UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

August 21, 2007

Richard Pu

State of New York

Re: *In the Matter of Motor Oil Importers of Puerto Rico, File No. 0610229*

Dear Mr. Pu:

Thank you for your comments regarding the proposed consent order accepted by the Federal Trade Commission for public comment in the above-captioned matter. The Commission has reviewed your comments in connection with its decision concerning whether to accord final approval to the proposed consent order, and has also placed your comments on the public record.

In your letter, you express the concern that the proposed consent order will not remedy adverse effects arising from the repeal of Law 278, the Puerto Rico statute that formerly governed the disposal of used lubricating oil. But, any injury caused by state action – like the actions of the legislature here regarding Law 278 – is not remediable under the antitrust laws, even if the legislature was unlawfully pressured to act. *See City of Columbia v. Omni Outdoor Advertising, Inc.*, 499 U.S. 365 (1991); *Parker v. Brown*, 317 U.S. 341 (1943); *Sandy River Nursing Care v. Aetna Casualty*, 985 F.2d 1138, 1144 (1st Cir. 1993). Whether or not consumers of motor oil should be required to pay an environmental deposit is a matter to be decided by the legislature, without interference by the antitrust laws or the FTC. In contrast, the Commission's complaint challenges an agreement among the respondent and its competitors to cease importing lubricants. Antitrust law is concerned with the "direct market effects" threatened by that conspiracy (*e.g.*, the reduced availability of lubricants, higher prices). *See Sandy River*, 985 F.2d at 1143.

In your letter, you also express the concern that the proviso (or exception) in the consent order "permits a repetition of the same conduct" challenged in this enforcement action. It is the Commission's conclusion that this is not the case. In particular, Paragraph II of the consent order enjoins the respondent, American Petroleum Company, Inc., from *inter alia* agreeing with any competitor to restrict the import or sale of lubricants. The proviso that you refer to simply permits the respondent to exercise its First Amendment right to petition any government body concerning legislation, rules, or procedures. The First Amendment does not, however, authorize competitors either to threaten or to implement a group boycott in order to coerce the legislature to modify regulations affecting the economic interests of such competitors. Accordingly, a repetition of the conduct challenged in the Commission's complaint would constitute a violation of the order.

After appropriate consideration of your comments, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without modification. A copy of the final Decision and Order is enclosed for your information. Relevant materials also are available from the Commission's website at http://www.ftc.gov.

Thank you again for your comment. The Commission is aided in its analysis by hearing from a variety of sources, and we appreciate your interest in this matter.

By direction of the Commission.

Donald S. Clark
Secretary