

**PUBLIC REGULATION OF
COMPETITIVE PRACTICES**

**STUDIES IN PUBLIC POLICY
TOWARD BUSINESS**

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PUBLIC REGULATION OF COMPETITIVE PRACTICES



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FOREWORD

THIS volume, like the study of "Trade Associations: Their Economic Significance and Legal Status" which preceded it, is an outcome of a comprehensive investigation of the problems raised by governmental regulation of industrial and business enterprise in the United States. Such problems are ever-present in a society in which manufacture and trade have undergone and are undergoing such rapid development and change as is witnessed in this country. Both this development of industry and trade and some form of government policy toward them are inevitable, and the flexible adjustment of the one to the other is necessary for economic security and progress.

The problems here involved, while interrelated and fundamentally one, present three aspects which for convenience have been distinguished and treated separately in the Conference Board's investigation. There are, first, the problems raised by the business practices of enterprises, regardless of their size or internal organization, in relation to competitors, dealers and consumers. These are problems of general business regulation arising out of the competitive process, the freedom of which it is the fundamental intent of all governmental policy in this country to preserve. Second, there are the special problems presented by the cooperation of independent business organizations in common lines of activity. These are the problems of the legitimate scope of trade association, which have been of increasing public concern, and which, because of the current interest in them, were treated earlier in the Conference Board's study in the volume mentioned above. Third, there are the problems raised by the large scale organization of business or industry through the consolidation or combination of independent interests. This is the "trust" problem itself, familiarly so-called, which presents in many respects the most difficult of all the problems of governmental policy toward business organization.

The present volume deals with the first of these three aspects of the regulatory problem. Its subject is not only of timely interest, but in the larger view it forms the bridge between the consideration of business cooperation and that of industrial combination, for the problems of the regulation of trade association activity and of large-scale industry are intimately bound up with those of the regulation of the competitive process in general.

In this, as in other parts of the Conference Board's investigation of the problems of governmental regulation, the primary purpose has been to seek the elements of sound public policy in this complicated sphere, not through a purely critical or negative approach to the existing policy, but through an analysis of the economic background in which any policy must function, in this way affording a basis for independent judgment upon the soundness and adequacy of the prevailing law and policy. While every effort has been made to make the survey of the legal situation as exhaustive and exact as possible, the emphasis in all these studies is placed primarily upon the economic rather than the legal aspect of the problems dealt with.

This volume is the result of an investigation conducted by Mr. Myron W. Watkins and assistants, of the Conference Board's Research Staff, under the general supervision of the Staff Economic Council.

In the preparation of its publications, the National Industrial Conference Board avails itself of the experience and judgment of the business executives who compose its membership and of recognized authorities in special fields, in addition to the scientific knowledge and equipment of its Research Staff. The publications of the Board thus finally represent the result of scientific investigation and broad business experience, and the conclusions expressed therein are those of the Conference Board as a body.

In this study the Conference Board has greatly benefited by the critical suggestions of numerous business executives, economists and legal authorities especially conversant with the subject of which it treats. To all of these the Conference Board wishes to express its indebtedness. The Board is under special obligation to the members of its Advisory Com-

mittee on Anti-Trust Policy and Enforcement, whose close cooperation has been invaluable, viz.:

Frederick P. Fish, of Fish, Richardson & Neave, Boston, Mass., Chairman.

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Magnus W. Alexander, President, National Industrial Conference Board, New York City.

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APPENDICES

APPENDIX A
SUMMARY RECORD OF FEDERAL TRADE COMMISSION
PROCEEDINGS BY FISCAL YEARS ENDING
JUNE 30, 1915-1924

This statistical summary must be examined with the following limitations in mind:

(1) Any classification of unfair methods of competition is necessarily arbitrary. For example, the heading "Misrepresentation as to character of product" might be sub-divided into such groups as false advertising, misbranding, false packaging, etc. It is believed, however, that the present classification is sufficiently comprehensive for the purpose of analyzing the character and direction of Federal Trade Commission activity, which was the object of its compilation.

(2) The distribution of cases under the various headings must also frequently be arbitrary. The distinction between misrepresentation of price and misrepresentation of character of product, for example, is sometimes difficult to make. Moreover, in many instances several diverse business methods have been the basis of the complaints and orders. In all such cases the classification was determined by the relative emphasis apparently given to the respective charges in the complaint or order.

(3) Complaints and orders are classified separately, it will be observed. As a result of the fact that in many instances the major charge in the complaint was either disproved, abandoned or relegated to a minor place in the findings of fact, the number of orders issued against a given practice bears relatively slight relation to the number of complaints. This also explains some curious anomalies in the table, e. g., the appearance of an order issuing in 1919 against false claim to use or endorsement, although no previous complaint against this particular practice is indicated.

(4) The yearly totals of orders and dismissals do not in every instance correspond with those given in the Trade Commission's Annual Report, 1924, p. 62. The only explanation which suggests itself is that while the date of each order in this compilation is that of the original order the commission has reclassified cases in which an order was subsequently suspended, modified or reversed. Any attempt to indicate such changes in this table would serve no useful purpose.

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SUMMARY RECORD OF FEDERAL TRADE COMMISSION PROCEEDINGS, 1915-1924, BY FISCAL YEARS ENDING JUNE 30

	Complaints	Orders to Desist	Dismissals	Sustained Circuit Ct.	Reversed Circuit Ct.	Sustained Sup. Ct.	Reversed Sup. Ct.	Complaints	Orders to Desist	Dismissals	Sustained Circuit Ct.	Reversed Circuit Ct.	Sustained Sup. Ct.	Reversed Sup. Ct.
	1916							1917						
Misrepresentation as to:														
Character of product.....	3							2	1					
Use or endorsement.....									1					
Trade status.....														
Place of origin.....														
Price.....														
Corporate securities.....														
Total, misrepresentation.....	3							2	1					
Trade-mark simulation, etc....														
Bogus independents.....														
Commercial bribery.....														
Subsidies to salesmen.....								1						
Lottery sales methods.....								1						
Disparagement.....														
Harassing tactics:														
Not otherwise classified.....	1													
Espionage.....														
Writing for catalogues.....														
Enticement of employees.....								1						
Inducing breach of contract.....														
Bidding up supplies.....														
Threatening litigation.....														
Total, harassing tactics.....	1							1						
Resale price maintenance.....														
Price guarantee.....														
Selling below cost.....														
Refusal to deal.....														
Clayton Act violation:														
Tying contracts.....	1							3	1					
Exclusive dealing.....								2						
Price discrimination.....														
Control of competitors.....														
Interlocking directorates.....														
Total, Clayton Act.....	1							5	1					
Conspiracy:														
to maintain trade channels.....								1						
to fix prices.....														
to coerce for other objects.....														
Total, conspiracy.....								1						
Miscellaneous.....														
Totals.....	5							9	3	1				

SUMMARY RECORD OF FEDERAL TRADE COMMISSION PROCEEDINGS,
1915-1924, BY FISCAL YEARS ENDING JUNE 30—(Continued)

	Complaints	Orders to Denist	Dismissals	Sustained Circuit Ct.	Reversed Circuit Ct.	Sustained Sup. Ct.	Reversed Sup. Ct.	Complaints	Orders to Denist	Dismissals	Sustained Circuit Ct.	Reversed Circuit Ct.	Sustained Sup. Ct.	Reversed Sup. Ct.
	1918							1919						
Misrepresentation as to:														
Character of product.....	10	4	..	..	..	..	..	11	5	3	..	..	..	..
Use or endorsement.....	..	..	..	..	..	..	..	1	1	..	..	..	..	..
Trade status.....	..	..	..	..	..	..	..	1	..	..	..	..	..	..
Place of origin.....	..	..	..	..	..	..	..	1	..	..	..	..	..	..
Price.....	2	1	..	..	..	..	..	1	2	..	1	..	..	..
Corporate securities.....	..	..	..	..	..	..	..	2	..	..	..	..	..	..
Total, misrepresentation.....	12	5	..	..	..	..	..	16	9	3	1	..	..	..
Trade-mark simulation, etc....	1	1	..	..	..	..	..	8	2	..	..	..	..	..
Bogus independents.....	1	..	..	..	..	..	..	1	1	..	..	..	..	..
Commercial bribery.....	54	39	2	..	..	..	..	47	34	1	..	..	..	..
Subsidies to salesmen.....	1	2	..	..	..	..	..	4	..	..	..	..	..	..
Lottery sales methods.....	23	15	1	..	..	..	..	..	3	4	..	..	..	..
Disparagement.....	7	1	..	..	..	..	..	4	1	1	..	..	..	..
Harassing tactics:														
Not otherwise classified.....	2	..	..	..	..	..	..	..	..	..	..	..	..	..
Espionage.....	..	..	..	..	..	..	..	1	1	..	..	..	..	..
Writing for catalogues.....	..	1	..	..	..	..	..	2	2	..	..	..	..	..
Enticement of employees.....	..	1	..	..	..	..	..	1	..	..	..	..	..	..
Inducing breach of contract	6	..	..	..	..	..	..	..	2	..	..	..	..	..
Bidding up supplies.....	3	..	..	..	..	..	..	..	1	..	..	..	..	..
Threatening litigation.....	4	2	..	..	..	..	..	5	2	1	..	..	..	..
Total, harassing tactics.....	14	4	..	..	..	..	..	9	8	1	..	..	..	..
Resale price maintenance.....	19	1	1	..	..	..	..	31	9	1	..	..	..	..
Price guarantee.....	..	..	..	..	..	..	..	1	..	..	..	..	..	..
Selling below cost.....	4	..	..	..	..	..	..	..	1	1	..	1	..	..
Refusal to deal.....	..	..	..	..	..	..	..	1	1	..	..	..	..	..
Clayton Act violation:														
Tying contracts.....	..	..	1	..	..	..	..	4	1	..	..	1	..	..
Exclusive dealing.....	6	..	..	..	..	..	..	2	1	..	..	..	..	..
Price discrimination.....	1	..	2	..	..	..	..	2	..	..	..	..	..	..
Control of competitors.....	1	..	..	..	..	..	..	1	..	..	..	..	..	..
Interlocking directorates.....	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Total, Clayton Act.....	8	..	3	..	..	..	..	9	2	..	..	1	..	..
Conspiracy:														
to maintain trade channels..	2	1	..	..	..	..	..	3	1	..	..	..	..	..
to fix prices.....	4	3	..	..	..	..	..	..	1	1	..	..	..	..
to coerce for other objects..	2
Total, conspiracy.....	8	4	3	2	1
Miscellaneous.....	2	1	1
Totals.....	154	72	7	135	74	13	1	2

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SUMMARY RECORD OF FEDERAL TRADE COMMISSION PROCEEDINGS,
1915-1924, BY FISCAL YEARS ENDING JUNE 30—(Continued)

	Complaints	Orders to Desist	Dismissals	Sustained Circuit Ct.	Reversed Circuit Ct.	Sustained Sup. Ct.	Reversed Sup. Ct.	Complaints	Orders to Desist	Dismissals	Sustained Circuit Ct.	Reversed Circuit Ct.	Sustained Sup. Ct.	Reversed Sup. Ct.
	1920							1921						
Misrepresentation as to:														
Character of product.....	83	31	1	..	..	..	..	31	27	9	..	1	..	..
Use or endorsement.....	5	1	1	..	..	..	..	8	6	..	..	..	..	..
Trade status.....	2	..	..	..	..	..	..	3	..	..	..	..	..	..
Place of origin.....	5	1	..	..	..	..	..	2	3	1	..	..	..	..
Price.....	11	2	1	..	..	..	..	18	6	2	..	..	..	..
Corporate securities.....	5	1	..	..	..	..	..	8	2	2	..	..	..	..
Total, misrepresentation.....	111	36	3	..	..	..	..	67	45	14	..	1	..	..
Trade-mark simulation, etc....	12	7	2	..	..	..	..	17	4	2	..	..	..	..
Bogus independents.....	..	..	1	..	..	..	..	1	..	..	..	..	..	..
Commercial bribery.....	42	33	5	..	1	..	..	63	46	1	..	..	..	..
Subsidies to salesmen.....	8	4	..	..	..	..	..	1	1	..	..	..	..	..
Lottery sales methods.....	1	..	..	..	..	..	..	1	1	..	..	..	..	..
Disparagement.....	5	..	1	..	..	..	..	1	3	1	..	..	..	..
Harassing tactics:														
Not otherwise classified....	..	..	1	..	..	..	..	..	..	..	..	..	..	..
Espionage.....	3	..	..	..	..	..	..	..	1	..	..	..	..	..
Writing for catalogues.....	..	..	..	..	..	..	..	1	..	..	..	..	..	..
Enticement of employees....	2	..	1	..	..	..	..	..	..	..	..	..	..	..
Inducing breach of contract	..	..	3	..	..	..	..	..	..	..	..	..	..	..
Bidding up supplies.....	..	..	1	..	..	..	..	1	..	..	..	..	..	..
Threatening litigation.....	2	1	2	..	..	..	..	2	2	2	..	..	..	..
Total, harassing tactics....	7	1	8	..	..	..	..	4	3	2	..	..	..	..
Resale price maintenance.....	16	1	9	..	1	..	..	1	1	..	..	..	..	..
Price guarantee.....	10	..	1	..	..	..	..	..	..	..	..	..	..	..
Selling below cost.....	2	..	3	..	..	..	..	..	..	..	..	..	..	..
Refusal to deal.....	1	..	..	..	..	..	..	..	1	..	..	..	..	..
Clayton Act violation:														
Tying contracts.....	41	26	1	..	..	..	1	10	10	8	..	8	..	..
Exclusive dealing.....	29	1	6	..	..	..	..	3	..	8	..	2	..	..
Price discrimination.....	2	1	1	..	..	..	..	2	..	1	..	..	..	..
Control of competitors.....	13	..	1	..	..	..	..	4	1	..	..	..	..	..
Interlocking directorates....	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Total, Clayton Act.....	85	28	9	..	..	..	1	19	11	17	..	10	..	..
Conspiracy:														
to maintain trade channels..	4	1	..	..	..	..	..	1	2	..	1	..	..	..
to fix prices.....	1	..	..	..	..	..	..	1	1	..	..	..	..	..
to coerce for other objects..	2	..	1	..	..	..	..	1	..	..	..	..	..	..
Total, conspiracy.....	7	1	1	..	..	..	..	3	3	..	1	..	..	..
Miscellaneous.....	..	..	2	..	..	..	..	..	..	..	..	..	..	..
Totals.....	308	111	44	..	2	..	1	177	119	37	1	11	..	..

SUMMARY RECORD OF FEDERAL TRADE COMMISSION PROCEEDINGS,
1915-1924, BY FISCAL YEARS ENDING JUNE 30—(Continued)

	1922						1923						
	Complaints	Orders to Desist	Dismissals	Sustained Circuit Ct.	Reversed Circuit Ct.	Sustained Sup. Ct.	Complaints	Orders to Desist	Dismissals	Sustained Circuit Ct.	Reversed Circuit Ct.	Sustained Sup. Ct.	Reversed Sup. Ct.
Misrepresentation as to:													
Character of product.....	21	12	5	1	..	1	28	45	6	2	..	..	..
Use or endorsement.....	6	3	2	..	..	..	3	1	3	..	..	..	..
Trade status.....	1	1	..	..	..	..	15	3	..	..	..	..	..
Place of origin.....	6	2	1	..	..	..	3	2	..	..	..	..	..
Price.....	18	27	8	..	..	..	4	5	..	..	..	..	..
Corporate securities.....	13	1	5	..	..	..	12	..	4	..	..	..	..
Total, misrepresentation.....	65	46	21	1	..	1	65	65	13	2	..	..	..
Trade-mark simulation, etc....	7	15	2	..	..	..	11	2	2	1	..	..	..
Bogus independents.....	..	..	2	..	..	..	..	..	..	..	..	..	..
Commercial bribery.....	14	21	15	..	2	..	2	1	9	..	..	..	..
Subsidies to salesmen.....	..	..	6	..	1	..	..	1	1	..	..	..	..
Lottery sales methods.....	1	..	..	..	..	..	..	1	..	..	..	..	..
Disparagement.....	4	..	..	..	..	..	1	2	1	..	..	..	..
Harassing tactics:													
Not otherwise classified.....	..	..	1	..	..	..	..	..	..	..	..	..	..
Espionage.....	..	..	1	..	..	..	..	..	1	..	..	..	..
Writing for catalogues.....	2	..	..	..	..	..	..	..	..	..	..	..	..
Enticement of employees.....	..	..	..	..	..	..	..	..	..	..	..	..	..
Inducing breach of contract	..	1	..	..	..	..	2	1	..	..	..	..	..
Bidding up supplies.....	..	..	1	..	..	..	2	..	..	..	..	..	..
Threatening litigation.....	2	..	..	..	..	..	2	..	1	..	..	..	..
Total, harassing tactics.....	4	1	3	..	..	..	6	1	2	..	..	..	..
Resale price maintenance.....	6	1	1	..	..	1	37	1	41	1	..	..	..
Price guarantee.....	..	..	..	..	..	..	1	..	2	..	..	..	..
Selling below cost.....	1	..	1	..	..	..	1	..	1	..	..	..	..
Refusal to deal.....	..	..	..	..	1	..	..	..	..	..	..	..	..
Clayton Act violation:													
Tying contracts.....	..	..	2	..	1	..	..	..	7	..	3	..	4
Exclusive dealing.....	1	..	16	..	..	..	2	..	4	..	..	..	1
Price discrimination.....	2	3	..	..	..	..	1	..	..	..	1	..	..
Control of competitors.....	2	1	1	1	..	..	5	3	3	..	..	..	..
Interlocking directorates.....	..	..	..	..	..	..	..	..	..	..	..	..	..
Total, Clayton Act.....	5	4	19	1	1	..	8	3	14	..	4	..	5
Conspiracy:													
to maintain trade channels..	..	2	2	2	..	..	4	1	..	1	..	..	..
to fix prices.....	2	..	..	..	..	..	4	1	1	..	..	..	..
to coerce for other objects..	2	1	3	..	..	..	3	..	..	..	..	..	..
Total, conspiracy.....	4	3	5	2	11	..	1	1
Miscellaneous.....	1
Totals.....	111	91	75	4	5	2	144	78	37	5	4	..	5

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SUMMARY RECORD OF FEDERAL TRADE COMMISSION PROCEEDINGS,
1915-1924, BY FISCAL YEARS ENDING JUNE 30—(Continued)

	Complaints	Orders to Desist	Dismissals	Sustained Circuit Ct.	Reversed Circuit Ct.	Sustained Sup. Ct.	Reversed Sup. Ct.	Summary						
								Complaints	Orders to Desist	Dismissals	Sustained Circuit Ct.	Reversed Circuit Ct.	Sustained Sup. Ct.	Reversed Sup. Ct.
1924														
Misrepresentation as to:														
Character of product.....	43	39	4	1	..	..	..	235	165	29	4	1	1	..
Use or endorsement.....	6	5	..	..	..	..	..	28	17	6	..	..	..	..
Trade status.....	17	7	2	..	..	..	..	36	15	2	..	..	..	..
Place of origin.....	3	5	..	..	..	..	..	20	13	2	..	..	..	..
Price.....	3	4	..	..	..	..	..	57	47	11	1	..	..	..
Corporate securities.....	1	4	2	..	..	..	..	41	15	13	..	..	..	..
Total, misrepresentation.	78	64	8	1	..	..	..	417	272	63	5	1	1	..
Trade-mark simulation, etc....	10	7	2	..	..	..	..	66	38	10	1	..	..	..
Bogus independents.....	..	..	..	..	..	..	..	3	1	2	..	..	..	..
Commercial bribery.....	5	1	..	..	..	..	..	228	175	33	..	3	..	..
Subsidies to salesmen.....	..	..	..	..	..	..	..	15	7	7	..	1	..	..
Lottery sales methods.....	4	1	4	..	..	..	..	29	21	9	..	..	..	..
Disparagement.....	1	1	..	..	1	..	..	24	8	4	..	1	..	..
Harassing tactics:														
Not otherwise classified.....	..	1	..	..	..	..	..	3	1	2	..	..	..	..
Espionage.....	..	..	..	..	..	..	..	4	2	2	..	..	..	..
Writing for catalogues.....	..	..	..	..	..	..	..	5	3	..	..	..	..	..
Enticement of employees.....	1	..	..	..	..	..	..	5	1	1	..	..	..	..
Inducing breach of contract.....	..	1	..	..	..	..	..	8	5	3	..	..	..	..
Bidding up supplies.....	..	..	..	..	..	..	..	5	1	2	..	..	..	..
Threatening litigation.....	1	1	..	..	..	..	..	18	8	6	..	..	..	..
Total, harassing tactics.	2	3	..	..	..	..	..	48	21	16	..	..	..	..
Resale price maintenance.....	22	4	8	..	..	..	..	132	18	61	1	1	1	..
Price guarantee.....	..	..	1	..	..	..	..	12	..	4	..	..	..	..
Selling below cost.....	..	..	..	..	..	..	..	8	1	6	..	1	..	..
Refusal to deal.....	..	..	..	..	..	1	..	2	2	..	..	1	..	1
Clayton Act violation:														
Tying contracts.....	..	..	..	..	..	..	..	59	38	19	..	13	..	5
Exclusive dealing.....	2	1	7	..	1	..	..	45	3	41	..	3	..	1
Price discrimination.....	4	2	2	..	2	..	..	16	6	6	..	3	..	..
Control of competitors.....	1	..	..	..	..	..	..	27	5	5	1	..	..	..
Interlocking directorates.....	2	..	..	..	..	..	..	2	..	..	..	..	..	..
Total, Clayton Act.....	9	3	9	..	3	..	..	149	52	71	1	19	..	..
Conspiracy:														
to maintain trade channels..	9	1	..	..	..	..	..	24	9	2	4	..	..	..
to fix prices.....	11	4	..	..	..	..	..	21	10	2	..	..	..	..
to coerce for other objects..	2	3	2	..	..	..	..	12	4	6	..	..	..	..
Total, conspiracy.....	22	8	2	..	..	..	..	57	23	10	4	..	..	..
Miscellaneous.....	1	..	2	..	..	..	..	5	1	4	..	..	..	..
Totals.....	154	92	36	1	4	..	1	1,197	640	300	12	28	2	7

APPENDIX B

DOCUMENTS, ETC., ISSUED BY THE FEDERAL TRADE COMMISSION

ACCOUNTING SYSTEMS

Fundamentals of a Cost System for Manufacturers, Washington, D.C., 1916, 31pp.

A System of Accounts for Retail Merchants, Washington, D.C., 1916, 19pp. Reprinted 1920.

BRIBERY

Special Report on Commercial Bribery, 65th Congress, 2nd Session, House Doc. No. 1107, Washington, D.C., 1918, 3pp.

Commercial Bribery, Special Report Dealing with the Subject of Commercial Bribery, 66th Congress, 2nd Session, Senate Doc. No. 258, Washington, D.C., 1920, 7pp.

CALCIUM ARSENATE

Report on the Calcium Arsenate Industry, Washington, D.C., 1923, 21pp.

COAL

Anthracite and Bituminous Coal, Report and Recommendations on the Anthracite and Bituminous Coal Situation and the Relation of Rail and Water Transportation to the Present Fuel Problem, 65th Congress, 1st Session, Senate Doc. No. 50, Washington, D.C., 1917, 420pp.

Bituminous Coal—Quarterly Reports, Revised costs, Suspended June, 1920, Washington, D.C., 1920.

Cost Reports, Coal, 7 vol., Washington, D.C., 1919–1921.

No. 1. Pennsylvania—Bituminous, 1919.

No. 2. Pennsylvania—Anthracite, 1919.

No. 3. Illinois—Bituminous, 1919.

No. 4. Alabama, Tennessee and Kentucky—Bituminous, 1920.

No. 5. Ohio, Indiana and Michigan—Bituminous, 1920.

No. 6. Maryland, West Virginia and Virginia—Bituminous, 1920.

No. 7. Trans-Mississippi States—Bituminous, 1921.

Preliminary Report on Investment and Profit in Soft-Coal Mining, Washington, D.C., 1922, 222pp.

Premium Prices of Anthracite, Washington, D.C., 1925.

COPPER

Cost Reports, Copper, Washington, D.C., 1919, 26pp.

COTTON

Report on Combed Cotton Yarns, Washington, D.C., 1921, 94pp.

Preliminary Report on the Cotton Trade, Washington, D.C., 1923, 28pp.

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The Cotton Trade, 68th Congress, 1st Session, Senate Doc. No. 100, 2 Parts, Washington, D.C., 1924.

Cotton Merchandising Practices, 68th Congress, 2nd Session, Senate Doc. No. 194, Washington, D.C., 1925, 38pp.

Empire Cotton Growing Corporation, Development, Method and Activities of Empire Cotton Corporation, a British Firm, Washington, D.C., 1925, 30pp.

DECISIONS

Federal Trade Commission Decisions, Findings and Orders of the Federal Trade Commission, 6 vol., Washington, D.C., 1920-1925.

FARM IMPLEMENTS

Report on the Causes of High Prices of Farm Implements, Washington, D.C., 1920, 713pp.

FEEDS

Report on Commercial Feeds, Washington, D.C., 1921, 206pp.

Summary of Report on Commercial Feeds, Washington, D.C., 1921, 15pp.

FERTILIZER INDUSTRY

Report on the Fertilizer Industry, Washington, D.C., 1916, 269pp.

Report on the Fertilizer Industry, Washington, D.C., 1923, 87pp.

FLAGS

Prices of American Flags, 65th Congress, 1st Session, Senate Doc. No. 82, Washington, D.C., 1917, 6pp.

FOOD

Report on Bakery Business in the United States. Report of the Bakery Section of Food Administration, Published by the United States Food Administration, Washington, D.C., 1917, 23pp.

Report on Beet Sugar Industry in the United States, Washington, D.C., 1917, 164pp.

Food Investigation, Report on Canned Foods. General Report and Canned Vegetables and Fruits, Washington, D.C., 1918, 103pp.

Food Investigation, Report on Flour Milling and Jobbing, Washington, D.C., 1918, 27pp.

Food Investigation, Summary of the Report on the Meat Packing Industry, Washington, D.C., 1918, 51pp.

Food Investigation, Report on the Meat Packing Industry, 6 parts, Washington, D.C., 1918-1920.

Part 1 and Summary. Extent and Growth of Power of the Five Packers in Meat and other Industries, 1919.

Part 2. Evidence of Combination among Packers, 1918.

Part 3. Methods of the Five Packers in Controlling the Meat Packing Industry, 1919.

Part 4. The Five Larger Packers in Produce and Grocery Foods, 1920.

Part 5. Profits of the Packers, 1920.

Part 6. Cost of Growing Beef. Cost of Fattening Cattle. Cost of Marketing Livestock, 1920.

Maximum Profit Limitation on Meat Packing Industry. Report of the Results of a Special Investigation of the Reasonableness of the Maximum Profit Limitations Fixed on the Meat Packing Industry by the Food Administration, 66th Congress, 1st Session, Senate Doc. No. 110, Washington, D.C., 1919, 179pp.

Food Investigation, Report on Canned Foods. Canned Salmon, Washington, D.C., 1919, 83pp.

Report on Sugar Supply and Prices, November, 1920, Washington, D.C., 1920, 205pp.

Report on Southern Livestock Prices, 66th Congress, 2nd Session, Senate Doc. No. 209, Washington, D.C., 1920.

Food Investigation, Report on Private Car Lines, Washington, D.C., 1920, 271pp.

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