cancer in the North American area, on the Atlantic side, and the eleven nations coming within the terms of the pact. But, as the Senator has so well expressed, it has an indirect effect, because in the treaty itself there is a clause which provides that if their security be threatened the nations will consult with each other. I take that to mean it is

not a debating society meeting, but that the purpose is to do something about it. As the Senator pointed out, if the possessions which Great Britain still retains in Africa, Burma, and even in Australia, should come under attack, we could be called in. In that event the other parties to the treaty are in a position to call for our help.

As I have pointed out many times, it would be an easy matter for some nations which are about to lose their colonies, though such colonies are not included in express terms, to do something to provoke an attacker and to get us directly involved in a war. We all remember that the Prime Minister of England, Mr. Winston Churchill, gloried in the fact that England got this Nation into the last war. That was one of their great feats of diplomacy. I can see how they would like to get us to proceed beyond the direct scope of the treaty. If the treaty is ratified, I think we should make the point that it does not in any way obligate us to guarantee any territory outside this country.

Mr. MALONE. Perhaps they will claim that the arms we are furnishing them are not being used in that connection.

Mr. WATKINS. Probably not, but they can release other arms from their store, and they would still have the arms which we send them. They could send their own arms to their colonies and use ours to protect themselves.

Mr. MALONE. I have no wish to delay the Senator's speech, but I have one other question, if he will yield.

Mr. WATKINS. I yield.

Mr. MALONE. I know the Senator has devoted a great deal of time in studying the possible effect of the treaty, and many of us are relying on the junior Senator from Utah to point out any "tricks," or sleight of hand, which are embedded in the treaty.

What about the paragraph which provides that we shall remove any economic conflict with any other nation? Does that mean we will erase any import fees or tariffs that these European nations may believe will prevent them flooding our markets with goods produced by the low-wage living standard European labor? What does the Senator think the provision means? Could they force us to reduce the floor under wage , the tariff, or import fees?

Mr. WATKINS. I think the Senator is probably referring to article 2 of the pact, in which it is provided that we will agree to economic collaboration and the removal of economic conflict.

I have asked that very question of numerous witnesses appearing before the committee, and there was not one who could give me a definite idea as to its meaning. But I think it is committing us to a policy which, by interpretation, may mean that we agree to do away with our tariffs; that we agree in advance to accept a treaty, such as the international trade organization treaty, and the various other pacts which have been recently negotiated. In other words, it is an agreement. It is so broad in its terms and in its application that nearly anything can be brought within it. I think the American people, including businessmen and labor unions, should be aroused as to what the implication may turn out to be. When the Allies need building up and strengthening we shall probably permit their goods to come in duty free or on better terms than are allowed other nations. It is to make it a little easier to accept international trade treaties and to permit the President of the United States to make reciprocal trade treaties. It can mean nearly anything, but, at least, what I have just stated would come under it.

Mr. MALONE. If I correctly understand the junior Senator from Utah, he would not agree to a blanket commitment to lower tariffs or import fees, which are, in effect, a floor under wages, or to commit ourselves to throwing the power to make such tariffs and import fees into an organization such as the North Atlantic Pact or the International Trade Organization. He would not like the United States to relinquish that power.

Mr. WATKINS. An occasion may arise when we may want to do it, but I do not want to agree in advance that we shall do it as a general policy. I think we should be free in our actions to do just as we think is necessary and to the best interests of the people of the United States when and if the time arrives when we must make such a decision. I do not think we should do so at this time. It binds us to almost anything.

Mr. MALONE. Referring to the three-part free-trade program of making up trade balances in cash, the Trade Agreements Act, through which the State Department has adopted a selective free-trade policy, on the theory that the more we divide the markets of this Nation among the nations of the world the less their annual trade-balance deficit will be and the assignment to the 58 nations, the International Trade Organization, of the power to fix tariffs and import fees, all in the interest of free trade. I understand the Senator to say that there are at least two implications of the North Atlantic Pact which have to do with other practical and important pieces of legislation coming before the Senate. The Senator from Utah suggests that there should be enough debate on the floor to bring these matters to a head, so that the workingmen in this country can understand the implications, and so that people who want peace—and all of us do; we will accept almost anything that has the word "peace" tied to it—can understand what a commitment to defend the colonial system and to reduce import fees might mean.

Do I correctly understand the Senator's position to be that he wants to clarify the situation so that the people will know what sort of an agreement we are accepting?

Mr. WATKINS. That is why I am making this speech today. I want to make it in advance of the general debate, so that the people of the United States can understand what the committments mean. That is exactly my motive for making this speech. I am sorry that there are not more Members present, but their attendance cannot be counted upon in a season like this. From what we are saying today the American people may get some idea of what the Atlantic Pact means. I heard the testimony before the Committee on Foreign Relations, and the interpretations by those who wrote the treaty and are its principal proponents. From the statements of those who drafted the treaty, I tried to get what the intention was, and before I get through I think the Senator will see what I think are the commitments under article 5. I am not arguing as to whether it is a good or bad treaty, I am trying to point out what I think it means and what others have said it means, what those who are for it and who drafted it, or at least had a part in its drafting, have said it means.

Mr. MALONE. I think the Senator is performing a valuable service, one which needed to be performed, and I deplore the tendency on the Senate floor toward impatience with debate on matters which may affect the whole future of our country. I think these questions should be fully debated. I agree with the Senator in that.

I was not in the meeting of the Committee on Foreign Relations to witness the cool reception which the junior Senator from Utah received there, but I was very much interested in it, and I think his reception was resented by many people. Naturally a Senator cannot attend every meeting of every committee, and we must at times depend on someone to tell us what evidence is presented, and many of us are depending on the Senator from Utah in this matter. I think he is performing a fine service.

Mr. WATKINS. Mr. President, I thank the Senator.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Maurer, one of its reading clerks, returned to the Senate, in compliance with its request, the bill (S. 930) to provide for the liquidation of the trusts under the transfer agreements with the State rural rehabilitation corporations, and for other purposes.

The message announced that the House had disagreed to the amendments of the Senate to the bill (H. R. 3734) making appropriations for civil functions administered by the Department of the Army for the fiscal year ending June 30, 1950, and for other purposes; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. CANNON, Mr. KERR, Mr. RABAUT, Mr. TABER, and Mr. WIGGLESWORTH were appointed managers on the part of the House at the conference.

The message also announced that the House further insisted on its amendment to the bill (S. 900) to amend the Commodity Credit Corporation Charter Act, and for other purposes; agreed to the further conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. SPENCE, Mr. BROWN of Georgia, Mr. PATMAN, Mr.

MONRONEY, Mr. WOLCOTT, Mr. GAMBLE, and Mr. KUNKEL were appointed managers on the part of the House at the conference.

PRICING PRACTICES—MORATORIUM

The Senate resumed the consideration of the bill (S. 1008) to provide a 2-year moratorium with respect to the application of certain antitrust laws to individual, good-faith delivered-price systems and freight-absorption practices.

Mr. LUCAS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The roll was called, and the following Senators answered to their names:

Aiken	Hill	Murray
Anderson	Hoey	Myers
Baldwin	Holland	Neely
Brewster	Humphrey	O'Conor
Bricker	Hunt	O'Mahoney
Bridges	Ives	Reed
Byrd	Jenner	Robertson
Cain	Johnson, Colo.	Russell
Capehart	Johnson, Tex.	Saltonstall
Connally	Johnston, S. C.	Schoeppel
Cordon	Kefauver	Smith, Maine
Donnell	Kilgore	Sparkman
Douglas	Knowland	Stennis
Downey	Langer	Taft
Eastland	Lodge	Thomas, Okla.
Ecton	Long	Thomas, Utah
Ellender	Lucas	Thye
Ferguson	McCarran	Tobey
Flanders	McCarthy	Tydings
Frear	McClellan	Vandenberg
Fulbright	McFarland	Watkins
Gillette	McGrath	Wherry
Graham	McKellar	Wiley
Green	McMahon	Williams
Gurney	Magnuson	Withers
Hayden	Martin	Young
Hendrickson	Maybank	
Hickenlooper	Millikin	

The PRESIDING OFFICER. A quorum is present.

Mr. O'MAHONEY. Mr. President, last evening when I introduced the bill S. 1974 to define the application of the Federal Trade Commission Act and the Clayton Act with respect to certain pricing practices, I announced it would be my purpose to offer it as a substitute for the pending bill, S. 1008, and after striking out all after the enacting clause to substitute in lieu thereof the language of my bill. I stated also that my purpose in presenting the bill was to accomplish the objective which everyone who has had the matter under consideration desires to accomplish, and that I announced that it was my intention to discuss the measure with the author of the moratorium bill and with other Senators in the hope that it would be possible to resolve any uncertainties which they might find in the language of my bill.

This morning I had a conference with the Senator from Pennsylvania [Mr. MYERS], the Senator from Colorado [Mr. JOHNSON], the Senator from Maryland [Mr. O'CONOR], who presented the report on S. 1008 on behalf of the Judiciary Committee, and several other gentlemen, including the administrative assistant of the Senator from Nevada [Mr. MCCARRAN]. We discussed the bill at great length. Certain criticisms were offered of the measure as I presented it, and I indicated a complete willingness to meet the criticisms so far as I could without sacrificing either of two objectives.

The No. 1 objective, of course, is to avoid creating a new opportunity for monopolistic practices. The second objective is to declare substantively in the law what the Chairman of the Federal Trade Commission a year ago declared to be his understanding of the law, namely, that sales at delivered prices or freight absorption are not unlawful per se. There has been no doubt whatever with respect to the meaning of the law upon the part of Judge Ewan Davis, who has been the Chairman of the Federal Trade Commission and who is now one of its most distinguished members. But without any question, after the decision in the Cement Institute case and after the decision in the Rigid Steel Conduit case, and after many conflicting explanations of the decisions and the laws upon which they were based, a great deal of confusion arose in the minds of people throughout the United States, both in industry and out of industry, among supporters of the antitrust laws, and among those who from time to time in the past have been accused of violating those laws. These then, Mr. President, are the two great objectives: to preserve the strength of the antitrust laws and to declare that delivered prices and freight absorption are not unlawful per se.

Before I discuss the bill at length, I should like to outline some of the changes which have come forth as a result of my discussion of the language of the bill with the Senators I have mentioned.

Mr. KEFAUVER. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from Wyoming yield to the Senator from Tennessee?

Mr. O'MAHONEY. I yield.

Mr. KEFAUVER. In discussing the objections which have been made to the bill (S. 1974), submitted by the distinguished Senator, some of us also had an objection to the provision of section 2 (b), on page 2.

Mr. O'MAHONEY. Mr. President, I have that in mind, and I shall discuss it in the course of my remarks.

Mr. KEFAUVER. Very well.

Mr. HILL. Mr. President, will the Senator yield?

Mr. O'MAHONEY. I yield.

Mr. HILL. I understand the Senator is now going to explain the changes he has made in Senate bill 1974.

Mr. O'MAHONEY. That is correct.

Mr. HILL. That bill, as he has changed it, is the proposal which he is suggesting to the Senate. Is that correct?

Mr. O'MAHONEY. That is correct.

Mr. HILL. It is proposed to substitute it for the committee bill. Is that correct?

Mr. O'MAHONEY. It is proposed to substitute it for the committee bill, and I hope, since I have not had the time to prepare a copy of the bill with these changes, that a notation of them may be made by the clerk at the desk, so that when I offer the amendment in the nature of a substitute the changes will be in it. I shall trespass upon the patience of our friends at the desk in doing this, if I may.

Mr. KEFAUVER. Mr. President, will the Senator yield?

Mr. O'MAHONEY. I yield.

Mr. KEFAUVER. Did I correctly understand the Senator to say that with these amendments the sponsor of the original bill had agreed to the substitute, or was any statement made about that?

Mr. O'MAHONEY. No; I have not said that the sponsor has agreed to this substitute. I think that is the case, but I have not had direct word from him. The first change will be found on page 1, in line 9, where it is proposed to insert after the word "or" the word "collusive", so as to make it read, "that this shall not make lawful any combination, conspiracy, or collusive agreement." It is then proposed to insert a semicolon after the word "agreement", and proceed, "or any monopolistic, oppressive, deceptive, or fraudulent practice", and to strike out the words "or other practice violative of law."

Let me say, Mr. President, that those changes were made after discussion with the senior Senator from Colorado [Mr. JOHNSON], the chairman of the Committee on Interstate and Foreign Commerce, the junior Senator from Maryland [Mr. O'CONOR], who reported the moratorium bill, the Senator from Pennsylvania [Mr. MYERS], and Mr. Sourwine, administrative assistant to the Senator from Nevada [Mr. MCCARRAN].

Mr. JOHNSON of Colorado. Mr. President, will the Senator yield?

Mr. O'MAHONEY. I yield.

Mr. JOHNSON of Colorado. My attention was diverted for a moment. Did the Senator say a semicolon was inserted after the word "agreement"?

Mr. O'MAHONEY. That is correct.

Mr. HILL. Mr. President, will the Senator yield?

Mr. O'MAHONEY. I am very glad to yield to the Senator from Alabama.

Mr. HILL. Will the Senator advise us at this time of the effect of the changes and their purport?

Mr. O'MAHONEY. Let me put in all the changes, and then I shall be very glad to do so. There are not very many.

On page 4, line 6, strike out all the language appearing on line 6, and insert in lieu thereof:

> Evidence sufficient to convince a reasonable person that there is probability of the specified effect.

Mr. HILL. Mr. President, will the Senator yield further?

Mr. O'MAHONEY. I yield.

Mr. HILL. Will the Senator repeat that language a little more slowly, so I can write it down?

Mr. O'MAHONEY. On page 4, line 6, strike out the line and insert:

> Evidence sufficient to convince a reasonable person that there is probability of the specified effect.

Some other changes were suggested, but, upon consideration, I think it was felt by those assembled that they would not be necessary.

There was another amendment which I discussed. In connection with the definition of the phrase "absorb freight", the Senator from Indiana [Mr. CAPE-

HART] spoke to me about the provision on page 3, beginning in line 22. He felt that the language in the bill would not cover all the conditions which might arise. So I suggested to the Senator that I should be very willing to insert at the end of that sentence on page 4, line 4, the words "or the average cost of transportation to the seller."

I shall now explain these various items.

EXPLANATION OF AMENDMENTS OFFERED TO PROPOSED AMENDMENT

The word "collusive" was inserted before the word "agreement" because it was suggested by the Senator from Maryland that the word "agreement" standing alone might include any perfectly innocent agreement. Of course, since the only purpose of this part of the bill is to make certain that nothing we are doing will make a collusive agreement lawful, I saw no reason to object to including that word.

The phrase "other practice violative of the law" was emphasized as being one of such breadth that it might be interpreted as giving the force and effect of law to rules or regulations which the Federal Trade Commission might lay down in the future. It was not intended to have any such effect; it was intended only to make certain that we should be closing the door to any practice which the ingenuity of those who look for ways and means of avoiding the antitrust laws might devise. But, in view of the words which preceded, I am quite willing to have that drop the phrase, "other practice violative of law."

The words which precede the phrase are "or any monopolistic, oppressive, deceptive, or fraudulent practice."

I think those four words pretty well cover the whole field of the activities prohibited by the antitrust laws, either because they describe practices which have already been found by the courts to be monopolistic in reported cases, or because they indicate practices which might be devised in the future which would have an effect upon competition contrary to the intent and the meaning of the antitrust laws. So, for that reason, I have no difficulty in going along with these suggestions.

With respect to the amendment on page 4, adding to the definition of the term "absorb freight," I may say that as it was originally written, this definition declared that the term "absorb freight" meant to establish for any commodity at any delivery point a delivered price, which, although as high or higher than the seller's price for the same commodity at the point from which said commodity is shipped, is lower than the sum of the seller's price for such commodity at such point of shipment, plus the actual cost to the seller for transportation of such commodity from such point of shipment to the delivery point.

It was pointed out to me—and as soon as it was pointed out I recognized it to be the fact—that there are producers of nationally distributed products who sell their products at a price determined by the cost at their manufacturing point plus the average cost of distributing the products to points throughout the United States. It is obvious that if a shipper in Washington, for example, should sell in Chicago at cost plus something less than the freight to Chicago, it might be a sum which would not cover the cost of production plus the cost of transportation to San Francisco. Since it is customary practice in such cases for the producer to average the prices, I had no objection.

I think that covers the various amendments which have been discussed and suggested.

PRICE DIFFERENTIAL AMENDMENT

The Senator from Tennessee and the Senator from Louisiana have discussed with me the effect of the provision to be found on page 2 beginning in line 16. In order that my discussion may be intelligible I think probably I should read the entire amendment. This is a part of section 2 which is designed to provide an amendment to section 2 (a) of the Clayton Act. The amendment of the Clayton Act reads as follows:

And provided further, That it shall not be an unlawful discrimination in price for a seller, acting independently—

A. to quote or sell at delivered prices if such prices are identical at different delivery points or if differences between such prices are not such that their effect upon competition may be that prohibited by this section; or

B. to absorb freight to meet the equally low price of a competitor in good faith, and this may include the maintenance, above or below the price of such competitor, of a differential in price which such seller customarily maintains.

The fear was expressed by the Senator from Louisiana that this might open the door to a restraint upon trade, a restraint upon competition, by making it possible for the seller to sell to Purchaser X at a differential which he would not give to Purchaser Z, and thereby operate intentionally to restrain the trade of Purchaser Z. Have I not correctly stated the question raised by the Senator from Louisiana?

Mr. LONG. That is what I had in mind.

Mr. O'MAHONEY. My answer is that in my judgment there are three words in the section which, obviate that interpretation. The first two of these words, "good faith," are to be found in line 17, and the entire clause reads, "The absorption of the freight must be made to meet the equally low price in competition in good faith."

The third word is to be found in line 20, namely, "customarily." The differential which is mentioned here must be one which such seller customarily maintains. So, in my judgment, it would be impossible, under this language, to produce the sort of condition the Senator fears.

Mr. LONG. Mr. President, will the Senator yield?

Mr. O'MAHONEY. I yield.

Mr. LONG. In regard to the condition of good faith, would it not be true that in the absence of proof to the contrary good faith would be presumed? Every time I have seen the phrase "good faith" used it has been presumed that the burden of proof is on the person on the other side to prove that the action was not in good faith. Would not that be the rule here?

Mr. O'MAHONEY. Perhaps it might be, but we have been very careful to make it clear that the Government is not prohibited from charging a monopolistic practice.

Mr. LONG. It is easy to charge, but very difficult to prove.

Mr. O'MAHONEY. But when the seller uses a differential which is different from that which he customarily maintains, I think there will be no difficulty.

Mr. LONG. Suppose there are two firms competing, let us say, in retail business. We will call them A and B. Let us assume there are two firms which are suppliers, to these two, and let us presume they are wholesalers, or producers, and we will call the latter C and D.

Suppose suppliers C and D provide supplies to A at half the cost at which they are supplying to B in order that A may run B out of business. The Federal Trade Commission goes to C and D and says, "You cannot maintain this price at one-half to A that is enabling him to run B out of business." Then C says, "I am selling at one-half to A because my competitor, who is also a wholesaler, is selling to him at that price, although neither of us is giving the other man the same discount." Would not both men be in the clear, and be in such position that the Federal Trade Commission could not act?

Mr. O'MAHONEY. I think the case the Senator states is contrary to both the provisions I have mentioned. First, it would not be in good faith, and, secondly, it would not be a customary differential.

Mr. LONG. Actually would it not be contemplated, within the meaning of this amendment, that any time a man lowered his price to meet competition he would be in good faith in meeting a competitor's price? Would not that itself prove good faith?

Mr. O'MAHONEY. Of course we are here trying to preserve competition, and I do not understand that the Senator wants to change the law so as to make it difficult to compete. If the competition is in good faith, if it is designed for the purpose of distributing the goods which are produced, and if it is not in any way for the purpose of restraining trade, or applying some monopolistic pressure or oppression to an individual, we have no complaint. But I say to the Senator that if there should be a situation such as he has described, in which the change was made for the purpose he described, namely, driving someone out of business, it would be very apparent, in my judgment, that it would be clearly cognizable under the law.

Mr. LONG. It is my point that in the particular case I have described to the Senator there would be two wholesalers, let us assume, C and D, competing with one another in good faith, but the effect of what they were doing would be to help A drive B out of business. It is a case in which both are in good faith,

at least to all intents and purposes. Only a crystal gazer could prove what was in their minds. Would not the immediate effect be to drive one man out of business? As I understand the Federal Trade Commission law, it would enable the Commission to require that either C or D prove that they were justified, that one of the two was justified, in going to a lower price in discriminating against one of the two competitors who were retailers.

Mr. O'CONOR and Mr. KEFAUVER addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Wyoming yield, and if so, to whom?

Mr. O'MAHONEY. If the Senator from Tennessee will permit me, I will yield to the Senator from Maryland, who reported the bill.

Mr. O'CONOR. Is not the answer to the Senator from Louisiana the statement that the Federal Trade Commission would still have a remedy against C who initiated the practice for the improper purpose of driving A out of business, so that there would be ample redress and remedy against C?

Mr. O'MAHONEY. I was about to make such a statement. I now yield to the Senator from Tennessee.

Mr. KEFAUVER. I am sure the Senator knows that the assumption of the Senator from Maryland is something that does not work out in actual practice, and I feel certain that the Senator from Wyoming must realize that this subsection B, on page 2, as now written might literally mean the ruination of competition insofar as small businesses were concerned, because I ask the Senator if it does not change the ruling under which the Federal Trade Commission now operates.

Mr. O'MAHONEY. I do not think it changes any ruling to bring about any such effect as the Senator describes.

Mr. KEFAUVER. Let me call the Senator's attention to the chart I have here. If A is a large consumer, and is buying something from B at, let us say, $10 a ton, and he is charging all the small customers—X, Y, Z, L, M—$15 a ton, C can come along, even though he is at a distance and absorb freight and sell also to A at $10 a ton. If the Federal Trade Commission tried to prosecute C under the Clayton Act the fact that B was charging $10 a ton in his sales to A would be a complete defense. That is, the showing that another seller was charging the same price would be a showing of good faith under the language of subsection B of the bill. Is not that true?

Mr. O'MAHONEY. No; I am not ready to agree with that statement. I will say to the Senator from Tennessee that I do not believe the present law undertakes to preserve the status quo in any line of business. Without question there are some purchasers of commodities from wholesalers who do not operate as efficiently or as economically as others, and the price at which they have to buy their material may be such as to make it impossible for them, by reason of their inefficiency, to operate at a profit. It is not the purpose of the existing law to compel the preservation in business of those who are suffering because of lack of efficiency.

Mr. KEFAUVER. Of course, the fact that A may buy in greater quantity or that different conditions may exist has always been a defense in a case before the Federal Trade Commission.

Mr. O'MAHONEY. And still is.

Mr. KEFAUVER. And still is. But the fact that the small fellow may be undercut by 50 percent under the present regulation of the Federal Trade Commission is not a defense because it is a discrimination, even though two or more may be selling A at the same price. The reason that is so is that the United States circuit court of appeals, as the Senator well knows, recently, in its January session, held by unanimous opinion—and the case is now before the Supreme Court—that if B is selling A on the basis of $10 a carload, and C starts selling A at $10 a carload, whereas they sell the little fellows at $15 a tankload of gasoline or a carload, the mere fact that they are selling A at the same price does not meet the requirements of the Robinson-Patman Act—that is, if there is unfair competition or discrimination, even though they may be selling A at the same price, they are still guilty of violation of section 2 of the Clayton Act, which is the Robinson-Patman Act. I have the opinion here before me, and it states in very clear terms——

Mr. O'MAHONEY. To what case is the Senator referring?

Mr. KEFAUVER. I am referring to docket 4380 in the United States circuit court of appeals.

Mr. O'MAHONEY. I do not know the docket number, but will the Senator give me the name of the case?

Mr. KEFAUVER. Standard Oil Co. against Federal Trade Commission, decided on March 11, 1949.

Mr. O'MAHONEY. I will say to the Senator, with respect to that question, that without any doubt, if the absorption was made in good faith, the particular injury to a particular person under such a case as was proved there probably would not be covered. I must acknowledge that to the Senator.

Mr. KEFAUVER. May I read to the Senator what the court felt about the practice that was taking place in this case? I read one sentence:

> The petitioner had given a club to its wholesalers which they passed on to their retailers to bludgeon their competitors. This is what the Commission is trying to stop, and it is toward the elimination of this evil that the cease-and-desist order is directed.

That is the law today. That law is necessary if we are going to protect the small consumers against unlawful discrimination under section 2 of the Clayton Act, and I do not want to see that protection taken away from them. I grant that there are differences because of the amount some may buy, or because of methods or business operations, or something of that sort. But when B happens to have been selling A at $10, and C comes along and does the same thing, whereas they are selling to their small customers at 50 or 100 percent more, that is going to put the little fellows out of business. I do not think meeting that competition which may have been established for the purpose of putting these little fellows out of business in the first place should be considered good faith. I think it takes away whatever protection there may be to small business. It takes away a remedy the Federal Trade Commission can now enforce. If anyone will read the decision of the court in this case he will agree that the Federal Trade Commission needs the power that is defined in the Standard Oil case, decided on March 11, 1949.

Mr. CAPEHART. Mr. President, will the Senator yield?

Mr. O'MAHONEY. I yield to the Senator from Indiana.

Mr. CAPEHART. Is it not a fact that we are talking about freight costs and freight absorption?

Mr. O'MAHONEY. I beg the Senator's pardon.

Mr. CAPEHART. We are dealing in terms of transportation costs, and not with general prices. In other words, in paragraph B on page 2 of the Senator's bill we find the words "to absorb freight to meet the equally low price."

The danger the able Senator from Tennessee points out, in my opinion, is not covered in either one of the two paragraphs A or B, because we are dealing in terms of the transportation cost only. Then if we look at paragraph A carefully we find it to say, "to quote or sell at delivered prices if such prices are identical at different delivery points."

Meaning that no man could sell to customers in New Orleans, for example, at different prices. He must sell everyone in New Orleans at exactly the same price. I will read the language again:

> A. to quote or sell at delivered prices if such prices are identical at different delivery points.

So we are dealing in transportation costs and not in the price of the article. But they must be the same at all points.

Mr. O'MAHONEY. The Senator from Indiana is talking about the provision governing delivered prices, and not the provision in paragraph "B" of absorbing the freight, to which the Senator from Tennessee alluded.

There is no doubt, as I said to the Senator, that paragraph "B" would have that effect under the conditions existing in the Standard Oil case he mentioned. This is the first time any Member of the Senate has spoken to me about that provision and, of course, the Senator is perfectly free to suggest an amendment with respect to it.

AMENDMENT WILL NOT CHANGE PROOF OF CONSPIRACY

For the present, Mr. President, I should like to add one or two statements explanatory of my purpose in offering this provision. The problem was first raised when the Supreme Court decided the Cement Institute case. The decision was handed down on April 26, 1948, and im-

mediately resulted in an announcement by United States Steel that it was going to abandon the basing-point system which had been followed prior thereto. Other statements were made immediately that the result of this decision was to compel f. o. b. pricing, that is to say, would compel all producers to sell at their mill net, and would render illegal either delivered prices or freight absorption.

At the time when I was queried about this by the press I expressed the opinion that such was not the case, and that it was absolutely essential, even under that decision, to prove a conspiracy. There are numerous statements in the decision which bear out this point of view. The court was referring to the comparison which the defendants in the case made between the attack upon the Cement Institute by the Federal Trade Commission, and what was known as the Old Cement case, which involved the Sherman Act. The court said in distinguishing between the two cases:

In the first place, unlike the Old Cement case, the Commission does here specifically charge a combination to utilize the basing-point system as a means to bring about uniform prices and terms of sale.

A little bit later on, again discussing the Old Cement case and delineating the basic problem, the court said—and used that very phrase:

That basic problem is whether the Commission made findings of concerted action, whether those findings are supported by evidence, and if so, whether the findings are adequate as a matter of law to sustain the Commission's conclusion that the multiple basing-point system, as practiced, constitutes an unfair method of competition because it either restrains free competition or is an incipient menace thereto.

It will be observed that findings supported by evidence of concerted action were here specifically required.

A little later the Supreme Court, in the same decision, made a similar reference:

Thus we have a complaint which charged collective action by respondents designed to maintain a sales technique that restrained competition, detailed findings of collective activities by groups of respondents to achieve that end, then a general finding that respondents maintained the combination, and finally, an order prohibiting the continuance of the combination.

Observe this language:

It seems impossible to conceive that anyone reading these findings in their entirety could doubt that the Commission found that respondents collectively maintained a multiple basing-point delivered price system for the purpose of suppressing competition in cement sales.

In the same case the Court cited the practice of cement producers submitting identical bids. Even when the Government of the United States asked for bids for supplying cement, identical bids were submitted, which were carried out to the sixth decimal point. In a note the Court gave an example:

The following is one among many of the Commission's findings as to the identity of sealed bids:

An abstract of the bids for 6,000 barrels of cement to the United States engineer office at Tucumcari, N. Mex., opened April 23, 1936, showed the following:

Name of bidder:	*Price per barrel*
Monarch	$3.286854
Ash Grove	3.286854
Lehigh	3.286854
Southwestern	3.286854

It went on through the United States Portland Cement Co., Oklahoma, Consolidated, Trinity, Lone Star, Universal, and Colorado. Each one submitted the same identical bid, carried out to the sixth decimal point.

In seeking to draft this legislation my purpose was to make it quite clear that, although we were saying that sale at delivered prices was not unlawful, we were careful to make clear that if there should appear a situation such as this, in which identical bids were submitted, carried out to the sixth decimal point, it should be a signal to the Government to look into the question of whether or not there was a conspiracy.

Mr. LUCAS. Mr. President, will the Senator yield?

Mr. O'MAHONEY. I am glad to yield to the Senator from Illinois.

Mr. LUCAS. Do I correctly understand that the Senator is quoting from the Cement Institute case?

Mr. O'MAHONEY. Yes. I think that case is good law. In my opinion, all of the interpretation of the law in that case should be approved by the Congress of the United States if we are to maintain what we call the free competitive system.

Mr. LUCAS. I agree with everything the Senator has said. However, in that case does not the Court go further, in an obiter dicta opinion written by Mr. Justice Black which has caused a great amount of confusion among independent dealers who definitely contend that they are in no way violating the Clayton Act or the Federal Trade Commission Act? According to the memorandum which I have had prepared the Supreme Court in its opinion went beyond the facts of the case which the Senator has been discussing, when Mr. Justice Black said:

In the second place, individual conduct or concerted conduct which falls short of being a Sherman Act violation may as a matter of law constitute an unfair method of competition prohibited by the Federal Trade Commission Act.

Mr. O'MAHONEY. I will say to the Senator that if my recollection is correct, Mr. Justice Black stated only what the Supreme Court had found in a previous case. There is a difference between the prohibitions of the Sherman Act and the prohibitions of the Federal Trade Commission Act or the Clayton Act.

Mr. LUCAS. I appreciate what the Senator has said; but from my brief examination of these acts, and from the information I have received from those who are vitally interested in doing something in the way of affecting the Supreme Court decision, I am advised by lawyers who have examined it that the obiter dicta opinion of Mr. Justice Black would cause them a great deal of concern in the case of an independent who definitely contends, supported by the facts, that he is in no way violating the act. At the same time, this decision has created a certain amount of confusion which they would like to have clarified.

Mr. O'MAHONEY. This bill undertakes to clarify it. Let me say again, however, that, as I stated at the time the decision was handed down, in my opinion the statement of Mr. Justice Black, which the Senator from Illinois calls obiter dicta, did not create the confusion. The confusion was created by what I deem to be misinterpretations of the plain meaning of the decision. In any event, my attempt now is to clear away the entire basis for any such misinterpretation.

Mr. LUCAS. I think the Senator, in negotiating with other Senators to arrive at a bill upon which we can all agree, is doing a great service for those who are affected by the Supreme Court decision which has been handed down. I congratulate the Senator and all others who are seeking to find a way out of the dilemma in which we find ourselves at the present time.

Mr. O'MAHONEY. I will say to the Senator that unquestionably it is a most difficult problem, and one to which we must give very careful attention.

Mr. LUCAS. I wholeheartedly agree with the Senator that it is a most difficult question. It is a very important problem from the standpoint of many industries, and from the standpoint of those who seek to bind others through a monopolistic practice. That is the one point upon which I wish to ask the Senator a question or two, to ascertain whether or not the amendment which has been agreed upon does the things which I hope it does.

Does this amendment protect the legality of delivered prices and freight absorption used independently of price-fixing schemes and without giving aid or comfort to monopolies?

Mr. O'MAHONEY. Precisely. That was the whole intent and purpose which I had in offering this substitute.

Mr. LUCAS. The man who continually looks toward monopolies is the big fellow who, as a general rule, takes care of himself pretty well. It is the little fellow who is always hurt. As I understand, that is the individual whom we are trying to protect through this amendment.

I should like to ask the Senator one further question. Does this amendment protect, likewise, the legality of normal price differences under the Clayton Act without legalizing injurious and monopolistic price discriminations?

Mr. O'MAHONEY. It is my opinion that it does. However, in all fairness I must say that I think the question which the Senator from Illinois has now propounded to me raises the same point which was first raised by the Senator from Louisiana [Mr. LONG] and the Senator from Tennessee [Mr. KEFAUVER]. I believe that the substitute will work in substantially the way the Senator has

indicated by his question; but unquestionably by authorizing freight absorption, when made in good faith, the substitute has the effect of changing the point of view which was expressed in the Standard Oil case just quoted by the Senator from Tennessee.

Mr. LUCAS. The amendments about to be proposed by the Senator from Wyoming in no way are in conflict with the Supreme Court decision; are they? Am I correct as to that?

Mr. O'MAHONEY. They are not at all in conflict with the Supreme Court decision.

Mr. LUCAS. In other words, the proposed amendments will not nullify the Supreme Court decision in any way; will they?

Mr. O'MAHONEY. They will not.

Mr. KEFAUVER. Mr. President, will the Senator yield?

Mr. O'MAHONEY. I yield.

Mr. KEFAUVER. I certainly wish to join the Senator from Wyoming in trying to work out this matter in a satisfactory way. I know of his long fight to protect the free-enterprise system by trying to prevent monopolistic practices, and I know of his support of the Clayton Act, the Robinson-Patman Act, and antimonopoly measures in general.

I wish to ask about the proposed amendment, on page 4. As the amendment has been printed, it reads as follows, beginning in line 5, on page 4:

D. The term "the effect may be" shall mean that there is a reasonable probability of the specified effect.

I understand that the amendment is now proposed to be amended or modified so as to read as follows:

D. The term "the effect may be" shall mean that there is evidence sufficient to convince a reasonable person that there is probability of the specified effect.

Is that correct?

Mr. O'MAHONEY. The Senator has correctly quoted the amendment. As I understand the amendment, it was originally proposed because there was entertained, though probably not on the part of any Senator, a suspicion that perhaps the staff of the Federal Trade Commission might be unduly agile and astute, and that the words "that there is a reasonable probability" might give the Federal Trade Commission more power than it now has.

I find that I myself entertain a reasonable fear that there are on the staff of monopolistic companies some very astute lawyers who know their way around a legal conundrum or dilemma. But as I see the matter, the substitute phrase means exactly what the original language of the amendment meant.

Mr. KEFAUVER. That being the case, let me ask the distinguished Senator who proposed the substitute phrase whether he thinks it will weaken the powers of the Federal Trade Commission. I am sure he does not believe it will weaken the Commission's powers.

Mr. O'MAHONEY. Oh, no.

Mr. KEFAUVER. Then let me say to the Senator that all of us know that the present rule of law, since the NLRB decision and other decisions affecting legislation beginning about 1935, is that if a finding by an administrative agency, such as the Federal Trade Commission, is sustained by any evidence, it shall not be reviewed in the appellate courts or the Supreme Court. In other words, as to the Federal Trade Commission, its findings of fact and its orders based on such findings are not reviewable in the Supreme Court if there is any evidence whatsoever to sustain them. I understand that is the position the Supreme Court takes.

I am afraid the proposed amendment of the amendment, by way of the insertion of the words "evidence sufficient to convince a reasonable person that there is probability" would make any finding of fact by the Federal Trade Commission reviewable by the upper court—in other words, that the case could be tried all over again in the appellate court or the Supreme Court, after the Federal Trade Commission had made findings of fact. Otherwise, why should there be the more-or-less double statement "evidence sufficient to convince a reasonable person that there is probability"? That is a matter which the Supreme Court would have to decide in every case coming to it from the Federal Trade Commission. In that event, the Court would have to decide, not whether there were sufficient facts to sustain the finding of the Federal Trade Commission, but whether there were facts or evidence "sufficient to convince a reasonable person." In that event, the entire hypothesis of the appeal would be completely changed, for as the law now stands, there must be some evidence which would convince the Federal Trade Commission; and if there is, the facts cannot be gone into in the appellate court.

But under the proposed substitute, we would get away from the Federal Trade Commission, and would substitute "a reasonable person," and that would make the matter reviewable by the Supreme Court. At least, I am afraid that would be the result of the language proposed.

I wish to ask the Senator whether he has considered that possibility or if it has been reviewed by the Department of Justice or some other agency.

Mr. O'MAHONEY. I am frank to say that I had not considered that possibility. I felt that the phrase "that there is a reasonable probability" would be subject to exactly the same interpretation as the substitute phrase which was suggested.

Mr. KEFAUVER. I wish to ask the Senator about that. Of course, I may be mistaken about the meaning; but I simply wish to be certain that that phrase will not do what I am afraid it might do. I wonder whether it would be well to put this matter over until tomorrow, so that we can obtain from the Attorney General or from some other authoritative source an opinion in regard to the possible effect of this provision.

Mr. O'MAHONEY. As I said last night when I submitted the substitute for printing in the RECORD, I did so for the purpose of making it available as soon as possible to anyone who had any point of view or any knowledge with respect to this problem, and at that time I invited criticism of the measure. I still have exactly the same opinion. I am not inclined to believe that it was intended by this amendment to change the basic law in regard to the Federal Trade Commission.

Let us look over the measure, however, to see where this proposal would apply to it.

Mr. KEFAUVER. I should like to ask another question: Is not the usual language in such cases, when dealing with questions of the weight of the evidence—which is really the subject matter of subsection D—and the usual language so far as the matter of review is concerned, whether there is "reasonably probability" or whether there is "substantial evidence"? I believe that the present rule of law, so far as the Federal Trade Commission is concerned, is that its findings of fact shall not be considered or reviewed by an appellate court, but shall be binding on the appellate courts or on the Supreme Court if there is any evidence or a reasonable probability of evidence of the specified effect.

Mr. O'MAHONEY. I say to the Senator from Tennessee that I have no intention whatsoever of altering the Federal Trade Commission Act or the Clayton Act in that respect.

Mr. KEFAUVER. I know the Senator from Wyoming does not have such an intention, but I wished to express alarm as to the language of the proposed substitute.

Mr. O'MAHONEY. I am very glad the language is being scrutinized as carefully as it is. I should be very happy to consider any amendment which would be designed to clarify that point in my amendment.

Mr. HUMPHREY. Mr. President, will the Senator yield?

Mr. O'MAHONEY. I yield.

Mr. HUMPHREY. I should like to ask what it is in the three cases which have been brought to the attention of the courts, and recently have been reviewed or acted upon by the Federal Trade Commission, which makes necessary either the proposal contained in Senate bill 1974 or the provisions of Senate bill 1008. What is it in the decision, for example, in the Cement Institute case or the decision in the Staley case or the decision in the Steel Conduit case which necessitates a moratorium provision such as is proposed in Senate bill 1008 or in the amendment submitted by the Senator from Wyoming.

Mr. O'MAHONEY. I say to the Senator from Minnesota that from my point of view a moratorium would be unwise. It is because I feel that it is unwise and against the public interest that I seek the adoption of the substitute language.

I shall explain to the Senator precisely why I think some action is necessary. Nothing in the Cement Institute case, so far as I can see, should have occasioned anyone any concern. The Cement Institute case is sound law and should be ac-

cepted as such. But immediately after it was announced it was misinterpreted. I entertain the belief that in some cases it was deliberately misinterpreted.

Mr. HUMPHREY. Is it not true that under the Cement Institute case there is no law which prevents freight absorption where there is a competitive situation?

Mr. O'MAHONEY. Precisely. When I began my explanation I pointed out that in the Cement Institute case, over and over and over again, the Court referred to concerted action.

Mr. HUMPHREY. That is correct.

NEED FOR BASING-POINT LEGISLATION

Mr. O'MAHONEY. That is the gravamen of a monopolistic practice, a concerted action. But, to answer the Senator's question, the difficulty as I saw it came when the Rigid Steel Conduit case was decided. There the Federal Trade Commission brought its complaint in two counts. In the first count it clearly and explicitly charged conspiracy. In the second count the charge of conspiracy was not as clearly set forth. Some who read it said it was not set forth at all. But, in any event, the defendants, who appealed from that decision, did not appeal from the findings on the first count, but only upon the second count. So that when the case went to the Supreme Court, with one of the Justices disqualifying himself, there was a division.

Mr. HUMPHREY. There was a division, four against four.

Mr. O'MAHONEY. There was a division, four against four, and the result was that the Supreme Court did not pass upon the case. Therefore, the decision of the circuit court remained the decision of the courts. But since the appeal to the Supreme Court was made only upon the second count, and the question there was whether there had been an allegation of conspiracy, therefore the question presented was whether an independent absorption of freight or independent delivered price was a violation of the law. Since the Justices of the Supreme Court divided four against four, it seemed clear to me that the only possible relief that we could give was to speak clearly in Congress, stating what the Federal Trade Commission has said from the beginning, namely, that independent action without conspiracy is not prohibited.

Mr. O'CONOR. Mr. President, will the Senator yield at that point?

The PRESIDING OFFICER. Does the Senator from Wyoming yield to the Senator from Maryland?

Mr. O'MAHONEY. I am very happy to yield.

Mr. O'CONOR. Is it not true, in connection with the question just asked by the Senator from Minnesota [Mr. HUMPHREY], that as the result of that situation another case might originate tomorrow, wherein a circuit court of the United States would decide exactly opposite to what the seventh circuit found in the Rigid Steel Conduit case?

Mr. O'MAHONEY. I am glad the Senator has mentioned that.

Mr. O'CONOR. Assuming that the same eight Justices of the Supreme Court would sit and would follow their philosophies, as would be expected, they would have to affirm that decision of the circuit court of appeals, with the result that two diametrically opposite decisions would have been rendered, and both would have been affirmed by the Supreme Court of the United States.

Mr. O'MAHONEY. Of course, "affirm" is not the word.

Mr. O'CONOR. When I say "affirm," I mean, allow to stand.

Mr. O'MAHONEY. That is correct. It would be allowed to stand. The four Justices of the Supreme Court who felt in the Rigid Conduit case that the independent producer was prohibited from absorbing freight without a charge of conspiracy would stand by their opinion, and the four who felt the opposite way would stand by theirs. We would as a result have two opposite rules of law in different circuits, and that situation could spread throughout the United States.

Mr. O'CONOR. If I may ask just one further question in that connection, is not this, therefore, if not the only way, at least the best way by which to correct that situation, and to establish definitely what is the right doctrine?

Mr. O'MAHONEY. It is the only way. I am glad the Senator asked that question, because it enables me to answer another question of the Senator from Minnesota, in connection with the moratorium bill. The moratorium would amount only to a declaration by the Congress, if it were enacted—and I do not think it would be enacted—that until July 1, 1950, no court could construe the existing law against the rule stated in the moratorium bill; that no court could hold that there was a violation of law when freight absorption was found to be used for the purpose of engaging in competition in good faith. Some questions might arise. I know that the committee in reporting the moratorium bill intended by their language to maintain competition and obviate the necessity for litigation, but there still remained the possibility of new opportunities for legal discussion and debate.

PERMANENT LAW PROMOTES INDUSTRIAL DEVELOPMENT

But the fact about it which has given me the greatest concern is that a moratorium would amount to a "road block" against the investment of any sum by any independent in an industry in which circumstances might compel him or might make it seem desirable for him to use freight absorption or delivered prices. Such a situation would stop the development of industries in the West as well as in the East and in the South. It would bring about a condition which would prevail until 1950, until the Congress would again review the matter and decide whether freight absorption or delivered prices were to be condemned.

Mr. HUMPHREY and Mr. O'CONOR addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Wyoming yield; and if so, to whom?

Mr. O'MAHONEY. I yield to the Senator from Minnesota.

Mr. HUMPHREY. Then as I gather, the Senator from Wyoming is proposing his amendment primarily upon the decision or the failure of decision, or the lack of decision, in the Rigid Steel Conduit case.

Mr. O'MAHONEY. Exactly.

Mr. HUMPHREY. That applies to the independent distributor or producer or wholesaler, whether acting in conspiracy or not. Is that correct?

Mr. O'MAHONEY. And I may say to the Senator that in that case the Circuit Court of Appeals found there was a combination.

Mr. HUMPHREY. That is correct.

Mr. O'MAHONEY. I think I should read a portion of that decision into the record, so as to make the matter clear:

> It also appears that instead of petitioner conduit sellers using an absolute Pittsburgh-plus system for all designations in their price quotations, they collectively discussed and considered the matter of maintaining and utilizing Chicago as a basing point, with its differential over Pittsburgh, and that until 1930 they followed a method of calculating delivered price quotations which provided for discounting from the Pittsburgh or Chicago base price, depending upon which base price and accompanying discount produced the lower figure at the customer's destination, and that during 1930—

Observe this language, Mr. President—

> representatives of petitioners at a meeting of the rigid steel commodity section of the National Electrical Manufacturers' Association determined upon a change from that method to the one they now use. (168 Fed. Rept., 2d series, 177.)

So here was the clear finding of a meeting, of an agreement—I might also say, a conspiracy, but I will not—but certainly there was a meeting or an agreement, and in this bill I have taken care to make certain that if there be a meeting or an agreement or a conspiracy, the power of the Federal Trade Commission remains absolutely undisturbed.

Mr. HUMPHREY. However, it is not the Senator's opinion that, had they acted independently without this understanding and this apparent approval of the method which they were using of collaborating, there would not be any action on the part of the Federal Trade Commission?

Mr. O'MAHONEY. That is correct. The Federal Trade Commission in my judgment would not have acted. But the unfortunate fact was that the allegations were presented in such a form that when the appeal was taken from only one count, the second count, it raised this issue.

Mr. HUMPHREY. That is correct. Is it not true that they took out the second count because they felt that that also embraced the charges of conspiracy in the first count?

Mr. O'MAHONEY. Judge Davis said so in a letter which has been made public.

Mr. MYERS. Mr. President, will the Senator yield?

Mr. O'MAHONEY. I shall be glad to yield to the Senator from Pennsylvania.

Mr. MYERS. Do I correctly understand from the Senator's former statement that his fundamental objection to the moratorium bill is that it will make necessary, a year hence, going through the same procedure again?

Mr. O'MAHONEY. Exactly.

Mr. MYERS. The Senator does not have a fundamental objection to the contents of the moratorium bill, but believes that it should be made permanent, in order that new enterprises may seek to go forward and use the freight-absorption method of doing business. Is that correct?

Mr. O'MAHONEY. Precisely. I know the objective of the Senator from Pennsylvania, the Senator from Maryland, and all who have been sponsoring the moratorium bill is the same as I intend, namely, to make sure that delivered prices and freight absorption shall not be deemed illegal per se, and that it is desired in nowise to legalize monopolistic conspiracies to restrain trade or to fix prices.

Mr. MYERS. And that is also the purpose of the Senator's proposed substitute.

Mr. O'MAHONEY. That is correct.

Mr. MYERS. The Senator's proposed substitute merely seeks to make permanent that which the moratorium bill sought to make temporary.

Mr. O'MAHONEY. That is correct.

Mr. KEFAUVER. Mr. President, will the Senator yield?

Mr. O'MAHONEY. I yield to the Senator from Tennessee.

Mr. KEFAUVER. A few moments ago we were discussing the effect of the proposed amended language in section 4 (D). I asked the Senator if he wanted to change in any way the present status of the Federal Trade Commisison Act or of the Clayton Act with reference to the reviewability of testimony on the facts by the Supreme Court.

SCOPE OF REVIEW OF FEDERAL TRADE COMMISSION DECISIONS

Mr. O'MAHONEY. And I said "No"; I did not.

Mr. KEFAUVER. The Senator definitely said "No," and I am certain that very few of us want to change the present situation, if there is any substantial testimony to sustain the findings of the Federal Trade Commission. I find, in examining section 5 of Public Law 203, Sixty-third Congress, which is the act establishing the Federal Trade Commission, that in prescribing the method of review it provides:

> The findings of the Commission as to the facts, if supported by testimony, shall be conclusive.

I also find, on examination of section 11 of the Clayton Act, which is Public Law 212, Sixty-third Congress, it provides that on an appeal from a finding by the Federal Trade Commission to the Supreme Court—

> The Commission or Board may modify its findings as to the facts or make new findings by reason of the additional evidence so taken, and it shall file modified or new findings which, if supported by testimony, shall be conclusive.

There is no doubt in my mind that the suggested new language changes that situation.

Mr. O'MAHONEY. It was not intended to change it. I think perhaps we could change it back, if it has been changed, by saying, in line 5, page 4, "evidence to support the specified effect."

Mr. O'CONOR. Mr. President, will the Senator yield?

Mr. O'MAHONEY. I yield to the Senator from Maryland.

Mr. O'CONOR. I may say to the Senator from Tennessee that I think there may be some misconception with respect to the matter. Reference has been made to the scintilla-of-evidence rule which we think no longer applies. Certainly, under the Administrative Procedure Act, there must be substantial and probative evidence, and there must be evidence showing that there was substantial backing and support for the administrative ruling.

Mr. KEFAUVER. The language refers to the phrase "effect may be." That is, the effect of the freight absorption or what not. It says:

> May be a reasonable probability of the specified effect.

I think that is as far as we should require the Federal Trade Commission to go. Of course, the Administrative Procedure Act is read into the appeal provisions of all the other acts; but to require the Federal Trade Commission to prove that the effect may be to the satisfaction of a reasonable person, on the weight of the evidence, completely carries the whole burden of the evidence to the Supreme Court and would end in litigation which could never be terminated.

So I think the language in the original provision is as it should be, and I certainly expect to object to any change in the original language.

Mr. O'MAHONEY. The language of the Administrative Procedure Act, which, of course, is now the law, is, as I understand, "substantial and probative evidence." So I think the objection of the Senator from Tennessee would be met by altering the amendment on page 4, line 6, to read as follows:

> Is substantial and probative evidence of the specified effect.

That would be a declaration of existing law.

Mr. KEFAUVER. The question here is what shall be required of the Federal Trade Commission to prove the effect of certain things that have been done. I think that if it shows there is a reasonable probability of the specified effect happening in the future, there may be some cases in which they cannot show by substantial evidence that a thing has taken place. In other words, they may be trying to take an event which has occurred and catch it at the beginning, before there is evidence of the actual harm which may have resulted.

Mr. O'MAHONEY. I will say to the Senator, as I said at the beginning, that I was agreeable to the suggested amendment, because I thought it made no change in the meaning of the definition as I originally proposed it. I was disturbed when the Senator pointed out that he felt it would bring about a change in the existing Federal Trade Commission law. I was overlooking the fact that the law has already been altered by the Administrative Procedure Act. When the Senator from Maryland called attention to that fact and cited the words of the statute, "substantial and probative," it occurred to me that if the Senator from Tennessee does not want to change the substantive law, he will agree with me that we should not change it one way or another, particularly when it is borne in mind that our whole purpose is to bring this controversy to an end and make a declaration of purpose, such as that which the majority of the Federal Trade Commission have announced over and over again, so we may remove any danger of a road block from the path of independent enterprise in the United States.

Mr. KEFAUVER. I might be satisfied to accept the language of the Administrative Procedure Act if I were convinced that it dealt with the same question. I should want to take some time to look into the matter. But I am glad, at least, the Senator agrees that the language as originally proposed by him, of a double-reasonableness provision, does not have any place in this amendment.

Mr. O'MAHONEY. I have not said that, and I do not think it requires a double reasonableness.

Mr. KEFAUVER But it requires a reasonableness and a probability.

Mr. O'MAHONEY. Before I introduced the language of my original amendment, I submitted it to members of the staff of the Federal Trade Commission who were absolutely upon the same side of the question of monopoly as is the Senator from Tennessee and the Senator from Wyoming. So that when the question was not raised there with respect to the matter, I saw no particular reason for raising it here.

Mr. WHERRY. Mr. President, I ask the distinguished Senator from Wyoming whether he has yet offered the amendment in the nature of a substitute.

Mr. O'MAHONEY. I have not offered the substitute. I was trying to whip it into shape that would be acceptable to all concerned, and I think we have it now substantially in that form, if the Senator from Tennessee and I can come to a meeting of minds with respect to the definition we have been discussing.

Mr. KEFAUVER. The Senator from Alabama is looking over the language and considering it. But I wondered if the Senator from Wyoming would agree that it should not be written into this bill that good faith is a defense even when there might be ruinous discrimination in the matter of costs by virtue of absorption of freight rates to seller competitors of a larger purchaser. In other words, does the Senator feel that the

effect of the Standard Oil decision, which incidentally I failed to mention was delivered by a former distinguished Member of this body, Judge Minton, should be maintained in whatever legislation is written?

Mr. O'MAHONEY. I am not altogether certain that that is essential, because, as I said in response to the Senator from Louisiana, I do not think it is quite necessary, after the precautions which have been established here, to cling to language which would seem to have the effect of making it necessary to sustain uneconomic and inefficient operations.

Mr. KEFAUVER. Of course, the uneconomic and inefficient operations have always been a reason, and a justifiable reason, for the Federal Trade Commission under its rules and under the law, but I am sure the Senator does not want the matter of the good faith defense to be such a defense that it is really going to lessen competition substantially.

Mr. O'MAHONEY. The way to meet an issue of this kind is to present an amendment.

Mr. KEFAUVER. I wonder what the Senator would say if somewhere in subsection B, section 2, an amendment were proposed in language somewhat to this effect, "except where the effect of such absorption of freight would be to substantially lessen competition." That would give the Federal Trade Commission the benefit of the Standard Oil case, which the court felt covered a very substantial right to be retained in the Federal Trade Commission.

Then on page 3 there would have to be a similar amendment, "except where the effect of the discrimination would be to substantially lessen competition."

Mr. O'MAHONEY. Mr. President, I cannot interpret the effect of what the Senator proposes off the cuff, as it were. I should like to say to the Senator that one of the purposes which I entertained in offering this provision was to make sure that the system which has been used, without criticism, by the sugar-beet industry, of selling at delivered prices by absorbing freight, should not now be disturbed. Not to my knowledge has there been any charge against the sugar-beet processors of any monopolistic practices. There are several beet producers in my part of the country who are competing with one another. The system by which they have absorbed freight has been such that they have never been able to go beyond the Mississippi in the transportation of their sugar, because they could not afford to absorb freight beyond that point and thus get to the eastern seaboard. I wanted to be sure that that great western industry was not being unduly affected by the decision.

Mr. KEFAUVER. I have no desire to affect that industry in its operation whatsoever. I certainly agree with the Senator that the Cement case was fairly clear, and it does not prohibit absorption of the freight, if it is done independently, and not in collusion, or for any unlawful purpose.

It seems to me that great protection might be taken away from the small competitors if good faith is based upon the fact that somebody else is doing something. I think good faith should be a matter of whether there is a lessening of competition as a result of what is being done. That was found in the Standard Oil case, and I have an amendment prepared which I should be glad to have the Senator consider. If the section we are discussing and section D could be worked out satisfactorily, I should have no objection.

Mr. O'CONOR. Mr. President, will the Senator from Wyoming yield?

Mr. O'MAHONEY. I yield to the Senator from Maryland.

Mr. O'CONOR. Let me ask the Senator from Wyoming and the Senator from Tennessee whether language similar to what I shall propose would be acceptable, or would in their opinion meet the situation. On page 2, line 17, after the words "good faith", insert "except where the result is substantially to lessen competition."

Mr. KEFAUVER. That is substantially what I have suggested to the Senator from Wyoming.

Mr. O'MAHONEY. That is almost identical with the Senator's amendment. The amendment to be offered by the Senator from Tennessee is on page 2, line 17, after the words "good faith", to insert "(except where the effect of such absorption of freight will be to substantially lessen competition)."

Mr. O'CONOR. I rather think that the two phrases mean almost the same thing.

Mr. KEFAUVER. They mean identically the same thing.

Mr. O'MAHONEY. The Senator desires to offer the same amendment on page 3, line 10.

Mr. President, since I have not yet offered the amendment, I shall accept the suggestion of the Senator from Tennessee and now offer the amendment as a whole.

Mr. KEFAUVER. Has the Senator decided what course he wishes to take in connection with subsection D on page 4?

Mr. O'MAHONEY. I suggested to the Senator the alternative to take the words out of the existing Administrative Procedure Act, and in line 6, on page 4, to insert the words "is substantial and probative evidence of the specified effect."

Mr. KEFAUVER. That will be satisfactory to me.

Mr. O'MAHONEY. Mr. President, the amendment as now modified I offer as an amendment to the pending bill, by striking out all after the enacting clause and offering this language in its place.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Wyoming in the nature of a substitute.

Mr. WHERRY. Mr. President, if this amendment shall be agreed to, will the bill still be open to amendment?

The PRESIDING OFFICER. It will not be open to further amendment.

Mr. WHERRY. Mr. President, may I suggest to the distinguished Senator from Wyoming that the Senator from New Hampshire [Mr. TOBEY] wanted to be here and speak for about 5 minutes, and ask a question or two about the amendment in the nature of a substitute. In view of the fact that the bill would not be open to further amendment if the substitute amendment offered by the Senator from Wyoming is agreed to, I wonder if the distinguished Senator would suggest the absence of a quorum.

Mr. O'MAHONEY. It is quite agreeable to me. Of course, I should like to have a quorum of Senators present.

Mr. WHERRY. I think we had better suggest the absence of a quorum before the Senator's substitute amendment is adopted. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

During the call of the roll,

Mr. LUCAS. Mr. President, I ask unanimous consent that the order by which the roll was ordered to be called, be rescinded. I understand that the suggestion of the absence of a quorum was made so that the Senator from New Hampshire [Mr. TOBEY] might be present on the floor. That purpose has been accomplished, the Senator from New Hampshire now being in the Chamber.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Illinois? The Chair hears none, and it is so ordered.

Mr. TOBEY. Mr. President, I shall be very brief in view of the lateness of the hour. I desire to go on record with respect to my viewpoint on this major piece of legislation. I confess it is far beyond my understanding in all its details. My interest, however, in the proposed legislation is twofold. Primarily I am for a measure which will not injure, but which will rather help the small-business interests of the country. Secondly, I am for a measure which maintains the integrity of the antitrust laws which have far too long and far too often been neglected in the past many years. Therefore I wish to go on record as saying that I am opposed to the bill itself. I shall vote for the O'Mahoney amendment in the nature of a substitute.

Mr. President, I ask unanimous consent to present my point of view by placing in the body of the RECORD at this point four statements, which embody my views on the subject.

The PRESIDING OFFICER. Without objection, it is so ordered.

The statements are as follows:

THE LEGAL EFFECTS OF THE MORATORIUM BILL, S. 1008

The annexed memorandum is devoted to the proposition (1) that S. 1008 legalizes at least some types of basing-point systems, and (2) that S. 1008 puts on the Government an impossible burden of proving, by affirmative acts, the lack of good faith without being able to rely on the use of identical destination or delivered prices.

This memorandum, therefore, deserves serious consideration from all Members of the Congress who have an earnest and sincere

interest in seeing to it that our antitrust laws are not subverted.

However, it is no more than fair to point out that Report No. 305 of the Committee on the Judiciary of the Senate, accompanying S. 1008, as amended, stated that the substitution of certain of the phrases "is intended to eliminate any possible contention that the Congress intends to legalize, even during the period of the moratorium, the systematic use of basing-point prices, which proponents of the bill have testified is not an objective."

It should also be pointed out, in all fairness, that a letter from the Office of the Attorney General, addressed to the committee, also takes the view that S. 1008 does not validate the use of basing-point systems, even during the moratorium period.

The statement in the committee report and the statement of the Attorney General are, of course, of great importance in construing S. 1008. Inasmuch as it is possible that the bill may become law, congressional opponents of the bill would no doubt be well advised to express their views with sufficient reservations so as not to impair the value of the statements of the committee and of the Attorney General as a limitation on S. 1008, should it become law.

S. 1008 can be effectively opposed on the somewhat modified ground that, although it does not necessarily legalize the use of a basing-point system or increase the Government's burden of proof, corporation lawyers will undoubtedly argue, if it is enacted, that it does accomplish these two things, and will be able to make their arguments with some degree of plausibility. Otherwise they would argue, why should a bill have been passed at all, and why should new words and phrases have been introduced into the antitrust laws? And why should the committee report have stated that under the bill the criterion will be "engaging in competition and good faith, rather than the resulting prices"?

If a cease-and-desist order is ordered by the Federal Trade Commission, it will come on for prolonged hearings, and even if decided against the respondents, it will then have to go to a circuit court of appeals, where there will be further consideration and further hearings, perhaps, while the respondents still continue to engage in the questioned activities. Even if the circuit court of appeals also decides against the respondents, there may be another case which comes before a different circuit court of appeals which may decide to the contrary. Finally, of course, the whole matter will probably come up before the Supreme Court again. In other words, we may be just where we were 20 years ago when the Cement Institute proceedings were commenced.

I. THE LEGAL EFFECTS OF THE MORATORIUM BILL, S. 1008

Nature of the moratorium

Section 1 of the moratorium bill, S. 1008, provides a moratorium until July 1, 1950, with regard to the Federal Trade Commission Act and the Clayton Act. The moratorium is in the nature of a declaration that neither act shall be construed as depriving individual companies, in the absence of conspiracy or combination or other agreement in restraint of trade, of the right to independently quote and sell at delivered prices, or to absorb freight for the purpose of engaging in competition in good faith in any and all markets.

Section 2 declares that the moratorium shall not affect any proceeding pending in any Federal court when the bill becomes law. The enforcement of orders entered on or before the effective date of the act is not to be affected except with respect to activities during the moratorium period.

Here, it may be noted that the result of this last provision, and indeed of section 2 as a whole, is to create one standard of law for concerns against whom orders have become final and another standard for concerns which are not subject to any such orders. Specifically, the provision that orders entered before the effective date of the moratorium may be enforced would mean that, as to the practices covered by the bill, orders such as those involving the Staley and Corn Products companies and the Pittsburgh Plus case against U. S. Steel Corp. could be enforced as to any such activities prior to the approval of the act, while concerns having no such orders against them would be immune from proceedings covering identical activities during this same period of time.

Application of moratorium to Clayton Act and Federal Trade Commission Act

Insofar as the Clayton Act is concerned, the new bill would establish a moratorium against enforcement of the law as construed by the Supreme Court in April 1945 and reiterated by it in April 1948, as well as by the Commission in 1924. These were the Glucose, Cement, and Pittsburgh Plus cases.

In addition, insofar as the Federal Trade Commission Act is concerned, it would establish a moratorium against enforcement of the law as construed by the Federal Trade Commission in the Pittsburgh Plus case and by the United States Court of Appeals for the Seventh Circuit in May 1948 in the Rigid Steel Conduit case, the Supreme Court having upheld the lower court in the latter case by a 4 to 4 division on April 25, 1949.

The moratorium is predicated not on the conclusion that such constructions of the law are definitely unsound and contrary to public policy but that they should be treated as unsound and contrary to public policy for the period of the moratorium. This is to act upon a tentative, makeshift presumption instead of upon a final and well-considered conclusion. That presumption would override the normal and usual presumption that the courts can be relied upon to construe properly the meaning of statutes and the significance of evidence. If such an extraordinary overriding presumption were to be accepted as a sound basis for the moratorium it would be equally sound to support the alternative of a permanent change in the law as judicially construed. But that would require the final conclusion that present constructions are unsound and definitely contrary to public policy, which apparently the Congress does not wish to make.

In short, the whole basis of American law, namely, the normal presumption in favor of the soundness of the Supreme Court's construction of the Federal statutes, would be restricted by the moratorium.

The effect of the moratorium in new, broadened language

The effect of the bill is to reverse the present law relating to geographic discrimination in price. This can be seen by an analysis of the new, broadened language included in the bill.

"Independently quote and sell at delivered prices": There can be no objection to the language of section 1 of the bill insofar as it merely declares the right of individual companies "to independently quote and sell at delivered prices." That is now and always has been the law. None of the proceedings of the Federal Trade Commission has ever challenged such a right, and there is no court decision which even suggests that delivered prices as such should be held unlawful. The vital point is that the law does not undertake to interfere with delivered prices but only with discrimination in delivered prices. However, if the language last quoted is carried over into the remainder of the sentence so that it becomes an affirmation of the right to quote and sell at delivered prices "for the purpose of engaging in competition in good faith in any and all markets," a different question arises. It would broaden the scope of the effective exemption of the moratorium so as to include something more than the mere use of a delivered price method of quotation. The existence of discriminations in delivered prices would probably be taken as not precluding engaging in competition in good faith in any and all markets unless that language be given the same application as was given different language in the Glucose and Cement cases.

"Freight absorption": When it comes to the language which deals with freight absorption further questions arise. The language declares that during the moratorium period an individual company shall have the right independently "to absorb freight for the purpose of engaging in competition in good faith in any and all markets." In view of the Supreme Court's holding in the Glucose cases that freight absorption may be a form of illegal price discrimination and its similar statement in the Cement Institute case, it is clear that the language of the bill concerning freight absorption destroys the principles as to price discrimination enunciated by the Supreme Court in the Glucose and Cement cases. The clause concerning freight absorption really means that any individual company may independently discriminate in price "for the purpose of engaging in competition in good faith in any and all markets" and that it may do this systematically whether or not competition among its customers is injured thereby. The phrase "in any and all markets" is no doubt designed to avoid the effect of the Supreme Court's ruling that the statute deals with individual competitive situations and not with "a general system of competition." (Staley case, at p. 753.)

"Engaging in competition": The phrase engaging in competition is extremely loose because even where there is a price-fixing conspiracy or combination the members are nevertheless engaged in competition in a broad sense. They are trying to sell the same customers and presumably are offering customers some advantages in the way of quality or service. But it is freedom and ability to compete fairly yet vigorously in price without injurious discrimination that is the primary goal toward which the Federal Trade Commission Act and particularly section 2 (a) of the Clayton Act are directed. Even under the present statute the argument has been made to the courts that systematic industry-wide freight absorption is only a method of meeting an equally low price of a competitor in good faith, but the Supreme Court rejected that argument in the Glucose and Cement cases. The argument would again be made and with redoubled force and plausibility in interpreting the words "engaging in competition." Those words are much broader and much less definite than the words "meeting competition" in the original section 2 of the Clayton Act, which Congress considered too broad and too indefinite to retain in the statute.

"Good faith": As presented in the moratorium bill, the words "in good faith" appear without qualification. Specifically, section 1 would make good faith a complete and substantive defense to price discriminations which take the form of individual freight absorption. This, of course, means the restoration of a test of law which has time and again proved to be impossible of effective enforcement in the antitrust field. It is difficult, indeed, to conceive of a more effective way of crippling antitrust enforcement than by saddling the antitrust agencies with the task of trying to determine what is really in the back of the minds of the respondents.

Moreover, a double standard of law would be created. Thus, in the Standard Oil case the United States Court of Appeals for the Seventh Circuit recently held that good faith to meet the equally low price of a competitor is not necessarily a complete and substantive defense. If that decision is upheld and the bill were to become law, then the illogical situation is created that, on the one hand, those who discriminate in price through freight absorption would be given a complete and substantive defense under the moratorium in the good-faith proviso, while, on the other hand, price discriminators whose discrimination does not happen to take the form of freight absorption would have a less complete defense.

The restoration of the basing-point system through the moratorium

The basic and fundamental objection to the moratorium lies not at all in the fact that it specifies the right of the individual companies independently to absorb freight—a right which, it should again be emphasized, is not questioned under the present law—but rather from the fact that it is so worded as to permit the restoration of the basing-point system. This can be seen from the fact that (a) the language of the moratorium would return the country to that law relating to the basing-point system as it stood after the decision of the Supreme Court in the old Cement case in 1925, a decision which permitted the system to continue for 23 years; (b) an analysis of the way in which the new language would be used to permit the operation of a basing-point system; and (c) outright statements by members of the steel industry that if the moratorium bill is passed they plan to return to the basing-point system. Each of these points is discussed below:

(a) The return to the old Cement decision: In the old *Cement case* (268 U. S. 588) the Supreme Court rejected the conclusion of the trial court that the basing-point system involved a conspiracy or combination and rationalized the system in the following language:

"The use of the basing points for the purpose of computing freight rates appears not to have been the result of any collective activity on the part of defendants or cement manufacturers generally, nor were they arbitrarily selected. Their use is rather the natural result of the development of the business within certain defined geographical areas. When a manufacturer establishes his factory at a given point of production and sells his product in a territory which is contiguous freightwise to his factory, other mills established in the vicinity and serving the same territory, in order to compete in that territory, must either secure a like freight rate or they must sell at a mill price which will permit them to deliver cement at a price which will enable them to compete with the mill or mills located at the basing point which is the principal point of production in the territory which is contiguous in point of freight rate to the basing point" (p. 598).

The result of that rationalization was to create a 23-year judicial moratorium for basing-point systems, ending with the new Cement case decision in April 1948. If the presently proposed moratorium were to become law, the language quoted above from the old Cement case would seem to fit perfectly the language of the bill which reads "to absorb freight for the purpose of engaging in competition in good faith in any and all markets." In other words, with conspiracy or combination absent, as in the old case, the conclusion would be strongly indicated that industry-wide freight absorption is what the Supreme Court said it was in the old case, a normal method of meeting competition. That is essentially what the bill says it is. And if it is not to be regarded as even an incipient restraint of trade under the Federal Trade Commission Act, by what logic can it be so regarded under the Sherman Act unless there be extraneous evidence of conspiracy not inhering in the mechanical features of the system itself? By implication those features could not be treated as circumstantial evidence of conspiracy.

In his recent book, The Law of Free Enterprise, Lee Loevinger says:

"It is at the point where this aspect of the matter is considered that most legal discussion of the problem assumes an Alice-in-Wonderland quality. Mature, intelligent men with college educations and law degrees solemnly argue whether an extremely complicated pricing formula which is rigidly followed by dozens of separate enterprises over a period of years can be legal, assuming that there is no collusion. The problem is reminiscent of those debated by medieval scholastics. It requires the assumption that the laws of probability and causation have ceased to operate. It makes about as much sense as the question, Would you get a traffic ticket for parking half an hour overtime in Louisville, Ky., assuming that all movement in the solar system had stopped 1 hour earlier?

* * * * *

"It is unrealistic in the extreme to discuss the propriety of a basing-point system upon the assumption that each firm, acting independently in an economic vacuum, uses a system that is completely unrelated to the one used by other firms but which happens, by sheer coincidence, to be identical with the system used by every other firm."

(b) The way in which the new language permits the basing-point system: Under the proposed bill there would be nothing to prevent each and every mill in a given industry from announcing in advance that it will make its delivered prices identical with those of any competitor in any and all markets and that it will absorb freight to whatever extent is necessary to accomplish that result. Or, to be more specific, there would be nothing to prevent each and every mill in a given industry from (a) becoming a base mill; (b) regarding the mill price of each other mill as the governing base price for the territory in which it is the nearest source of supply freightwise; and (c) varying its freight absorption to yield a delivered price which would equal the sum of the price of the governing mill plus freight from that mill to the destination. In this way identical delivered prices could be obtained by all mills for every destination.

(c) Statements of industry spokesmen of intent to return to basing-point system if moratorium is passed: That the passage of the bill would result in the return of the basing-point system is also indicated by statements to that very effect which have apparently been made by industry spokesmen themselves. Of interest on this point is part of the testimony opposing the original version of the present moratorium bill, S. 1008, by Mr. Otis Brubaker, director of research, United Steel Workers of America, CIO, which applies with equal force to the present version of that bill:

"Make no mistake—the cement industry and the steel industry have abandoned their basing-point systems because the cement system was declared illegal and the steel system was so similar in functioning that it clearly could not stand the test of law. These industries are actively seeking amendment to the law which would explicitly permit them to reinstitute these systems and they believe this bill will accomplish that purpose. This belief is such common knowledge in the industry that it was even cited recently in the financial page of the New York Times.

"Remember, these industries have never admitted that their basing-point systems were price-fixing devices. In fact, they affirmatively contend today that the basing-point system as they used it was not a collusive device. The industry has never 'consented' in steel to the abandonment of its basing-point system. As a result, the FTC case against the steel industry is still active. Surely, if the industry really believed that the law required an f. o. b. arrangement it would abandon this costly suit. Both industries believe that their systems could be reinstituted with impunity and be safe from challenge if individual price systems were made legal, per se, as this moratorium would do.

"Representatives of my union have been approached repeatedly by various of the companies which we have under contract asking for their support first, for S. 236, now for S. 1008 and H. R. 2222. They will tell us, if not you, that these amendments would permit them to return to their former basing-point systems. And, most importantly, they do plan to return to such a system in the near future. If this law is passed, they will take such action in the near future. If it is not passed, they will wait until the demand for steel has slackened and then return to a system of freight absorption. They have never abandoned their belief in their right to use a system and they will use one again as soon as it is to their advantage to do so. We presented evidence in our earlier testimony to show that some of these companies in the steel industry, who now pretend that the law as interpreted does not permit freight absorption, are now, today, absorbing freight on some items. The number of items covered by and the number of companies using freight absorption in steel has increased, even during the one short month since we first made the statement—and this without any corrective legislation. This subcommittee in Congress should not be deceived by these specious representations regarding interpretations of existing law when these companies do not really believe these interpretations enough to fully obey the law as they pretend to interpret it."

The effect of the moratorium on economic concentration

Inasmuch as the moratorium bill, for reasons described above, would permit the restoration of the basing-point system, it would consequently have the effect of increasing the already excessively high level of economic concentration, for, as is well known, the basing-point system tends to react against small firms and in favor of big business.

That the basing-point system clearly does place small competitors at a disadvantage is brought out by Mr. William Summers Johnson as follows:

"If the small producer operates as a nonbase mill he may find it very hazardous to attempt becoming a base mill. Where such a producer does lower prices in his local market area, the base-mill producer may, through the automatic workings of the system, absorb freight to match the lower delivered prices, in which case the small mill is engaged in an unequal contest of matching income losses. The small producer may then find it impossible to raise his prices again, particularly if the large producer chooses to continue the contest.

"Whether the small producer operates as a base mill or as a nonbase mill, if the size of the two mills is greatly unequal, the small producer is restrained from lowering prices in his local territory by the action of the large producer in absorbing freight to match such lower prices." [1]

[1] The Georgetown Law Journal, vol. 37, No. 2, January 1949, p. 165.

Dr. Corwin Edwards has also expressed himself on the same question in an article entitled "Geographic Price Formulas and the Concentration of Economic Power."[2] He said:

"Another feature which tends to strengthen large enterprises against small ones in basing-point industries is the fact that large concerns frequently have several producing establishments. The basing-point system works in favor of the multiple plant enterprise as compared with the single plant enterprise. With plants at several basing points, the large concern can make sales in each base area, yet hold to a minimum the number of instances in which it absorbs freight in order to sell from one base area into another. Within a single base area, a large concern which has both base and nonbase mills may enjoy the high local realizations of the nonbase mill and yet, by supplying intermediate territory from the base, minimize freight absorptions from the nonbase mill. As the number of plants under one ownership is increased, the occasions when freight is absorbed grow fewer, though the opportunities to collect phantom freight remain as numerous as before. By contrast, the single plant enterprise located away from a base cannot enjoy phantom freight without being forced to absorb freight or forego markets toward the base; and the single plant enterprise located at a base cannot sell in other base areas without freight absorption. Only the multiple plant enterprise can eat its cake and have it too."

Dr. Edwards further said:[3]

"In summary, the foregoing analysis means that the benefits the small seller obtains from industry-wide use of a basing-point system are limited to protection against localized price cutting by his larger rival and provision of a relatively high return upon his local sales if he is situated far from the basing point. The sacrifices imposed upon him by such a system are loss of his initiative and independence in making prices, abandonment of any effort to give a nearby customer a price incentive to deal with him rather than with a distant producer, and impairment of his opportunity to enlarge his business by reaching out to markets nearer the basing point. A concern which is willing to remain permanently small and docile is well suited to the use of such a pricing system, but a small concern which desires to grow is likely to find the system a serious handicap."

Dr. Edwards characterized the price structures of basing-point systems as "skewed in a direction adverse to the ambitions of small enterprises" (same, p. 142). He quoted in support of his argument the statement of a witness before the Capehart committee on Senate Resolution 241 as follows:

"Many businessmen in the Pacific Northwest state that the practice of freight absorption by which distant eastern mills dump into this area by absorbing some of the freight has definitely served to retard the development of local industry—such as steel making—because local demand is readily supplied by the eastern mills."[4]

Dr. Edwards' final conclusion was that the long-run effect of the abandonment of basing-point pricing is likely to be a reduction in the strategic advantage which attaches to concentrations of economic power and a gain in the opportunity for small-business enterprises to pursue their own price policies, develop their own markets, and grow bigger. Warning that it was easy to overstate the extent of such effect he said that "nevertheless the movement is in the right direction."[5] Since freight absorption is an inherent and indispensable part of any basing-point system Dr. Edwards' discussion of the effects of such system was necessarily, in part, a discussion of systematic freight absorption.

Paraphrasing his warning above referred to it may with equal logic be said that while it is easy to overstate or understate the effect of the bill on concentration of economic power it necessarily runs counter to what Dr. Edwards characterized as the right direction.

II. THE COLLUSIVE ORIGIN OF BASING-POINT PRICING

Introduction

Since the days of the first common law decisions condemning agreements and planned market controls which fix prices, control production or sales, or otherwise restrain competition or tend to create monopoly, businessmen have sought to rationalize as being within the law any practice or plan of economic action which served their own personal interests. Individuals, partnerships and separately incorporated and managed companies, and cooperating groups of otherwise mutually independent persons and managements, all pursue this line of thinking. The clash of such rationalization with the public interest, as interpreted by courts of law, has resulted in a long series of leading decisions, first under the common law, and later, under statutory law, outlawing various forms of both individual and planned concerted action. This struggle between private and public interest is perennial, for human ingenuity in devising new methods of attaining private ends is unlimited.

Concerted use of various methods of pricing which result in the naming of identical delivered prices for every possible delivery point by some or all potential suppliers is the latest such privately planned and administered group activity to come under legal questioning. Investigation of the operation and effects of such plans has abundantly indicated that several methods of pricing, which are not per se unlawful when used by competing concerns acting independently, have so interwoven in the fabric of group controls as to become an integral part thereof. The application of sanctions against such cooperatively used plans in their entirety implies the application of sanctions against methods of pricing which, used alone and disassociated from such concerted plans, would not, by themselves, be unlawful.

Delivered pricing is a good example of what is meant. If followed individually by sellers who actually compete in price, it is not unlawful. In fact it may be a means of truly independent price competition. If, however, it is uniformally and concertedly used by a cooperating group to assure identical delivered prices for all sellers at any given point of delivery, it becomes a part of that plan. The application of sanctions against the plan as a whole, however, implies criticism or condemnation of delivered pricing per se only to the extent that it is used as part of the broader plan. Numerous other business practices are in the same position as delivered pricing in being lawful per se yet susceptible of being woven into and made a part of concertedly used plans to control competition, restrain competition, or promote monopoly.

The purpose of this analysis is to trace back to their origin those methods of pricing commonly spoken of as basing point pricing[6] and to provide some indication of the extent to which these systems were the outgrowth of collusive activity.

The sequence of events which have generally occurred in the establishment of basing-point system typically runs about as follows:

1. Around the turn of the century producers in the industry would get together in pools or gentlemen's agreements for the express purpose of fixing prices.

2. Because of their relative ineffectiveness and because of legal attacks both by Federal and State antitrust agencies, the pools and gentlemen's agreements gradually disappeared.

3. During the course of their existence, however, it was found that one of the most effective ways of controlling prices was through the use of a single basing point which all mills, no matter where located, would use in quoting delivered prices by adding to the price at such basing point the freight to destination.

4. By providing a means whereby delivered prices could automatically be determined without the need of meetings, written agreements, etc., the basing-point system which emerged from the pools and gentlemen's agreements thus replaced them as a means of obtaining their objective.

5. Either because of the development of new sources of production remote from the established basing point or because of legal attacks, the single basing-point system gradually gave way to the multiple basing-point system. The only difference between the two lies merely in the fact that under the latter the number of basing points is increased, which in turn simply decreases the size of the areas in which each basing point controls the delivered price. By following the common practice of quoting delivered prices as the sum of (1) the base price at the basing point nearest the destination, and (2) freight from that basing point to the destination, all mills, under the multiple basing-point system, are able to quote identical delivered prices, down to the ten-thousandth of a cent, at any destination.

Although each industry which has followed the system shows minor deviations and exceptions of its own, the same general pattern applies by and large to the majority of the industries operating under the basing-point system. That the basing-point systems did, in fact, spring from collusive activities is indicated in this analysis which examines the development of the system in the two industries in which it has been most prominent—the cement and steel industries.

Collusive origin of basing-point pricing in cement

Cement a growing young industry: Prior to 1878, all portland cement used in the United States was imported. In that year, however, production began in this country at Coplay, Pa., in the Lehigh Valley, which, for at least 10 or 15 years, continued to pro-

[2] Supra, p. 141.
[3] Supra, p. 142.
[4] Statement by Vernon A. Mund, Seattle, Wash., the Impact of the Pricing Policies of the FTC, before the Trade Policies Committee, Senate Interstate and Foreign Commerce Committee, December 8, 1948.
[5] The Georgetown Law Journal, vol. 37, No. 2, January 1949, p. 148.
[6] The term "basing point pricing" as used throughout this analysis is applied to those methods of pricing in which the following two essential features are present: (1) That the commodity affected shall be sold only at delivered prices, and (2) that for every customer destination there is one governing base point, or basing price area, with a known base price to which sellers of the commodity, regardless of their geographical locations, add a predetermined amount (either actual freight cost or an arbitrary charge) to cover transportation. Application of these two fundamentals of basing point pricing yields identical prices for all potential sellers at any given point of delivery.

duce practically all cement manufactured in the United States.[7] Many States, however, have limestone, shale, or steel-mill slag from which cement of good quality can be made. By 1900, therefore, manufacture was spreading to other States, and the cement industry, although young, was rapidly spreading to other areas. Production at new domestic plants began under the natural protection of prices in the Lehigh Valley plus transportation costs to distant consuming areas, just as the Lehigh Valley had begun production under the protection of the cost of imported cement landed at American ports of entry plus domestic transportation to inland points.

Prior to the organization of the Association of American Portland Cement Manufacturers in 1902, cement was predominantly sold f. o. b. mill.[8] Even before that date, however, basing-point delivered pricing had appeared, at least in embryonic form, when Atlas Portland Cement Co., an early producer in the Lehigh Valley, decided to build and operate a plant in the Middle West. B. F. Affick, president of Universal-Atlas Cement Co. (a combination of United States Steel Corp.'s Universal Portland Cement Co. and Atlas Portland Cement Co.) testified as follows on this point before the Interstate Commerce Committee of the Senate in 1936:[9]

"In 1901, the Atlas Portland Cement Co., which had built and was operating one of the first plants built in the Lehigh Valley, began to build a large plant at Hannibal, Mo., on the Mississippi, 100 miles north of St. Louis. The purpose was to better serve the Middle West and to make more profit.

"The company then announced it would name all prices delivered instead of f. o. b. mill, and for a time these prices were based on Lehigh Valley base plus freight, the difference between the freight from Lehigh Valley and from Hannibal going to increase the profit of the Hannibal plant, the customers paying no more than before but getting better service."

F. M. Coogan, president of Alpha Portland Cement Co. also testified that, after 1902, his company, which had formerly sold f. o. b. mill, began selling on a delivered-price basis, but for a few years continued making a limited number of sales f. o. b. mill. In 1902 Alpha Portland Cement Co. operated two plants, one at Alpha, N. J., and, through its subsidiary, Martins Creek Portland Cement Co., one at Martins Creek, Pa.[10]

When Atlas Portland Cement Co. built its new plant at Hannibal, Mo., other strong interests already were manufacturing cement in Illinois and Indiana.[11] The attempt of Atlas to price cement manufactured at Hannibal at delivered prices based on Lehigh Valley plus freight, obviously was vulnerable to the extent that other manufacturers chose to compete by undercutting in price. A similar situation existed in Michigan and Ohio, where local producers undercut Lehigh Valley-plus in competing for the local market.

Association activities for Lehigh Valley-plus: Thus the setting for further effort in the direction of monopolistic price control through basing-point pricing was provided by the independent pricing of the growing fringe of local producers. This step was taken through the Association of American Portland Cement Manufacturers. This association, founded in 1902, was stated at its December 1904 meeting to represent approximately 90 percent of the productive capacity of the United States. This would indicate membership of all large producers and smaller ones as well. The minutes of that meeting indicate that one member stated that:

"The main grievance which the association has here is the grievance for a uniform price for cement."

Another said:

"Now if we are going to accomplish anything in the matter of prices, I believe the right place to do it is here."

And still another stated: [12]

"While we are on this subject today we ought to do something practical; according to our bylaws, we are here for mutual benefit and not for mutual admiration, and I think we can pass a resolution that will be a basis to steady the market for next year. * * * I am sure that if we pass a resolution here, fixing the price to April 1 deliveries, then increase price for deliveries after that time, and agree right here to do this, we can carry this through. This is the time and place that this should be done."

After discussion, it was resolved in association meeting:

"That the members of this association in answering inquiries for prices, confine deliveries up to April 1, 1905, and quote a higher price for deliveries after that date, and that it is the sense of this meeting that the price should not be less than $1 per barrel—at the mill for the Lehigh district." [13]

This subject again came up at a Philadelphia meeting of the association in April 1905, when Michigan members were called upon to state what they were doing. One Michigan producer stated:

"We are trying to follow our eastern friends in the Lehigh Valley, and we will be very well satisfied if they keep up their nerve." [14]

Another Michigan member said:

"We have lately issued a schedule of prices on a basis of 85 cents in the Lehigh Valley, adding freight, and this price we can get without any trouble." [15]

A resolution directing the appointment of a special committee to take charge of the matter of prices and business methods and report at the next meeting to be held in Atlantic City was unanimously adopted. In the discussion preceding adoption of the resolution, the influence of large eastern producers is to be noted in the following suggestion made by its sponsor: [15]

"It seems to me that it would be well if you would appoint a committee, with the majority coming from the Lehigh Valley, to take this matter in hand, formulate some plan, and get together and have a report for the next meeting at Atlantic City, establishing a uniform method."

This report was presented at the Atlantic City meeting in September 1905 with the statement:

"Forty-six members have signed the report, and three, the Atlas, Pacific, and Standard Portland Cement Co.'s, have refused, the latter two being California companies and the other an eastern company."

The exact terms of agreement signed by 46 companies is not known. Whatever they were, however, the discussion preceding the agreement and subsequent developments indicates that the idea and purpose of monopolistic price control was fairly launched by a big segment of the industry by direct association action leading to collusive agreement among its members, with a distinct slant toward delivered prices determined by the basing point method.

Throughout several ensuing years there still remained, or developed by defection, a considerable fringe of competition which did not observe Lehigh Valley-plus basing-point pricing. In 1908, the chairman of the association's committee on trade conditions ascribed "the unwarranted and unfortunate condition into which our business has drifted" to "lack of unity and cooperation on the part of all manufacturers in their respective territories" and recommended, among other things, that: [16]

"All prices for portland cement shall be the prices delivered by the purchaser."

The use of the Lehigh Valley as the single basing point or zone for determining delivered prices in other areas, and the maintenance of such a system of price control by voluntary, collusive action continued to be sought through the Association of American Portland Cement Manufacturers and lesser local associations for a number of years. A report made at the American Association's June 1910 meeting respecting conditions in Michigan contained the following: [17]

"The situation in Michigan is very satisfactory and is growing more so. There was a chaotic state there early in the year. There was no unity of action at all among the mills until they formed a little association which comprises all Michigan mills and one or two across the border. This resulted in a free exchange of views and an understanding to the effect that the Lehigh prices should govern the prices out here. This understanding has been observed. The price today, based on the Lehigh price of 80 cents, makes Detroit a price of $1.25, delivered."

With such a system of pricing, a single local-price agreement or understanding among Lehigh Valley producers respecting the Lehigh Valley base price would determine the delivered price in every producing area of the United States.

Price fixing under patents to further identical delivered pricing: In 1900, about a year before Atlas Portland Cement Co. sought to put Lehigh-plus pricing into effect for its Hannibal plant, two of its employees, Hurry and Seaman, patented a method for burning powdered coal in rotary cement kilns. In 1903, Atlas brought suit alleging infringement by Alpha Portland Cement Co. Final argument in the suit occurred in July 1906. Before final decision was handed down, however, a settlement was affected in November 1906, whereby a new corporation known as North American Portland Cement Co. was set up to hold an exclusive license with power to sublicense under three Hurry and Seaman patents. The new company was jointly controlled by Atlas Portland Cement Co., Alpha Portland Cement Co., American Cement Co., Lehigh Portland Cement Co., Lawrence Portland Cement Co., and Vulcanite Portland Cement Co. Various companies were licensed under the patent, and in December 1907,

[7] The Americana, vol. 22, p. 398.

[8] Docket 3167, Cement Institute et al., 37 F. T. C. 87 at p. 150.

[9] Ibid., p. 150.

[10] Moody's Manual (1903), p. 1301.

[11] Illinois Steel Co. had already started manufacturing cement from blast furnace slag in the Chicago-Joliet area in 1896. Following acquisition of Illinois Steel Corp. in 1902, Illinois Steel Co. continued cement manufacture until United States Steel Corp. formed Universal Portland Cement Co. in 1906 to take over and develop the steel corporation's cement business which subsequently became concentrated at Buffington, Ind., Morgan Park (Duluth), Minn., and Universal (Pittsburgh), Pa. In addition, a number of lesser companies had begun cement manufacture in the Illinois-Indiana area by 1901, and in 1902 Lehigh Portland Cement Co., another of the large Lehigh Valley producers, entered the Middle West field by building a plant at Mitchell in southern Indiana. (F. T. C. Report: Price Bases Inquiry; the Basing Point Formula and Cement Prices, exhibit 1, pp. 147–157.)

[12] Docket 3167, Cement Institute et al., 37 F. T. C., 87 at p. 151.

[13] Ibid., pp. 151–152.

[14] Ibid., p. 152.

[15] Ibid.

[16] Ibid., p. 153.

[17] Ibid., p. 154.

the Association of Licensed Cement Manufacturers, consisting exclusively of licensees, was formed to further the interests and business of licensees. Two years later all of the companies named above, plus the following companies, participated in a supplemental licensing agreement dated January 13, 1909: Pennsylvania Cement Co., Penn-Allen Portland Cement Co., Nazareth Cement Co., Catskill Cement Co., Bath Portland Cement Co., Glens Falls Portland Cement Co., Phoenix Cement Co., Edison Portland Cement Co., Whitehall Cement Manufacturing Co., and Northampton Portland Cement Co. The agreement also provided that other Portland cement companies thereafter licensed might become parties.[18]

About 20 important cement producers were licensees in the year 1909. These licensees agreed that the licensor, North American Portland Cement Co., should fix minimum selling prices for cement For this purpose two territories, designated territory A and territory B, were set up. Territory A included roughly all of the area east of a north and south line drawn from Rochester, N. Y., through Hagerstown, Md., to the northern boundary of North Carolina and the whole of North Carolina and South Carolina. The balance of the United States constituted territory B.[19] The 1909 agreement fixed minimum base prices and numerous conditions of sale for mills in part of territory A and reserved the right similarly to fix prices and conditions in the balance of territory A and all of territory B.[20] The penalty for any licensee failing to observe the prices and other stipulations of the agreement was stated to be cancellation of his license.

For present purposes the important points to note are that: (1) the base prices fixed were for the Lehigh Valley producing area and certain other producers in adjoining areas in New York; (2) all prices were to be quoted on a delivered basis; and (3) prices in territory A were to be not less than $1.20 in wood and cotton and 95 cents in paper plus the Northampton, Pa., all-rail rate, with certain specified exceptions. Thus, except where otherwise specified, the delivered prices were to be Lehigh Valley-plus. Efforts along this line continued until after a decision adverse to the validity of the Hurry and Seaman patents in 1910, whereupon the licensing agreement was canceled on January 1, 1911.[21]

Switch to multiple-basing-point pricing: Inability, even under the licensing agreement, to extend Lehigh Valley-plus pricing beyond the territory adjacent to and mainly northeast and south of the Lehigh Valley highlights the fact that competition arising out of the development of production in other areas was forcing concerted price control efforts to take the direction of multiple-basing-point pricing. By 1915, this trend had become well-established.

Multiple basing-point pricing substitutes two or more smaller areas for one large area covered by a single basing point, in the determination of identical delivered prices. Concerted cooperation of two kinds, however, is required under multiple basing-point pricing, whereas, only one is required under a single basing point. First, there must be concerted action among producers within each basing-point area to use the same base price in each area and, second, there must be cooperation from producers outside each multiple basing-point area not to undercut delivered prices in any basing-point area other than their own.

This was well-exemplified in 1915, when, by concerted action, multiple basing-point pricing was extended into the Northwest, as far as Irvin (Spokane), Wash. This action involved concerted price leadership by two important producing interests operating in the area from the Mississippi River on the east to Colorado and Washington on the west, and the at least tacit cooperation of a third interest in Washington. These three interests were, respectively: [22]

1. Cement Securities Co. and its three subsidiaries, Colorado Portland Cement Co. (plant at Portland, Colo.), Union Portland Cement Co. (plant at Devils Slide, Utah), Three Forks Portland Cement Co. (plant at Trident, Mont.).[23]

2. Lehigh Portland Cement Co., operating plants in the competitive area at Mason City, Iowa; Iola, Kans.; and Metaline Falls (extreme northeast), Wash.[24]

3. International Portland Cement Co., Ltd., operating a plant at Irvin (Spokane), Wash.

In this instance, the general sales manager of Colorado Portland Cement Co. (of the Cement Securities group) outlined the understanding in instructions to an official of Colorado's affiliated Three Forks Portland Cement Co. as follows on January 28, 1915:[25]

"I have wired you the basis for quoting all of your territory, which is as follows:

"$1.50 per bbl., f. o. b. Irvin.
"$1.30 per bbl., f. o. b. La Salle.
"$1.50 per bbl., f. o. b. Mason City.
"$1.10 per bbl., f. o. b. Iola.
"Whichever figures lowest.

"You need have no fear whatever of the Lehigh people taking any business except on this basis, as their Chicago office is now in complete charge of their Spokane factory, and will be responsible for every action of every one of their employees, and you may rest assured that Mr. Brown, as well as the others, understands this perfectly. Mr. Gowan gave me his personal guaranty of this and I gave him my guaranty of strict adherence to this."

After discussing at some length the fact that International Cement Corp. had not been approached on the matter, but "that its western representative had stated 'that he would not go lower than any basis upon which he knew the Lehigh plant was selling,'" Colorado Portland Cement Co.'s general sales manager concluded with this admonition to his subordinate: [26]

"While on this subject, I want to call your attention to the fact of not letting anyone know that any understanding whatsoever has been agreed upon, and especially never mention it to any of our customers, but simply say to them that we have reasons to believe that no lower prices will be named than those we are quoting, because we know the basis to be practically cost to manufacture, at basing points, and no exceedingly high profit can be made by the plants operating at those basing points. Please caution your salesmen particularly in this regard."

By such means as this, multiple basing-point pricing became the established method of pricing practically everywhere in the industry prior to the formation of the Cement Institute in 1929, and became one of the customs and usages which the institute has sought to maintain ever since.

Collusive origin of basing-point pricing in steel

Common lineage of pools and Pittsburgh plus: Pittsburgh-plus pricing, as adopted in the steel industry in 1903, is the first recorded instance of a well-developed method of basing-point pricing. From at least as early as 1873 down to 1903, there had been numerous pool agreements and understandings respecting steel prices. As a background for both the formation of pools and the development of basing-point pricing, the following economic facts are important:

1. From 1873 onward, Carnegie Steel Co. or its predecessor Carnegie interests were an important factor in the steel industry. From 1888 onward, Carnegie Steel Co. rapidly assumed a distinct position of leadership, and, in 1899, controlled about 25 percent of the country's production of ingots and steel for castings.[27]

2. United States Steel Corp., formed in February 1901, absorbed Carnegie Steel Co. and numerous other pig-iron, steel-fabricating, and iron-ore companies. By this consolidation, United States Steel Corp. and its subsidiaries became, by far, the dominant factor in the industry, producing and selling under single corporate control the following proportion of the country's total iron and steel production in 1901: Steel ingots, 65.7 percent; finished rolled-steel products, 50.1 percent; pig iron, 43.3 percent.

3. Rudimentary elements of basing-point pricing were tried out at least for a time in a number of steel pricing pools, agreements, and understandings from 1873 to 1903.

Emergence of zone pricing: It appears that up to about 1882 steel was predominantly sold f. o. b. mill. At that time steel beams had been developed for structural purposes, and in that year four manufacturers of structural steel—Carnegie Bros., Passaic Rolling Mill Co., New Jersey Steel & Iron Co., and Phoenix Iron Co.—fixed a price of 7½ cents per pound. New York City was then the largest consumer of structural steel. Under this pool, the West was left to Carnegie Bros., while the East was parceled out among the last three concerns named. Carnegie's prices in the West were based on the Pittsburgh price. In 1884 or soon thereafter zone prices for structural steel were established.[28] Merchant iron manufacturers west of the Alleghenies likewise adopted a zoning system and agreed upon a price schedule in 1887, and

[18] Ibid., pp. 153–154: Also Commission's Exhibit 3196, p. AA.

[19] Territories A and B were described in the 1909 agreement as follows:

"Territory A shall embrace the New England States, New Jersey, Delaware, District of Columbia, North Carolina, and South Carolina, and all portions of New York, Pennsylvania, Maryland, and Virginia (excluding West Virginia), lying east of a line running approximately north and south from Lake Ontario to the northern border of North Carolina and passing through the most westerly point of the boundary of Rochester, N. Y., and the most westerly point of the boundary of Hagerstown, Md., and through a point halfway on an air line between the Lehigh Valley Mills at Northampton, Pa., and Pittsburgh, Pa. * * *.

"Territory B shall embrace all territory covered by said patents not included in territory A." (Docket 3167, Comm. Ex. 3196, p. M. M.)

[20] Ibid., p. 154.

[21] Ibid.

[22] Docket 3167, Cement Institute, 37 F. T. C. 87 at pp. 155–156.

[23] Moodys, 1916, p. 2332.

[24] Moodys, 1916, p. 2935 and Doc. 3167, Cement Institute et al., Examiners Report, p. 68 (mimeographed).

[25] Docket 3167, Cement Institute et al., 37 F. T. C., p. 155.

[26] Ibid., p. 156.

[27] C. J. H. Bridge, The Inside History of Carnegie Steel Co., p. 297, and American Iron and Steel Institute Annual Statistical Report, 1945, p. 29. The percentage stated is obtained by converting gross tons as stated by Bridge to net tons for comparison with the AISI total for production of the United States.

[28] Docket 760 (Pittsburgh Plus), Examiner's Report, p. 38.

in 1895 bar manufacturers announced zone prices for iron bars fixed on a mill basis at $1 for the eastern, $1.05 for the central, and $1.10 for the western territories, respectively.[29]

Even earlier than any of the above instances a beginning of zone pricing is to be noted in the action of eastern and western nail associations, which in 1876 agreed on $2.75 per keg for the eastern and $2.85 for the western territories, respectively. Members of each association agreed to sell at the other's price when selling in the other's territory.[30]

It will be noted that zone prices did not appear in the various pools until competition arose from mills outside the Pittsburgh district. Various zones then appeared. A Cleveland zone included Ohio north of Columbus; Indiana and Illinois were put into another; Michigan was a zone by itself; several Southern States constituted another; and there was some zoning in the East, including New England, New York, and New Jersey. As distances from Pittsburgh increased, zone prices were higher to cover freight rates which increased with distance from Pittsburgh.[31] By this means the areas within which newcomers could sell most advantageously were limited and price competition between the new and old mills was restrained. Pool pricing by zones broke up whenever some party striving for tonnage failed to adhere to the zone price agreement.

Emergence of base prices and extras: Pittsburgh became the largest center of production early in the history of the steel industry, and, as noted above, the Pittsburgh price was used by Carnegie Bros. as early as 1882 in pricing structural steel for the western territory assigned to them under the pool agreement of that year.

Uniform prices, however, could not readily be maintained without uniform extras for steel products varying in size, shape, finish, and quality. To cover this point, extra cards for iron products were first adopted in the early 1880's, and a card of extras for steel was made in the early 1890's, and was used by the plate and structural pools.[32] It is stated that a then existing association of bar manufacturers took steps to put bar extras on a cost basis in 1897.[33]

Concerning the operation of this association, a former vice president in charge of sales of Carnegie Steel Co., testified in the Pittsburgh basing case from personal knowledge. He said:

"I sat in what was known as the bar association from 1897 on. That was what was called a gentlemen's agreement. It was not a pool. It was nothing more or less than an association to help stabilize prices, but more particularly to stabilize extras, which had been very unscientific in their manner, and went to a cost basis in order to establish scientific extras, which were almost more important than the base price, and many of the associations dealt with matters of that kind quite as much or more than they dealt with prices." [34] (Exhibit 51.)

Evidence of the use of base prices prior to the adoption of Pittsburgh-plus is to be noted in the fact that in April 1896, representatives of a billet pool conferred with Alabama furnace companies and western bar manufacturers and agreed upon prices of $20.25 per ton for soft steel bars at Pittsburgh, $20.75 at Cleveland, $21.25 at Chicago and $22.50 at eastern points.[34] This, it will be noted, involved multiple basing points, or basing-point areas.

Still another step, now in the direction of single basing-point pricing, was taken in 1898 by a structural steel association among whose members were Carnegie Steel Co., Jones & Laughlin, Pencoyd Steel Co., Cambria Steel Co., Tidewater Steel Co., and (probably) Illinois Steel Co. This association had meetings from time to time and arranged for maintaining uniform prices for its members who agreed they would sell at not less than agreed upon prices for certain classifications of steel when sold within designated districts or freight zones, the minimum zone prices agreed upon being based on a specified fixed price f. o. b. cars, Pittsburgh. A plate pool organized in 1900 in which Carnegie Steel Co., Cambria Steel Co., Jones & Laughlin Steel Co., Worth Steel Co., Lukens Steel Co. and Illinois Steel Co. participated, followed practically the same method of pricing as the structural steel pool.[35]

Pittsburgh-plus as substitute for previous agreements: With experiences such as those outlined above as a background, and with it becoming clearer year by year that pool-pricing agreements were both lacking in permanence and unlawful, it was only a short step for the big companies to establish Pittsburgh as their principal basing point with a secondary higher-price base at Birmingham establishing a zone for the distant southern mills, all of which then were independent. United States Steel Corp. and its subsidiaries, then controlling two-thirds of the country's ingot production and half of its rolled-steel products, took the lead. Use of uniform extras was continued, and actual freight from Pittsburgh or Birmingham was substituted for arbitrary zone prices and differentials. Agreements of the pool type respecting base prices and other matters continued at least through 1906, and then went underground as the result of Government attack, to reappear in the form of understandings developed at Gary dinners.[36] Thus, basing-point pricing, nurtured by the industry's leaders, emerged as the direct offspring and heir apparent to recognizedly unlawful pool pricing.

The substitution of Pittsburgh-plus for earlier pool methods, however, did not occur simultaneously throughout the industry. Manufacturers of structural steel abolished the zoning system in favor of a Pittsburgh base price of $1.60 per hundredweight plus carload freight to destination in November 1903.[37] A month later the plate association similarly fixed a Pittsburgh base price of $1.60, to become effective January 1, 1904, the delivered price to be computed in the same manner.[37] Bars likewise went to this method of pricing at about this time and other steel products followed with the result that Pittsburgh-plus pricing became a constituent part of the industry's price-fixing activities on shapes, plates, bars, sheets, tin plate, wire, and wire products in 1903, but the system was adopted for other rolled-steel products only in part or not at all until 1904 or later.[38]

Conclusion

From the point of view of the producers engaged in price fixing, the beauty of the basing-point system lies in its nearly automatic operation. Once it is established it operates almost like a perfect machine, without much attendance, direction, or guidance. Meetings, written agreements, and similar forms of overt activities which leave behind the tell-tale irrefutable proof of collusion are seldom required. Occasionally, evidence of this type does turn up, but generally it is the exception rather than the rule. Most of the instances of collusive meetings and agreements which have taken place after an industry has adopted a basing-point system occurred during the troubled period of the early thirties, when producers would at times deviate from the basing-point formula in their desperate attempt to secure business. In order to correct such straying from the beaten path, meetings were held now and then and on occasion producers would write very frank letters concerning the necessity of maintaining prices through the use of a basing-point system. Such an instance is provided by a letter written on May 17, 1934, by Mr. John Treanor, a trustee of the Cement Institute, who stated:

"Do you think any of the arguments for the basing-point system, which we have thus far advanced, will arouse anything but derision in and out of the Government? I have read them all recently. Some of them are very clever and ingenious. They amount to this, however: That we price this way in order to discourage monopolistic practices and to preserve free competition, etc. This is sheer bunk and hypocrisy. The truth is of course—and there can be no serious, respectable discussion of our case unless this is acknowledged—that ours is an industry above all others that cannot stand free competition, that must systematically restrain competition or be ruined." [39]

With the disappearance of the NRA, the basing-point system became the law of the land for those industries in which the system was incorporated as part of the Code of Fair Competition, and departures therefrom were punishable by fines. The effect of the NRA was thus to strengthen the effectiveness of the system, thereby largely eliminating the need for meetings and written agreements which had developed during the depression. And since that time instances of such overt collusive activities have been few and far between.

Hence it may be seen that the collusive activity which sets in motion this nearly automatic mechanism is a matter of real importance in any true understanding of the basing-point system. They represent the prime mover, the initiating force, which sets in motion the most sophisticated, effective, and highly developed form of monopoly control ever devised.

III. IDENTICAL BIDS UNDER THE BASING-POINT SYSTEM

Introduction

The essential feature of basing-point pricing which assures absolute identity of bids or quoted prices by all suppliers is the determination of the price for the commodity at any destination as the lowest sum of base price, together with freight to the destination. Universal observance of this method or system of pricing by all potential suppliers produces, at any given destination, absolute identity of prices, both in sealed bids and in invoices to dealers.

Hence the determining and critical element in true competition—price differences which enable the buyer to judge where, or from whom, he can obtain the most for his money—is wholly eliminated by the system. All differences in manufacturing costs among sellers and differences in delivery expense

[29] Ibid., p. 40.
[30] Ibid., p. 37.
[31] Ibid., p. 43.
[32] Ibid, p. 57.
[33] Col. Henry P. Bope, vice president, Carnegie Steel Co., transcript of record in FTC Docket 760, pp. 10857–10870.
[34] Docket 760 (Pittsburgh Plus), Examiner's Report, p. 41.
[35] Ibid., pp. 41–42.
[36] Ibid., pp. 43, 44–47.
[37] Ibid., p. 43.
[38] Ibid., pp. 43–44.
[39] Letter from Mr. John Treanor to Mr. Rader, dated May 17, 1934. Quoted from *Aetna Portland Cement Company et al.*, v. *Federal Trade Commission*, in the United States circuit court of appeals, brief for respondent (Federal Trade Commission, February 1946), p. 127.

are wiped out by the noncompetitive nature of the pricing.

A large body of data has been assembled, showing identical prices, especially for cement and certain steel products, resulting from the use of the basing-point system. These data, which cover a period of more than 20 years, are derived from bids to Government agencies and sales to dealers. This information is supplemented by certain recent bids to Government agencies following the abandonment of basing-point pricing in July 1948 which reveal the absence of identity in bidding after the system was abandoned.

Under the basing-point system, prices less than the formula price can appear only when some cooperating supplier makes a mistake in applying the formula, or when some noncooperating supplier deliberately shades the base price or freight rates and thereby violates the formula. Bids higher than the formula price are a convenient method by which any freightwise distant supplier may effectively eliminate himself while offering a semblance of competition.

Identical bids for cement

Summary of bids to Government agencies: Table 1 presents a summary of identical bids in the cement industry over a period of more than 10 years (from 1927 through 1937) as shown by bids submitted to State and Federal purchasing agencies. The figures clearly reveal just how perfectly the basing-point system works automatically to destroy competition and make Federal and State purchasing agencies, and the public they represent, the victims of this monopolistic system.

TABLE 1.—*Cement—manufacturers' destination prices bid to Government agencies*

Year	Barrels	Number of destinations	Number of manufacturers bidding [1]	Total number prices bid	Bids at formula prices		Bids above formula prices		Bids under formula prices	
					Number	Percent	Number	Percent	Number	Percent
1927	[2] 453, 545	129	15	1, 359	1, 355	99. 70	2	.15	2	0. 15
1929	[2] 9, 035, 027	579	77	7, 713	7, 342	95. 19	237	3. 07	134	1. 74
1930	9, 050, 435	558	59	4, 662	4, 553	97. 66	60	1. 29	49	1. 05
1934	[2] 2, 900, 000	4	12	[4] 38	38	100. 00				
1935	[3] 1, 000	1	8	8	7	87. 50	1	12. 50		
1935	[3] 10, 000	1	3	[5] 6	6	100. 00				
1936	[3] 8, 000	1	18	18	18	100. 00				
1936	[3] 500	1	14	14	14	100. 00				
1936	[3] 6, 000	1	11	11	11	100. 00				
1937	[3] 1, 200	2	15	[4] 29	29	100. 00				
Total	21, 465, 707	1, 277	222	13, 858	13, 373	96. 50	300	2. 16	185	1. 33

[1] Includes duplications where the same manufacturer bid on more than 1 invitation.
[2] Bids to State highway commission on numerous projects.
[3] Bids to Federal agencies on individual projects.
[4] Some manufacturers did not bid for all destinations.
[5] Counting as separate the bids by individual manufacturers for cement in bulk and in bags.

These figures were based on investigations of the Federal Trade Commission in its Price Bases Inquiry (1932), and in its *Cement Institute case* (37 F. T. C. 87). The 1927 and 1930 bids were all to various State highway commissions for shipment to more than 1,250 destinations in the 9 States of Illinois, Indiana, Iowa, Louisiana, Maryland, Missouri, Oklahoma, South Carolina, and Wisconsin.

The general showing is that, by years, from 95 to 99.7 percent of the bids were identical with the basing-point destination price. In no year did the number of bids which were at a lower price amount to as much as 2 percent of the total number of bids. Or, to put it another way, the basing-point system produced approximately 99 percent uniformity in price.

For the smaller number of bids to Federal agencies during the years 1934 to 1937, inclusive, the showing of uniformity of bid prices is even more striking. For six of the seven individual projects covered, 100 percent of the bids carried identical prices. For the seventh project, seven of the eight bidders named prices strictly in accordance with the basing-point system. One bid higher destination prices, thereby indicating a probable lack of interest in the business.

Taking all of these bids together, out of a total of 13,858 prices bid for shipment to 1,277 different destinations, only 1.33 percent were at prices less than required by the system.

Summary of bids to private dealers: Basing-point proponents claim that destination prices at which cement is invoiced to dealers often differ from the pattern of identity shown by bids to Government agencies. To test the accuracy of this statement, the Federal Trade Commission examined more than 66,000 invoices by 51 cement producers covering shipments to dealers in 21 cities during the years 1927–29. Only 6 percent of the sales, representing practically the same percentage of invoices, deviated from the basing-point system prices. The degree of conformity to basing-point pricing in each of the cities is shown in table 2.

TABLE 2.—*Manufacturers' sales of cement to dealers at formula delivered prices, 1927–29*

Destinations	Total sales reported			Sales at formula prices			Percent of total
	Invoices	Shippers	Barrels	Invoices	Shippers	Barrels	
Baltimore, Md	2, 117	13	536, 305	1, 868	13	474, 391	88. 49
Birmingham, Ala	3, 633	9	657, 348	3, 633	9	657, 348	100. 00
Buffalo, N. Y	2, 752	15	681, 866	2, 750	15	681, 366	99. 93
Chattanooga, Tenn	1, 333	5	257, 745	1, 226	5	239, 038	92. 74
Chicago, Ill	14, 881	9	4, 420, 930	12, 129	9	3, 612, 137	81. 71
Cincinnati, Ohio	2, 071	14	438, 899	2, 070	14	438, 699	99. 95
Cleveland, Ohio	8, 716	17	2, 392, 887	8, 716	17	2, 392, 787	100. 00
Detroit, Mich	6, 069	14	2, 224, 298	4, 988	14	1, 960, 618	88. 15
Ensley, Ala	773	7	137, 374	773	7	137, 374	100. 00
Hedona, Ala	608	7	128, 833	608	7	128, 833	100. 00
Indianapolis, Ind	2, 797	11	732, 244	2, 766	11	724, 878	98. 99
Madison, Wis	1, 319	11	352, 182	1, 319	11	325, 182	100. 00
Minneapolis, Minn	1, 879	11	877, 555	1, 242	11	729, 420	83. 12
New York, N. Y	6, 457	17	5, 367, 916	6, 547	17	5, 367, 916	100. 00
Norfolk, Va	430	5	67, 930	430	5	67, 930	100. 00
Philadelphia, Pa	3, 296	15	813, 803	3, 296	15	813, 803	100. 00
Pittsburgh, Pa	93	7	23, 451	93	7	23, 451	100. 00
Richmond, Va	753	7	129, 346	753	7	129, 346	100. 00
St. Louis, Mo	4, 494	7	907, 990	4, 494	7	907, 990	100. 00
Washington, D. C	1, 295	10	426, 412	1, 295	10	426, 412	100. 00
Wilmington, Del	391	7	101, 453	391	7	101, 453	100. 00
Total	66, 157	[1] 51	21, 649, 667	61, 297	[1] 51	20, 340, 572	93. 95

[1] Exclusive of duplications.

Source: FTC Price Bases Inquiry: Basing-point formula and cement prices, p. 58.

Every shipper quoted identically the same destination price on every invoice to dealers in 13 of the 21 cities. For four more cities, invoice prices were identical for 99 percent or more of the tonnage.

This striking price identity in 17 cities was, of course no accident, since every one of the 51 shippers observed the system in pricing most of the tonnage shipped. Unintentional errors might well account for most of the few deviations shown for the 17 cities.

Only four cities showed less than 90 percent price identity, the largest deviations occurring in Chicago. It is interesting to note that one producer local to Chicago, and another local to Baltimore accounted for all deviations in each of these cities.

In some instances the apparent nonconformity was due to deliveries on old contracts made at formula prices prevailing when the contracts were made. Had it been possible to enter such invoices under the contract date, the price shown would have been at the system price then prevailing. Therefore, the showing that, on the average, 94 percent of all invoices sampled were billed at basing-point prices actually understates the degree to which the system was observed. This means, in short, that the degree of price identity for dealers was practically the same as for Government bids.

Resubmission of identical bids: Dissatisfied with the constant submission of identical bids, Government purchasing agencies, particularly during the 1930's, made repeated efforts to secure competitive bidding with little success. The original submissions would be thrown out, followed by readvertisement for new bids, which upon being submitted, would again be found to be exactly identical.

An illustration of the futility met by Government agencies in their attempts to secure competitive pricing is provided by the case of bids for cement in 1935 for the Tygart River Reservoir Dam at Grafton, W. Va. This project was a large one, involving the delivery of 1,200,000 barrels of cement to be delivered over a period of 2½ years. The United States engineer office, Pittsburgh, Pa., first issued a call designated serial 35–224 to which 17 bidders responded. The bids were opened on January 18, 1935, and all were found to be identical at $1.84 per barrel, as shown in table 3.

The engineer office refused to accept any of these bids and approximately 1 month later, on February 7, 1935, issued a second call for bids on the same project, under the designation serial 35–264. This request called for detailed information as to plant locations, distances to delivery point, published freight rates, capacity to produce and store, etc. Eleven of the seventeen firms which had submitted prices on the previous call again submitted bids. All bids again were absolutely identical, but at a price 14 cents per barrel less than the figure previously submitted. The bids in this second submittal are summarized in table 4.

TABLE 3.—*Abstract of bids for furnishing and delivering approximately 1,200,000 barrels of portland cement for use in the construction of Tygart River Reservoir Dam received in response to advertisement and specifications, serial No. 35–224, dated Jan. 7, 1935, and opened at United States engineer office, Pittsburgh, Pa., Jan. 18, 1935 (serial No. 35–224)*

	Price per barrel
1. Southwestern Portland Cement Co., Osborn, Ohio	$1.84
2. The Bessemer Limestone & Cement Co., 1106 City Bank Bldg., Youngstown, Ohio	1.84
3. Universal Atlas Cement Co., 518 Frick Bldg., Pittsburgh, Pa	1.84
4. West Penn Cement Co., 233 South Main St., Butler, Pa	1.84
5. Lehigh Portland Cement Co., 718 Hamilton St., Allentown, Pa	$1.84
6. Standard Portland Cement Co., 925 Midland Bldg., Cleveland, Ohio	1.84
7. The Diamond Portland Cement Co., Middle Branch, Ohio	1.84
8. Wabash Portland Cement Co., First National Bank Bldg., Detroit, Mich	1.84
9. Superior Cement Corp., Portsmouth, Ohio	1.84
10. Copley Cement Manufacturing Co., 521 Fifth Ave., New York, N. Y	1.84
11. Alpha Portland Cement Co., Easton, Pa	1.84
12. The Washington Building Lime Co., 2004 First National Bank Bldg., Baltimore, Md	1.84
13. Huron Portland Cement Co., 1325 Ford Bldg., Detroit, Mich	1.84
14. Medusa Portland Cement Co., 1000 Midland Bldg., Cleveland, Ohio	1.84
15. Lawrence Portland Cement Co., 270 Broadway, New York City	1.84
16. Green Bag Cement Co. of Pennsylvania, 2119 Oliver Bldg., Pittsburgh, Pa	1.84
17. Pittsburgh Plate Glass Co., Columbia Cement Division, 2130 Grant Bldg., Pittsburgh, Pa	1.84

O. & R. 719.1 (b).

Appropriation: 8.05678.5 P. W. A. allotment to War, Rivers, and Harbors 1935 (Tygart River Dam, W. Va., 8.03/5640.5 N. I. R. War, Rivers, and Harbors 1933–35 (Tygart River Dam, W. Va.).

"I certify that the above is a true abstract of all bids received.

"JOHN SERGAN,
"Chief, Purchasing Section.
"UNITED STATES ENGINEER OFFICE,
"Pittsburgh, Pa."

TABLE 4.—*Advance abstract of cement bids (Serial No. 35–264)*

Name and address of bidder	Location of plant	Railroad freight rate to Grafton per barrel	Distance from plant to Grafton	Will bidder accept whole order?	Amount of order preferred by bidder	Price per barrel, f. o. b. dam site
			Miles		*Barrels*	
Lehigh Portland Cement Co., Young Bldg., 718 Hamilton St., Allentown, Pa.	Union Bridge, Md	$0.5076	221½	Yes	1,200,000	$1.70
	New Castle, Pa	.5076	201½			
The Bessemer Limestone & Cement Co., 1106 City Bank Bldg., Youngstown, Ohio.	Bessemer, Lawrence County (railroad name, Walford, Pa.).	.5076	194	No	500,000	1.70
West Penn Cement Co., Butler, Pa	West Winfield, Pa	.49	176.9	Yes	1,200,000	1.70
Standard Portland Cement Co., 925 Midland Bldg., Cleveland, Ohio.	Painesville, Ohio	.63	272.4	No	450,000	1.70
Wabash Portland Cement Co., Detroit, Mich	Osborn, Ohio	.63	290.7	No	400,000	1.70
Pittsburgh Plate Glass Co., Columbia Cement Division, 2129 Grant Bldg., Pittsburgh, Pa.	Fultonham, Muskingum County, Ohio.	.55	182	Yes	1,200,000	1.70
The Washington Building Lime Co., 2004 First National Bank Bldg., Baltimore, Md.	Martinsburg, W. Va	.49	165	No	540,000	1.70
Alpha Portland Cement Co., 15 South 3d St., Easton, Pa	Manheim, W. Va	.3008	31	Yes	1,200,000	1.70
Universal Atlas Cement Co., 518 Frick Bldg., Pittsburgh, Pa	Universal, Pa	.4324	148.2	Yes	1,200,000	1.70
Green Bag Cement Co. of Pennsylvania, 2119 Oliver Bldg., Pittsburgh, Pa.	Neville Island, Pa	.46	157.9	Yes	1,200,000	1.70
Medusa Portland Cement Co., 1000 Midland Bldg., Cleveland, Ohio	Crescentdale, Pa. (Post office, Wampum, Pa.).	.5076	180	Yes	1,200,000	1.70

The following facts respecting the effects of systematic observance of basing point pricing are revealed by a comparison of these two sets of bids, as shown in tables 3 and 4.

1. The destination price named by all bidders in each submittal was identical, but the price uniformly quoted in the second submittal was 14 cents less than the first. This, of course, raises the question as to how 11 bidders all came to submit bids in February which were exactly 14 cents per barrel less than those the same 11 bidders submitted in January.

2. The shipping plants were located at distances varying from 31 miles to 291 miles from the destination.

3. The published freight rates from the different mills to the destination ranged from $0.30008 to $0.63 per barrel.

In order to bring about identical prices on the second bid 14 cents lower than on the first, all that each of the 11 February bidders had to know was that the controlling base mill had reduced its price 14 cents per barrel. With this fact known, systematic observance of the basing-point system under which all other pricing factors were fixed and known automatically produced the 11 identical bids.

Individual instances of identical bids: Individual instances of identical bids in cement could be cited almost indefinitely. Since, as was illustrated above, the throwing out of the bids and the advertising for new bids merely results in the resubmission of bids which are again identical, the purchaser has little alternative but to make the award by lot. Mere chance or luck is thus substituted for the culmination of all the varying economic factors represented by price in the making of economic decisions. Specifically, under a well developed and smoothly working basing-point system, differences in distance of supplier from destination, cost of production and distribution, and so forth, are all automatically and systematically eliminated. Some impression of the widespread success of the basing point system in achieving this result can be gained from the following typical examples of identical bidding.

Table 5 covers an abstract of bids for large quantities of cement for delivery at four destinations for the Tennessee Valley Authority in 1934. Twelve individual bidders with plants as far away as Cape Girardeau, Mo., and Clinchfield, Ga., as well as others in nearby Tennessee, northern Georgia, and Alabama, all submitted bids which were absolutely identical to the fourth decimal place for each destination.

TABLE 5.—*Abstract of bids for deliveries to Tennessee Valley Authority as follows on bids opened Oct. 15, 1924*

200,000 to 800,000 barrels or partial quantity at Coal Creek, Tenn.; 100,000 to 700,000 barrels or partial quantity at Wheeler Dam, Tenn.; 100,000 to 700,000 barrels or partial quantity at Wheeler Dam, Tenn.; 100,000 to 700,000 barrels or partial quantity at Sheffield, Ala.

Bidders	Plants nearest to destination	Coal Creek, Tenn.	Wheeler contractor	Wheeler authority	Sheffield, Ala.
1. Alpha Portland Cement Co	Phoenixville, Ala		$1.8798	$1.8398	$1.7008
2. Universal Altas Cement Co	Leeds, Ala		1.8798	1.8398	1.7008
3. Marquette Cement Manufacturing Co	Cape Girardeau, Mo		1.8798	1.8398	1.7008
4. Lehigh Portland Cement Co	Birmingham, Ala		1.8798	1.8398	1.7008
5. Hermitage Portland Cement Co	Nashville, Tenn	$1.7384	1.8798	1.8398	1.7008
6. Cumberland Portland Cement Co	Cowan, Tenn	1.7384	1.8798	1.8398	1.7008
7. Signal Mountain Portland Cement Co	Chattanooga, Tenn	1.7384	1.8798	1.8398	1.7008
8. Lone Star Cement Co	Birmingham, Ala		1.8798	1.8398	1.7008
9. National Cement Co	Ragland, Ala		1.8798	1.8398	1.7008
10. Georgia Cement & Products Co	Portland, Ga		1.8798	1.8398	1.7008
11. Pennsylvania-Dixie Cement Corp	Kingsport, Tenn.; Richard City, Tenn	1.7384	1.8798	1.8398	1.7008
12. Volunteer Portland Cement Co	Caswell, Tenn	1.7384			

NOTE.—All bids subject to 10 cents per barrel discount for payment in 15 days. Some bidders limited their offers to partial quantities.

Table 6 covers a large quantity of cement in bulk and a smaller quantity sacked in paper, delivered to the War Department for the Fort Peck (Mont.) Dam in 1935. Three producers submitted bids, all of which were identical to the fourth decimal place.

TABLE 6.—*Abstract of bids for 600,000 barrels of cement in bulk and 10,000 barrels of cement in paper for Fort Peck Dam in 1935*

Name of bidder	Plants nearest destination	Bulk per barrel	Paper per barrel
Universal-Atlas Portland Cement Co.	Duluth, Minn	$2.5054	$2.7145
Huron Portland Cement Co.	Alpena, Mich	2.5054	2.7145
Three Forks Portland Cement Co.	Trident, Mont	2.5054	2.7145

Table 7 covers an abstract of bids for a smaller order of cement for Leavenworth Penitentiary, on which bids submitted in September 1935 by seven of eight bidders all were identical to the sixth decimal place.

TABLE 7. *Abstract of bids for 1,000 barrels of cement for Leavenworth Penitentiary, opened Sept. 3, 1937*

Name of bidder:	Price per barrel
Universal	$2.163424
Ash Grove	2.163424
Missouri	2.163424
Lone Star	2.163424
Lehigh	2.163424
Monarch	2.163424
Dewey	2.163424
Consolidated	2.175280

All bids subject to 10 cents' discount per barrel for payment in 15 days.

In this instance, the only exceptions from sixth-decimal place identity in the price per barrel was the bid of Consolidated Cement Corp., with a plant at Fredonia, Kans. Its bid, for some reason, was 0.5856 cent per barrel higher than the price uniformly bid by the other 7 bidders. The discount terms offered by all bidders also were identical.

Table 8 covers an abstract of bids for cement for the United States engineer office, Tucumcari, N. Mex., for which bids by 11 bidders, opened in April 1936, were all identical to the sixth-decimal place.

TABLE 8.—*Abstract of bids for 6,000 barrels of cement for United States engineer office, Tucumcari, N. Mex., opened Apr. 23, 1936*

Name of bidder:	Price per barrel
Monarch	$3.286854
Ash Grove	3.286854
Lehigh	3.286854
Southwestern	3.286854
Oklahoma	3.286854
U. S. Portland Cement Co	$3.286854
Consolidated	3.286854
Trinity	3.286854
Lone Star	3.286854
Universal	3.286854
Colorado	3.286854

All bids subject to 10 cents per barrel discount for payment in 15 days.

Table 9 covers 18 bids in May 1936 for cement for delivery to the United States Navy Department at Brooklyn, N. Y. The 18 bids were all identical.

TABLE 9.—*Abstract of bids for 8,000 barrels of cement for U. S. Navy Department, Brooklyn, N. Y., opened May 29, 1936*

Name of bidder:	Price per barrel
Allentown P. C. Co	$2.43
Alpha	2.43
Coplay	2.43
Edison	2.43
Giant	2.43
Hercules	2.43
Keystone	2.43
Lawrence	2.43
Lehigh	2.43
Lone Star (N. Y.)	2.43
National	2.43
Nazareth	2.43
North American	2.43
Penn-Dixie	2.43
Standard Lime & Stone	2.43
Universal	2.43
Vulcan	2.43
Whitehall	2.43

Table 10 is an abstract for a small quantity of cement for the United States Industrial Reformatory at Chillicothe, Ohio. The bids of 14 producers opened in June 1936 showed absolute identity.

TABLE 10.—*Abstract of bids for 500 barrels of cement for United States Reformatory, Chillicothe, Ohio, opened June 26, 1936*

Name of bidder:	Price per barrel
Alpha	$2.02
Green Bay (W. Va.)	2.02
Southwestern	2.02
Standard	2.02
Universal	2.02
Medusa	2.02
Pittsburgh Plate Glass	2.02
West Penn	2.02
Lehigh	2.02
Bessemer	2.02
Superior	2.02
Louisville Cement Co	2.02
Diamond	2.02
Wabash	2.02

All bids subject to 10 cents per barrel discount for payment in 15 days.

Table 11 covers 1,200 barrels of cement for the United States engineer office, Vicksburg, Miss., delivery to be made at Monroe, La. This abstract is of special interest because the advertisement called for bids on two bases, namely: (1) Delivered at Monroe, La., on commercial bills of lading, with the supplier paying the freight, and (2) delivered at Monroe with the Government paying the freight at land-grand railroad rates. The bids showing total value delivered showed the following identity resulting from perfect systematic observance of the basing-point system by every bidder, on each of the two bases.

TABLE 11.—*Abstract of bids for 1,200 barrels of cement for United States engineer office, Vicksburg, Miss., opened Aug. 30, 1937*

Name of bidder	Destination cost on Government bills of lading, f. o. b. Monroe, La.	F. o. b. local switch, Missouri Pacific R. R., Monroe, La.
Pennsylvania-Dixie Cement Corp.	$2,772	$3,060
Arkansas Portland Cement Co	2,772	3,060
Universal-Atlas Cement Co	2,772	3,060
Cumberland Portland Cement Co.	2,772	3,060
Trinity Portland Cement Co	2,772	3,060
Signal Mountain Portland Cement Co	2,772	3,060
Alpha Portland Cement Co	2,772	3,060
Lehigh Portland Cement Co	2,772	3,060
Lone Star Cement Co	2,772	3,060
Monarch Cement Co	2,772	3,060
National Cement Co	2,772	3,060
Consolidated Cement Co	2,772	(1)
Volunteer Portland Cement Co	2,772	3,060
Georgia Cement & Products Co	2,772	3,060
Hermitage Portland Cement Co	2,772	3,060

[1] No bid.

Tables 5 to 11 inclusive cover a total of 94 bids by 72 bidders. In 93 of these bids each bidder adhered strictly to the basing point method of pricing with the result that all prices were identical for each destination. In the case of the 94th bid, which was not identical, as shown in table 7 above, Consolidated Cement Corp. deviated from the system only to the extent of overbidding the system price by 1756 ten-thousandth of a cent per barrel.

Because the system of pricing used automatically produced a deadline of equal bids, by all bidders, the only basis for awarding any of these 7 bids would be by lot. Basing point pricing thus denies the buyer, even including the Government of the United States, all benefits of choosing suppliers on the basis of where the most can be obtained for the money.

Misapplication of the basing-point system: Only in the rare instances where one producer, either by accident or design, misapplies the basing point formula, do there occur any deviations or exceptions to the otherwise consistent pattern of identical bids.

Such a case is illustrated by table 12 which summaries an abstract of bids for 45,000 barrels of cement for the United States Engineer Office, for delivery at Greenville, Miss., for which bids were open on September 3, 1945. In this instance, the United States Government got a break only because 2 of 14 bidders, either by accident or design, failed to apply the basing point system correctly.

The abstract of these bids is of interest for several reasons, but especially because the advertisement, calling for delivered prices, requested the submission of bids on two different bases: (1) with suppliers paying the freight at published commercial rates, and (2) with the Government paying the freight at land grant rail rates. This results in what appears to be differing amounts bid by the same bidder, as shown in the table.

Twelve producers who bid on both bases named $117,529.65 as the cost to the Government on Government bills of lading, with the Government paying land grant rates, and $126,900 as the destination price with suppliers paying published freight rates. Louisville Cement Co. and Monarch Cement Co., however, each bid $117,529.65 f. o. b. cars, Greenville, Miss., with the suppliers paying the freight. Whether they made an acciden-

TABLE 12.—*Abstract of bids for furnishing and delivering approximately 45,000 barrels of American portland cement received in response to advertisement issued Aug. 23, 1935, and opened Sept. 3, 1935*

Name of bidder	Mill shipping point	Destination cost to Government f. o. b. Greenville on Government bills of lading	Amount f. o. b. Government spur track, Greenville, Miss.
1. Universal-Atlas Cement Co	Leeds, Ala	$117,529.65	$126,900.00
2. Hermitage Portland Cement Co	Nashville, Tenn / Cowan, Tenn	117,529.65	126,900.00
3. Trinity Portland Cement Co	Dallas, Tex	117,529.65	126,900.00
4. Louisville Cement Co	Speed, Ind	No bid	117,529.65
5. Arkansas Portland Cement Co	Okay Junction, Ark	117,529.65	126,900.00
6. The Monarch Cement Co	Humboldt, Kans	No bid	117,529.65
7. Missouri Portland Cement Co	Prospect Hill, Mo	117,529.65	126,900.00
8. Signal Mountain Portland Cement Co	Chattanooga, Tenn	117,529.65	126,900.00
9. Alpha Portland Cement Co	Phoenixville, Ala	117,529.65	126,900.00
10. Penn-Dixie Cement Co	Richard City, Tenn	117,529.65	126,900.00
11. Lehigh Portland Cement Co	Boyles, Ala	117,529.65	126,900.00
12. Cumberland Portland Cement Co	Cowan Tenn	117,529.65	126,900.00
13. Lone Star Cement Corp	Boyles, Ala	117,529.65	126,900.00
14. Marquette Cement Manufacturing Co	Cape Girardeau, Mo	117,529.65	No bid
15. National Cement Co	Ragland, Ala	117,529.65	126,900.00

tal error in submitting on the second basis the figure called for by the basing point system on the first basis, or whether they chose this method of shading the basing point formula, the results were the same—two deviations from the usual pattern of identical bids—an event which, as indicated by the data presented above, represents a rare occurrence in a basing-point industry.

Continuation of identical bids until cement decision

There is ample evidence that the almost perfect operation of basing point pricing in cement continued to produce identical noncompetitive bids up to the Supreme Court decision in the cement case on April 26, 1948. Not only were bids characteristically uniform but the customary efforts to instill some measure of competition in bidding by refusals of bids and readvertisements continued to be ineffectual.

These conclusions are borne out in the factual material presented in the following tables dealing with a number of identical bids received by the Corps of Engineers of the War Department during the period April, 1947 to March, 1948.

TABLE 13.—*Abstract of bids, for 2,000 barrels American portland cement received by Corps of Engineers, War Department, Vicksburg, Miss., advertised Mar. 26, 1947, and bids opened Apr. 9, 1947; serial No. 22-052-47-209, for flood control, Mississippi River and tributaries, destination Vicksburg, Miss.*

Bid No.	Bidder [1]	Price per barrel f. o. b. destination		Discount per barrel (15 days)
		Item 1	Item 1 (a)	
1	Hermitage Portland Cement Co	$2.83	$2.85	$0.10
2	Universal Atlas Cement Co	2.83	2.85	.10
3	Alpha Portland Cement Co	2.98	3.00	.10
4	Lehigh Portland Cement Co	2.83	2.85	.10
5	Lone Star Cement Corp	2.83	2.85	.10
6	Marquette Cement Manufacturing Co	2.83	[2]	.10

[1] Awarded by lot to bidder No. 4 as between bidders 2 and 4, because these were lowest bids considering guaranty against increase for 15 days.
[2] No bid.

The first of these tables (table 13) relates to a relatively small quantity of cement advertised on March 26, 1947, to be used for flood control purposes. In this table, item 1 is the price for cement delivered on Government bills of lading at land grant railroad rates and item 1 (a) is the usual basing point destination price using the rate tables of the basing point formula.

In this instance all four of the five bids received for item 1 were identical both as to amount and discount, and three of the four bids for item 1 (a) likewise were identical.

Table 14 summarizes a case in 1947 in which the Corps of Engineers, having received what it regarded as unsatisfactory bids on a first call, advertised for new bids with no better result in obtaining really competitive bids. The bids were for four lots of cement. On the first call there were only four bidders altogether, of whom only one bid on lot A; four bids on lot B; two bids on lot C, and two bids on lot D. The second call produced two additional bidders. Again, the only deviations from identical bidding were a few quotations which were higher than the formula price.

TABLE 14.—*Abstract of bids for 4 lots of American portland cement received by Corps of Engineers, War Department, Huntington, W. Va., for Bluestone Reservoir project, New River, W. Va., in 1947*

[Serial No. W-46-022-Eng.-47-136: First call issued May 1, 1947; opened May 12, 1947. Second call issued May 23, 1947; opened June 3, 1947]

Company	Item 1			Item 2 (a)		
	Price per barrel f. o. b. destination		Discount per barrel (15 days)	Price per barrel f. o. b. destination		Discount per barrel (15 days)
	First call	Second call		First call	Second call	
Lot A, 267,000 barrels:						
1. Universal-Atlas Cement Co	$2.58	$2.58	$0.10	$2.60	$2.60	$0.10
Lot B, 162,000 barrels:						
1. Universal-Atlas Cement Co	2.58	2.58	.10	2.60	2.60	.10
2. Lehigh Portland Cement Co	2.58	2.58	.10	2.60	2.60	.10
3. Medusa Portland Cement Co	2.58	2.58	.10	2.60	2.60	.10
4. North American Cement Corp	2.73	[1]2.58	.10	[1]2.75	2.60	.10
Lot C, 75,000 barrels:						
1. Universal-Atlas Cement Co	2.58	2.58	.10	2.60	2.60	.10
2. Medusa Portland Cement Co	2.58	2.58	.10	2.60	2.58	.10

[1] Bid on only 87,000 barrels.

TABLE 14.—*Abstract of bids for 4 lots of American portland cement received by Corps of Engineers, War Department, Huntington, W. Va., for Bluestone Reservoir project, New River, W. Va., in 1947*—Continued

[Serial No. W–46–022–Eng.–47–136: First call issued May 1, 1947; opened May 12, 1947. Second call issued May 23, 1947; opened June 3, 1947]

Company	Item 1			Item 2 (a)		
	Price per barrel f. o. b. destination		Discount per barrel (15 days)	Price per barrel f. o. b. destination		Discount per barrel (15 days)
	First call	Second call		First call	Second call	
Lot C, 75,000 barrels—Continued						
3. Huron Portland Cement Co	(2)	$2.58	$0.10	(2)	$2.60	$0.10
4. Bessemer Limestone & Cement Co	(2)	2.85	.10	(2)	2.75	.10
Lot D, 30,000 barrels:						
1. Universal-Atlas Cement Co	$2.58	2.58	.10	$2.60	2.60	.10
2. Medusa Portland Cement Co	2.58	2.58	.10	2.60	2.60	.10
3. Huron Portland Cement Co	(2)	2.58	.10	(2)	2.60	.10
4. Bessemer Limestone & Cement Co	(2)	2.85	.10	(2)	2.75	.10

[2] No bid.

Specifically, for lot A, Universal-Atlas Cement Co. was the only bidder on both calls for bids, and it quoted the same price on both calls.

For lot B the first call produced four bids, three of which were identical at the formula price and the fourth was higher. The second call gave North American Cement Co., the high bidders, an opportunity to correct its bid to formula, which it did, with the result that all bids were identical on the second call.

For lot C, the first call produced two identical bids. The second call produced two more bids, making four in all, of which three were identical and one, by Bessemer Limestone & Cement Co., was high.

For lot D, the second call likewise increased the number of bidders from two to four, with a showing exactly similar to that for the preceding lot, namely, three bids identical at formula price and one, again by Bessemer, higher than formula.

Table 15 shows three bids on a relatively small quantity of cement for the Corps of Engineers, War Department, for flood-control construction on the Mississippi River. The prices quoted in October 1947 were all identical.

TABLE 15.—*Abstract of bids, 3,000 barrels American portland cement, air entrained, received by Corps of Engineers, War Department, Vicksburg, Miss., advertised Sept. 24, 1947, and bids opened Oct. 6, 1947; serial No. W–22–052–48–103, for flood control on the Mississippi River and tributaries*

Bid No.	Bidder [1]	Price per barrel f. o. b. destination		Discount per barrel (15 days)
		Item 1	Item 1 (a)	
1	Universal Atlas Cement Co	$2.98	$3	$0.10
2	Lone Star Cement Corp	2.98	3	.10
3	Lehigh Portland Cement Co	2.98	3	.10

[1] Awarded by lot to bidder No. 1 as between bidders 1 and 3, because these were lowest bids considering guaranty against price increase for 15 days.

Table 16 likewise covers a relatively small Government contract for cement for flood-control construction for which form identical bids were received.

TABLE 16.—*Abstract of bids, 1,000 barrels American portland cement, received by Corps of Engineers, Vicksburg, Miss., advertised Oct. 13, 1947, and bids opened Oct. 24, 1947; serial No. W–22–052–eng–48–130, for flood control, Mississippi River and tributaries*

Bid No.	Bidder	Price per barrel f. o. b. destination	Discount per barrel (15 days)
1	Lehigh Portland Cement Co.[1]	$3.03	$0.10
2	Universal Atlas Cement Co	3.03	.10
3	Lone Star Cement Corp	3.03	.10
4	Alpha Portland Cement Co	3.03	.10

[1] Awarded by lot to bidder No. 1 as between bidders Nos. 1, 2, and 3, one of the 4 lowest bidders as to price. Bidder No. 4 disqualified by stating right to limit deliveries to 1 car per month and to allow 15 days to ship each car.

Table 17 deals with an abstract of bids for a large quantity of cement for the Corps of Engineers for general flood-control purposes, the contract for which was awarded early in 1948. In this instance there were five bidders whose prices for cement, both in bulk and in paper bags, were all identical.

TABLE 17.—*Abstract of bids, 144,000 barrels of American portland cement, received by Corps of Engineers, Baltimore, Md., advertised Dec. 23, 1947, and opened Jan 12, 1948; serial No. W–18–020–eng–48–23, for flood control, general*

Bid No.	Bidder [1]	Price per barrel f. o. b. destination		Discount per barrel (15 days)
		Per barrel	Paper sacks	
1	Alpha Portland Cement Co. (partial quantity bid)	$2.91	$3.19	$0.10
2	Universal-Atlas Cement Co	2.91	3.19	.10
3	Lehigh Portland Cement Co. (partial quantity bid)	2.91	3.19	.10
4	North American Cement Corp	2.91	3.19	.10
5	Glens Falls Portland Cement Co. (partial quantity bid)	2.91	3.19	.10

[1] Awarded one-half of requirements to each of the following companies: Universal-Atlas Cement Co. and North American Cement Corp., because of special considerations favorable to the Government in proposed contracts.

Table 18 covers 2,500 barrels of cement for flood-control work on which there were three bidders, all of whom quoted identically the same price for cement delivered on Government bills of lading.

TABLE 18.—*Abstract of bids, 2,500 barrels of portland cement, received by Corps of Engineers, Vicksburg, Miss., advertised Feb. 26, 1948, and opened Mar. 10, 1948, for flood-control work*

Bid	Bidder [1]	Price per barrel f. o. b. destination		Discount per barrel (15 days)
		Item 1	Item 1 (a)	
1	Lehigh Portland Cement Co	$3.23	----------	$0.10
2	National Cement Co.	3.23	$3.21	.10
3	Lone Star Cement Co.	3.23	----------	----------

[1] Awarded by lot between bidders Nos. 1, 2, and 3, to bidder No. 3, one of the three equal lowest bidders as to price.

Table 19 covers four identical bids on 6,000 barrels of cement for flood control. In this instance all of the bids which were identical were rejected.

TABLE 19.—*Abstract of bids, 6,000 barrels of portland cement, received by Corps of Engineers, Vicksburg district, Vicksburg, Miss., advertised Mar. 3, 1948, and opened Mar. 15, 1948, serial No. Eng–22–052–48–338, for flood-control work*

Bid No.	Bidder [1]	Price per barrel f. o. b. destination	Discount per barrel (15 days)
1	Lone Star Cement Corp. (partial bid on 3,000)	$3.09	$0.10
2	Pennsylvania-Dixie Cement Corp	3.09	.10
3	Lehigh Portland Cement Co	3.09	.10
4	Marquette Cement Manufacturing Co	3.09	.10

[1] No award made. All bids rejected on Mar. 23, 1948.

Table 20, covering 10,000 barrels of cement for the Corps of Engineers in Seattle, Wash., shows three bids identical in price, but with discounts of 10 cents for payment, respectively, in 20, 15, and 10 days. Award went to Superior Portland Cement, Inc., who offered the longest discount period, all other price factors being equal.

TABLE 20.—*Abstract of bids, 10,000 barrels of portland cement received by Corps of Engineers, Seattle, Wash., advertised Mar. 8, 1948, and opened Mar. 22, 1948; serial No. W–45–108–Eng–48–213*

Bid No.	Bidder [1]	Price per barrel f. o. b. destination	Discount per barrel
1	Superior Portland Cement Inc	$3.35	[2] $0.10
2	The Olympic Portland Cement Co., Ltd	3.35	[3] .10
3	Permanente Cement Co	3.55	[4] .10

[1] Awarded to bidder No. 1 who was lowest bidder considering discount offered.
[2] 20 days.
[3] 15 days.
[4] 10 days.

The entire showing of tables 13 to 20, inclusive, is that the basing-point system of pricing cement continued to produce absolute identity of prices up to the Cement decision in April 1948.

Identity of bids disappears after the Cement decision

In order to determine whether the abandonment of the basing-point system following the Supreme Court decision in April 1948 resulted in any changes in the customary pattern of identical bids which had prevailed in the cement industry for over 40 years, information was received from the highway departments of several representative States.

Abstracts of bids furnished by the Virginia Department of Highways are especially informative in that they present directly comparable data covering destination prices at a large number of delivery points in the State for the last contract period preceding abandonment, and for the first contract period immediately thereafter. The complete data for the two periods, in the form of two large tables, appear in the Appendix of the CONGRESSIONAL RECORD, pages 2416 and 2417.

The two outstanding facts to be noted from the complete tables as they appear in the record are:

1. In June 1947 under the basing-point system, seven cement manufacturers submitted a total of 543 bids for delivery at 134 destinations in 82 counties. Of these 543 bids, there were only 3 deviations from the customary pattern of absolutely identical bids or a showing of 99.45 percent identity of price. Moreover, the three bids which were not identical were all submitted by one company and in each case they were higher than the basing-point formula prices.

2. Nine months later in September 1948 or about 2 months after the abandonment of basing-point pricing, 3 of these 7 producers submitted a total of 381 bids for delivery within the same 82 counties. In sharp contrast to the previous pattern these new bids showed great diversity of prices as between the different companies when bidding for delivery at the same destinations. In fact there were only five destinations at which any two of the bidders quoted the same prices.

Without presenting the great body of data contained in the two tables as they appear in the RECORD the general nature of the showing is presented in table 21 below which summarizes the bids of the 3 companies for delivery at the same destinations in 18 counties, or about one-fourth of all the counties covered by bids on each of the dates.

TABLE 21.—*Sample comparison of prices quoted to Virginia Highway Department by 3 producers for cement to be delivered at same destination June 1947 and September 1948. Abstract of bids to Virginia Department of Highways: Inquiry No. 6706, closing date June 17, 1947, and inquiry No. 7320, closing date Sept. 14, 1948*

JUNE 17, 1947

County	Destination	Lehigh Portland Cement Co.	Lone Star Cement Co.	Penn-Dixie Cement Co.
Albemarle	Charlottesville	$2.75	$2.75	-----
Augusta	Staunton	2.68	2.68	-----
	Verona	2.68	2.68	-----
Buchanan	Grundy	2.80	2.80	$2.80
Brunswick	Alberta	2.86	2.86	-----
	Lawrenceville	2.86	2.86	-----
Campbell	Lynchburg	2.83	2.83	2.83
Culpeper	Culpeper	2.75	2.75	-----
Dickenson	Fremont	2.78	2.78	2.78
	Haysi	2.78	2.78	2.78
Dinwiddie	DeWitt	2.86	2.86	-----
	Petersburg	2.78	2.78	-----
Frederick	Winchester	2.57	2.57	-----
	Gainesboro	2.68	2.68	-----
Henrico	Richmond	2.78	2.78	-----
	Fair Oaks	2.82	2.82	-----
James City	Williamsburg	2.71	2.71	-----
	Toano	2.74	2.74	-----
Loudoun	Leesburg	2.82	2.82	-----
	Purcellville	2.82	2.82	-----
Norfolk	Norfolk	2.39	2.39	-----
	Portsmouth	2.39	2.39	-----
Pittsylvania	Danville	2.94	2.94	2.94
	Chatham	2.91	2.91	2.91
Roanoke	Roanoke	2.87	2.87	2.87
	Salem	2.87	2.87	2.87
	Starkey	2.91	2.91	2.91
Rockingham	Harrisonburg	2.68	2.68	-----
	Broadway	2.68	2.68	-----
Scott	Gate City	2.57	2.57	2.57
Washington	Abington	2.74	2.74	2.74
	Bristol	2.71	2.71	2.71

SEPT. 14, 1948

Albemarle	Charlottesville	$3.19	$3.60	$3.73
Augusta	Staunton	3.11	3.64	3.69
	Verona	3.11	3.64	3.73
Buchanan	Grundy	3.61	4.02	3.54
Brunswick	Alberta	3.49	3.49	3.73
	Lawrenceville	3.49	3.49	3.76
Campbell	Lynchburg	3.34	3.60	3.61
Culpeper	Culpeper	3.36	3.60	3.73
Dickenson	Fremont	3.61	4.02	3.38
	Haysi	3.61	4.02	3.38
Dinwiddie	DeWitt	3.45	3.49	3.76
	Petersburg	3.45	3.41	3.76
Frederick	Winchester	3.34	3.83	3.84
	Gainesboro	3.49	3.91	4.09
Henrico	Richmond	3.38	3.41	3.76
	Fair Oaks	3.45	3.49	3.76
James City	Williamsburg	3.49	3.30	-----
	Toano	3.45	3.34	-----
Loudoun	Leesburg	3.59	3.83	3.99
	Purcellville	3.64	3.83	3.99
Norfolk	Norfolk	3.49	[1] 2.73	-----
	Portsmouth	3.49	[1] 2.73	-----
Pittsylvania	Danville	3.45	3.64	3.69
	Chatham	3.38	3.64	3.69
Roanoke	Roanoke	3.34	3.68	3.54
	Salem	3.38	3.68	3.54
	Starkey	3.38	3.68	3.54
Rockingham	Harrisonburg	3.15	3.68	3.73
	Broadway	3.19	3.68	3.73
Scott	Gate City	3.61	3.91	3.12
Washington	Abingdon	3.53	3.87	3.31
	Bristol	3.57	3.91	3.27

[1] Plus switching.

This sample table covering 32 destinations shows the typical identity of delivered prices before and wide differences in prices after the abandonment. For the first time in many years the Virginia Highway Department had a basis for awarding contracts on the basis of differences in price rather than by lot.

It will be noted that the prices submitted were higher in 1948 than those submitted for the same destination in 1947, although the extent of the differences varies widely. The higher prices in 1948 were due to—

(a) Higher mill prices, the cement companies having sharply increased their mill prices at the time that they went off the basing-point system, perhaps for the purpose of creating the impression among their customers, the public generally, and Congress that the elimination of the basing-point system in and of itself automatically meant higher delivery prices for everyone;

(b) Higher transportation rates, the railroads having increased their freight rates in a number of instances after the basing-point system was abandoned; and

(c) Elimination of freight absorption, the mills having followed a policy—not required by the Supreme Court decision—of eliminating all freight absorption, a factor which should have been of only minor importance in the increase in delivered prices in view of the facts that, first, most of the mills, because of the existence of the sellers' market, had largely ceased the practice of absorbing freight before the Supreme Court decision, and, second, the increases in delivered prices resulting from the elimination of freight absorption—whatever they may have been—should have been largely offset by accompanying reductions in delivered prices resulting from the elimination of phantom freight.

That the old pattern of identical bids has, in fact, been replaced by wide variations in delivered prices is also borne out by data relating to the West in the form of bids received by the Bureau of Reclamation.

On June 24, 1948, the Bureau received bids for a fairly large quantity of cement from two companies—with the mill price, the transportation charge, and the delivered price varying substantially, as shown in table 22.

TABLE 22.—*Specification No. 2291: 40,000 barrels of portland cement in bulk for the Boise-Anderson Ranch project, bids opened June 24, 1948; destination, Mountain Home, Idaho*

Bidder	Price per barrel	Freight rate	Per barrel destination price
Permanente Cement Co.	$2.65	$2.0868	$4.7368
Oregon Portland Cement Co	[1] 3.00	.8648	3.9148

[1] Oregon 0.10 cent per barrel discount, Permanente, no discount.

NOTE.—Maximum price increase at time of shipment: Permanente 0.20 cent; Oregon 0.15 cent.

The same type of wide variations in the price factors is also revealed in two other instances of bids received in the West by the Bureau of Reclamation, one for a very large quantity of cement for the Columbia Basin project and one for a small amount for the Paonia project.

TABLE 23.—*Specification No. 2591, item No. 1: 72,000 barrels of portland cement, for the Columbia Basin project; bids opened Mar. 15, 1949; destination, Adrian, Wash.*

Bidder	Per barrel price, f. o. b. mill	Freight rates	Per barrel destination price
Permanente Cement Co.[1]	$2.999607	$1.0152	$4.014807
Lehigh Portland Cement Co	3.45	.678	4.1268
Spokane Portland Cement Co	3.45	.7144	4.1644
Ideal Cement Co	4.50	1.9552	6.4552
Carroll Mill Co	----------	----------	[2] 4.80

[1] Permanente, no discount, others 0.10 cent per barrel discount.
[2] Bid includes delivery to job site in bags, informal bid.

TABLE 24.—*Specification No. 2597: 3,000 barrels of portland cement in paper sacks, for Paonia project; bids opened Mar. 22, 1949; destination, Somerset, Colo.*

Bidder	Per barrel price, f. o. b. mill	Freight rates	Per barrel destination price
Permanente Cement Co., Oakland, Calif.	$3.05	$3.91248	$6.96248
Permanente Cement Co., Seattle, Wash.	3.45	4.11008	7.56008
Superior Portland Cement Co., Inc.	3.45	4.11008	7.56008
Ideal Cement Co.	3.55	1.292	4.842

NOTE.—Maximum price increase at time of delivery: Permanente, Oakland, none; others, 0.15 cent; Ideal, 0.30 cent for unshipped portion after first year of contract.

Because of the great distances in the West and the consequent importance of freight costs in the delivered prices, the data presented in the above tables show rather sharply the extent of the discrimination against the local buyer which would have taken place if a basing-point system had existed. They also serve to emphasize the fact that under a basing-point system base prices must be high enough, on the average, to reimburse distant bidders for any amount per unit by which the freight rate from their mill to destination exceeds the freight rate from the controlling base mill to the destination. Assuming in the instance of the bids shown in table 24 that, under basing-point pricing, Ideal's plant had been the basing point, and that either Permanente or Superior had been the successful bidder, the uniform delivered price for cement laid down in Somerset, Colo., would have been $4.482 per barrel. Of this amount both Permanente and Superior, whose mills are located at the same place, would have paid out as actual freight $4.1108 per barrel, leaving each of them only $0.7312 per barrel as their mill net price to cover production and selling costs and profit. This price compares with a mill net figure for sales to their local buyers of $3.48, or nearly five times the mill net for the distant sale. Thus, this illustration would appear to provide a typical example of the subsidy paid by local buyers under the basing-point system to enable the mills to compete on an identical delivered-price basis in distant markets.

Identical bids in rigid steel conduit

Unlike cement, rigid steel conduit is not a single homogeneous product, consisting rather of many sizes of pipe, each of which may be finished in any one of several ways, such as galvanized, enameled, or asphalt-coated. It is customarily priced on the basis of a master list price for different sizes with differentials for finish, threading, etc., for each size. Consequently, the establishment and maintenance of a basing-point system of pricing for such a heterogeneous product was no simple undertaking.

But the industry was successful in establishing such a system by an ingenious combination of list prices and discounts to fixed base prices at each of two recognized basing points, Chicago and Pittsburgh, and, finally, the Rigid Steel Conduit Association developed and published standard freight rates which, when added to the base price, yielded identical delivered prices from every supplier for every destination.

The essence of the system was described in a freight-rate book published by the conduit association in 1937, which carried the following foreword:

"METHOD OF FIGURING DELIVERED PRICE

"The freight rates listed herein are to be used to ascertain delivery charges in figuring f. o. b. destination prices to all points in the United States and their possessions.

"When the freight rates shown are from Pittsburgh, Pa., the Pittsburgh basing prices must be used. If the freight rates shown are from Chicago or Evanston, Ill., the Chicago or Evanston basing prices must be used."

Despite the great pains which had been taken in developing the details of the system, it did not always work perfectly, since a considerable amount of conduit is distributed through wholesalers who at times failed to maintain the manufacturers' prices. To remedy this situation, a plan was adopted in 1936 with the approval of the National Electrical Contractors Association representing the wholesalers, under which conduit was to be sold through wholesalers acting as consignment agents for the manufacturers. As late as October 1939 it was stated that wholesalers heartily approved the sales-agency plan in connection with the distribution of rigid-steel conduit.

This was only one of several collective actions taken for the fundamental purpose of controlling or eliminating trade conditions and practices which disturbed the perfect operation of basing-point pricing. Among other measures were consignment contracts, protective contracts, the investigation and control of specific building contracts, so-called closed transaction inquiries, elimination of warehouses, uniform trade discounts, and classification of purchasers.

The effectiveness of the system, as thus reinforced and strengthened by these persuasive measures, in achieving identical delivered prices, is illustrated by the following abstract of bids in 1940 to the Navy for conduit of six sizes for delivery in varying quantities at two destinations:

TABLE 25.—*Abstract of bids to the Navy for galvanized rigid steel conduit pipe (schedule 3559, lot 400, opening Oct. 29, 1940)*

Destinations and bidders	Sizes and prices bid for quantities (lineal feet) specified					
	½-inch	¾-inch	1-inch	1¼-inch	1½-inch	2-inch
Philadelphia Navy Yard, lineal feet	140,000	180,000	115,000	30,000	19,000	45,000
1. Clayton Mark & Co.	$0.0496	$0.0634	$0.0913	$0.1235	$0.1479	$0.1990
2. Enameled Metals Co.	$0.0496	$0.0634	$0.0913	$0.1235	$0.1479	$0.1990
3. Garland Manufacturing Co.	$0.0496	$0.0634	$0.0913	$0.1235	$0.1479	$0.1990
4. General Electric Supply Co.	$0.0496	$0.0634	$0.0913	$0.1235	$0.1479	$0.1990
5. Graybar Electric Co.	$0.0496	$0.0634	$0.0913	$0.1235	$0.1479	$0.1990
6. E. B. Latham & Co.	$0.0496	$0.0634	$0.0913	$0.1235	$0.1479	$0.1990
7. Republic Steel Corp.	$0.0496	$0.0634	$0.0913	$0.1235	$0.1479	$0.1990
8. Triangle Conduit & Cable Co.	$0.0496	$0.0634	$0.0913	$0.1235	$0.1479	$0.1990
9. Walker Bros.	$0.0496	$0.0634	$0.0913	$0.1235	$0.1479	$0.1990
10. Youngstown Sheet & Tube Co.	$0.0496	$0.0634	$0.0913	$0.1235	$0.1479	$0.1990
11. Westinghouse Electric Supply Co.	$0.0496	$0.0634	$0.0913	$0.1235	$0.1479	$0.1990
Norfolk Navy Yard, lineal feet	18,000	15,000	7,000	7,000	2,500	3,000
Sewalls Point Navy Depot (Norfolk), lineal feet	200,000	200,000	45,000	20,000	20,000	20,000
1. Clayton Mark & Co.	$0.0502	$0.0643	$0.0925	$0.1252	$0.1499	$0.2017
2. Enameled Metals Co.	$0.0502	$0.0643	$0.0925	$0.1252	$0.1499	$0.2017
3. Garland Manufacturing Co.	$0.0502	$0.0643	$0.0925	$0.1252	$0.1499	$0.2017
4. General Electric Supply Co.	$0.0502	$0.0643	$0.0925	$0.1252	$0.1499	$0.2017
5. Graybar Electric Co.	$0.0502	$0.0643	$0.0925	$0.1252	$0.1499	$0.2017
6. E. B. Latham & Co.	$0.0502	$0.0643	$0.0925	$0.1252	$0.1499	$0.2017
7. Republic Steel Corp.	$0.0502	$0.0643	$0.0925	$0.1252	$0.1499	$0.2017
8. Triangle Conduit & Cable Co.	$0.0502	$0.0643	$0.0925	$0.1252	$0.1499	$0.2017
9. Walker Brothers	$0.0502	$0.0643	$0.0925	$0.1252	$0.1499	$0.2017
10. Youngstown Sheet & Tube Co.	$0.0502	$0.0643	$0.0925	$0.1252	$0.1499	$0.2017
11. Westinghouse Electric Supply Co.	$0.0502	$0.0643	$0.0925	$0.1252	$0.1499	$0.2017

This table shows perfect observance of basing point pricing by 11 bidders, with a resulting 100 percent identity of prices at each destination. The lower prices uniformly quoted for each size at Philadelphia represent merely the difference in freight charged from Pittsburgh to each destination.

This group of bidders included pipe and conduit manufacturers with plants scattered from Youngstown, Ohio, to Brooklyn, N. Y., and south to Conshohocken and Pittsburgh, Pa., and Moundsville, W. Va. It also included important quasi-independent large wholesale distributors such as Clayton Mark & Co. of Chicago, and Graybar Electric Co., as well as manufacturer-owner wholesale distributors of both General Electric and Westinghouse. Yet all of these seemingly diverse interests bid identically the same price based on the fiction that regardless of who received the award, the conduit delivered would be priced as if shipped from Pittsburgh at the Pittsburgh base price.

A similar illustration is provided by abstracts of bids for conduit over a period of 6 years, for delivery to the Panama Canal, which reveal a relatively high degree of observance to the system, although some deviations are to be noted. (See table 26.)

TABLE 26.—*Identical bids to the Panama Canal, 1935–38*

Bidders	Project I bids (111,000 feet, June 7, 1935)		Project II bids (100,000 feet, Jan. 6, 1938)		Project III bids (2,000 feet, Dec. 21, 1938)	
	Respondents	Others	Respondents	Others	Respondents	Others
1. American Electric Supply Co		$8,188.90		$6,200.00		$687.00
2. Associated Hardware & Supplies Corp						[1] 636.00
3. Austin Co	$8,188.90		$6,200.00			
4. Baltinger Electrical Co., Inc		8,188.90		6,200.00		
5. Baltimore Electric Supply Co		8,188.90				
6. Cass Co. (Philip)		8,188.90				
7. Central Tube Co	8,188.90					
8. Clayton Wark Co	8,188.90		6,200.00		$687.00	
9. Electrical Industrial Equipment & Supply Co						[1] 646.00
10. Enameled Metals Co	8,188.90		6,200.00			
11. Gaffney-Kreese Electrical Supply Co		8,188.90		6,200.00		
12. Garland Manufacturing Co	8,188.90		6,200.00		687.00	
13. General Electric Supply Corp. (subsidiary of General Electric Co.)				6,200.00		[1] 666.80
14. Germantown Electric Supply Co				6,200.00		
15. Gertler Electric Supply Corp		8,188.90		6,200.00		[1] 666.80
16. Gold Seal Electric Supply Co				6,200.00		
17. Goodman Co., Inc				6,200.00		
18. Graybar Electric Co		8,188.90		6,200.00		687.00
19. Greene-Wolf Co., Inc		8,188.90		[1] 6,000.00		687.00
20. Home Lighting Co., Inc		8,188.90				
21. Hudson Electric Supply Co		8,188.90				
22. Laclede Steel Co. and its subsidiary, Laclede Tube Co	[1] 8,147.70		6,200.00			
23. Latham & Co. (E. B.)				6,200.00		[1] 666.80
24. Lavenson & Savasta		8,188.90				
25. Lee Electric Co		8,188.90				
26. Loman Electric Supply Co		8,188.90		6,200.00		
27. Louis Electrical Corp				[1] 7,000.00		
28. Monumental Electrical Supply Co						[1] 636.00
29. National Electric Products Corp	8,188.90		6,200.00		687.00	
30. National Electric Supply Co		8,188.90				
31. Roland Co., Inc		8,188.90		6,200.00		
32. Shell Electric Supply Corp		8,188.90		6,200.00		
33. Somerville Co		8,188.90				
34. Steel & Tubes, Inc	8,188.90		[1] 6,360.00		[1] 685.00	
35. Steelduct Co	8,188.90		6,200.00			
36. Triangle Conduit & Cable Co., Inc	8,188.90					
37. U. S. Electrical Export Corp		8,188.90		6,200.00		
38. Walker Bros	8,188.90		6,200.00		687.00	
39. Weinstein Supply Co		8,188.90		[1] 5,823.95		
40. West Philadelphia Electric Supply Co		8,188.90		6,200.00		
41. Westinghouse Electric Supply Co		8,188.90		6,200.00		
42. Williamsburg Electric Supply Corp						[1] 668.40
43. Youngstown Sheet & Tube Co	8,188.90		6,200.00		687.00	

[1] Bid deviating from the system price.

On the first project there were 33 bidders, 12 of whom were respondents (the term used to describe defendants in Federal Trade Commission cases) and the other 21 were nonrespondents. One respondent, the Laclede Tube Co., filed a low bid of $8,147.70 as against $8,188.90 bid by every other supplier. Laclede's low bid was thrown out as not being strictly according to specifications and the award was made by lot. Observance of the system by both respondents and nonrespondents who bid strictly according to advertised specifications thus produced 100 percent identity in prices for all bidders.

On the second project there were 29 bids—10 by respondents and 19 by others. Among the 29 bids, only 3 deviated from absolute identity. One of these by respondent Steel Tubes, Inc., was $160 higher; one by nonrespondent Louis Electric Corp. was $800 higher; but the third by nonrespondent S. Weinstein Supply Co. was $379.05 less than the system price offered by the other 26 bidders.

For the third project there were 16 bidders, of whom 6 were respondents and 10 nonrespondents. On this smaller order there were 8 bids identical at $687 for the lot. The other 8 bids all were lower than this amount. Of these lower bids one was by a respondent manufacturer, while the other seven were all by nonrespondents, the bids ranging from 20 cents to $49 under the system price, the smallest concession being made by the one respondent in the price-cutting group, the General Electric Supply Corp.

The occasional lack of strict observance to the basing-point system, as is illustrated by the diversity of bids shown in the last abstract, resulted in pressure being applied by the manufacturers to their price-cutting wholesalers. The Rigid Steel Conduit Association advised its members that they should insist upon wholesalers maintaining the manufacturers' "published position." Some manufacturers wrote to their wholesalers regarding the matter; for example, the Garland Manufacturing Co. stated in a letter to an agent under date of June 8, 1938:

"We do not wish to threaten, but we definitely are going to cancel some of our distributor agency contracts if they do not carry out our instructions, and if they are known as price cutters, it is going to be very hard for them to sign up new agreements with ourselves or others."

In addition, a number of distributor contracts were canceled for nonobservance of basing-point prices. Thus it can be seen that in the case of a heterogeneous product which is distributed in large part through independent wholesaling channels, coercion becomes almost an integral part of the basing-point system.

Conclusion

That the basing-point system has been singularly successful in achieving its fundamental objective of securing uniform delivered prices at any particular destination from all sellers is clearly demonstrated by the material on identical bids which has been presented above.

Deviations from the formula prices, particularly those which consisted of bids below the formula, have been few and far between. Occasionally, a supplier will either make a mistake in applying the formula or will even go to the lengths of shading it. But the opportunities for unintentional error have been materially reduced through the activities of trade associations in compiling and publishing standard freight rate books, extra books, and other types of helpful information which greatly simplify the application of the formula. And, likewise, instances of deliberate shading of the formula have become something of a rarity, owing in part to the disciplinary, coercive measures which have frequently been taken in order to bring the price-cutters back into line.

Thus strengthened by measures designed to avoid accidents and eliminate independent action, the basing-point system, as the above data clearly reveal, has developed into an almost perfect mechanism of price control.

IV. PHANTOM FREIGHT

Introduction

The term "phantom freight": It seems to be impossible to establish definitely by whom the term "phantom freight" was first employed. In the complaint and the findings as to the facts in the Pittsburgh-plus case,[40] the Federal Trade Commission most frequently spoke of "imaginary," sometimes of "fictitious," freight. It also, at one point, referred to the freight from Pittsburgh charged at a certain mill location as "said extortion,"[41] and elsewhere alluded to freight charges in excess of actual freight as "extra prices extorted."[41] Before, at any rate, the issuance of the Commission's order in United States Steel Corporation et al., on July 21, 1924, though it is not clear just how much earlier, the term "phantom freight" would appear to have been popularly used and understood. One bit of evidence to this effect is found in a cartoon published in the American Farm Bureau Federation's Weekly News Letter of January 24, 1924, where phantom freight is pictured as a gigantic, grinning figure, partially reclining in an immobilized freight car, over the side of which he holds toward a small man, presumably intended to represent a farmer, a bill reading, "American Farmer: To Pittsburgh-plus, January 1, 1923, to January 1, 1924, $25,000,000."

But what has been referred to as phantom freight has been called not only fictitious

[40] 8 F. T. C. 1.
[41] 8 F. T. C. 9.

freight and imaginary freight, but also ghost freight, a freight that nobody pays (i. e., as freight), imputed freight, unearned freight, artificial freight, theoretical freight, arbitrary freight, and mythical freight. The several qualifiers carry a variety of connotations, largely, no doubt, though certainly not equally, unfavorable, so far as their ordinary use is concerned. In the context of controversial discussions of the basing-point system, however, the adjectives "fictitious" and "mythical" seem especially appropriate.

In its report to the President with respect to the basing-point system in the steel industry,[42] having stated its judgment "that the basing-point system not only permits and encourages price fixing but that it is price fixing," the Commission said: "It is price-fixing so self-centered that * * * the advantages bestowed by nature on particular sections or communities have been nullified."

"Not only that, but the immense sums invested by government in improving the gifts of nature and by private industry in the faith that natural advantages and their improvements would accrue to the benefit of the buyers, fabricators, and consumers of steel as well as the producers, have been in effect largely appropriated by the producers. The basing-point system with its supporting formula in essence withholds the gifts of nature from the consuming classes and monopolizes them in the hands of the producers and sellers of iron and steel. Only aims of a blind and selfish character can account for the arbitrary abnormalities and flagrant fictions which are inherent in this basing-point system." [43]

Definition of "phantom freight": In a statement presented by this Commission to the Temporary National Economic Committee,[44] it was said:

"The term 'phantom freight' simply means that where the actual freight is less than the amount added to the base price to cover the freight element in the delivered price, the difference goes to the seller, giving him a mill net yield greater than the governing base price by the amount of that difference. It is not freight in any sense but is an addition to the sales price. Nor is it a phantom in the sense of being unreal. The existence of it is just as real as the base price itself, and the size of it may at times approach the base price. This is one of the features of the basing-point system which sellers find it most difficult to defend. For it involves the anomaly of a seller realizing the most out of a delivered price where there is little or no actual freight charge included in it. As between buyer and seller, the nearby buyer is not only deprived of any price benefit from his location but is penalized for it." [45]

Phantom freight is described by TNEC Monograph No. 21 in these words:

"When a producer makes a shipment by a cheaper method of transportation than that assumed in the computation of his price and when he makes a charge for delivery from a basing point which is farther from the buyer than is his own establishment, he collects 'phantom freight'." [46]

Dr. Melvin G. deChazeau, coauthor of a major book on the steel industry, accounts as follows for "phantom freight" and "freight absorption":

"Under a basing-point system of pricing, phantom freight (i. e., the amount by which the freight charge in the delivered price exceeds the freight actually paid) has two sources: (1) In local sales at or near the mill, especially if the mill is not in the vicinity of a basing point, and freightwise away from both mill and basing point; (2) in shipments made over a medium cheaper than that used to calculate the delivered price. Because of this second source, phantom freight is not confined to mills away from basing points, but is a more significant factor in the sales of such mills." [47]

"Phantom freight"—steel

Phantom freight takes place under both single and multiple basing-point systems when mills are located at places which are not basing points.

"Phantom freight" under the "Pittsburgh-plus" single basing-point system: Under a single basing-point system such as the old Pittsburgh-plus scheme, any plant not at the basing point, so long as it sells at its own mill location or ships in a direction away from the basing point, obtains the full benefit of "phantom freight" calculated on the basis of rail rates.[48] Or, in terms of a concrete situation, as the complaint in the Pittsburgh-plus case emphasized and reiterated, "Every consumer outside of Pittsburgh is subjected to * * * discrimination, and the farther away his consuming plant is from Pittsburgh, the greater is the discrimination against him." [49] The price discrimination charged and the use of unfair methods of competition alleged were primarily and largely substantiated by evidence with respect to Pittsburgh-plus freight charges, i. e. "phantom freight," and the consequences for competition ensuing therefrom.

Here, then, preceded by an explanation of how a Pittsburgh-plus price was constructed, is a collection of instances of "phantom freight," all taken from the Federal Trade Commission's findings of fact.

"Respondents' price at Chicago, for instance, which is a Pittsburgh-plus price, is made up as follows: They take their price at which they sell their products at Pittsburgh * * *. They add to that price an amount which is equivalent to what the freight charge on such steel products from Pittsburgh to Chicago would be if they were actually shipped from Pittsburgh, or $7.60 per ton. The Chicago steel user, therefore, who buys his steel from respondents' mill at Chicago must pay $7.60 per ton more than his Pittsburgh competitor pays. In similar fashion, the Duluth steel user must pay * * * for the steel he buys from respondents' Duluth mill" $13.20 per ton more than his Pittsburgh competitor, "because the imaginary freight charge from Pittsburgh to Duluth is $13.20 per ton. This freight charge is referred to as 'imaginary' because there is no freight charge incurred in such case. No matter where outside of Pittsburgh the steel is manufactured by respondents, they charge the said Pittsburgh-plus prices. At Milwaukee, a customer backs up his truck to respondents' Milwaukee mill, hauls away the steel himself, but is obliged to pay the imaginary freight charge from Pittsburgh to Milwaukee. * * * The discrimination against the Birmingham steel user of wire and in favor of the Pittsburgh steel user of wire in 1920 amounted to $15.30 per ton." In general, "the amount of the respondents' prices under the Pittsburgh-plus system varies with the variations in the railroad freight rates from Pittsburgh to the customers' different destinations." [50]

While in the dissolution suit brought by the Department of Justice against the United States Steel Corp. in 1911,[51] some 200 of the corporation's customers testified that they were satisfied with the Pittsburgh-plus method of pricing, several of these concerns, by the time the Pittsburgh-plus case came to be heard, were ready to appear in opposition to the respondents. But theirs were only a few of the voices in what had become a crescendo of protest. The experience of western users of steel during the 10 months of World War I when, thanks to the War Industries Board, Chicago was a basing point, and substantial advances in freight rates [52] which greatly increased the burden of phantom freight after Pittsburgh-plus was restored—these were probably the more important factors that stimulated the revolt. It was the Western Association of Rolled Steel Consumers for the Abolition of Pittsburgh Plus, organized in January 1919, that first requested the Federal Trade Commission to issue a complaint. By 1921 the American Farm Bureau Federation had interested itself in the matter. Later, after the Commission's complaint had been issued, other associations were organized to support the prosecution of the case. The most important of these was the Associated States Opposing Pittsburgh-Plus, formed originally by the States of Illinois, Iowa, Minnesota, and Wisconsin, and later joined by Alabama, Arizona, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Utah, and Wyoming. A brief amici curiae was "submitted and an oral argument made * * * by counsel for" the original four members of the Associated States. Counsel for the Joint Committee of the Civic Organizations of Duluth, Minn., which was fighting Pittsburgh-Plus, also submitted a brief amici curiae.[53]

Thus in the Pittsburgh-plus case, in contrast with the earlier case against U. S. Steel, there was heard the "testimony of some 125 witnesses showing a substantial lessening or destruction of their competition in interstate commerce due to Pittsburgh-plus prices," which testimony, said the Commission's findings, "remain undisputed in the record." [54] Illustrating disadvantages experienced by the buyers of steel who were most handicapped in competition by the operation of the Pittsburgh-plus system (including its modification, the Birmingham differential), the findings present in considerable detail the cases of Chicago and other western fabricators of steel and, naturally, of manufacturers of steel products in the West and South. Specific examples of phantom freight payments are also given:

"In one Chicago building alone, the Federal Reserve Bank Building, the imaginary freight on the steel amounted to over $76,000, which went to respondent, Illinois Steel Co. In 5 years the Manitowoc Shipbuilding Co. paid respondent, Illinois Steel Co., $140,000

[42] November 30, 1934 (hereinafter cited as Report to the President).

[43] Ibid, p. 35.

[44] TNEC hearings, pt. 27, pp. 14312, 14329, and 14548–14598 (exhibit No. 2242). The statement, "An analysis of the basing-point system of delivered prices as presented by United States Steel Corp. in exhibits Nos. 1410 and 1418" was prepared by Messrs. Walter B. Wooden, then assistant general counsel, and Hugh E. White, then examiner, Federal Trade Commission.

[45] Ibid., pt. 27, p. 14568.

[46] P. 150.

[47] Daugherty, deChazeau, and Stratton, the Economics of the Iron and Steel Industry, 2 vols. (1937), pp. 674–75.

[48] Complexities are here intentionally disregarded. The Birmingham differential will remain in the background in the ensuing discussion of the Pittsburgh-plus case, as also the differential instituted at Chicago before the decision in that case.

[49] 8 F. T. C. 7, 14.

[50] 8 F. T. C. 19–21.

[51] *U. S.* v. *United States Steel Corporation et al.* (251 U. S. 417).

[52] Between September 20, 1917, and June 25, 1918, the freight from Pittsburgh to Chicago was $4.30 per ton; on the latter date it became $5.40 per ton; by the end of August 1920, it had risen to $7.60 per ton. (8 F. T. C. 20–21.)

[53] 8 F. T. C. 15.

[54] 8 F. T. C. 23.

as imaginary freight which the United States Shipping Board had to pay."

The table below shows the amounts of "imaginary freight" paid "annually" by certain manufacturers of farm implements, with the amounts their customers were required to pay by reason of the "actual Pittsburgh plus paid by the farm-implement manufacturer."

TABLE 1.—*Amounts of "imaginary" freight paid annually by certain farm-machinery manufacturers, with annual payments by their customers chargeable to such freight paid by manufacturers*

Company	"Imaginary" freight paid annually by manufacturers	Annual payment by customers chargeable to "imaginary" freight
Deere & Co	$488,400	$1,000,000+
Emerson-Brantingham Co	100,000	200,000
Litchfield Manufacturing Co	68,000	[1] 136,000
"A Minneapolis Manufacturer"	84,000	[1] 168,000
J. I. Case Threshing Machine Co	----------	[2] 509,033

[1] "* * * for every dollar which the farm implement companies pay as Pittsburgh-plus, the farmers must pay more than double every such dollar, because to the actual Pittsburgh-plus paid by the farm implement manufacturer must be added the various percentages of overhead, selling expenses, and profits which are borne in the ordinary course of business. The figures are undisputed in the record" (8 F. T. C. 34).

[2] Based on the statement that in 1920 "Pittsburgh-plus resulted in an addition" of the amount here shown "to the list prices of J. I. Case Threshing Machine Co., an amount which the farmers would have saved if Pittsburgh plus had not been charged" (8 F. T. C. 35).

In connection further with the cost of phantom freight to consumers, or to the public, the findings relate that, "as the president of the American Farm Bureau Federation, representing more than a million and a quarter farmers, testified, the double Pittsburgh-plus imaginary freight thus paid by the farmers in only 11 Middle Western States amounted to around $30,000,000 annually. The farmers in the other States would use even more steel than those in the 11 States figured in the calculations." [55]

Phantom freight under the multiple basing-point system

Following the issuance of the Federal Trade Commission's order in the Pittsburgh-plus case, the United States Steel Corp. and its subsidiaries reported that they had determined to conform to the order, and would conform thereto, in the sale of their various products, insofar as it is practicable to do so. They also reported that they had abandoned the Pittsburgh-plus system, as defined in said order, throughout their various organizations and would not make use of it in the future. They declared further that they would not quote for sale or sell their rolled-steel products upon any other basing point than that where the products are manufactured or from which they are shipped.

Commenting some 10 years later upon the degree of harmony between the corporation's words in 1924 and its subsequent actions, the Commission said:

"What the corporation and the industry in general did in ostensible compliance with the Commission's order may be gathered from the published statements of steel officials, both corporation and independent, as reported in the trade journals of that time. Although announcing their intention to abandon the so-called Pittsburgh-plus practice, they appear to have made no attempt to substitute in any general way actual mill-base prices and actual freight charges for basing-point bases and imaginary freight in compliance with the order. They merely reduced certain arbitrary base differentials and increased the number of basing points for the various kinds of steel products, thus reducing by a like comparatively small number the mills following the practice that was condemned. Correspondingly, the area within which some one producing point would set delivered prices for other mills was narrowed considerably in a few cases, but to a slight extent or not at all in others.

"The character of the principal changes under way between 1924 and 1933 is clear. In general the situation as to basing points (with the exception of pig iron) seems to have come nearly to that set forth in the code adopted in August 1933. Indeed, the representatives of the industry offered the code as being in substantial accord with their recent practice." [56]

In order to determine the actual difference resulting from the substitution of the multiple for the single-basing-point system, the Federal Trade Commission made a detailed analysis of hot-rolled sheets. Under the multiple-basing-point system basing points established for this important product were Pittsburgh, Gary, Birmingham, and Pacific coast ports. "The Pacific coast ports," it was said, "are basing points in name only, their prices being merely a composite of the Pittsburgh base price plus transportation from Pittsburgh. Accordingly, the Pittsburgh-plus system is literally in effect in that territory. Each of the other three points is the ruling basing point for certain territory, which outside mills must recognize when they ship into it."

The consequence of this was then pointed out in the following paragraph:

"Within such territory, therefore, it is a single-basing-point system. On sheets Pittsburgh is the ruling basing point in the great industrial region of the North Atlantic and New England States and for large areas to the West and South. In all that region comprising many States a single-basing-point system is in effect on sheets. Likewise, Gary has an immense area comprising many Middle Western and Western States in which it is the only basing point for sheets and in which the single-point system is consequently in effect. On a smaller scale Birmingham is the center of a single-basing-point system for sheets in a territory which includes a number of Southern and Southwestern States. When all other products are analyzed in the same way the multiple-point system is found to be composed of a collection of single-point systems, each controlling the delivered price in its territory." [57]

During the NRA days, that is from August 1933 to May 1935, the basing-point system as prescribed in the Code of Fair Competition for the Iron and Steel Industry achieved a new status. It was at once part of the law of the land and a practice which each "member" of the code had contracted to observe, agreeing to the assessment of liquidated damages at the rate of $10 per ton for violation of any of the provisions relating to prices or terms of payment. A member of the code was thus bound to realize his freight advantage on all occasions. In these circumstances, it is probable that fewer opportunities to charge phantom freight were neglected than during the depression years immediately preceding the code period or even in periods of greater stability.

Because of its legal status, the basing-point system was enforced more rigidly than during the last days of the depression; exemptions and concessions were eliminated; and consequently the stream of protest from both the producer and consumers who were adversely affected by the operation of the system swelled rapidly. Among these protests, none was more insistent than the constant complaint against phantom freight.

There is, for example, the complaint made in November 1933, by steel companies in the Mahoning Valley, i. e., in the vicinity of Youngstown, Ohio. The protest, addressed to the American Iron and Steel Institute, whose board of directors constituted the code authority, objected to "the establishment of Pittsburgh as the basing point for flat-rolled steel."

In this protest, the consumers of steel were joined "by five of the steel producers of that [the Youngstown] district who petitioned the Institute 'to reestablish the basis of selling in effect prior to the date of the steel code.' The producers said their district had greater producing capacity on sheets and strip steel than any other district, yet it was not considered a basing point. They stated that the results of this change in basing point was to 'arbitrarily increase the price' to fabricating consumers from $1.50 to $2.50 per ton 'without a smiliar increase in the price to their competitors, which will throttle development of the valley and cause established industries to retire from business or move to other districts.' These steel producers therefore petitioned the Institute 'to authorize the reestablishment of the basis of selling which has existed in the Mahoning Valley for more than a generation.'" [58]

So far as sheets were concerned, Youngstown was the largest producing center, while at Pittsburgh, the governing basing point for Youngstown, no sheets were produced.[59]

As another example, there was the complaint of the Diamond Calk Horseshoe Co. of Duluth, Minn, which for some years prior to the effective date of the steel code, had been buying its steel from the Minnesota Steel Co., also located at Duluth. For the sort of steel used by the Diamond Co., Chicago had been the applicable basing point; but the Minnesota Steel Co. had allowed the Diamond Co. a reduction of $5 per ton on steel purchased at its Duluth mill. Thus the Diamond Co. had escaped paying all but $1.60 of the $6.60 phantom freight from the basing point which was included in the Minnesota Steel Co.'s regular delivered price under the basing-point system. The code, however, forbade the concession previously granted, and required the Diamond Co.'s supplier to charge the full formula price, including $6.60 of phantom freight per ton. The Diamond Co.'s nearest competitor, located at Chicago, was able to buy its steel at the base price. That the Minnesota Steel Co. would (as was reported) have been willing to continue its former arrangement with the Diamond Co. can be believed, since on sales of similar steel in Illinois and Indiana it was netting $13.20 per ton less than its net from the Diamond Co.[60]

Manufacturers in St. Louis protested in 1934 against having to pay phantom freight of 22 cents per hundredweight on steel products manufactured in St. Louis. One St. Louis concern, appealing to the American Iron and Steel Institute for "relief from the heavy burden which has been placed upon users of rail steel angles in this district," wrote as follows:

"A burden of 22 cents per hundredweight freight is now imposed upon us, as we are

[55] 8 F. T. C. 34–35.

[56] Practices of the Steel Industry Under the Code, p. 62.

[57] F. T. C., Report to the President, pp. 28–29.

[58] Practices of the Steel Industry under the Code, p. 18,

[59] Ibid., p. 5, by the date of the NRA report (November 30, 1934), which so reported (p. 90), Youngstown had "been granted a concession substantially restoring its previous position."

[60] Practices of the Steel Industry under the Code, p. 16. Duluth was later made a basing point for the bars used by the Diamond Co. But the new Duluth base price "was arbitrarily placed at a considerable differential over the Chicago base price" (F. T. C. Report to the President, p. 31).

obliged to purchase angles at the f. o. b. Chicago base, plus freight from Chicago to St. Louis and merely shipped across the city to our plants.

"We are in keen competition with our finished product with manufacturers located in Chicago, and our business has been seriously handicapped in the territories which can be served from Chicago equally as well as from St. Louis. We refer especially to Indiana, northern Illinois, Iowa, Nebraska, and Kansas." [61]

The institute's commercial committee was appealed to in April 1934 by the Granite City Steel Co., Granite City, Ill., which sought relief for St. Louis railroad-car builders, who were reported to be "at a decided disadvantage when competing against car builders located at basing points." Again, in October 1934, presenting the case of the middle western car builders, the Granite City Steel Co. wrote the institute:

"Up to the present time nothing has been done to correct this situation, and it is quite apparent that there is no intention on the part of the steel industry, as a whole, to put those car builders not located at basing points in position to compete on the same basis of raw-material costs with car builders located at basing points." [62]

Modification of the basing-point system was requested in May 1934 by the president of the Los Angeles Chamber of Commerce, who requested the institute "to remove the artificial present elimination of natural advantages and the arbitrary equalizing of opportunity, for the ostensible purpose of point prices, it was charged, "have largely been made substantially equal to the Pittsburgh mill base price, plus rail and water transportation charges, including wharfage, handling, and terminal delivery." As the Commission commented on the Pacific coast situation later in the same year, "while steel is produced in California, it is priced as though it were produced in and transported from Pittsburgh, despite the fact that other basing and producing points are nearer freightwise than Pittsburgh." [63]

"Follansbee Bros. Co., of Steubenville, Ohio, in January 1934 complained to the institute that it was a purchaser of pig iron, sheet bars, and hot rolled strip from local producers, that besides the advance in base prices, 'an additional $2 per ton has been forced upon us due to the Pittsburgh basing point as provided under the Steel Code.'" [64]

With the end of NRA, the basing-point system continued in the steel industry without substantial change, except for the addition in 1938 of a number of new basing points, until the industry abandoned the system following the Supreme Court's decision in the Cement case in April 1948. That phantom freight continued to be charged and collected during this period can be gathered from a few examples. Thus on the basis of a compilation made by the Tariff Commission from published freight tariffs and from prices quoted in Iron Age, it can be determined how much phantom freight per long ton was included in the delivered prices of any soft steel bars shipped from Buffalo and Bethlehem to New York, and from Bethlehem to Philadelphia in February 1938. Pittsburgh was the basing point for both the Buffalo and Bethlehem mills. Phantom freight per long ton on shipments from these mills would have been: [64a]

Buffalo to New York	$0.45
Bethlehem to New York	3.98
Bethlehem to Philadelphia	4.14

The following illustrations of phantom freight are from statements submitted to, or testimony before the Temporary National Economic Committee:

"The following consumers' goods are produced in large quantities at Sparrows Point (Baltimore) but are still priced on a Pittsburgh base: Butteweld pipe, lapweld pipe, cold rolled strip, cold rolled sheets, tin plate, plain wire, and nails and staples. Purchasers of these goods in Baltimore are charged Pittsburgh-plus by Baltimore producers. This involves the addition of phantom freight from Pittsburgh to Baltimore amounting to $6 per ton. A subsidiary of the [United States Steel] Corporation produces plain wire and nails at Allentown, Pa., [65] but the price is still based on Pittsburgh. Allentown purchasers of these consumers' goods are charged Pittsburgh-plus involving phantom freight from Pittsburgh to Allentown of $6.20 per ton.

"Moving to the Middle West, hot-rolled sheets and plain wire are produced at Kokomo, Ind., by the Continental Steel Corp. and the same producer produces hot-rolled sheets at Indianapolis. The price of the latter product at Indianapolis is based on Middletown, Ohio. Indianapolis purchasers are charged Middletown plus. This involves the addition of "phantom freight" from Middletown of $3.80 per ton. Kokomo prices for hot-rolled sheets and plain wire are based on Gary and Chicago. Kokomo purchasers are charged Gary or Chicago plus which involves phantom freight of $3.60 per ton on sheets and $4 per ton on wire. A mill at St. Louis produces Buttweld pipe but bases on Chicago. This involves a St. Louis price equivalent to Chicago plus including $4.80 a ton phantom freight from Chicago. A mill at Pueblo, Colo., produces large quantities of heavy structural shapes, light structural shapes, universal plates, hot-rolled strip, merchant bars, concrete reinforcing bars, billets and blooms for forging, plain wire, nails and staples, barbed wire, wire fencing and bale ties. It bases prices for these products on Chicago and Gary. To local purchasers in Colorado, the addition of phantom freight from those basing points is required by the basing-point system. This amounts to $19.60 per ton." [66]

Appearing on November 14, 1939, before the Temporary National Economic Committee, Mr. T. A. L. Loretz, general manager, Pacific Coast Steel Fabricators' Association, Los Angeles, Calif., testified regarding Pacific coast prices of steel bars, shapes, plates, and sheets. Referring to "bars which are quoted and are sold at Birmingham at a base price of $2.15," he said: "The transportation cost to Los Angeles Harbor, for example, is * * * made up of several factors, 65 cents per 100 pounds, making a total of $2.80. The base price on cars Los Angeles Harbor, which is also the base price on cars at other Pacific coast ports, is $2.75, a difference of 5 cents, and I might state again that that $2.75 price which is quoted on cars Pacific ports applies whether the material has actually been transported in through a Pacific port or produced at a Pacific coast rolling mill."

To a price of $2.31½ on shapes delivered at Philadelphia were added all transportation costs to Los Angeles Harbor, the total being $2.70½ "as against the on-cars Pacific coast or Los Angeles Harbor price of $2.70. That," it was stated, "would apply whether the material is rolled at a mill adjacent to Philadelphia or actually rolled at Torrance or Los Angeles or Seattle or other Pacific coast rolling mills."

"On sheets, * * * the situation is the same. The Sparrows Point price [$2] [67] plus actual transportation costs, total $2.49, as against a quoted price Los Angeles Harbor or other Pacific coast port, of $2.50, 1 cent over the eastern price plus transportation, regardless of whether the material is rolled in a Pacific coast mill or is actually shipped out of the East." [68]

The amounts of phantom freight included in the base price at Pacific coast ports of items produced on the Pacific coast ranged, it will be seen, from approximately $8 to $13 per ton. In the case of plates, which were not rolled on the Pacific coast when this testimony was given, certain sellers may have collected phantom freight to the extent of the difference between the regular commercial rates and the cost of transportation in their own facilities. In this connection, Mr. Loretz said that he "might state further * * * that the two major steel companies own and operate their own intercoastal steamship services, and that the great bulk of the tonnage transported for their account from the east coast to the west coast is transported in their own bottoms." [69]

Mr. Loretz's association was, he stated, only concerned "to illustrate that the Pacific coast prices are substantially the eastern prices plus actual transportation. It is not our purpose to argue either for or against the delivered-price system." [70] Nor was it the "purpose to state that any steel company is charging too much for its products." Mr. Loretz would "say, however, that it is the contention of the Pacific coast steel fabricators that steel sold on the Pacific coast, steel produced on the Pacific coast, I should say, should be sold based upon its cost of production plus a reasonable profit, whatever that may be, and not based upon eastern prices plus transportation costs." [71]

Phantom freight—Water transportation

This analysis of phantom freight, that is, the excess of freight charges collected by mills over freight costs actually incurred has thus far been largely limited to the phantom freight which results from the charging of freight for shipping material greater distances than the material is actually shipped. But there is another form of phantom freight, the form which results not from any difference between the distance charged and the distance shipped, but rather from the use of a cheaper form of transportation, such as trucks, barges, etc., than that on which the freight charges are based—which is invariably railroads. Of these alternative means of transportation, the differences between rail freight and shipments by water are particularly pronounced.

As early as "1929 one Jones & Laughlin official estimated that his company was saving $2 to $3 a ton by using water. The public, however, did not benefit because steel is sold under a basing-point system of pricing. The savings were retained by the manufacturer. * * * The fact that under the basing-point system of pricing, water shipments are usually charged the all-rail rate discourages the use of barges, so far as the buyer of steel is concerned." [72]

According to the same authority, "relatively low prices for steel compared with freight rates resulted in a greater relative use of waterways for steel beginning with the depression of the early thirties"; [73] and

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[61] FTC report to the President, p. 20.

[62] Ibid., p. 20.

[63] Ibid., p. 19.

[64] Ibid., p. 20.

[64a] U. S. Tariff Commission, Iron and Steel (Report No. 128, second series (1938)), p. 335, table 220. Soft steel bars: Net realization at mill as affected by prices at basing points.

[65] The mill at Allentown has since been dismantled.

[66] TNEC hearings, pt. 27, pp. 14570–14571. These illustrations appear in exhibit 2242, An analysis of the Basing Point System of Delivered Prices, by Walter B. Wooden and Hugh E. White, Federal Trade Commission.

[67] TNEC hearings, pt. 20, p. 11013.

[68] Ibid., pt. 20, pp. 10907–10908.

[69] Ibid., pt. 20, p. 10912.

[70] Ibid., pt. 20, p. 10908.

[71] Ibid., pt. 20, p. 10910. Cf. Iron Age, July 22, 1948: "Historically, every ton of steel produced in the Far West has carried with it phantom freight, and much of it has been delivered under a price umbrella" (p. 108).

[72] Economics of Iron and Steel Transportation, p. 48.

[73] Ibid., p. 43.

it would appear that certain steel manufacturers must have passed on to their customers some of the economies of water transportation. This is indicated by the protests against the all-rail basis on which the iron and steel code required delivered prices to be computed, many of which came from consumers of steel who had benefited from the lower water rates, and also by the industry's uncompromising stand throughout the NRA period against recognition of buyers' claims that they should share in the benefits of water transportation. Past sharing of these benefits with consumers was evidently one of the abuses of the basing-point system which it was attempted to eliminate through code provisions.

The provision of the code for the iron and steel industry which required that all prices should be delivered prices also specified that the delivered price should be the sum of the base price and the all-rail freight from the basing point to the place of delivery, thus reserving for the members of the code all the advantages of superior geographical location on inland waterways or at tidewater. Steel consumers, on the other hand, were denied the benefit of cheaper water transportation, though its use by producers was permitted.[74] In the words of Mr. E. L. Parker, chairman of the committee on cold-finished steel bars:

"The seller may elect to make delivery by rail, water, little red wagon, airplane, or parcel post. The steel code is not concerned about the means employed for transportation." [75]

What it was concerned about was the use of the all-rail freight rate in computing the delivered price; and various firms were assessed liquidated damages at the rate of $10 per ton for improper transportation charges.

Before the approval of the code, both manufacturers within the industry and users of steel had unsuccessfully protested the compulsory all-rail delivery charge, from which there had been deviations in the past. During the first 4 months of the code, so many complaints concerning the all-rail freight provision had been referred by the NRA to the code authority that, late in December 1933, the institute's traffic committee recommended that deductions from the all-rail delivery charge be permitted on shipments by water to Atlantic coast ports, certain Great Lakes ports, and some points on inland waterways. At the same time, deductions from the all-rail freight charge would have been permitted on shipments to specified points on the Ohio and Mississippi Rivers. But the opponents of change prevailed when the recommendations were rejected by the commercial committee; and the all-rail basis for delivery charges continued in effect,[76] while protests increased.

[74] Cf. Daugherty, deChazeau, and Stratton, op. cit., vol. I, p. 463: "But the failure to provide for price concessions on steel products which could move by inland waterway forced the full burden, with discriminating effect, on the buyer. Where the mill could use water transport—to its own warehouses and fabricating plants (or to those of its subsidiaries) or to some customers where water delivery was more convenient—it merely absorbed the difference between all-rail freight and water freight as an extra profit. While docking and loading facilities of customers were going unused and while the advantages that had conditioned investment at river locations were being destroyed, in effect, the steel mills were able to utilize the Government's investment in waterways to their own advantage."

[75] Hearings on S. 4055, p. 175.

[76] In January 1934, the code authority did authorize certain specified reductions in the delivery charges of pig iron shipped by rail or by rail and water to specified destinations. These came from buyers of steel located on inland waterways, from inland water carriers and owners of terminal facilities and from chambers of commerce and similar associations interested in water transportation.

One concern which had previously availed itself of the cheaper transportation made possible by its location on the Mississippi River complained that none of the saving is now passed on to the consumer, adding that all the advantages of shipment by river on account of lower river rates are now going to the steel manufacturer.[77]

Another company, which reported that "at great expense" it had moved from the East to a location on the Ohio River, where it would be nearer its customers and could obtain the benefits of river transportation, pointed out that the all-rail provision had largely wiped out the advantages it had taken pains to provide for itself:

"We built a dock and purchased a barge. We now find that our competitors located inland who have not invested a dollar in river transportation facilities are equally well situated as regards steel costs as we are." [78]

A somewhat parallel case was that of a user of steel sheets which had established its plant on the Ohio River in order to obtain its raw material from mills along the river which before the code had been willing to quote delivered prices based on river rates, and thus be able to compete with Youngstown and Wheeling. This company protested that "by the operation of the code we are not permitted to enjoy the same privileges and remain on the same basis in competition with the Youngstown, Wheeling, and other plants, and it is a very serious handicap." [79]

A Louisville, Ky., hardware manufacturer charged that steel companies were profiting by the prescribed use of all-rail freight rates in calculating delivered prices, saying that "the manufacturer ships by barge while the purchaser pays the all-rail rate and the manufacturer puts the saving on account of the lower barge rates in his own pockets." The same complainant stated that all tonnage shipped by steel mills to their warehouses at river points was moving by barge.[77]

Buyers of steel at Evansville, Ind., Charlestown, W. Va., Mobile, Ala., New Orleans, La., Memphis, Tenn., and elsewhere, complained that enforced all-rail delivery charges were discriminatory or placed them at a competitive disadvantage.[80]

Most complainants among steel consumers, as also spokesmen for inland water carriers and those offering terminal facilities, and business communities speaking through chambers of commerce, referred in some fashion to Government expenditures in improving inland waterways, presumably for the benefit of the public, and challenged the right of the steel industry, for its private purposes, to restrict their use. The Ohio Valley Improvement Association of Cincinnati found the all-rail provision objectionable because "it would deny to consumers the benefit of delivered prices based on transportation of commodities by whatever agency might be the cheapest." Noting that similar provisions were contained in other codes, it generalized its objection, declaring that "this principle will destroy water transportation and render valueless the large sums of money spent for equipment and terminals as well as the cost to the Government for improvements; it will take away all geographical advantages both to industries and consumers in the valley." [81]

The Memphis Chamber of Commerce characterized the all-rail provision as an "arbitrary injustice * * * set up through the steel code," and in its complaint said in part:

"This method of selling steel in effect excludes the transportation by water or rail and water, for the purchaser would naturally not accept water or rail-and-water delivery when he is being charged the all-rail freight as the saving would not be for his account but would go in the pocket of the seller. This eliminates Memphis and other river points from enjoying the natural advantages which she possesses and * * * would eventually lead to a higher all-rail structure, as our present advantageous position is due to the recognition of the river competition." [82]

"The Mississippi Valley Association of St. Louis, with 437 registered delegates from 26 States passed a resolution * * * declaring that the use of all-rail rates 'are inimical to the interests of the consumers, unjustly eliminate all forms of transportation other than railroads from participation in valuable traffic and tends to destroy water carriers and port facilities." [82]

It is uncertain to what extent water transportation was adversely affected by the steel industry's insistence that only rail rates be used in arriving at the delivered price. But there is some evidence that traffic on the Great Lakes was reduced; [83] and one complainant whose steel was obtained from Birmingham stated that the mills there would ship only by rail, that barge transportation of steel from Birmingham to New Orleans was no longer available.[84] In its report to the President (November 1934) the Federal Trade Commission expressed the opinion:

"The effect on water transportation in which the Federal Government has a special interest may be gaged from the fact that in 1932 some 84,000 tons of steel products were carried by the Federal Barge Line between Birmingham and Mobile while now this tonnage is moving largely by rail between those points." [85]

The Commission summarized the issue in these words:

"The issue is thus made clear: shall both purchasers and producers favorably located as to water transportation be denied the natural advantage of their location in order that higher prices may be maintained to protect purchasers and producers who are not so located? If so, the inevitable result is that the natural disadvantages of unfavorably located producers are removed by what amounts to a subsidy collected from the buyers and that the favorably located purchasers pay a price not warranted by the cost of delivery." [86]

The attitude of the steel industry on this issue is revealed in hearings before the Senate Interstate Commerce Committee in the midthirties on a bill, S. 4055, to abolish the basing-point system.

During the questioning of Mr. William A. Irvin, president of the United States Steel Corp., regarding the use of all-rail freight rates in computing the delivered price under the basing-point system, the chairman of the committee (Senator Wheeler, inquired, "Why is it that you use the all-rail freight cost even if delivery is actually made by water, or by truck in some cases?" Mr. Irvin

[77] Practices of the Steel Industry Under the Code, p. 30.

[78] Ibid., p. 30.

[79] Practices of the Steel Industry Under the Code, p. 31.

[80] Ibid., pp. 29–32.

[81] Ibid., p. 29.

[82] Practices of the Steel Industry under the Code, p. 29.

[83] FTC report to the President, appendix F–1, p. 105.

[84] Practices of the Steel Industry Under the Code, p. 31.

[85] Op. cit., p. 23.

[86] FTC report to the President, p. 24.

thought that "Mr. Gregg (a vice president of the corporation who had appeared earlier) explained that in his testimony," but was willing to give his own opinion:

"We have more at stake than just the immediate order. In other words, in every territory in the northern part of the United States east of the Mississippi River there are many factories converting various forms of steel into finished products. * * * These factories have been located for one reason or another all over the country. * * * Now, if we were to sell material at a lower price delivered by reason of having barge delivery in, let us say, Cincinnati, than we would make to the same sort of factory located inland 20 miles, we would give the manufacturers in Cincinnati an advantage over all those located in, we will say, Indianapolis, Columbus, or elsewhere, and that would prove detrimental to his interests. So in order to keep him satisfied and on a fair competitive basis, it would be necessary for us to make the same price to the inland plant that we would make to the plant on water."

This explanation led to questions by which the chairman sought to discover Mr. Irvin's attitude regarding the proper distribution of the benefits of advantageous location. Did Mr. Irvin think it fair for a purchaser who receives delivery by water to be charged a delivered price in which all-rail freight was included? He did think it fair for the producer to take advantage of his ability to ship by water, considering the expense he is put to in the construction of docks and other facilities for loading, and having in mind your secondary markets. He thought it fair for the steel company and also fair for the users.[87] After some further discussion of the same issue, the following testimony was elicited:

"The CHAIRMAN. * * * As I understand it, you want the [natural] advantage for the steel company, but you feel that the fabricator who locates his plant, no matter whether small or large, and we will suppose that he has some barges, the same as the United States Steel Corp. has, and he desires to send his barges to your place, why shouldn't he get the advantage of having the use of his own barges for transportation?

"Mr. IRVIN. Well, he could have the advantage of getting it in his own barges, but we could not afford for the purchases of any one concern to destroy the entire price structure for all the steel we make and is going forward.

"The CHAIRMAN. Then you feel that it would destroy the price structure?

"Mr. IRVIN. I do not feel that way, but I know it." [88]

[87] Hearings on S. 4055, p. 583–584. The testimony just summarized ran as follows:

"The CHAIRMAN. Do you think it fair for the purchaser who receives delivery by water or by truck to be charged a delivered price which is just as high as though the product were received by rail?

"Mr. IRVIN. I think from the standpoint of water it is fair for the producer of material to take advantage of his natural location on water, and his ability to ship by water, considering the expense he is put to in the construction of docks and other facilities for loading. I think it is perfectly fair for him to take advantage, having in mind your secondary markets, which is the conversion of your raw materials into your finished products by all the small manufacturers, and they number thousands all over the country.

"The CHAIRMAN. You think it is fair for the steel company?

"Mr. IRVIN. I think it is fair for the steel company, and also fair for the users."

[88] Hearings on S. 4055, p. 585.

The chairman then asked, "Do you think that by imposing equal hardships on communities located on waterways the hardships of the inland communities are thereby removed?" "No," replied Mr. Irvin; "I think it puts them all in the came competitive position."

After two more questions and answers came the following:

"The CHAIRMAN. Will you agree that unless steel mills calculated the delivered prices and costs in terms of a common mode of transportation, such as all-rail, the delivered prices could not be identical at the place of delivery?

"Mr. IRVIN. Yes, sir."

Here another Senator interposed to ask two questions. Then—

"The CHAIRMAN. I asked you a moment ago—and I will repeat it—you stated you would agree that unless steel mills calculated delivery costs in terms of a common mode of transportation, such as all-rail, the delivered prices could not be identical at the place of delivery. That is the real reason for calculating delivery in terms of all-rail freight, is it not?

"Mr. IRVIN. Yes, sir." [89]

Another important witness questioned about the returns received by a steel mill which ships by water but uses all-rail freight rates in calculating its delivered price was Mr. Eugene G. Grace, president of the Bethlehem Steel Co. During his rather extended testimony regarding modes of transportation other than all-rail, variations in mill net, and enjoyment of the advantages of location, the chairman of the committee asked why, assuming that he was a fabricator of steel who had located on water in order to benefit by water transportation, and to whom shipment was made by water, he would be charged all-rail freight by a steel manufacturer, and so denied the advantage of his location. Assuming his company to be the seller in the hypothetical instance, Mr. Grace replied: "We would be capitalizing, in a fair manner, the advantageous position of plant in being able thus to ship to you." [90]

Mr. John L. Neudoerfer, vice president and general manager of sales, Wheeling Steel Corp., Wheeling, W. Va., was another who appeared before the Senate Committee on Interstate Commerce in opposition to S. 4055. Prompted no doubt by the witness' statement that all of his company's seven plants were on the Ohio River, the question was asked: "When you ship your goods on the Ohio River, to a plant on the Ohio River, we shall say, do you charge them the water rate or the rail rate?" He replied, "We charge them the rail rate." "And notwithstanding," said the chairman of the committee, "that they are located on the river?" "Yes, sir; that is right," answered Mr. Neudoerfer. The chairman then inquired: "Should they not be entitled to their natural advantage of being on a river? Isn't that why they located upon the river—generally?" The witness' reply was, "Well we feel that, as a matter of policy we prefer to build up our prices on the rail rate." Somewhat earlier, Mr. Neudoerfer had said: "In one section there [i. e., of the proposed bill] it expressly gives the purchaser power to take delivery at a point of production, after the delivered price has been made. I think that if that became a law and if that practice were indulged in, it would result in confusion. Now whether or not that would eventually be a good thing, I am not able to say. But it does seem to me that would result in confusion. And, after all, I think a buyer wants to have an orderly way in which to figure his prices and to know whether or not they are reasonably competitive." [91]

That substantial differences in delivered prices would result if water rates, instead of rail rates, could be used in computing delivered prices is apparent from the extent of the differences in costs of the two types of transportation. Thus, "at water rates prevailing at the outbreak of the war," says the Economics of Iron and Steel Transportation (1944), "the saving to the steel companies ranged from $4.30 to $9.45 a ton, depending on distance." [92]

The following tables show, respectively, comparative water and rail rates on iron and steel between Pittsburgh and selected cities, and a comparison of all-water (contract carrier cargo) and all-rail rates on iron and steel between selected lake centers:

TABLE 2.—*Comparative water and rail rates on iron and steel between Pittsburgh and selected cities* [1]

[In dollars per short ton]

Between Pittsburgh and—	Water rate in barges furnished by carriers including insurance		Rail rate
	Minimum 500 tons	Minimum 200 tons	
Huntington	$1.30	$2.05	$5.00
Charleston	1.80	2.80	5.80
Cincinnati [2]	1.40	2.25	5.80
Louisville	2.06	3.06	7.20
Cairo	2.60	3.85	8.80
Memphis	3.10	4.60	11.40
Helena	3.40	5.05	12.75
Vicksburg	4.15	6.15	13.60
New Orleans	5.20	7.70	13.60
Houston	7.00	8.78	14.00
St. Louis [3]	3.65	5.65	8.60
Peoria	5.00	[4] 5.35	8.20

[1] Economics of Iron and Steel Transportation, p. 137.
[2] Water rates are per gross ton on semimanufactures, pig iron, skelp, and a few other articles.
[3] Minimum, 300 tons.
[4] Minimum, 400 tons.

Source: ICC No. 13, American Barge Line rates applicable as of March 31, 1941.

[89] Ibid., pp. 586-587.

[90] "The CHAIRMAN. * * * Let us assume that I am a fabricator of steel products, and that I want to buy steel from some plant. * * * and I want to have the steel shipped by water, why cannot I have the benefit of that?

"Mr. GRACE. And the steel company you have in mind is in a position to ship to your plant by water?

"The CHAIRMAN. Yes; the steel company is in a position to ship by water.

* * * * * *

"The CHAIRMAN. But instead of shipping the steel to me by water, or even if they do ship it by water, they charge me the all-rail rate.

"Mr. GRACE. Well, they will charge you, or we will charge you if we happen to be the steel company, what we find to be the competitive price for steel at your plant. That is all that we would charge you.

"The CHAIRMAN. Exactly; and you would charge me a competitive price, with an all-rail rate. You would charge me the all-rail rate, and I would not get the advantage of my location, notwithstanding the fact that I located there on the water to have cheaper freight rates.

"Mr. GRACE. We would be capitalizing, in a fair manner, the advantageous position of our plant in being able thus to ship to you." (Ibid., p. 535.)

[91] Ibid., pp. 199–201.

[92] Op. cit., p. 48.

TABLE 3.—*Comparison of all water (contract carrier cargo) and rail rates on iron and steel between selected lake centers* [1]

[Rates in dollars per short ton]

From—	To—	All-water rate	All-rail rate
Buffalo	Cleveland	$1.10	$4.60
Do	Detroit	1.15	5.20
Do	Chicago	1.60	7.80
Do	Duluth	1.60	12.60
Cleveland	Detroit	.95	4.40
Do	Chicago	1.50	6.20
Do	Duluth	1.50	12.00
Chicago	Detroit	1.50	5.60
Do	Duluth	1.50	7.20
Detroit	Chicago	1.50	5.60
Do	Duluth	1.50	11.00

[1] Economics of Iron and Steel Transportation, p. 138.

Source: Gartland Steamship Co., ICC No. 2, May 15, 1942. Lake rates were not required to be filed previous to that date.

The savings in steel transportation shown in the foregoing tables to be possible by resort to carriers on inland waterways would undoubtedly be still greater for steel manufacturers having their own water transportation facilities. To the extent then that their costs were lower than common carrier water rates, by so much would the phantom freight be increased if the freight factor in the delivered price were computed on the basis of all-rail rates.

Since the abandonment of the basing-point practice it appears that consumers of steel may at long last receive some of the benefits of the most economic forms of transportation available. Under the heading, "Switch to f. o. b. mill sales brings up complex questions," Iron Age for July 15, 1948, reported (p. 125):

"Looking ahead, Carnegie-Illinois recently made a trial shipment of several different customers' orders to Cincinnati by barge. Warehousing arrangements were made there to handle its distribution. Chicago mills have long been planning to step up barge shipments."

Pittsburgh mills, it was said further, had "their eyes on cutting costs by barge shipments" to points as distant as Cairo, Ill., and Nashville, Knoxville, and Chattanooga, Tenn.

Conclusion

The practice of charging phantom freight under the basing-point system differs from geographic price differences under truly competitive conditions in two basic ways: (a) Phantom freight is not related at all, or at best only partially, to the natural flow of goods from surplus deficit areas; what shall or shall not be a nonbase mill is determined on the basis of what happens to suit the convenience of the producers participating in the system, not on the basis of the existence of a surplus or deficit of production at a particular mill; and (b) phantom freight prices are rigidly fixed for many years at a time, the prices at nonbase mills generally failing to decline with increases in local supply.

Under these conditions, the price and profit mechanism does not serve its proper function under a competitive system of making an efficient allocation of resources. Differences in prices charged to variously located customers reflect not differences in economic efficiency—cost of production, management efficiency, demand, location of markets, etc.—but rather differences in the way in which the operation of a wholly artificial and arbitrary system affect consumers in one area as against those in another.

With these distinctions between phantom freight and geographic price differences under the normal pattern of competitive prices in mind, it is possible to summarize the undesirable economic effects of phantom freight as follows:

(1) Phantom freight penalizes existing buyers—or prevents them from coming into business in the first place—in some localities to the benefit of customers in other localities. Those buyers in those territories which have to pay phantom freight are penalized in their competition with those who do not have to pay this charge by the amount of the phantom freight. The effect of the phantom freight charge upon the customer who has to pay it is particularly pronounced during times of business recession. In such periods, the extra burden which it represents is sufficient to make it impossible for numerous customers in the unfavored areas who have to pay this burden to compete effectively with those who do not.

(2) Phantom freight restricts the growth of the nonbase mills, which are typically the smaller mills. In the long run, the high prices charged the local customers by the phantom freight mill actually benefit the mill very little, if at all, and consequently do not serve their normal purposes of increasing capacity and decreasing prices. The reason is that under the basing-point system the nonbase mill has to share its local high-priced market with the distant mills and is able to increase its market only by shipping toward the surplus base mill areas, with a progressive decline in its mill price—a penalty which is not imposed on the base mill in shipping into the nonbase mill's territory. This twofold burden tends to reduce the nonbase mill's profit. This is particularly true during the long run, since, as noted above, the high prices charged the local customers of the nonbase mill places them at a disadvantage in their efforts to compete with the customers of the base mill, thereby retarding their normal economic growth and development.

The economic effects of the practice of charging phantom freight can be no better summarized than in the following extracts from the findings of fact in the Pittsburgh Plus case some 25 years ago, which illustrated the effects of phantom freight both on the customers and on the nonbase mills themselves.

"A number of steel users have been forced to discontinue the manufacture of a variety of products made of steel because of the Pittsburgh Plus prices which they were forced to pay. They were unable to compete with their competitors in favor of whom such discriminations operated. In addition to this total destruction of competition caused in a great many cases by the increasing Pittsburgh Plus discriminations, a destruction of further industries is threatened with the continuance of Pittsburgh Plus prices. As a large number of manufacturers testified, they will be ultimately driven out of business if Pittsburgh Plus prices continue." [93]

* * * * *

"The effect of Pittsburgh Plus prices are greatly aggravated in depressed business periods when manufacturers need additional business the most. In such periods the Pittsburgh and other eastern manufacturers of steel products go into the Chicago territory and take business at a very small profit, sometimes below profit, in order to keep their plants going and to spread their overhead charges over a large production. During such times, the Chicago manufacturers likewise need business to keep their plants going and to keep down their overhead charges. But their needs are subservient to the needs of their eastern competitors. These eastern competitors divide and take away much of the needed western business, while the western manufacturers are left helpless without a reciprocal power to invade the East, because of respondents' Pittsburgh Plus prices." [94]

* * * * *

"The capacity of the steel mills within a radius of 60 miles of Pittsburgh increased from 1908 to 1923, 6,000,000 tons, while the capacity of the steel mills within the same radius of Chicago increased only 3,000,000 tons. In other words, the mills in the Pittsburgh district increased their capacity twice as much as those in the Chicago district, notwithstanding the fact that the respondents' cost of production of steel in the Pittsburgh district is 20 percent higher than in the Chicago district." [95]

[93] 8 F. T. C. 27.

[94] 8 F. T. C. ——.

[95] 8 F. T. C. 47.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Wyoming [Mr. O'MAHONEY] in the nature of a substitute.

Mr. LONG. Mr. President, in the language suggested by the Senator from Tennessee [Mr. KEFAUVER] there were the words "will substantially lessen competition." I move to have the word "substantially" stricken, if it is agreeable to the Senator.

Mr. O'MAHONEY. Mr. President, that is the language of the Federal Trade Commission Act. It is the language of the so-called Kefauver-O'Mahoney bill to prevent monopolistic mergers. "Substantially" is the word which has been used since the very beginning, in connection with this matter. I do not think it ought to be stricken.

Mr. ROBERTSON. Mr. President, I should like to ask the distinguished Senator from Maryland if the so-called Kefauver amendment or modification is agreeable to him?

Mr. O'CONOR. It is.

Mr. ROBERTSON. Is the O'Mahoney substitute, as modified, agreeable to the Senator from Maryland?

Mr. O'CONOR. In answer to the question of the Senator from Virginia I should like to make this brief statement. We feel that the amendment, as proposed by the Senator from Wyoming, accomplishes exactly what was intended to have been accomplished by the Committee on the Judiciary on a temporary basis, but now is accomplished on a permanent basis by the suggestion of the Senator from Wyoming, as amended in the several respects to which explanation has been given.

Furthermore, the questions asked by the Senator from Illinois [Mr. LUCAS] having been answered in the affirmative by the Senator from Wyoming, as indicating his intention, we feel that the main purpose of this enactment is as described yesterday on page 7019 of the RECORD:

> The sole purpose, therefore, of this problem is to confirm the right of individual companies to use certain pricing practices until July 1, 1950, when there is no conspiracy and when the practices are pursued for the purpose of engaging in competition in good faith.

That being the undoubted purpose, and the necessity having been shown by reference to the Supreme Court decisions which have resulted in the utmost confusion, we feel that the bill as proposed to be amended should be enacted.

The PRESIDING OFFICER. The Chair inquires whether the Senator from Louisiana [Mr. LONG] wishes to withdraw his motion.

Mr. LONG. I withdraw my motion.

The PRESIDING OFFICER. The question is on agreeing to the amendment in the nature of a substitute, offered by the Senator from Wyoming [Mr. O'MAHONEY].

The amendment in the nature of a substitute to the amendment was agreed to, as follows:

That the Federal Trade Commission Act (38 Stat. 719, as amended; 15 U. S. C. 45) is amended by adding at the end of section 5 (a) the following: "It shall not be an unfair method of competition or an unfair or deceptive act or practice for a seller, acting independently, to quote or sell at delivered prices or to absorb freight: *Provided*, That this shall not make lawful any combination, conspiracy, or collusive agreement; or any monopolistic, oppressive, deceptive, or fraudulent practice, carried out by or involving the use of delivered prices or freight absorption."

SEC. 2. Section 2 (a) of an act entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914 (38 Stat. 730, as amended; 15 U. S. C. 13), is amended by substituting for the period at the end thereof a colon and adding thereto the following: "*And provided further*, That it shall not be an unlawful discrimination in price for a seller, acting independently—

"A. to quote or sell at delivered prices if such prices are identical at different delivery points or if differences between such prices are not such that their effect upon competition may be that prohibited by this section; or

"B. to absorb freight to meet the equally low price of a competitor in good faith (except where the effect of such absorption of freight will be to substantially lessen competition), and this may include the maintenance, above or below the price of such competitor, of a differential in price which such seller customarily maintains."

SEC. 3. Section 2 (b) of an act entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914 (38 Stat. 730, as amended; 15 U. S. C. 13), is amended to read as follows:

"(b) Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price the effect of which upon competition may be that prohibited by the preceding subsection, or discrimination in services or facilities furnished, the burden of showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: *Provided further*, That a seller may justify a discrimination (other than a discrimination which will substantially lessen competition) by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor."

SEC. 4. As used in this act—

A. The word "price" shall have the meaning which it has under the commercial law applicable to the transaction.

B. The term "delivered price" shall mean a price at which a seller makes or offers to make delivery of a commodity to a buyer at any delivery point other than the seller's own place of business.

C. The term "absorb freight" shall mean to establish for any commodity at any delivery point a delivered price which, although as high as or higher than the seller's price for the same commodity at the point from which such commodity is shipped, is lower than the sum of the seller's price for such commodity at such point of shipment plus the actual cost to the seller for transportation of such commodity from such point of shipment to the delivery point or the average cost of transportation to the seller.

D. The term "the effect may be" shall mean that there is substantial and probative evidence of the specified effect.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (S. 1008) was passed.

Mr. O'MAHONEY. Mr. President, the title of the bill should be amended, I think, to agree with the title of the bill which I introduced yesterday. I therefore move that the title of the bill be amended to read: "A bill to define the application of the Federal Trade Commission Act and the Clayton Act to certain pricing practices."

The PRESIDING OFFICER. Without objection, the title will be amended as suggested.

Mr. JOHNSON of Colorado. Mr. President, I merely wish to say two things.

First, I wish to thank the Senator from Wyoming [Mr. O'MAHONEY] for working out a most difficult problem, not to the entire satisfaction of the Senator from Colorado, but substantially so.

Secondly, I feel that the bill will permit industry and business to function without the handicap of being upset and worried as to what the laws of the Nation are with respect to the absorption of freight and with respect to the ordinary methods of conducting business, which are traditional in the United States. I want the Senator from Wyoming to know that I greatly appreciate what he has done. I have spent 3 months of my life trying to solve this problem, so I know something about the difficulties.

Mr. WHERRY. Mr. President, for many months I, too, have worked on this problem. I have consulted with the Senator from Colorado [Mr. JOHNSON], chairman of the Committee on Interstate and Foreign Commerce, as well as with members of the Committee on the Judiciary, which was handling the proposed legislation.

I realize that this is a most difficult piece of legislation to pass in such form as to meet the approval of all those who are interested. I feel that this legislation will go a long way toward settling the confusion and chaos now experienced by hundreds of small-business men throughout the country. I feel that it is a step in the right direction. I hope that it will accomplish the results which those who sponsored it feel it will, and that it can be made to work.

Mr. MYERS. Mr. President, I wish to join my colleagues and pay my compliments to the Senator from Wyoming for his efforts and his accomplishments. When I introduced Senate bill 1008, in the nature of a moratorium, in the nature of temporary legislation, I was hopeful that at least we might get that much action. However, at that time I did not believe that it would be possible to get permanent legislation through the Senate. However, with the assistance and guidance of the Senator from Wyoming, we are able to make permanent what we originally sought to make temporary. I congratulate him for his efforts. I am sure that it was only because of his work and leadership that we were able to get some action in Congress on this very important legislation.

Mr. O'MAHONEY. Mr. President, I am most grateful to my colleagues for their very gracious words. I cannot accept them, however, without saying that if it had not been for the spirit of cooperation by the Senator from Pennsylvania [Mr. MYERS], the Senator from Maryland [Mr. O'CONOR], the Senator from Colorado [Mr. JOHNSON], the Senator from Tennessee [Mr. KEFAUVER], the Senator from Louisiana [Mr. LONG], the Senator from Indiana [Mr. CAPEHART], the Senator from Nebraska [Mr. WHERRY], and other Senators, it would have been utterly impossible to obtain this result. It shows that once we set our minds to the objective we wish to accomplish, differences speedily vanish. I think there are many other problems plaguing the country and the Congress which could be settled in the same spirit of cooperation.

Mr. LUCAS. Mr. President, the Senator from Illinois certainly agrees with the distinguished Senator from Wyoming.

The able Senator from Colorado [Mr. JOHNSON] stated that he had been studying this problem for 3 months. Well do I know how long the subcommittee, headed by the Senator from Indiana [Mr. CAPEHART], studied this very problem last year, and how long the subcommittee has been studying it during this session. Yet this afternoon, when minds got together and started cooperating, giving and taking a little, we were able to pass this measure, which apparently does everything which everyone wants, not only by protecting the little fellow, whom everyone wants to protect, but by giving us permanent legislation and eliminating the confusion which exists at the present time among businessmen throughout the Nation.

Mr. LONG. Mr. President, I should like to state for the RECORD that even though I was in favor of the O'Mahoney amendment, on the voice vote I voted against the bill. I believe that the O'Mahoney amendment makes the bill much better than it was in the beginning.

However, I am inclined to feel that when everyone is as happy about a piece of legislation as Senators appear to be, someone is going to be fooled when he wakes up and sees what is in it. I have not studied the question as much as I should like to study it. I have a few doubts. We may find that we have somewhat slackened our antitrust laws by passing this legislation. Perhaps I shall be satisfied after I have had an opportunity to study the bill. If I am, I am afraid that there may be some who will be dissatisfied. However, I hope that they will all be satisfied with the legislation we have passed today.

Mr. LUCAS. Mr. President, if we have slackened our antitrust laws, there is one Senator who is going to be greatly surprised, and that is the Senator from

Wyoming [Mr. O'MAHONEY], who has been the chief trust buster ever since he first came to the Senate.

Mr. THYE. Mr. President, I wish to commend all Senators who have had anything to do with the amendment of the bill so as to make it acceptable. I know that manufacturers in Minnesota who have been so gravely concerned and in such a quandary over this entire question will feel greatly relieved when they know that all Senators concerned with this bill have concurred and have agreed that it is a good piece of legislation.

EXECUTIVE SESSION

Mr. LUCAS. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business.

EXECUTIVE REPORT OF A COMMITTEE

Mr. JOHNSTON of South Carolina, from the Committee on Post Office and Civil Service, reported favorably the nomination of Harry F. Schiewetz to be postmaster at Dayton, Ohio.

The PRESIDING OFFICER (Mr. BRICKER in the chair). If there be no further reports of committees, the clerk will proceed to state the nominations on the Executive Calendar.

FEDERAL POWER COMMISSION—NOMINATION PASSED OVER

The legislative clerk read the nomination of Thomas Chalmers Buchanan to be a member of the Federal Power Commission.

Mr. WHERRY. Mr. President, I ask the distinguished majority leader if he will again consent to passing over this nomination?

Mr. LUCAS. Mr. President, I am glad to accommodate the distinguished minority leader. However, I hope that we can consider the nomination of Thomas Chalmers Buchanan the next time the Executive Calendar is called, if possible.

The PRESIDING OFFICER. Without objection, the nomination will be passed over.

POST OFFICE DEPARTMENT

The legislative clerk read the nomination of Harrison Parkman to be purchasing agent for the Post Office Department.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

POSTMASTERS

The legislative clerk proceeded to read sundry nominations of postmasters.

Mr. LUCAS. Mr. President, I ask that the nominations of postmasters be confirmed en bloc, and that the President be immediately notified of all nominations confirmed this day.

The PRESIDING OFFICER. Without objection, the nominations of postmasters are confirmed en bloc; and, without objection, the President will be notified forthwith of all nominations confirmed this day.

LEGISLATIVE PROGRAM

Mr. LUCAS. Mr. President, for the benefit of the Senate, I desire to make a brief announcement: It is the intention that in a few minutes we shall adjourn until tomorrow, at which time we shall have a call of the calendar, first of all, after going through the regular morning hour. Then perhaps we shall take up the second deficiency appropriation bill, and there is a possibility that we may take up the international wheat agreement, if it is reported in time by the Foreign Relations Committee. Following that, it is proposed that the Senate take a recess until Monday.

Mr. CAPEHART. In other words, to take a recess from Thursday evening until Monday?

Mr. LUCAS. Yes; from Thursday evening until Monday.

Mr. WHERRY. Mr. President, will the Senator yield?

Mr. LUCAS. I yield.

Mr. WHERRY. In connection with the call of the calendar, will the distinguished majority leader state whether it is intended to begin the call of the calendar where the call was concluded on May 23, when the last call of the calendar ended, or whether it is intended to go back to the beginning?

Mr. LUCAS. I think we shall begin at the point where we concluded the last call of the calendar.

Mr. WHERRY. In other words, the call of the calendar will begin with Calendar No. 403, Senate Concurrent Resolution 42?

Mr. LUCAS. I think that is correct.

I may add, Mr. President, that following those two bills, if we pass them tomorrow afternoon, we shall then take up the bill for the repeal of the Taft-Hartley Act and make it the unfinished business, beginning on Monday.

Mr. WHERRY. I thank the Senator from Illinois. I should like to point out again that I understand that it is intended to begin the calling of the calendar tomorrow with Calendar No. 403. I make this statement in order that all Senators may be on notice that the calling of the calendar tomorrow will begin at the point where the previous call of the calendar was concluded.

Mr. LUCAS. Yes; I am glad the Senator has made that statement.

Mr. JOHNSTON of South Carolina. Mr. President, will the Senator yield?

Mr. LUCAS. I yield.

Mr. JOHNSTON of South Carolina. If we finish the call of the calendar, tomorrow, beginning with Calendar No. 403, will we then go back and take up any of the measures on the calendar previous to No. 403; or will such measures have to be taken up on motion?

Mr. LUCAS. I think they will have to be taken up either on motion or by unanimous consent, if it is desired to have measures preceding No. 403 on the calendar taken up at that time, for it is understood the call of the calendar will begin with No. 403. Of course, some Senators who are interested in measures preceding No. 403 on the calendar may be away, and might read this statement in the RECORD and understand that measures preceding No. 403 would not be taken up, and therefore would not be in the Senate Chamber at that time.

Mr. JOHNSTON of South Carolina. That is why I asked the question.

ADJOURNMENT

Mr. LUCAS. I move that the Senate now stand adjourned until 12 o'clock noon tomorrow.

The motion was agreed to; and (at 5 o'clock and 35 minutes p. m.) the Senate adjourned until tomorrow, Thursday, June 2, 1949, at 12 o'clock noon.

CONFIRMATIONS

Executive nominations confirmed by the Senate June 1 (legislative day of May 23), 1949:

POST OFFICE DEPARTMENT

Harrison Parkman to be Purchasing Agent for the Post Office Department.

POSTMASTERS

ALABAMA

John T. Fuller, Alexander City.
Mary E. Sims, Boothton.
Lewis R. Nail, Calera.
Joseph L. Savage, Centre.
Carl T. Driskill, Dawson.
Clodie M. Hall, Geraldine.
Jack Winfred Miller, Joppa.
Carey M. Brady, Jr., Lanett.
Helen A. Pollard, Newbern.
Paul H. Woods, Parrish.
Seth Berry Stalcup, Phil Campbell.
William Britton, Spruce Pine.

ALASKA

Martin E. Olsen, Dillingham.

ARIZONA

Lee N. Clayton, Bullhead City.
Allan Baker, Clifton.
Warren D. Judd, Fredonia.
Maudy M. Looney, Ganado.
Ernest S. Hulet, Holbrook.
Ralph S. Spotts, Laveen.
Lloyd K. Basteen, Oracle.
Glen G. Goodman, St. David.
Wallace E. Bryce, Safford.
Frankie F. Tanner, Sedona.
Edith E. Barnhill, Window Rock.

ARKANSAS

Ralph B. Ellis, Dermott.
Basil L. Grigsby, Hartford.
Louis E. Rice, Lonoke.
Mansel H. Howie, Montrose.
Kate L. Dooley, South Fort Smith.
William L. Burns, Tillar.

COLORADO

Doris B. Byrd, Association Camp.
Charles E. Morris, Jr., Canon City.
Lela C. Keen, Cedaredge.
Earnest E. Sullivan, Craig.
Julius M. Lancaster, Eads.
Albert A. Dwiggins, Evans.
Wade Ernest Gore, Fruita.
Lou M. Rector, Glen Haven.
Florence M. Graham, Hillrose.
A. J. Anderson, Kim.
Lucille Stewart, Louviers.
Myrtle L. Craig, Merino.
Wilbur W. Carrothers, Monument.
William Graham Mills, Olathe.
Thomas W. Chambers, Pagosa Springs.
Raymond R. Iacovetto, Phippsburg.
Charlie P. Stewart, Sedalia.
Elizabeth A. Bartolo, Somerset.
Timothy C. Devlin, Wray.
Richard E. Shoup, Yampa.
Paul L. Kohlmeier, Yuma.

GEORGIA

Bessie Sue K. Smith, Atco.
Hubert Hadley, Chipley.
Alonza L. Haddock, Haddock.
Joseph D. Smith, Lindale.
Vernon L. Roberts, Monticello.
Raymond S. Townsend, Wildwood.

HAWAII

Shuji Seki, Honokohau.
Josephine Makaiwi, Hoolehua.
Eva Lindsey, Kamuela.
Joseph M. Mihal, Kekaha.
Howard S. Green, Lanikai.

IDAHO

Henry W. Daven, Burley.
Oliver R. Acheson, Craigmont.
Vance Joines, Emmett.
Glenn W. Pratt, Firth.
Joseph Miles Flanigan, Grangeville.
George E. Johnson, Headquarters.
Nell G. Andrews, Leadore.
Letitia H. Erb, Lewiston.
Francis L. Mackey, Naples.
Arthur Dinnison, Orofino.
Lillian Ruth Nail, Riggins.
Samuel R. Walker, St. Maries.
Horace Thales Leavitt, Shelley.
James R. Fenwick, Sun Valley.
Wilford W. Frantz, Twin Falls.
Ostella A. Brown, Wilder.

ILLINOIS

James Kenneth Dolan, Albany.
Rollie N. Hammel, Alta.
John L. Baumunk, Bardolph.
Meredith L. Hull, Barry.
Ralph H. Watermann, Bartlett.
Agnes M. Coomes, Bristol.
Virgil J. Brown, Carbondale.
Robert E. Balk, Chadwick.
Cecilia G. Missal, Chenoa.
Catherine M. Hulen, Coatsburg.
Charles H. Lawler, Cortland.
Viola T. Johnson, Danforth.
Alice Gisy, Dow.
Israel Victor Hill, Edinburg.
William P. Lipe, Elkville.
Ruby G. Forman, Elliott.
Peter J. Roth, El Paso.
Robert E. Duncan, Eureka.
William H. Neece, Jr., Franklin.
Margery A. Howard, Franklin Grove.
Gerhard R. Bunting, Gifford.
Hugh R. Ganey, Gillespie.
Leo Pickrel, Gilson.
William L. Smith, Golconda.
Louise Tevis, Goodfield.
Abraham F. Weece, Grand Chain.
Andrew S. Fitzgerald, Greenview.
James H. Wilson, Highland.
Hugh Fleming, Johnston City.
Loretta Lanan, Kingston Mines.
Morris W. Dunn, Lacon.
Joseph D. Martin, Ladd.
Ned C. Dollinger, Lanark.
Sidney M. Phillips, Lena.
Floyd Durst, Lincoln.
James A. Krecek, Lyons.
Melvin R. Beckett, Macon.
Daisy E. Miller, Mahomet.
John W. Scamahorn, Maunie.
William S. Shipley, Mazon.
Charles L. Quindry, Mill Shoals.
Donald L. Besander, Mount Prospect.
Monroe Jones, New Holland.
John E. Nichols, Newton.
Jerry Volny, Jr., Northfield.
Edwin A. Luczaj, Oakdale.
George A. Garrison, Pearl.
Merlyn M. Dirksen, Pecatonica.
Francis M. Guest, Reddick.
Edward Charles Henninger, Savanna.
Edwin H. Criswell, Seaton.
William G. Strode, Smithfield.
Mabel L. Reinert, South Elgin.
William J. LeMar, Tallula.
Willis Hance McColly, Thornton.
Louis J. Dobrich, Toluca.
Arnitz E. M. Watson, Tower Hill.
Terence J. Henry, Trenton.
Daniel J. Hallissey, Venice.
Floyd H. Weihler, Viola.
Robert E. Cline, West Union.
Cellia E. Skerbinek, Willow Springs.
Lyle A. Thurman, Yates City.

INDIANA

Francis E. Sheller, Albany.
Paul L. Hyden, Butlerville.
Harmon G. Carbiener, Bremen.
Charles Peffley, Bridgeton.
Claude T. Linn, Camden.
Herman P. J. Hoessle, Charlestown.
Jay B. Williams, Colfax.
Arthur B. Newman, Coatesville.
Frederick M. Griffith, Dupont.
Malcolm E. Wade, Fillmore.
Woodbury Mohr, Flat Rock.
Charles D. Walts, Georgetown.
Edward G. Velk, Hanna.
Donald F. Holle, Hoagland.
George J. Ress, Indianapolis.
Charles Calvin Apple, McCordsville.
Frederick J. O'Laughlin, New Carlisle.
Ernest B. Bower, New Washington.
John A. Young, Osgood.
Hobart M. Smith, Patriot.
William C. Drof, Petersburg.
Gilbert L. Thomas, Richland.
Ruby J. Butler, Straughn.
Elbert S. Reinke, Santa Claus.
Henry P. Childers, Union Mills.
George H. Heckman, Sr., Wadesville.
Elmer J. Deetz, Waterloo.

KANSAS

James B. Robson, Abilene.
Leo N. Williams, Baldwin City.
Albert L. Davis, Glen Elder.
Harold Jay Keazer, Marion.
Ruby M. Smith, Stark.

KENTUCKY

Carlos P. Hall, Beattyville.
Jack L. Miller, Bradford.
Jack G. Talbot, Burkesville.
Joseph Wade Walker, Lancaster.
Newell M. Harlett, Maysville.
Robert E. Batts, Turners Station.
John Howard, Utica.

LOUISIANA

Alverie O. Jarrell, Longleaf.
Paul M. Potts, Natchitoches.
Louis V. Mayeux, Plaucheville.
Sion E. Jenkins, Winnfield.
Mamie A. McHugh, Zachary.

MAINE

Albert D. Lacasse, Berwick.
Stanley Gordon Farrar, Bryant Pond.
Arthur I. Davis, Canaan.
William John Furlong, Eagle Lake.
Ernest G. Labbee, Fort Kent.
Lynne W. Greene, Hartland.
Ellis Franklin Smith, Jonesboro.
Mildred M. Miller, North Edgecomb.
Bryon R. Adams, Ogunquit.
Margaret B. Manson, Rumford.
Kenneth T. Pinkham, Southport.
Irving R. Moulton, West Scarboro.

MARYLAND

William N. Michael, Aberdeen.
Margaret W. Conroy, Barton.
Joseph Edward Walter, Cambridge.
William E. Roe, 3d, Centerville.
Sterling P. Lynch, Chesapeake City.
Orem A. Gardner, Chester.
Harry C. Coleman, Jr., Chestertown.
Walter B. Mills, Clear Spring.
James O. C. Shank, College Park.
Dale N. Broadwater, Cresaptown.
Herbert S. Hyatt, Damascus.
Charles E. Simpkins, Ellerslie.
Thomas R. Freeman, Greenbelt.
Emma P. Jones, Henderson.
Louise C. Messick, Lexington Park.
Mabel L. Carter, Lime Kiln.
Nettie M. Ford, Lothian.
Edith W. Jenkins, Mechanicsville.
Winfield S. Wallace, Jr., Ocean City.
Sadie E. Raley, St. Inigoes.
Donald J. Gardner, State Sanatorium.
Earl Kennard Jones, Still Pond.

MASSACHUSETTS

Howard F. Davis, Bedford.
Horace D. Moore, Boxford.
Cornelius T. O'Neil, Chicopee.
John F. Colbert, Dedham.
Fred J. Maher, Dennis.
Edith M. B. Formhals, Erving.
Arthur E. Sherman, Lanesboro.
Paul Callahan, Marshfield.
Elizabeth Agnes Murray, Mill River.
Lewis H. Wood, Mount Hermon.
Joseph Elliott, North Egremont.
Charles G. Starratt, Ocean Bluff.
John T. McManus, Otis.
Martin J. McDonagh, Plympton.
Daniel E. Prado, Raynham Center.
Maurice D. Bessom, South Orleans.
Samuel Warren Forrest, Topsfield.
Irving I. Peltonen, West Barnstable.
Leo J. Connell, Westford.
Pearl K. Gibbs, West Wareham.
Alexander B. Chase, West Yarmouth.
Helen D. Rogers, White Horse Beach.

MICHIGAN

Grace V. Hamilton, Alger.
F. Willard Kime, Bangor.
Lucille Ledger, Belding.
Raymond F. Michalski, Biteley.
Wayne B. Cassada, Breedsville.
Edwin T. Stone, Burr Oak.
James W. Quinn, Caseville.
Louis B. Schimmel, Center Line.
Howard E. C. Rogers, Charlotte.
Howard K. Snook, Colon.
Orville Fader, Jr., Columbiaville.
Eseler J. Hanna, Custer.
Ottis O. Gardner, Edwardsburg.
Signe F. Kangas, Ewen.
Effa L. Knepp, Fairview.
Mary M. Hunter, Gagetown.
Laura A. Wauchek, Gobles.
Jacob Louwenaar, Grandville.
O. William Tornquist, Harbert.
Winifred M. Fanning, Harrison.
Walter K. Peters, Houghton Lake.
Gerald T. Hughes, Howell.
Alfred H. Thompson, Hubbard Lake.
John R. Magney, Ionia.
Duane M. Gray, Lake Odessa.
Paul A. Walkup, Litchfield.
George Albert Hale, Lowell.
Henry A. Davis, Maple City.
Earle R. Thompson, Montague.
Harold T. Haas, New Hudson.
Harold W. Sweet, North Street.
Albert P. Verderbar, Oshtemo.
Claude F. Julian, Osseo.
Mary E. Harrington, Painesdale.
Calvert John Winters, Perry.
Alexander W. Worden, Petoskey.
Violet M. Whisler, Portage.
Clifford Bates, Jr., Sebewaing.
Alexander H. Shaw, South Lyon.
Elmer E. Lehman, Stockbridge.
Edward Thompson, Sunfield.
Sherwood E. Shaver, Troy.
Robert S. Mason, Waldron.
J. C. Hummel, Webberville.
Robert J. Trierweiler, Westphalia.
Donald Basford, White Cloud.
Orley R. Frank, White Pigeon.
Frances Sikorski, Whittaker.
Norma E. Sifton, Woodland.

MINNESOTA

Melvin J. Peterson, Big Falls.
George W. Keller, Jr., Climax.
Fred E. Colberg, Dassel.
Charles F. LaCroix, Deer River.
Ward A. Olson, Fosston.
James H. Rustad, Hendrum.
Frank J. Klabechek, Iron.
Dwight M. Curo, Jenkins.
Leo C. Locken, Lake Bronson.
Gladys M. Holmberg, Lawler.
George H. Otterson, McGrath.
Margaret J. Bjork, Minnetonka Beach.
Emil M. Paulson, Nielsville.

Kenneth M. Haaven, Plummer.
Lottie M. Just, Rapidan.
Esther B. Pound, Remer.
Andrew J. Weinzierl, Jr., St. Bonifacius.
Myron G. Sidlo, Sebeka.
Cecelia W. Hoagland, Tofte.
Kenneth Y. Koetke, Walters.
Andrew J. Johnson, Wolf Lake.

MONTANA

Grace V. Fenlon, Belfry.
Mildred H. Johnson, Fairview.
Robert J. Culbertson, Fort Benton.
Bernard G. Clemo, Geraldine.
James J. Grogan, Grassrange.
Myrtle M. Barta, Lavina.
Clara M. Frederick, Martin City.
Jennie E. Oliver, Park City.
Bertha M. Sullivan, Seeley Lake.
James H. Lindsay, Warmsprings.
William J. Neidt, Wisdom.
Minnie E. Jacobson, Wolf Creek.

NEBRASKA

Alvin L. Daily, Anselmo.
Paul C. Geis, Beaver Crossing.
Jesse U. Malick, Bloomington.
Dale W. Jones, Byron.
Donald C. McGill, Center.
Donald B. Douglas, Clarks.
Gustav D. Maline, Cozad.
Mary M. Mutchie, Eddyville.
Edward D. Booth, Ericson.
Arthur R. Montgomery, Eustis.
Frank M. Leibee, Exeter.
Angus K. Halcomb, Filley.
Edna M. Suing, Fordyce.
Fred H. Walters, Gering.
Anna Hansen, Goehner.
Kenneth C. Pedersen, Hardy.
Carl Kruse, Hildreth.
Carroll C. Colbert, Imperial.
Rex E. Scott, McCook.
Donald E. Wilsey, Milford.
Margaret L. Brendel, Murray.
Lawrence O. Wohleb, Naponee.
Eileen V. Anderson, Newport.
Vernon J. Christ, Plymouth.
Amanda H. Banning, Union.
Paul Richard Geiger, Utica.
Edwin B. Gustafson, Wakefield.
Muriel L. Holley, Waverly.

NEW MEXICO

Fannie T. Matthews, Columbus.
Lyle L. Gholson, Hobbs.
Charles A. Wier, Loco Hills.
Tiburcio Frietze, Mesilla.
Irene Graham, Reserve.
Anna M. Hawley, San Jon.
Jesse L. Turner, Silver City.

NEW YORK

Nellie C. Van Orden, Acra.
Charles M. Soplop, Allegany.
Antoinette Rieger, Amawalk.
Joseph V. Mahony, Baldwin.
Vincent R. Callahan, Batavia.
Edna M. Davis, Bernards Bay.
Martin H. Crippen, Bible School Park.
Thomas W. Ryan, Binghamton.
Margaret A. Fox, Bridgeport.
John E. Bell, Bullville.
John F. Pappas, Buskirk.
Helen Bennett, Chichester.
John M. Bowman, Clinton Corners.
Elizabeth A. Otto, Cornwall Landing.
Leo C. Woodward, De Kalb Junction.
William Joseph Duvelow, Deansboro.
Raymond L. Liddington, Dryden.
Laurence S. Strayline, Dundee.
Daniel P. Scannell, Dunkirk.
Seth E. Morgan, Earlville.
Henri F. Cormier, East Norwich.
Leola M. Feldman, Eddyville.
James E. Gilleran, Ellenville.
Daniel H. Yacobucci, Elma.
Charles W. Morgan, Fosterdale.
Frank E. Miller, Friendship.
Earl T. Martin, Gabriels.
Salvator M. Dahlia, Garrison.
Lyman R. Wood, Gorham.
Edwin A. Spencer, Hannacroix.
Charlotte R. Sisson, Holcomb.
Thomas P. Burns, Homer.
Fred Churchill, Hughsonville.
Harriet E. Space, Huguenot.
Agnes M. Barbuscia, Island Park.
Vincent F. Briggs, Jordanville.
Francis P. Russell, Keene.
Noel E. Harding, Lodi.
Walter James Finnegan, Madrid.
James J. Maines, Malden on Hudson.
Velma G. Banner, Maryland.
Kenneth E. Hardenburg, Meyville.
Ruth C. Tuttle, McConnellsville.
Wilson Sherman, McDonough.
David M. Welch, Mechanicville.
Matthew A. Jannelli, Milton.
William Murtagh, Mongaup Valley.
Benjamin S. Ketcham, Mountainville.
Roland H. Tonnesen, Mount Marion.
Joseph P. Hetzler, Mount Vision.
Lyle A. Simser, Natural Bridge.
Edward O. Bodge, Nelsonville.
Ida Mae H. DeGouff, Newton Falls.
Gladys L. Crausway, Niverville.
Dominic W. Zappia, Norfolk.
Dennis F. Pollutro, North Collins.
Melinda Germeroth, North Greece.
Marian S. Welsh, North Salem.
Elizabeth Bennett, Oliverea.
Mary R. D. Clark, Oswegatchie.
Lynn R. Wagner, Panama.
Joseph W. Harrison, Patchogue.
James F. Cudebec, Phelps.
Garret V. Cochrane, Jr., Putnam Valley.
Otto Heisig, Quaker Street.
Roland A'Brial, Red Hook.
Pearl L. Rice, Rock Hill.
Florence H. Stape, Rushville.
William E. Roder, Salt Point.
John T. Bryant, Sr., Saratoga Springs.
Charles E. Griffin, Shandaken.
Harry E. Coogan, Sheridan.
Mary R. Bellport, Shoreham.
Herman T. A. Kruse, Shushan.
Leslie Van Aller, Sloansville.
Roland C. McLaren, South Cairo.
Elizabeth L. Schaupp, Spring Glen.
David M. Loeb, Thompsonville.
Lula M. Oliver, Treadwell.
Gail G. McLymond, Union Hill.
Loretta H. Grover, Varysburg.
William A. Day, Vestal.
Thelma H. McNamara, Waterville.
Oscar L. Schlenker, West Camp.
Margaret Ely, West Henrietta.
John L. Lusardi, Woodbury.

NORTH CAROLINA

Walter C. Craven, Asheboro.
Clarence H. McCaskill, Candor.
Elizabeth W. Settle, Cordova.
Arthur F. Dawkins, East Rockingham.
Marvin D. Harper, La Grange.
Robert M. McRee, Maiden.
Maurice E. Walsh, North Wilkesboro.
Jasper A. Drye, Richfield.
Thomas F. Norfleet, Jr., Roxobel.
Thomas V. Hall, Spruce Pine.
Dewey F. Cockrell, Stony Point.
Harry D. McLaughlin, Waxhaw.

NORTH DAKOTA

Ronald L. Hanson, Ambrose.
Kenneth M. Narum, Amidon.
Arthur J. Irwin, Big Bend.
Esther F. Klokonos, Butte.
Jerome G. Martin, Enderlin.
Peter J. Karp, Epping.
Otto Bollinger, Forbes.
Herbert, Herman, Gackle.
Ernest E. Parrow, Havana.
Algie H. Simpkins, Hazelton.
Jennie C. Brown, Heaton.
Agnes Dettmann, Judson.
Grace M. Dahlin, Max.
Fred W. Gebhardt, Merricourt.
Eleanor M. Robbins, Milton.
Vernon C. Douville, Neche.
Leonard I. Aamold, Portland.
Howard J. Kuhn, Richardton.
Alice G. Kelly, Rogers.
Arda J. Roy, St. John.
Clarence R. Schultz, Tappen.
Ethel J. G. Griffin, Tower City.
Donald L. Scott, Underwood.
Arnold M. Hanson, Walcott.
Melvin C. Rude, Watford City.
Clara M. Rossing, Werner.
Josephine M. Gannon, Wyndmere.

OKLAHOMA

Jesse D. Walker, Broken Arrow.
Velma M. Becker, Cardin.
Arthur B. Mullen, Inola.
Lester R. Rhoades, Mannford.
Etta M. Morrison, Ochelata.
Esther H. Perrin, Tyron.

OREGON

Harriet A. Fleischhauer, Aurora.
Rose Mabel Haskell, Bates.
Wannie M. Osborn, Culver.
Lucile S. Weber, Dexter.
Cornelius C. Fosback, Dillard.
Ruth F. St. Clair, Dorena.
James A. Wallis, Eagle Point.
Lenn D. Allen, Elgin.
Hazel L. Strand, Empire.
Ethan L. Newman, Eugene.
Russell I. Avrit, Foster.
Ruby I. Smallwood, Gilchrist.
Minnie G. Miltenberger, Lapine.
Eleanor L. Ray, Mohler.
Melvin J. Tufford, Newberg.
Theodore C. Arnoldus, North Powder.
Leon L. McFarlane, Oregon City.
John J. Clark, St. Benedict.
Fern Miles, Scotts Mills.
Mary V. Sullivan, Seaside.
Frances T. Burr, Selma.
Eugene N. Mee, Shady Cove.
Madge L. Herron, Shevlin.
Sydney V. Ward, Springfield.
Albert R. Hammer, Terrebonne.
E. Cleone Blaisdell, Valsetz.

PUERTO RICO

Agapito Davila, Comerio.

RHODE ISLAND

George H. Carr, Adamsville.
Walter I. Burroughs, Allenton.
Anne E. Fowkes, Alton.
Becky W. Burdick, Carolina.
Phebe P. Bentley, Coventry.
Joseph O. Blanchard, Harrisville.
James W. Breckenridge, Hope Valley.
Helen Handell, Saunderstown.
Cecil S. Holding, Tiverton.

SOUTH CAROLINA

Bennie R. Permenter, Aiken.

SOUTH DAKOTA

Earl F. Minier, Brookings.
Bernard J. Lentz, Estelline.
Ambrose M. Schultz, Presho.
Edward S. Gillen, White Lake.

TENNESSEE

Lawrence J. Bullington, Atwood.
Herman D. Eaves, Holladay.
Atwell L. Moreland, Memphis.
Leonadus F. Yancey, Oakland.

TEXAS

Willie Frank Crocker, Abbott.
Anna J. Witt, Adrian.
Ruben A. Felder, Bishop.
Wayne C. Bunton, Borger.
Earl Slater, Clyde.
Mary E. Boyett, Colmesneil.
Nicolas Cantu, Jr., Encino.
Elizabeth D. Cline, Friendswood.
Emil J. Bartosh, Granger.
Carrie B. Patterson, Hart.
Richard E. Phelps, Ingleside.

Charles A. Fleming, Jr., Kress.
Grace M. Wright, League City.
Galen S. Brademan, Lexington.
John H. Seitz, Miami.
Jake C. Posey, Missouri City.
Rufus J. Tyson, Mobeetie.
James O. Bradford, Pettus.
Robert C. Brown, Premont.
Luis Felipe Garcia, San Diego.
Byron T. Worsham, Tioga.
Martin J. Cordes, Westhoff.

UTAH

Nathan J. Barney, Elsinore.
Florence S. Seely, Greenriver.
Eddis Reid Betts, North Salt Lake.
Frank K. Richards, Panguitch.
LaPreal Richards, Spring Canyon.
Ferne L. F. Barker, Wellington.

VERMONT

John T. McKeever, Brandon.

VIRGINIA

Gladys B. Wright, Bland.
Roy A. Lassiter, Boykins.
Retta E. Litchfield, Buell.
John B. Gillespie, Cedar Bluff.
Vivian C. Simmons, Heathsville.
James S. Cole, Jewell Valley.
Harry P. Allen, Rich Creek.
William T. Brittingham, Temperanceville.
John A. Spivey, Windsor.

WASHINGTON

Janice Smith, Kettle Falls.
Henry G. Riecks, Mercer Island.
Grace V. B. Coil, Nespelem.

WEST VIRGINIA

Howard C. Lowell, Colliers.
Anne M. Bailey, Kingston.
Arnold L. Strawderman, Mathias.
Virgil L. Farley, Matoaka.
Bertha S. Watts, McComas.
Cornelius B. Carrer, Shepherdstown.
Marjorie S. Sharousky, Vivian.
Roy L. Coleman, Wilcoe.

HOUSE OF REPRESENTATIVES

WEDNESDAY, JUNE 1, 1949

The House met at 11 o'clock a. m.

Rear Adm. (retired) the Very Reverend Robert J. White, fleet chaplain of the Mediterranean Fleet during the last war, former president, Military Chaplain Association of the United States, offered the following prayer:

Bless, O Lord, we humbly beseech Thee, the deliberations of this day, as we turn the calendar from the month of May so meaningfully with the memories of our heroic and blessed dead.

Keep us mindful of the meaning of Memorial Day every day as we hear the solemn echo from a thousand heroes across the Nation urging us to keep faith with the fallen by lifting our hearts and minds in prayer to Thee, the author of life and the strength of government.

Teach us to pray because Thou hast ordained that man live not by bread alone but by faith, hope, and charity, because Thou hast ordained that man lives not to himself alone but in beneficent cooperation with other men in orderly government under God.

We ask humbly Thy divine help and the wisdom of Thy holy spirit and strength and confidence in our prayers to Thee.

Let us not forget that though nations may build heavy iron curtains to divide men who otherwise might live in friendship and peace, no nation, however powerful, can draw a bleak iron ceiling across the skies to divide men on earth from God in the heavens. Let us not forget that while nations may jam with static the voice of truth which can make men free, no nation can jam with static the powerful pleading of our prayers to Thee, Almighty God, and the resultant blessings and grace to men.

Keep us mindful that there is no pact so powerful as God's pact with men who believe in Him and love and serve Him and find silent strength and faith in the sword of spirit given to us by God himself in days of old.

Behold, I command Thee, take courage and be strong. Fear not and be not dismayed because the Lord, Thy God, is with thee in all things whatsoever everywhere. We ask these blessings through Jesus Christ our Redeemer. Amen.

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Carrell, one of its clerks, announced that the Senate had passed without amendment a bill of the House of the following title:

H. R. 1357. An act to authorize the establishment of the St. Croix Island National Monument, in the State of Maine.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 1527. An act to provide for home rule and reorganization in the District of Columbia.

The message also announced that the Senate insists upon its amendments to the bill (H. R. 1754) entitled "An act extending the time for the completion of annual assessment work on mining claims held by location in the United States for the year ending at 12 o'clock meridian July 1, 1949," disagreed to by the House; agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. O'MAHONEY, Mr. MURRAY, Mr. DOWNEY, Mr. MILLIKIN, and Mr. CORDON to be the conferees on the part of the Senate.

REORGANIZATION BILL

Mr. McCORMACK. Mr. Speaker, I ask unanimous consent that the House conferees on the reorganization bill may have until midnight tonight to file a report.

Mr. MARTIN of Massachusetts. Mr. Speaker, reserving the right to object, what is this bill?

Mr. McCORMACK. The reorganization bill.

Mr. MARTIN of Massachusetts. Is there any minority report?

Mr. McCORMACK. Well, we have not agreed, but I ask that the conferees may have until midnight tonight in case there is a report.

Mr. HOFFMAN of Michigan. Mr. Speaker, reserving the right to object, would that include the right of the minority to file a report?

Mr. McCORMACK. Yes. I will also ask that that be included.

The SPEAKER. Well, there are no minority views on a conference report.

Mr. HOFFMAN of Michigan. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. HOFFMAN of Michigan. May not the conferees express their views? They can do it on the floor, then, can they not, if they can get recognition.

The SPEAKER. A statement of the managers on the part of the House accompanies the conference report.

Mr. CHURCH. Mr. Speaker, further reserving the right to object, what is the number of the bill?

Mr. McCORMACK. I will get it for my friend.

The SPEAKER. H. R. 2361. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

EXTENSION OF REMARKS

Mr. BOGGS of Louisiana asked and was given permission to extend his remarks in the RECORD and include extraneous matter.

Mr. MANSFIELD asked and was given permission to extend his remarks in the RECORD in two instances and include in each extraneous matter.

Mr. KARSTEN asked and was given permission to extend his remarks in the RECORD and include an editorial.

Mr. MULTER asked and was given permission to extend his remarks in the RECORD in four instances and include extraneous matter.

Mr. PATMAN asked and was given permission to extend his remarks in the RECORD in two instances and include certain statements and excerpts.

Mrs. WOODHOUSE asked and was given permission to extend her remarks in the RECORD and include a statement by the Common Council of the City of Middletown.

Mr. BOLLING asked and was given permission to extend his remarks in the RECORD in two instances; to include in one an editorial and in the other a resolution.

Mr. LECOMPTE asked and was given permission to extend his remarks in the RECORD and include a news story from the Chariton (Iowa) Leader.

Mr. ANDERSON of California asked and was given permission to extend his remarks in the RECORD in two instances and include in each an article.

Mrs. ROGERS of Massachusetts. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD and include an editorial that appeared in the Washington Post of yesterday quoting Charles Dickens' American Notes in 1843. It is as applicable today as it was in 1843.

The SPEAKER. Is there objection to the request of the gentlewoman from Massachusetts?

There was no objection.

COMMITTEE TO ATTEND AS OBSERVERS WORLD ASSEMBLY FOR MORAL REARMAMENT AT CAUX-SUR-MONTREUX, SWITZERLAND

Mr. McCORMACK. Mr. Speaker, I offer a resolution (H. Res. 232) and ask for its immediate consideration.