

ADVANCE

CAUTION



ADVANCE

ADDRESS BY
HON. GARLAND S. FERGUSON, JR., MEMBER OF FEDERAL TRADE COMMISSION,
BEFORE
COTTON-TEXTILE INSTITUTE,
AT BILTMORE HOTEL, NEW YORK CITY,

FOR RELEASE ON DELIVERY

At 10:30 A. M., E. S. T.,
Wednesday, October 28, 1936.

THE FEDERAL TRADE COMMISSION
AND THE COTTON-TEXTILE INDUSTRY.

I was very glad to accept the invitation of your President, Dr. Murchison, to address the meeting of the Cotton Textile Manufacturers, and I assure you that I regard it a great privilege.

It is an event of importance in our commercial life when an organization devoted to the advancement of the business interests of its members meets to celebrate its tenth anniversary. The success which your association has achieved, under constructive leadership, is attributable to the high degree of service that you have rendered to your membership. It is also evident, and I believe it of equal importance, that you have had due regard for the rights of the public, which should assure you the continuation of its faith and the retention of its good will.

May I then convey to you my sincere congratulations on the completion of ten years of service, and to wish each of you continued success, which will assuredly be yours if you consistently maintain those meritorious principles which you have established by sustained effort.

When I became a member of the Federal Trade Commission, nine years ago, I brought with me some small knowledge of the problems of the cotton textile industry. Within a radius of seventy-five miles of my home town, Greensboro, North Carolina, more than a million bales of cotton are spun and woven each year. I am very proud to number among my oldest and best friends members of your industry. I have had opportunity to increase my knowledge of the industry during my term of office.

I know that it is because of your interest in the Federal Trade Commission and its work that I was invited to talk to you today. With your kind indulgence I shall try to tell you very briefly something about the Federal Trade Commission. It is one of the oldest of the independent establishments of the government. By the term "independent" I mean that it is not a bureau or a part of any department of the government. It reports directly to the Congress.

The act creating the Federal Trade Commission was approved by President Wilson on September 26, 1914, so it has been in existence for twenty-two years. The act was responsive to a message from the President after a declaration in favor of such law by each major party.

The duties and powers of the Commission are two-fold, general economic investigation and the prevention of unfair methods of competition. Looking at these powers and duties in another way, they are two-fold: judicial and administrative.

The independency of the Commission and the manner of its functioning were strikingly recognized in a recent decision of the United States Supreme Court, which stated in part:

"The Commission is to be nonpartisan; and it must, from the very nature of its duties, act with entire impartiality. It is charged with the enforcement of no policy except the policy of the law. Its duties are neither political nor executive, but predominantly quasi-judicial and quasi-legislative. Like the Interstate Commerce Commission, its members are called upon to exercise the trained judgment of a body of experts 'appointed by law and informed by experience.'"

Under the enforcement powers and duties are the law of unfair competition set forth in Section 5 of our act; the law against price discrimination under Section 2 of the Clayton Act as amended by the Robinson-Patman Act; tying and exclusive contracts under Section 3, and unlawful mergers under Section 7 of the Clayton Act. The Commission also has certain powers and duties under the Webb Export Trade Act.

The powers of investigation are set forth in Section 6 of our Act. This section authorizes and directs the Commission, on its own motion, or at the direction of the President or either House of Congress, to make broad investigations of both economic and legal nature that may and often do embrace whole industries. It extends directly to all corporations engaged in interstate or foreign commerce.

IMPORTANT LEGISLATION HAS RESULTED

During its existence of twenty-two years, the Commission has conducted nearly one hundred of such investigations, many of which have resulted in the passage, by Congress, of salutary laws. It was due to the facts brought out in the public utility investigation under a senate resolution that the Securities Act of 1933, and the Public Utility Holding Company Act became law. The Packers and Stockyards Act of 1921 was the result of an investigation by the Commission directed by the President of the United States. The Robinson-Patman Act amending Section 2 of the Clayton Act in regard to price discrimination grew out of and was the result of an investigation of the Chain Store system conducted by the Commission.

Coming closer home to your industry, I have no doubt that some of those present may remember an investigation of the cotton trade which the Commission made many years ago. The cotton textile manufacturer was very keenly

interested in the prices of raw cotton as a buyer, and in the price of cotton futures as a means of hedging his purchases of raw cotton. The Commission conducted an investigation into the practices of the trade, and at the close of this investigation a conference of those interested was held in Washington. Some of those present may have attended this conference. If so, they will remember, and history has recorded, that out of this investigation and conference grew the report of the Commission to Congress that under the old contract then prevailing, the requirement for delivery of cotton sold on futures contract in New York was not a natural and economic condition as New York was not a natural spot market; and the recommendation that legislation be enacted providing that delivery of cotton at southern warehouses be recognized in fulfillment of cotton futures contracts. While there was no legislation by Congress on this question, the Commission's report and recommendation did much to crystalize sentiment in favor of southern warehouse delivery, and it was ultimately adopted by the New York Cotton Exchange.

Those of you who watch the future markets are, I am sure, familiar with the fact that since the adoption of this practice the former wide gyrations of New York futures have largely disappeared, and that, in general, the relationship of future prices to spot cotton prices has been much more normal than was formerly the case.

I believe, and I think you will agree, that this has been beneficial to cotton planters, merchants and manufacturers.

IMPORTANT INVESTIGATIONS

Many of the investigations conducted by the Commission in response to Congressional resolutions, direction of the President or upon its own motion, have been and are still interesting to you. Some of them are current and some of them are old, but in each and every one you will find, if you care to look, facts and statistics which directly or indirectly affect you individually and as members of an industry. I shall mention only a few.

Anthracite and Bituminous Coal: Unless you take all your power from the electric lines, you are or should be interested in these studies of coal production and distribution.

Cement: Should you contemplate the erection of a new building or factory, you would be interested in the facts brought out in this investigation.

Cotton Yarn: This applies directly to your industry, and upon inquiry at the office of the Federal Trade Commission you can find valuable information and statistics that will be of use to you.

Resale Price Maintenance: Any manufacturer, whether of textiles or other goods, is interested in this question which is now the subject of legislation in many states and upon which several bills have been introduced in the Congress.

Public Utility Investigation: Not only did this investigation result in the Public Utility Holding Company Act and the Securities Act, but as a direct result of our investigation, even before it was completed and a report made to Congress, service charges of holding companies were largely eliminated and rates on electric power reduced, resulting in an immense saving to the users of electric current.

In my remarks I have tried to give you very briefly some of the work done by the Commission in past years under our investigational powers. Now I shall speak of an investigation under these powers with which you are more familiar. This is not past, but current history. In September, 1934, when many textile mills were closed on account of a strike, President Roosevelt, upon the recommendation of a board of inquiry, of which Governor Winant, of New Hampshire, was chairman, in an Executive Order directed that

"The Federal Trade Commission shall undertake an investigation of and report on the labor costs, profits and investments of companies and establishments in the textile industries, and make pertinent comparisons between the facts so ascertained and the changes in wages, hours and extent of employment of workers in such industries".

I think it a tribute to the impartiality and efficiency of the Federal Trade Commission that the investigation by the Commission was welcomed by both parties to the controversy. While seven reports have been made showing in detail labor costs, profits and investments, costs of material, volume and amount of sales, profits and losses, and these reports have been made public, no one yet has challenged the facts found or conclusions drawn.

One of the direct results of this investigation from which your industry has directly benefited is, that based on our report that 302 spinning and weaving companies had lost almost twice as much money during the first six months of 1935 as during the last six months of 1934, and upon the recommendation of the Tariff Commission, President Roosevelt, on May 21 of this year, by Executive Order, increased the tariff on certain cotton textiles an average of 42 per cent.

AGRICULTURAL INQUIRY

Another investigation which is now going on, and with which you are familiar, is that usually referred to as the "Agricultural Income" investigation. The Commission was directed by a joint resolution of Congress, which has the full effect of law, to conduct this investigation. The purpose is to give Congress facts upon which it may intelligently determine the reasons for the difference between what the producer receives for farm products and

what the consumer pays for the same. We know that at times there is a surplus of certain agricultural products, and at other times a deficiency. We all recognize the fundamental law of supply and demand. And yet there is often a wide spread between the price the farmer receives for his grain, cotton, fruit, vegetables or live animals, and the price the consumer pays for the same, when accessible and usable, which appears to be unjustified. It is a live question and is very interesting to a great majority of the people in the United States.

The Commission, under the resolution, is undertaking to make a careful, painstaking and scientific investigation. Reasons for the differences will be found and pointed out. If by salutary legislation laws can be passed that will remedy any evil that may exist, the Commission will so recommend. Where differences are merely economic and are only the result of the natural flow of commerce, the Commission will so find and report.

We realize that it is a burden, and sometimes a hardship, for you to assemble the information and fill out the long and apparently complicated questionnaires we send to you. Sometimes we receive complaints to that effect. However, you must realize that it is necessary for us to have this detailed information in order that our trained economists and expert accountants may arrive at accurate and sound conclusions for the Commission's review and approval.

Hitherto I have spoken of only one part of the Commission's work which may be briefly characterized as "fact finding". The Commission has sometimes been called the "fact finding" agency of the government.

I shall now speak of the law enforcement work of the Commission. In the beginning I referred to Section 5 of the Federal Trade Commission Act which authorizes and empowers the Commission to prevent unfair methods of competition. The Act creating the Commission did not enumerate unfair methods, so that the question as to what is and what is not an unfair method of competition is left to the Commission and the courts.

When the Commission was first organized and began to function, it had to "blaze a trail" just as the courts have to do or any agency of the government which undertakes to administer a new law. It had very few precedents to guide it, only such as were found in infrequent decisions of the courts upon the subject of unfair competition. During the twenty-two years of its existence, many cases have gone by appeal to the Circuit Courts of Appeals, and some to the Supreme Court of the United States, so that now we have what the lawyers sometimes designate as a "body of law" built up by which the layman usually, and almost always his lawyer, can determine whether or not a given practice is an unfair method of competition. The Commission has published, and there are now available, nineteen volumes of reports of its decisions. The decisions of the Circuit Courts of Appeals and Supreme Court of the United States are, of course, open to all.

MANY NEW QUESTIONS ARISE

From time to time new questions arise which have not been hitherto determined by the Commission or the courts. Upon these the Commission must make a decision upon the law and the facts. It is obvious, and without point for me

to say, that these decisions of the Commission are carefully considered and the questions judicially resolved. However, from any decision of the Commission the party against whom an order is made may appeal to the Circuit Courts of Appeals and thence to the Supreme Court of the United States. One of your competitors may complain that you are guilty of an unfair method of competition, let us say misbranding your goods, or calling a product of your mill by a name that would indicate to the trade that it had a certain number of threads to the square inch, or that there was a certain relation between the warp and the woof, or that it had a certain finish, when such was not the fact. This complaint coming into the Commission would be assigned to our chief examiner, and under him a trained investigator would not only go to the complaining party to secure the facts upon which he bases his accusation, and to other competitors who might or might not be injured, but would go to you to see whether or not you had any justification for the claims you had made for your product. This investigation is not only impartial, but is carefully reviewed by the chief examiner and then reported to the Commission. The Commission determines upon this report whether or not it will dismiss the complaint as unjustifiable, or whether it will give you an opportunity to stipulate that you will no longer use the method complained of, or whether it will issue a complaint. This determination is and must be in the sound discretion of the Commission. Here I want to say that under its organic act the Commission is not justified in issuing, and does not issue, a complaint unless in the public interest. We are not concerned with controversies between individuals, unless in our opinion the public is injured.

The question may arise in your mind as to how this part of the work of the Commission affects your industry. It does, and has affected directly and indirectly some of you in many decided cases. Statistics are wearisome and I shall not undertake to tell you how many cases involving the misbranding and misrepresentation of cotton goods has come before us. You may think that you are only interested in this when some one complains against you, but that is not true. You may be very much interested if some manufacturer is advertising and selling in competition with you, goods much lower than you can manufacture and sell them, when he does not come up to the recognized standard as to the composition of such goods. You may be interested if you have a brand name for your goods which is known and recognized by the trade and under which you have built up a goodwill, and some concern appropriates the use of that name for its goods. These matters and many more which, if I had time I could call to your attention, illustrate the function of the Commission in eliminating unfair methods of competition that may apply to you.

There is another part of our work with which you no doubt have some knowledge and which is open to any and all industries. This is the "Trade Practice Conference". Under Section 5 of the Federal Trade Commission Act it is authorized to prevent unfair methods of competition in commerce. Many years ago the Commission realized that where a method or methods of unfair competition were prevalent in a particular industry that it could conserve the government's money by undertaking to prevent such unfair methods in the wholesale rather than in the retail. In other words, instead of issuing 25, 50 or 100 individual complaints against individual violators of the law, the Commission would undertake to get the members of the industry together in a conference in which they would all agree voluntarily to abandon such unfair methods. This system originated in 1919, and as industry began to comprehend

the usefulness and wholesomeness of it, gathered impetus, until today the Commission has held nearly 200 conferences in as many industries. In each of these, members of the particular industry have agreed to abandon such practices as were unfair. Gradually there grew up a desire to include in these conferences agreements to abandon practices that, while not unfair or unlawful, were unsound, unbusinesslike and uneconomic.

The Commission, wisely, I think, decided that while it could not expressly approve an agreement among competitors to continue or abandon practices that were not violative of the law over which it had jurisdiction, that it would receive such agreements, if not in contravention of the law, as expressions of the sound opinion of the industry. This resulted in what is generally known as Group 2 Rules of trade practice conferences. Three of the conferences were with branches of your industry, namely, Mending Cotton Manufacturers in 1925, shirting fabrics in 1931, and cotton converters in July, 1936.

ROBINSON-PATMAN ACT

In the letter of your President, inviting me to address you, he indicated that you would be interested in anything I had to say in regard to the Robinson-Patman Act.

Inasmuch as this is a new law, and the Commission, the Department of Justice, and the courts must, to use the same expression I used in regard to the early administration of the Federal Trade Commission Act, "blaze a new trail", necessarily, anything I say must be guarded. Interpretations by those charged with administering a law in advance of decisions on contested cases are often misleading.

Immediately upon the approval of the Act, the Commission created a committee, headed by our Chief Counsel and composed of some of our ablest lawyers and economists, to study the Act and to confer with and advise, within necessary limits, those affected by the Act.

Lawyers and business men from all over the country have come to Washington to consult this committee and hundreds of others have written to us in regard to the effect of the Act upon their activities. In so far as it is consistent with our duty as an enforcement agency, we have undertaken to be, and I am sure in many cases have been, very helpful to those who desire to comply with the law.

Putting it in a very few words, the principal provision of the new law, in my opinion, is that a vendor of goods in interstate commerce cannot give to one customer a lower price or a greater discount than he does to another customer, unless the difference makes "only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities". To be unlawful, however, the discrimination must also tend to substantially lessen competition, or to create a monopoly, or to "injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them".

The law also prohibits allowances to certain purchasers for advertising and other services that are not open to other purchasers on proportionally equal terms, who are competing with those who do receive the allowances.

The Act has placed on the vendor the burden of proving that his discriminatory price, discount, allowance or service is justifiable.

In closing, I will say that it is the policy of the Commission to follow the principles laid down in President Wilson's message to Congress. That is, that the Federal Trade Commission should be helpful to honest business. We do not conceive it to be our duty to harass, to annoy or to persecute. It is our duty to conscientiously and fairly administer the laws over which we have jurisdiction. In so far as we can, we are glad at all times to confer with any business man or his representative about any problem which may come within our line of duty.

---oOo---