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PRICE DIFFERENTIALS BASED ON COST
DIFFERENCES: Strengthening the

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PRICE DIFFERENTIALS BASED ON COST DIFFERENCES:
Strengthening the Administration of the Robinson-Patman Act

I long have thought that one of the main reasons for failure to obtain general compliance with the Robinson-Patman Act, is the mystery and ignorance (both in industry and government) which surround distribution costs.

While savings in cost constitute the primary justification for price differentials under the Act, there has been little advancement in the field of distribution cost accounting during the eighteen years involved lower net prices than those charged independent dealers

were made because of the great difference in the volume purchased by Sears as compared with that of the largest independent dealer.

After some 25,000 pages of testimony, the Commission ruled that it did not consider "a difference in price to be on account of quantity unless it was based on a difference in cost and was reasonably related to and approximately no more than that difference." It concluded that since the price differential in favor of Sears was not justified by differences in cost of transportation or selling, quantities in which such commodities are to such purchasers sold or delivered."

It was believed at the time that the new proviso was little more than a legislative restatement of the Commission's interpretation of the old proviso, namely, that price differentials should be "reasonably related" to cost differences. It was designed to procases in which respondents became convinced that the cost defense would not be successful or that it was too complex and expensive to be undertaken. By and large, however, the rigid standards of proof required by the Commission have resulted in very few decisions on the merits in favor of respondents.

In none of the cases, with the possible exception of the recent

An Advisory Committee on Cost Justification was appointed and Professor H. F. Taggart of the University of Michigan was designated Chairman. The Committee was asked to ascertain whether it is feasible for the Federal Trade Commission to develop standards of proof and procedures for costing which can be adopted by the Commission as guides to businessmen desiring to comply with the law.

To the extent that such standards of proof and reliable guides to satisfactory costing procedures are susceptible of development, and are consistent with good business practices, sellers who wish to

In the recent <u>Sylvania</u> case decided two weeks ago, the Commission may have anticipated one of the many problems the committee will consider. There were divergent points of view in that case as to whether the price differential, which was the subject of the com-