Order vacating initial decision dismissing complaint for lack of jurisdiction—respondent claiming to be a "packer" within the meaning of the Packers and Stockyards Act—and remanding case for further proceedings.

OPINION OF THE COMMISSION

By GWYNNE, Chairman:

The complaint charges violation of section 2(d) of the Clayton Act by the giving of promotional and advertising allowances to some but not all of respondent's customers competitively engaged in the resale of its products. Before evidence was taken as to the truth of this allegation, respondent filed a motion to dismiss on the ground that it is a "packer" within the meaning of the Packers and Stock-

yards Act (17 U.S.C. 191 et seq.) and that exclusive jurisdiction of the acts and practices in question was in the Secretary of Agriculture rather than the Federal Trade Commission. The hearing examiner sustained the motion and dismissed the complaint for want of jurisdiction, from which this appeal is taken.

The hearing examiner made findings of fact as to the jurisdictional feature as follows:

Factual allegations contained in the motion being controverted by counsel in support of the complaint, a hearing for that purpose only was held, from which it developed that respondent makes, manufactures or prepares some 14 products containing meat or "stock" extracted from meat, as follows:

Name	*Raw percentage*	*Cooked percentage*
Beef stew	25	18
Lamb stew	25	18
Corned beef hash	50	35
Chili con carne	25. 5	17. 5
Ham and tongue paste	36	24
Liver and beef paste	50	39
Scotch chicken soup	14	. 4
French onion soup	12. 5	----------
Cream of chicken soup	8. 7	----------
Chicken noodle soup	13. 8	----------
Chicken rice soup	9. 3	----------
Beef noodle soup	20	----------
Vegetable beef soup	19	----------
Vegetable soup with beef stock	10	----------

Sales of these items containing meat or meat stock amounted to $339,211 in 1955 and $380,250 in 1956 out of a total sales of manufactured products in 1955 of $7,760,679, and in 1956 of $7,897,162. The sales of said products have continued during the year 1957 at approximately the same rate.

Respondent sells approximately 150 products under 1 brand name, and some 35 under another, totaling approximately $14 million a year. Its sales in 1955 of the 14 products containing meat constituted 2.3 percent of its 1955 total sales, and in 1956, 2.7 percent.

* * * * * * *

Respondent is not registered under the Packers and Stockyards Act with the Secretary of Agriculture, and does not own or control, directly or indirectly, through stock ownership or otherwise, any slaughterhouse or packing plant or any interest therein, nor does it do any slaughtering or shipment of carcasses in commerce. The meat which it incorporates in the 14 products enumerated above is purchased by it from a local slaughterhouse and by it trimmed, boned, cut up, cooked, mixed, and otherwise prepared for canning.

Title 7 United States Code section 191 is as follows:

Packer defined.

When used in this chapter—

The term "packer" means any person engaged in the business (a) of buying livestock in commerce for purposes of slaughter, or (b) of manufacturing or preparing meats or meat food products for sale or shipment in commerce, or (c) of manufacturing or preparing livestock products for sale or shipment in commerce, or (d) of marketing meats, meat food products, livestock products, dairy products, poultry, poultry products, or eggs, in commerce; but no person engaged in such business of manufacturing or preparing livestock products or in such marketing business shall be considered a packer unless—

(1) Such person is also engaged in any business referred to in clause (a) or (b) above, or unless

(2) Such person owns or controls, directly or indirectly, through stock ownership or control or otherwise, by himself or through his agents, servants or employees, any interest in any business referred to in clause (a) or (b) above, or unless

(3) Any interest in such business of manufacturing or preparing livestock products, or in such marketing business is owned or controlled, directly or indirectly, through stock ownership or control or otherwise, by himself or through his agents, servants, or employees, by any person engaged in any business referred to in clause (a) or (b) above, or unless

(4) Any person or persons jointly or severally, directly or indirectly, through stock ownership or control or otherwise, by themselves or through their agents, servants, or employees, own or control in the aggregate 20 per centum or more of the voting power or control in such business of manufacturing or preparing livestock products, or in such marketing business and also 20 per centum or more of such power or control in any business referred to in clause (a) or (b) above.

The Commission had occasion to consider this section *In the Matter of Food Fair Stores, Inc.*, docket 6458. In that case the facts were substantially different. Food Fair had since 1945 operated a meat packing plant and bought livestock in commerce for purposes of slaughter. Furthermore, it produced and distributed meat as that term is used commercially.

Respondent in the instant case does neither of these. Its motion to dismiss is based solely on the fact that the products it produces and sells contain certain percentages of meats. The claim is that it is a "packer" under section 191(b) because it is engaged in the business of manufacturing or preparing meat food products for sale or shipment in commerce. The ultimate question, therefore, is whether such products are included in the definition given in Title 7 U.S.C. sec. 182(3) which is as follows:

(3) The term "meat food products" means all products and byproducts of the slaughtering and meat-packing industry—if edible.

The initial decision calls attention to section 1.1(w) of the regulations governing meat inspection by the U.S. Department of Agriculture

which regulations are promulgated under authority of the Meat Inspection Act, 21 U.S.C. secs. 71–91. The above section defines meat food products as:

> Any article of food, or any article intended for or capable of being used as human food which is derived or prepared, in whole or in substantial and definite part, from any portion of any cattle, sheep, swine, or goat, except such articles as organo-therapeutic substances, meat juice, meat extract, and the like, which are only for medicinal purposes and are advertised only to the medical profession.

Title 21 has to do with the production, sale and transportation of many articles of food, including meat and meat food products. Section 74 provides for the inspection of all "meat food products prepared for interstate or foreign commerce in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment."

That the law contained in section 71 and following of Title 21 is a health measure to be given a broad construction to carry out its purpose is indicated by the following:

> The determination of the meaning of the term "meat food products" is essential to the proper enforcement of the meat inspection law, and, as Congress has not defined the term, and it has no well defined meaning but is one of commercial usage, such determination is not a question of law upon which the Attorney General may express an opinion, but is a question of fact.—(1910) 28 Opinions of the Attorney General 369. The power to determine what is a meat food product rests in the Secretary of Agriculture subject to the restriction that the definition of the term adopted be not clearly and unquestionably outside the intent of such section. The definition of "meat food product" as given by the Secretary in regulation 3, section 8, to wit: "Any article of food intended for human use which is derived or prepared in whole or in part from any edible portion of the carcass of cattle, sheep, swine, or goats, if the said edible portion so used is a considerable definite portion of the finished food product" is valid.—(1911) 29 Opinions of the Attorney General 227.

In *Pittsburgh Milling Co.* v. *Totten* (1918) 248 U.S. 1, the court pointed out that one purpose of the act was to prevent shipment of impure, unwholesome, and unfit meat and meat food products in commerce, and that Oleo oil, a substance made from the fat of slaughtered beeves, seldom used by itself as food, but employed largely in making oleomargarine and somewhat in cooking, is a "meat food product" within the Meat Inspection Act, when manufactured fit for human consumption and not "denatured" and is barred from commerce unless inspected and passed under the act.

It is not disputed that respondent's products are meat food products as defined by the Secretary of Agriculture under the Meat Inspection Act. In fact, respondent is registered under said act and its products are inspected regularly.

However, the question in this case is not the meaning of "meat food products" under the Meat Inspection Act, but the meaning under

the Packers and Stockyards Act. The two acts are entirely separate. Although both touch and concern the general subject of meat and the production and distribution thereof, nevertheless, the objectives are entirely different. The Meat Inspection Act is a health measure to protect the public from the introduction of impure products into commerce. The Packers and Stockyards Act was enacted to remedy certain business practices of a designated industry.

We conclude that respondent's products are not meat food products under the definition of that term in the Packers and Stockyards Act for the following reasons:

(1) The Packers and Stockyards Act contains no indication, either expressly or by implication that Congress intended to adopt therein the definition of meat food products which had been adopted by the Secretary of Agriculture under the Meat Inspection Act.

(2) In fact the Packers and Stockyards Act has its own definition, differing in its language from that of the Meat Inspection Act.

(3) In applying this definition, consideration should be given to the intent of Congress in adopting the legislation.

When the Packers and Stockyards Act was adopted, the Meat Inspection Act had been in operation for some time. Congress was familiar with the broad and sweeping definition of "meat food products" being enforced by the Secretary of Agriculture. Nowhere in the legislative history is their any express acceptance of such definition for the Packers and Stockyards Act. Nor is there an implied acceptance by failing to write a definition in the statute. On the contrary, a definition was expressly included, considerably limiting the sweep of the same language in the regulations under the prior legislation. Instead of including every article of food derived or prepared in part from any edible portion of the carcass of cattle, etc., the definition in the Packers and Stockyards Act covers only all edible products and byproducts of the slaughtering and meat-packing industry.

What Congress had in mind is illustrated by the following statement by Senator Wadsworth:

> The discussions in the committee very clearly brought out the fact that the authors of the bill intended by this bill, and under these two definitions, to have these regulatory provisions apply to the packer as we know him, as he is generally considered, that is, a large concern engaged in purchasing animals, slaughtering them, selling the food products and processing the byproducts to a greater or lesser degree. That, I think, it is fair to say is the conception of the authors.

While there was considerable dispute as to the choice of language which would best express the congressional intent, nevertheless,

there were many other statements in substantial agreement with the above quotation from Senator Wadsworth.

In *Bishop* v. *City of Tulsa* (Okla. 1922) 27 A.S.R. 1008, the court said:

> A byproduct is a secondary or additional product of value; something produced in the course of business in addition to the principal product. It is well known that packing houses, oil refineries, and some other kinds of manufacturers, make byproducts amounting in value to a material part of their gross income.

It is clear that respondent's products are not byproducts. The use of the term "byproducts" in the definition throws considerable light on what groups Congress intended to include under the Packers and Stockyards Act. The language used, the history and background of the legislation indicate that it was aimed at organizations buying livestock for slaughter or preparing therefrom meats as was customarily being done by the packers of that day. We do not believe that it was ever intended to cover an organization such as respondent, which buys no animals for slaughter, prepares no meat as that term is used commercially, and which only produces products of which meat may be an ingredient, In other words, respondent is not a member of the "slaughtering and meat packing industry" as envisioned by the framers of the Packers and Stockyards Act. This situation is similar to that of an independent processor of livestock products. As to that situation, the House Committee report points out:

> An independent tannery would not be a packer, but if a packer sets up a tannery business as a separate corporation, it would be controlled.

To give the law the construction urged by respondent would bring strange results. For example, a baker who buys meat and puts it in pizza pies sold in interstate commerce would be a packer. A farmer might also be a packer in spite of the fact that the Meat Inspection Act exempts the farmer who engages only in traditional farming operations.

In construing the meaning of the words in the statute consideration must be given to the intent of the entire statute and to the evils it was designed to cure. This is true of such words as "meat" and "meat food products" which are used in a variety of meanings as is indicated by dictionary definitions and by court decisions. For example, see *Gardner* v. *State* (1915 Ind.), 108 N.E. 230; *State* v. *Nugent* (1955 N.C.), 89 S.E. 2 781; *State* v. *Morey* (Wis.), 60 Am. Dec. 439.

The general objective of the Packers and Stockyards Act was to regulate certain business practices of a group usually referred to as

the slaughtering and meat packing industry. To apply the act to respondent would be to go beyond what we consider to be the Congressional intent.

We conclude that the hearing examiner was in error in sustaining respondent's motion to dismiss. The appeal of counsel supporting the complaint is granted, the motion to dismiss is denied and the case is remanded to the hearing examiner for further proceedings in accordance with this opinion.

ORDER VACATING INITIAL DECISION AND REMANDING CASE TO HEARING EXAMINER

This matter having come on for hearing upon the appeal of counsel supporting the complaint from the initial decision of the hearing examiner which granted the respondent's motion to dismiss the complaint for lack of jurisdiction; and

The Commission, for reasons stated in its accompanying opinion, having determined that the hearing examiner was in error in granting the motion to dismiss:

It is ordered, That the initial decision be, and it hereby is, vacated and set aside.

It is further ordered, That this case be remanded to the hearing examiner for further proceedings in accordance with the Commission's opinion.

AMERICAN HOME PRODUCTS CORP.

(formerly WHITEHALL PHARMACAL CO.)

Docket 6755. Order, Nov. 14, 1957

Interlocutory order granting complaint counsel's appeal from hearing examiner's rulings excluding from the record photographic prints of the video portions of particular frames of certain kinescopes or films of respondent's television commercials as not the "best evidence."

ORDER GRANTING INTERLOCUTORY APPEAL FROM RULING OF HEARING EXAMINER

This matter having been heard upon an interlocutory appeal, filed by counsel in support of the complaint, from rulings of the hearing examiner excluding from the record photographic prints of the video portions of particular frames of certain kinescopes or films of the respondent's television commercials, which kinescopes or films had already been admitted in evidence; and

It appearing that the bases for said rulings were that the photographs are not the best evidence, and that they do not purport to show the films in their entirety; and