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## 9 Does Government Regulation Inhibit the Reporting of Transactions Prices by Business?

Murray F. Foss

Sometime in the mid-1980s, the Bureau of Labor Statistics (BLS) completed a major overhaul of the producer price index (PPI). The Bureau made several important improvements in the PPI, notably the introduction of probability sampling, and broadened coverage not merely in terms of industries but also in terms of types of sellers and transactions. It promised greater efforts at enlisting cooperation from businesses so that the index would reflect transactions (shipments) prices rather than list prices. A big problem for which BLS made no promises was the quality problem—in the sense of changing commodity characteristics—because it recognized that much more research was needed. Quality was the one remaining major issue for which a ready solution was still not at hand.

What got me started on this particular paper—the behavior of steel prices in the first half of the 1980s—suggested that quality was not the only big problem still outstanding. I had read newspaper reports that, under the depressed market conditions in the steel industry, particularly from 1982 to 1985, market prices for steel were well below list prices. I was curious to see how the newly revamped PPI was reflecting this weakness in demand.<sup>1</sup> To my surprise, the PPI for steel showed relatively little response, as I indicate further on. I say “surprise” because I thought that the Bureau’s efforts to obtain

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1. The index for steel mill products was revamped in July 1982.

transactions prices, if not eradicating this problem, had greatly diminished its importance. I believe now that BLS was overly sanguine in its expectations regarding the transactions-list price problem; indeed, I think that this old problem is still very much with us, although improvements have occurred and some major changes in the reporting of steel prices were introduced in 1990.

The reason that this problem does not go away has to do with the sensitive nature of much price information, particularly as it is affected by law and regulations. I believe that the existence of the Robinson-Patman Act, a law directed against price discrimination that has been on the books for more than half a century, is a significant impediment to the reporting of transactions prices by business. I must emphasize that I cannot prove this point. Stigler and Kindahl mentioned the Robinson-Patman problem about twenty years ago, but no one seems to have pursued it. I can only suggest its importance by providing some figures on survey response rates, discussing the Robinson-Patman Act and business response to it, and discussing how a rational businessman might react to government requests for price data.

I believe that, even in the last decade of the twentieth century, we still do not measure prices well at the producer level. This is an old story that many have written about. Much is at stake, in terms of both theory and measurement. The apparent rigidity of prices and wages is at the heart of the controversy in macroeconomics that has been going on for some two decades and perhaps half a century.

Through most of the period that has seen the rise and partial eclipse of the Keynesian macroeconomic system, there has been a series of empirical studies demonstrating the rigidity of prices in recessions and attempting to explain it by concentration, industrial structure, and the like. Keynesians have tended to be more accepting of the facts of rigid prices and the explanations of them. In contrast, the newer rational expectations macroeconomists have been somewhat more skeptical of the facts of rigid prices, often raising many questions about the validity of the data in support of rigidity.

The past ten years have seen the emergence of new theories that reject the new macroeconomics and attempt to solve the Keynesian dilemma. The late Arthur Okun and others developed theories that accept price rigidity as a normal aspect of the relations between buyers and sellers (Okun 1981). Wage and price stickiness is at the core of what has been called the "new Keynesian" economics (Gordon 1990). In addition, recent empirical work by Dennis Carlton (1986) based on prices paid by individual buyers (from the Stigler-Kindahl [1970] study) finds a great deal of rigidity in prices, especially where there is a long-term relationship between buyer and seller. He raises the question of whether economists have been right in believing that prices and prices alone serve as allocators of resources. In a more recent article, Carlton suggests that nonprice methods as well as prices are used to allocate goods (Carlton 1989, 943).

The issue involves more than cyclical movements in prices. Inadequacies

in our producer price measurements may also give a distorted view of the long-run movement of prices. If, because of Robinson-Patman, businesses are uncertain about the legality of the price cutting that they may employ to establish themselves in new markets or to improve market shares, they may be chary about reporting to BLS, or the prices they do report may not be accurate reflections of true transaction prices. Thus, the prices that are reported may have an upward bias.

This paper is organized as follows. First I give a brief historical review of the criticisms of the PPI (formerly the wholesale price index [WPI]), focusing on the list-transactions price problem. The big 1979-86 revamping of the PPI was a major undertaking. The expansion in sample size and the shift to probability sampling for four-digit industries were important responses to many of the earlier criticisms. However, the best sample design can be frustrated if companies refuse to cooperate or, when they do, if they fail to submit the desired transactions prices. In the second section, I provide some information on cooperation or what I refer to as *response rates*. Measured by the number of companies who submit price reports to the BLS, the nonresponse to the PPI appears to be substantial. In this section, I provide no information about the nature of the price quotations that companies do report, that is, whether they are true transactions prices. In the third section, I hypothesize that the Robinson-Patman Act may be a significant influence affecting the nature of the price information that BLS obtains from business. After a brief review of this law and criticisms of it, I speculate about how its existence may affect both the willingness of firms to cooperate in the BLS price program and the nature of the prices they do submit.

I am aware that government agencies are at a serious disadvantage when they conduct voluntary surveys that are affected by or impinge on government laws and regulations. The agencies see discussion of such matters as exceedingly delicate, if not impossible. At the very least, outside economists should recognize and discuss such problems. In section 9.4, I offer a few suggestions that take some account of the U.S. regulatory environment. I believe that BLS is not following optimal policies for obtaining information about price behavior in producer markets. Where response is not good, BLS should be willing to accept a different kind of price reporting, which might elicit better cooperation in terms of numbers of firms and a closer approximation of transactions prices.

## 9.1 The Bureau of Labor Statistics and Its PPI Critics

The Bureau of Labor Statistics has been aware of the problem of accurate price measurement from the very beginning. John Flueck (1961, 419-20) quotes Wesley C. Mitchell from a 1915 BLS bulletin (no. 173, *Index Numbers of Wholesale Prices in the U.S. and Foreign Countries*) that goes to the heart of the matter:

[The] reliability of an index number obviously depends upon the judgement and accuracy with which the original price quotations were collected. This field work is not only fundamental, it is also laborious, expensive, and perplexing beyond any other part of the whole investigation. Only those who have tried to gather from the original sources quotations for many commodities over a long series of years appreciate the difficulties besetting the task. . . . To judge from the literature about index numbers, one would think that the difficult and important problems concern methods of weighing and averaging. But those who are practically concerned with the whole process of making an index number from start to finish rate this office work lightly in comparison with the field work of getting the original data.

During the 1930s, the validity of price quotations became a prominent issue after Gardner Means published his famous study on price inflexibility based on BLS wholesale prices (Means 1935). In the hearings of the Temporary National Economic Committee, rigid prices were drawn into the debate over the causes of the 1937–38 recession, one side maintaining that rigid prices, especially in industries such as steel—as demonstrated in the Means study—were responsible for either the downturn in aggregate economic activity or the slow recovery after mid-1938, or both (U.S. Temporary National Economic Committee 1939–40). Questions, however, were raised about the quality of the BLS wholesale price statistics that Means had used as the basis of his analysis. In 1939, Saul Nelson made a study showing that BLS was failing to capture various discounts and secret price concessions made by sellers (Stigler and Kindahl 1970). The basis for some further questions came from a study of steel prices conducted by BLS for the Office of Price Administration (OPA). Among other things, the OPA study, based on purchasers' prices, showed much more price cutting in 1939 and 1940 than was evident in the WPI (Stigler and Kindahl 1970, 17–18).

The first comprehensive critique of the WPI after World War II was the Stigler Report of 1961 (National Bureau of Economic Research 1961). The report cited “several types of evidence suggest[ing] very strongly that the price quotations obtained from manufacturers do not faithfully measure the movements of prices, quite aside from the usual problems of quality change” (p. 69). Part of the evidence had to do with the frequent reliance of the WPI on a single price report; another part was a comparison of the WPI with prices paid by government units, showing that WPI prices were higher and more rigid than average bid prices on government contracts. In their 1970 study based on prices supplied by buyers, Stigler and Kindahl found no evidence to suggest that price rigidity or “administration” of prices was a significant phenomenon (Stigler and Kindahl 1970, 9).

The 1970s also witnessed a number of government reports that pointed in the same direction, namely, that BLS was not reflecting actual transaction prices. The most prominent of these was the study by Ruggles (COWPS 1977); earlier, a presidential commission had criticized the WPI for not re-

flecting transactions prices (Report of the President's Commission 1971). It was late in the 1970s that BLS announced a major long-range overhaul of the PPI, which would move to probability sampling, increase coverage, greatly extend the range of transactions covered by the PPI, and put special emphasis on obtaining transaction prices.

Successive editions of the *BLS Handbook of Methods* demonstrate BLS's continuing interest in obtaining actual transactions prices. Thus, in 1976:

The Bureau attempts to base the WPI on actual transaction prices. Companies are requested to report prices less all discounts, allowances, rebates, free deals, etc., so that the resulting net price is the actual selling price of the commodity for the specified basis of quotation. The Bureau periodically emphasizes to reporters the need to take into account all discounts and allowances. However, list or book prices are used if transaction prices are unobtainable. (U.S. Department of Labor 1976, 110)

This was essentially repeated in 1982, midway through the revision program, with the Bureau emphasizing in addition that "rebates and other forms of price concessions granted by producers to their distributors . . . are reflected as decreases in the PPI. . . . Conversely, terminations in rebate programs are considered price increases" (U.S. Department of Labor 1982, 44).

According to the Bureau, list prices were used for only about 20 percent of traditional PPIs (U.S. Department of Labor 1982, 44). I believe that the 20 percent figure was probably the lower end of a range whose higher end was not known. Support for this skepticism comes from Richard Ruggles, who, in his study for COWPS, took a one-in-fourteen sample of wholesale price observations as of March 1975, for which he was able to obtain the source of the price quotations (COWPS 1977, 120):

	N	%
List price	116	18
List price minus discounts	421	67
Average realized unit price	56	9
Unknown	36	6
Total	629	100

Ruggles noted that the forms filled out by price reporters "often show relatively few changes in discounts." He thought it reasonable to assume that the discounts that firms do report to the BLS were "the more regularized and standardized discounts which apply to all purchasers," for example, cash or trade discounts. He went on to say that, even with a fixed discount structure, over the business cycle firms could change prices by altering the classification of customers and thus their eligibility for discounts. He concluded that list prices adjusted for discounts "may not reflect the actual changes in transaction

prices.” He stated further, “There is of course no way of determining from the questionnaires whether the producers are reporting all of the discounts which they actually give to their customers” (COWPS 1977, I-18).

The 20 percent figure for list prices cited by BLS in 1982 is repeated in its 1988 *Handbook* (U.S. Department of Labor 1988, 126):

The use of list prices in the industrial price program has been the exception, not the rule. Even before the conversion on the methodology of the Producers Price Index Revision (PPIR), a BLS survey showed that only about 20 percent of traditional commodity indexes were based on list prices. Inasmuch as the PPIR methodology is more systematic than the traditional methodology in concentrating on actual transaction prices, the use of list prices is even less frequent now.

In the *Handbook*'s latest revision, BLS takes note of the list price problem, promising to devote more time and resources to it, but refrains from discussing why firms may be unwilling to report transactions prices. Thus, in an April 1978 article, John Early states: “One of the continuing concerns of the Producer Price Program has been to obtain real transaction prices rather than list prices at which no sales occur. While the program has had substantial success in this effort the revision will expand and intensify it. It should be realized that in some industries the list price and the transaction price are the same” (Early 1978, 18).

But that is all. The following year, in an article reporting the results of a pilot survey testing the new PPI procedures, Early emphasized the need for good cooperation from business:

One critical factor in both surveys is the cooperation received from American companies, because they are the only possible source for the required information. Most companies have been highly cooperative in both the present and revision programs. They generally realize the important role that accurate price statistics play in fiscal and monetary policy decisions, which in turn are major determinants of the Nation's economic health and the performance of individual companies. Many companies also use the data extensively in their own market and economic research activities, and more and more companies are using the data to escalate prices in long-term contracts for items they sell or buy.

He presented response rates for four pilot industries and noted that, in some industries, response was “low enough to suggest the need for special attention.” He noted further that intensive reviews were “being conducted to determine both the causes and effects of high refusal rates in some industries” (Early 1979, 19).

What motivated me to write this paper, as I mentioned earlier, was the behavior of steel prices in the early 1980s. I had been interested to read in the *Wall Street Journal* of 23 September 1985 that discounting from list prices for steel mill shapes and forms was very severe because of weak demand (see

Russell 1985). In one sense, this was scarcely news because the domestic industry had experienced a steep decline in production and employment early in the decade and had experienced only a weak recovery as the overall economy expanded. It was around this time that one began to read about the “Rust Belt” and near-depression conditions in steel mill towns. The same 1985 *Wall Street Journal* article quoted a very large producer as saying that the actual selling price of a ton of sheet steel “equals the level of 5 years ago.”

One would have thought that the BLS steel price index, reflecting a new sample and new procedures instituted in July 1982 under the PPI revision, would provide evidence of the substantial price reductions that had taken place. But, as of August 1985, the PPI for cold-rolled carbon sheets was 26.8 percent *above* its level of April 1980. In fact, the entire iron and steel index showed scarcely any response to the true demand conditions in the industry. The decline in the BLS iron and steel price index from the July 1981 business cycle peak to the November 1982 trough was 1 percent, or about average (median) for nine recessions from 1937 to 1982 (excluding the end of World War II). These issues are discussed in some detail in Betsock and Gerduk (chap. 8 in this volume).

Is it possible that the steel industry is not unique and that, despite the steps that BLS has taken to improve the quality of reporting, it is still not obtaining transactions prices from producers in several other industries? In his study for the Stigler Report, John A. Flueck compared BLS prices with prices bid on government contracts for a wide variety of commodities. He found that BLS series changed less frequently than the government series and that, in the short run, the BLS series changed by smaller magnitudes than did the government series. Flueck’s data included such commodities as aluminum sheet and ingot, steel sheet and plate, brass bar, plywood, gummed tape, auto tubes, storage batteries, linoleum, plate glass, enamel, and several chemicals (Flueck 1961, 427). The Stigler and Kindahl study covered a fairly broad array of industrial products, concentrating on those typically viewed as having administered prices (Stigler and Kindahl 1970, 5).

## 9.2 Obtaining Transactions Prices

Long years of experience with a voluntary survey had demonstrated to BLS that obtaining actual prices was no simple matter. Very briefly, what is needed is a proper sample design, a willingness of sampled firms to participate in the survey on an ongoing basis, and a willingness of firms to submit the information that BLS desires.<sup>2</sup> This paper does not consider sampling problems as such, although its thrust is concerned with potential bias insofar as some “co-operating” firms do not report actual transactions prices while others do not

2. For recent descriptions of current methodology, see U.S. Department of Labor (1988, 125–43) and U.S. Department of Labor (1986).



participate at all. Obviously, it would be highly desirable if I could present information that evaluated the validity of the price quotations reported to BLS, but I have no such information except for what I have alluded to in the steel industry. What I do have is some information on response rates.

### 9.2.1 Response Rates

*Response rate* can be defined in many different ways. As used here, *response rate* refers to the willingness of firms to submit to the BLS or Census Bureau what are purported to be the desired statistics—relative to potential respondents. For purposes of comparison, the only meaningful response rate in a sample survey must be a rate that is based on a probability sample and that is now possible as a result of the improvements that BLS made in its revamped PPI.<sup>3</sup> This section compares response rates in some large-scale, probability-based surveys of business firms conducted by BLS and the Census Bureau. All are voluntary, and most are conducted monthly or quarterly.

The focus on business as distinct from households or governments is important because the PPI is directed at business. Large-scale surveys are preferable to those directed to a particular (say, four-digit) industry because the PPI covers primarily all detailed manufacturing and mining industries. Since the PPI is a monthly survey, comparisons should be made with other surveys conducted periodically within the year—monthly or quarterly. Finally, since the PPI is voluntary, it should not be compared with mandatory surveys, even though the Office of Management and Budget (OMB) concluded, on the basis of some broad findings, that response rates to voluntary and mandatory surveys do not seem to be different (Coffey 1987).

### 9.2.2 Producer Price Index

BLS collects its price data by means of two surveys: an “initiation” survey and a “repricing” survey (BLS terminology). The former is a one-time informational survey in which the field agent, if permitted by the firm, examines the company books and follows a sampling procedure to select the items to be priced, including the host of details that define each “price.” The repricing survey is the monthly mail survey in which the firm reports prices for the monthly PPI. The Bureau draws a probability sample of establishments in a given four-digit industry from a comprehensive file of establishments reporting under the unemployment compensation program. By the time they are contacted, some firms are out of business, and others turn out to be engaged in an industry or activity different from their designated classification. Some

3. Before the 1975–85 revision, the response rate to the producer price survey was said to be very high—in the neighborhood of 95 percent. But that result was not based on a probability sample that made a proper accounting of cooperators and noncooperators. In seeking participants for its price survey, BLS made a practice of contacting firms until it encountered a cooperator; the large number of firms that refused BLS when first approached did not enter BLS’s calculation of the response rate. Consequently, the prerevision response rates were of very limited value.

up-to-date results on response rates at initial contact are presented in table 9.1. These are based on what BLS refers to as Cycle B, which represents a resampling of every SIC being used for the PPI.<sup>4</sup> This particular cycle, which lasted several years, was completed in 1992 and covered all of manufacturing and mining and a few other industries.

At the time of the initial visit, the BLS agent explains the price collection program, its importance, and the confidentiality of individual reports.<sup>5</sup> After the agent has examined company records for the purpose of sampling transactions, the company is asked to supply from two to sixteen items—price quotations—ordinarily on a monthly basis. Within the past year or so, small firms were requested to remain in the program for five years; previously, there was no time limit. The largest firms, which are chosen “with certainty,” are expected to remain in the sample continuously.

In table 9.1, productive firms (establishments) are properly classified firms still in business that supplied the agent with all items requested by the agent plus those firms supplying *some* of the items requested. Where the firm agreed to supply only some of the requested prices, it was treated as a partial cooperator.

At this stage, the response rate ranges from 83.5 percent (weighted by sales) to 82.3 percent (unweighted). The difference in favor of larger firms, however, is not very striking.

Table 9.2 provides data on “repricing” (pricing) for December 1989. The first 5 rows come from actual BLS tabulations made available to me. The data refer to price quotations and not firms.

Row 1 shows the number of price quotations for which respondents in the initiation survey said they would report. It is the equivalent of the number of potential cooperators as determined in the initiation survey times an average that falls between two and sixteen.

Row 2 represents items “permanently discontinued.” It includes known business deaths, cases in which the respondent ceased selling the item permanently and for which a substitute could not be found, and firms who agreed to report but never did or who, in the past, reported at least once but for reasons of their own no longer submit reports. BLS employs a more or less fixed procedure for dropping quotations. If a quotation is missing with no apparent explanation for two months, the firm is contacted by phone. Another call is made at the end of six months. If there is still no answer at the end of nine months, the quotation is assigned to the “permanently discontinued” category, but each analyst makes his own decision about such cases.

Row 3 represents items for which prices were submitted but that BLS rejected for some reason.

4. Under the PPI revision, Cycle A ran from January 1979 to January 1986 for manufacturing and mining industries.

5. This is explained in U.S. Department of Labor (1988, 128).

**Table 9.1**                    **Producer Price Index Survey: Response at Initiation**

	Establishments (%)	
	Weighted	Unweighted
1. Productive	71	65
2. Refusals	14	14
3. Out of business	7	11
4. Out of scope	4	6
5. Misclassified	3	4
Response rate ([row 1]/[rows 1 + 2])	83.5	82.3

Source: Bureau of Labor Statistics, unpublished data. See the text.

**Table 9.2**                    **Producer Price Index: Response in Repricing, December 1989**

1. Items potentially in PPI from initiation survey	90,591
2. Less "permanently discontinued"	21,154
3. Less "repriceable" items not used by BLS	1,622
4. Equals items potentially available for PPI	67,815
5. Actual number of items received for preliminary December 1989 PPI	48,452
6. Estimated late reports (3 percent of row 5)	1,454
7. Seasonal items and "off-cycle" items (9.5 percent of rows 3 plus 4)	6,596
8. Estimated items not being reported for repricing ([row 4] - [rows 5 + 6 + 7])	11,313
Estimated Refusal Rate:	
$[(.786)(\text{row } 2) + (.5)(\text{row } 8)]/[(\text{row } 1) - (.214)(\text{row } 2)] = .259$	
Response Rate = .741	

Source: See the text.

Row 4 is row 1 less rows 2 and 3. It is the potential number of items that— if reported— would be used for the preliminary PPI that month.

Row 5 is the actual number of items used by BLS in the preliminary December 1989 index. It is considerably less than either row 4 or row 1, but important qualifications should be noted in rows 6 and 7.

Row 6 makes an allowance for late reports. This figure (3 percent of row 4) is the upper end of a "2–3 percent" suggested by Richard Pratt of the Statistical Methods Division, Office of Prices and Living Standards, BLS.

Row 7 is an allowance for seasonal items and those reporting for less than twelve months. At the time of the initiation survey, the cooperating firm informs the BLS field agent of seasonal patterns in which no prices may be reported in particular months or other patterns involving fewer than twelve monthly prices per year. A firm that sells an item every month of the year but is willing to supply data for only one month in each calendar quarter is treated as though it made sales in only four months of the year. The figures for the adjustment in row 7 come from BLS tabulations.

Row 8 is a residual, equal to row 4 less rows 5, 6, and 7. It consists of two

main parts, a breakdown of which is not known by BLS. One part represents items with irregular monthly pricing. That is, at the time of the initiation survey, the firm informs BLS that it does not sell in every month of a year but that it cannot specify which months will be blank. BLS sends this firm a normal schedule that calls for twelve monthly reports, but, obviously, the absence of a report from such a firm is not necessarily a sign of noncooperation. The other part, however, represents firms that are dropping out without having informed BLS and that would in time (say, nine months) be assigned by BLS to the “permanently discontinued” group.

To get a nonresponse rate on repricing, it is necessary to combine appropriate components of rows 2 and 8 divided by an appropriate total.

For row 2, Richard Pratt has estimated that 78.6 percent represents refusals. This is what remains after estimating that business deaths are 5 percent of row 1, a figure based on the attrition experience of these establishments. For row 8, I arbitrarily decided that half this row represented refusals. The denominator reflects row 1 minus business deaths. This yields a nonresponse rate of .259 (22,283/86,064) or a response rate of .741. These are unweighted. An OMB response survey conducted in 1983–84 suggested that 2 percentage points should be added to the unweighted figures, which would yield a rate of .761. This times the .835 response at initiation yields a combined rate of .635 on a weighted basis. Note that this is seasonally adjusted after a fashion and says nothing about the validity of the price quotations submitted by the respondent.

### 9.2.3 International Price Program

The BLS international price program is somewhat similar to the PPI; a subsample of the quarterly sample is now being used for monthly prices. The quarterly survey employs a probability sample with five to six thousand importers and an equal number of exporters covering some thirty thousand products; about fifteen hundred firms are added to each program yearly. The program is now open ended, but BLS hopes to put the sampling on a four-year cycle. Response rates at initiation are similar to those of PPI: 79 percent for importers and 82 percent for exporters. The figures are about the same whether weighted or unweighted.

Table 9.3 shows a few figures on repricing (pricing) for the fourth quarter of 1989. The 5 percent slippage figure in row 7 reflects the fact that about 5 percent of those who appeared to agree to cooperate at the initiation survey in fact drop out and are not included in the mailing figure in row 1. The combined response rate of 67 percent for both exports and imports is possibly a little better than the rate for the PPI.

### 9.2.4 Employment Cost Index

The employment cost index is a quarterly survey based on a probability sample of private firms and government. In the private sector, more than four thousand establishments report wage and benefit costs per hour or other unit

**Table 9.3** Export and Import Prices: Response Rates

	Exports	Imports
<i>Response at initiation (recent experience)</i>	.82	.79
<i>Response on repricing, 4th quarter 1989</i>		
1. Mailing	10,160	12,923
2. Less known business deaths	220	461
3. Equals potential prices available for index	9,940	12,462
4. Actual returns	8,600	11,070
5. (No transactions in 4th quarter)	980 <sup>a</sup>	2,300 <sup>a</sup>
6. Response at repricing ([row 4]/[row 3])	.865	.888
7. Adjusted for 5 percent slippage	.822	.844
8. Combined response ([row 7] × response at initiation)	.674	.667

Source: Bureau of Labor Statistics, unpublished data.

<sup>a</sup>Included in row 4.

of time. Once chosen, firms are requested to remain in the sample for four years, but, in the December 1987 survey of response rates referred to in table 9.4, the average age of the sample is two and a half years. The response rate is 69.7 percent for all manufacturing. These figures refer to the reporting of wages; about 95 percent of firms reporting wages will also report benefits. The response figures may be slightly higher because the refusal rate includes some late reporters. According to BLS, weighting would make little difference.

BLS conducts an annual occupational-employment survey. For 1986, the response rate that is comparable to the "good data" total in the employment cost survey is 79.5 percent for all manufacturing, with only small variations among the twenty two-digit manufacturing industries. The overall weighted figure is within 1 percent of the unweighted.

### 9.2.5 Census Surveys

From the Census Bureau, we have three voluntary surveys based on probability samples: retail sales, wholesale sales, and the value of private nonresidential construction put in place.<sup>6</sup> Although the trade examples refer to a single month, they are representative of recent experience in the opinion of Census Bureau specialists. Results appear in tables 9.5–9.7.

Table 9.8 summarizes the results of the response surveys just described. About all that I would venture to say at this stage is that the response rate for the PPI looks low relative to the Census sales surveys and somewhat low relative to the others. The Census Bureau's survey of wholesale trade is perhaps the closest to the PPI in terms of the kinds of companies covered; its response rate is much higher than that of the PPI. It is difficult to draw inferences about

6. The Census Bureau's Monthly Industry Survey, covering shipments, inventories, and orders received by manufacturers, is not a probability sample.

**Table 9.4 Employment Cost Survey: Response Rate, December 1987**

	All Private Industries		Manufacturing	
	<i>N</i>	%	<i>N</i>	%
Original sample of establishments	5,940		944	
Less out of business	746		135	
Less out of scope	318		41	
Less no job match	135		18	
Equals eligible establishments	4,741	100.0	750	100.0
Good data	3,417	72.1	523	69.7
Refusals	1,324	27.9	227	30.3

Source: Bureau of Labor Statistics, unpublished data.

**Table 9.5 Retail Sales: Response Rates, August 1989**

	No. of Firms	Estimated Sales Volume (\$bil.)
1. Initial sample	12,197	146.4
2. Less out of business	877	0
3. Less out of scope	404	2.3
4. Equals potential respondents	10,916	144.1
	(100.0)	(100.0)
5. Less initial refusals	1,104	9.0
	(10.1)	(6.2)
6. Equals total mailed	9,812	135.1
	(89.9)	(93.8)
7. Less new refusals in August	37	<sup>a</sup>
	(0.3)	
8. Less failed to report	1,135	13.6
	(10.4)	(9.4)
9. Equals reports received	8,640	121.5
	(79.1)	(84.3)

Source: Bureau of the Census, unpublished data.

Note: Percentages are given in parentheses.

<sup>a</sup>Included in row 8.

any one survey from such a small sample of surveys. A major problem is that hard data on the response at repricing are not available; this information can come only from special BLS investigations.

The figure for the PPI in tables 9.2 and 9.8 includes some estimates on my part. An independent judgmental estimate of BLS specialists for the PPI puts the response rate in the "low sixties," a figure that is viewed by BLS as a low response.<sup>7</sup>

7. Thomas Tibbetts, assistant commissioner, Division of Industrial Prices, Bureau of Labor Statistics, conversation with author, 24 January 1990.

**Table 9.6 Wholesale Sales: Response Rates, August 1989**

	No. of Firms	Estimated Sales Volume (\$bil.)
1. Initial sample	3,577	151.3
2. Less out of business	63	"
3. Less out of scope	176	7.3
4. Equals potential respondents	3,338	142.1
	(100.0)	(100.0)
5. Less initial refusals	320	13.2
	(9.6)	(9.3)
6. Equals total mailed	3,018	128.9
	(90.4)	(90.7)
7. Less new refusals in August	13	"
	(0.4)	
8. Less failed to report	248	10.6
	(7.4)	(7.5)
9. Equals reports received	2,757	118.3
	(82.6)	(83.2)

Source: Bureau of the Census, unpublished data.

Note: Percentages are given in parentheses.

\*Included in row 8.

**Table 9.7 Private Nonresidential Construction Survey: Response Rates, 1988**

Month	% of Projects	% of Dollar Volume of Work Put in Place
1	41	50
2	53	65
6	60	73
12	60+	75-76

Source: Bureau of the Census, unpublished data.

Note: Similar results would obtain for Multifamily Residential Construction Survey according to the Census Bureau.

### 9.2.6 Factors Affecting Response Rates

What are the factors that affect response rates? I believe that three are important: the complexity of the survey (the "burden" problem); the nature of the data (proprietary issues) and who is asking for the information; and legal issues. I am not aware that legal issues, which may be a special aspect of proprietary problems, have ever been discussed in connection with government price surveys, although Stigler and Kindahl mention the problem in passing. It is taken up briefly here and more fully further on. I am assuming

Table 9.8 Summary of Total Response Rates

	Frequency	Date	Response Rate
BLS:			
Producer prices	Monthly	Late 1989	64 wtd.
International prices <sup>a</sup>	Quarterly	1989:4 <sup>b</sup>	67-67
Employment cost	Quarterly	Dec. 1987	70
Occupational-employment	Annual	1986	80
Census:			
Retail sales	Monthly	Aug. 1989	84 wtd.
Wholesale sales	Monthly	Aug. 1989	83 wtd.
Private nonresidential construction	Monthly	1988 avg.	73 wtd. <sup>c</sup>

Source: See tables 9.1-9.7 and the text.

<sup>a</sup>These results refer to the quarterly sample, not to the smaller monthly sample.

<sup>b</sup>Repricing survey.

<sup>c</sup>After six months. Similar results are obtained for private *multifamily* construction.

that the relative effort by each government agency to collect the data is constant across surveys.

The burden of a survey is a common problem. In the fall of 1988, OMB conducted a small survey concerning the burden of the PPI repricing survey (Form BLS 473P). Most respondents said that it was an easy survey to answer, but there was a certain amount of complaining about government surveys generally. I assume that the general complaints are common to all surveys. Individual responses are available in the OMB Docket Library in docket 1220-0008.

Proprietary issues involve two closely related considerations: the nature of the data and who is asking for the information. Some proprietary data are more confidential than others. Because they can often be reasonably approximated by (literally) an outside observer, employment data would seem to be less confidential than, say, profits of a nonpublic corporation. A careful observer can probably make a reasonably good guess about annual sales volume of a trade establishment. Price data are of several different kinds. Some are available for the asking through price lists, while others may vary from customer to customer even when price lists are published by the seller; this latter type is highly confidential information.

The source of the data request is also important. Generally speaking, a government agency will do better than a private individual or institution in obtaining price information, although there are private price surveys, such as the survey of spot steel prices referred to in International Trade Commission (ITC) reports (U.S. International Trade Commission 1988, 39-40).

Stigler and Kindahl had poor success in enlisting cooperation from sellers in their survey of industrial prices: "Industrial companies are generally reticent to report selling prices other than list prices. . . . The reticence no doubt



stemmed partly from reasons of commercial interest, despite our promise of complete confidentiality” (Stigler and Kindahl 1970, 23, 26).

Although businesses provide BLS with much proprietary information in the price surveys, no one—including the Bureau—really knows the extent to which even cooperating firms may be holding back information. The following, from a *Wall Street Journal* story (Carnevale 1989) is suggestive. AT&T complained to the Federal Communications Commission (FCC) that MCI gave discounts to several large customers for telecommunications services but failed to include this information in its filings with the FCC. MCI responded that it provides discount services under contract to big business customers but does not file these details with the FCC. In its complaint, AT&T maintained that it was illegal for MCI not to provide tariff information for services MCI offered to such firms as Merrill Lynch, Westin Hotels, United Airlines, the Pentagon, the University of Colorado at Boulder, and others. According to AT&T, the offer to Merrill Lynch was 8.5 percent below the lowest rate specified in MCI tariffs.

Legal issues must be of importance in response rates to government price surveys. Stigler and Kindahl stated that, in addition to reasons of commercial interest, “potential legal complications also discourag[e] the reporting of selling prices. The Robinson-Patman Act places a substantial burden on any seller to justify differences in price . . . and *it was often cited to us as a reason for noncooperation*. Buyers, on the other hand, had fewer legal or commercial doubts and cooperation was much greater” (1970, 23, 26; emphasis added). No doubt, the very poor response that Stigler and Kindahl elicited from *sellers* was due partly to the fact that they were acting as private individuals. BLS can offer firms more convincing assurances regarding confidentiality.

The Bureau has gone to considerable lengths over a long period of years to assure respondents to its surveys that any information supplied by the individual firm will be held in the strictest confidence and cannot be used against the firm by another agency of the government. U.S. courts have upheld the Bureau in resisting attempts of private individuals and firms to gain access to individual company data as well as attempts by agencies of the government for similar information. There can be little doubt that BLS enjoys an excellent reputation so far as confidentiality of data is concerned. The problem is whether this view of the Bureau is universally shared by all businesses. Surely, some of the firms who choose not to participate in the price survey at initiation and some of the cooperating firms that either fail to send in reports each month or send in partial reports must have a degree of skepticism regarding BLS assurances. Such firms hold back because they are fearful that the data that they supply may fall into the wrong hands.

This kind of concern should not be passed over lightly. In this regard, the experience of the Census Bureau in getting firms to report inventory statistics is instructive. The problem revolved around the use of the LIFO (last-in first-out) method of inventory accounting, a technique that has the effect of reduc-

ing book profits and profits taxes during periods of inflation. The material that follows is excerpted from a report on inventory statistics of which I was a joint author and concerns the so-called conformity requirement as stated in sections 472(c) and (e) of the 1954 tax code (Foss, Fromm, and Rottenberg 1981, 73–74):

There are many aspects of income determination where firms may use one accounting method in reporting to Internal Revenue Service (IRS) for calculating its tax liability and another for financial reporting to shareholders, creditors, and others. For example, a firm may use accelerated methods of depreciation for tax purposes but straight-line methods for reports to stockholders. . . . However, if a firm has adopted LIFO, IRS bars use of a different valuation method for financial reporting to the public or to creditors. Failure to abide by this requirement may result in withdrawal of permission to use the LIFO method for determining tax liability. LIFO is apparently viewed as a [tax-reducing] privilege which IRS grants and may revoke. . . . The rationale of the IRS position is that a firm should not be permitted to report a low profit for tax purposes and a high profit to the public.

In the mid-1970s, the IRS conformity requirement was hindering the compilation of inventory statistics by the Census Bureau. The Census Bureau wanted firms that used the LIFO method to report their inventories on a non-LIFO valuation basis so that valuation methods across all firms could be more or less uniform. Despite the fact that reports to the Census Bureau are governed by title 13 of the U.S. Code, which states, among other things, that the information in such reports may be used for no purpose other than statistical and prohibits the disclosure of individual firm data under pain of criminal prosecution, some firms refused to cooperate with the Census Bureau *on advice of legal counsel* “because of concern that the IRS conformity requirement would be violated” (Foss et al. 1981, 74).

This impasse was resolved after the Census Bureau took steps to explain to the IRS how IRS regulations were adversely affecting response rates. Following a series of discussions, IRS issued a regulation permitting firms to report the information requested by the Census Bureau without fear of losing their LIFO privileges (see the appendix). The episode is interesting because it shows how sensitive firms can be regarding compliance with the law. To me, it demonstrates that mere assurance of confidentiality from BLS may not be sufficient for some firms to assuage the fear that, by reporting to the Bureau, they may be exposing themselves to enforcement action or private lawsuits.

I have been impressed by the experience of Stigler and Kindahl and was especially impressed in the late 1970s by what most persons would consider some innocuous data requests that the Census Bureau made regarding inventory valuation methods. Even though the Federal Trade Commission is enforcing Robinson-Patman far less vigorously than it was in the early post-World War II period, it remains the law of the land and cannot fail to be taken into

account by all but the smallest businesses when asked by BLS to supply price data.

### 9.3 The Robinson-Patman Act

The Robinson-Patman Act is a federal statute directed against price discrimination. It was passed in 1936 as an amendment to certain provisions of the Clayton Act at a time of widespread concern over the future of small business. In particular, the sponsors of the legislation believed that large national chain stores, mail-order houses, and other large buyers were wresting price concessions from small suppliers that would lead, if unchecked, to the disappearance of small firms. The chief provision of the new law prohibited the charging of different prices for goods of the same quality where the effect would result in a "substantial lessening of competition." Such price discrimination is legal, however, if it can be proved that these price differences are based on cost differences, if the price differences were made to meet competition "in good faith," or if they were based on perishability or obsolescence of the product.

If Robinson-Patman were limited in its scope, it might be dismissed as one of many specialized obstacles to the working of competition in the U.S. economy. In fact, however, its scope is far reaching not simply because it applies to commodities sold in interstate commerce but also because price discrimination is a common economic phenomenon, one of the most prevalent forms of marketing practice (Varian 1989, 598). Price discrimination in economics involves charging different buyers different prices even though marginal costs are the same or charging the same price to different buyers where marginal costs are different. Economists have long known that it always pays to discriminate if you can do so. As Philips (1987, 953) put it, "Compared with a uniform price, discriminating prices are not only closer to the highest price a particular customer will pay; they also make it possible to serve customers who would not be able to buy at the uniform price."

Although the professed intention of the sponsors of Robinson-Patman was the preservation of competition, the law in fact became a device to protect established, independent wholesalers and retailers (Adelman [1953] 1969). The administration of the law by the Federal Trade Commission was anticompetitive in its effects, at least through the 1970s. For much of its history, attempts at price cutting have been discouraged. For example, in concentrated markets, a seller might hesitate to make price cuts that would be met immediately by competitors. The same seller might cut prices, however, to one or more purchasers as a first step toward a more general price reduction. Or a new entrant might decide that the best way to gain a foothold in a new market was through price reduction. If, however, he is required to cut prices to purchasers in all markets, old and new, he may decide against the new venture. As the Stigler Report pointed out, the FTC never attempted to differentiate

between the seller who wished to make a secret price cut and the monopsonist who extracted unjustified concessions from his suppliers to the detriment of his competitors (Report of the Task Force on Productivity and Competition [Stigler Report] 1969, 839).

In recent years, enforcement of the law as reflected in cases brought to court by the FTC has diminished greatly, averaging less than one per year in the 1980s, a substantial decline as compared to the experience of the 1950s and 1960s. The more recent FTC behavior undoubtedly reflects a response to the widespread criticism of the act as well as a changed attitude at the FTC and in the courts.<sup>8</sup> The FTC's main concern now appears to be anticompetitive practices. It seems to be looking at results in the marketplace rather than at the practices themselves. In the new view, practices that involve price differences may be overlooked if they bring about greater efficiency.<sup>9</sup> It would be a mistake, however, to assume that the act is now and has been in recent years a complete dead letter. Moreover, since the law continues to have the backing of small business, it still has powerful support in the Congress.

### 9.3.1 Robinson-Patman Today

Since the Federal Trade Commission's enforcement of Robinson-Patman has been minimal for more than a decade—although late in 1988 the FTC brought a case against book publishers for granting larger discounts to certain retail chains than to other retailers<sup>10</sup>—what can be said about Robinson-Patman today? Do businessmen take account of it in their pricing decisions? The fact is that little is known about compliance with this statute. On the basis of recent evaluations of Robinson-Patman and recent conversations with Robinson-Patman specialists—mainly but not exclusively lawyers—I have the impression that the law is very much alive but that businessmen have learned how to live with it in a diversity of ways.<sup>11</sup>

The deterrent effect of the law now comes primarily from private suits, which may involve treble damages in addition to the certainty of legal costs, both of which may be substantial. According to Earl Kintner, a former FTC chairman, and Joseph Bauer (Kintner and Bauer 1986, 607–8):

The present vitality of the Robinson-Patman Act has been sustained by private litigants. And indeed, there are still literally dozens of reported private actions each year reflecting what must be hundreds of such claims (or counts in other actions) that are being filed. Knowledge of this potential for

8. For criticism in addition to the Stigler Report, see "Report of White House Task Force on Antitrust Policy" ([1968] 1969) and Justice Department (1977). For some of the very extensive literature, see American Bar Association (1980).

9. See, e.g., a 1982 statement by James C. Miller, former FTC chairman, in Kintner and Bauer (1986, 606–7, n. 108).

10. *Harper and Row, Publishers, Inc., et al.*, D.9217–9222 (complaints issued 20 December 1988).

11. For some fairly recent assessments, see "The Robinson-Patman Act" (1986).

litigation plays an important role in marketing decisions and preventive counseling. However, of late the likelihood of success in a private enforcement action has been diminished somewhat by restrictive, and even hostile, readings given the act by various court decisions.

In the past few years, there have been from twenty to thirty private lawsuits per year involving Robinson-Patman, although some of these have been countersuits in response to an initial suit.<sup>12</sup> But, if Robinson-Patman is dead, its death—or at least its moribund condition—has perhaps been exaggerated. In March 1990, a North Carolina jury in a federal court awarded Liggett and Myers Company a record treble damages judgment of \$148.8 million against Brown and Williamson Tobacco Corporation for discriminatory pricing practices under Robinson-Patman.<sup>13</sup> In August 1990, a federal judge threw out this jury verdict, maintaining that the goal of the antitrust laws was “to promote consumer welfare, not to discourage aggressive price competition” (Green 1990). The plaintiffs are appealing. Although the judge’s decision is in keeping with the newer thinking on the part of the courts and the Federal Trade Commission, the very large award and the still uncertain outcome of this case cannot help but reinforce the feeling among businessmen that Robinson-Patman is still very much alive.

Some specialists, asked about compliance suggest that it is necessary to differentiate between large and small firms. One defined a large firm as one that is large enough to have a general counsel or that sells according to a “sales policy.” Large firms are very much aware of Robinson-Patman. Small firms either are not aware or tend to ignore it. One Robinson-Patman specialist told me recently, “When you talk to sales and marketing people about prices, price discrimination is always the \$64,000 question.”

Lawyers offer all kinds of advice to their clients for overcoming the restrictions against discrimination. In one view, the easiest defense against Robinson-Patman is “to make sure it does not apply to a [covered] transaction at all” (Scher 1986, 533). For example, since Robinson-Patman prohibits the sale of the *same* product to different buyers at different prices, a price concession may be made within the law if the specifications of the product are altered slightly (Scher 1986, 541–42; Whiting 1986, 713). Critics of Robinson-Patman have pointed out that the statute thus encourages an increase in product differentiation and “denies the economy the advantage of longer production runs” (Justice Department 1977, 176).

According to another attorney, the essence of “good” Robinson-Patman counseling is to find a “sophisticated” way by which a firm can cut prices without having the price concession show up in the price quotation. As an

12. Robert M. Klein, American Bar Association, telephone conversation with author, 17 January 1990.

13. *Liggett Group Inc. v. Brown & Williamson Tobacco Corp.*, DC MNC, No. C-84-617-D, 3/2/90, 58 ATRR345.

example, a manufacturer may devise an advertising campaign that would be of definite benefit to a particular customer or a particular class of customers. As a result of the concession, the seller's advertising costs would be higher and its net revenue lower, but the price itself would be unaffected.

### 9.3.2 How Robinson-Patman Might Affect Business Response

Against this background, what can be said about the business response to the PPI survey? The paragraphs that follow, which are necessarily speculative, attempt to delineate various kinds of responses. Since the incentive to discriminate is still strong, and since sanctions against discrimination are now mainly in the form of private suits, which have been increasingly difficult to win, I conclude that there is much noncompliance with Robinson-Patman today.<sup>14</sup> Some of the *noncompliance*, especially among large firms, leads such firms to omit the reporting of prices that are discriminatory by Robinson-Patman standards. Some of the noncompliance among the same firms leads them to report prices that are not true transactions prices, such as list prices. I have no doubt that there are many firms that comply with the law completely. Some conceivably make no attempts to get around the law because of respect for the law, because of the prospective costs of a lawsuit, or because the costs of changing commodity specifications, for example, are too high. These firms report prices that BLS can accept at face value.

Another group ignores the law completely. It is not likely to report to BLS at all. These firms should be found mainly among the refusals at initiation, although there are other reasons for refusals. My guess is that most firms would fall in between the group that ignores the law completely and the group that complies completely.

Sellers who discriminate by making special deals with one or a few buyers are unlikely to report them to BLS. Although Stigler and Kindahl elicited much better cooperation in obtaining prices from buyers than from sellers, they found that even buyers who supplied data for their investigation were unwilling to report "extraordinarily favorable deals" (Stigler and Kindahl 1970, 27). The data on response rates in repricing in the PPI (see table 9.2 above) suggest that even cooperating firms often fail to report prices to BLS regularly. Special deals or discounts from list that firms prefer not to report to BLS could well be important reasons for missing reports. Furthermore, these are not likely to be the sorts of things that a business would report in response

14. Although the plaintiffs lost their appeal in the Circuit Court, their petition for certiorari was granted by the Supreme Court (see Barrett 1992). It remains to be seen how the Liggett and Myers case against Brown-Williamson will affect business behavior. The same question could be raised about the recent Texaco case. In June 1990, in a nine to zero decision, the Supreme Court found that Texaco had violated the Robinson-Patman Act by selling gasoline to two large distributors at discounts that it did not give to smaller retailers. The Justice Department supported Texaco in a brief filed with the Court (Greenhouse 1990). Conceivably, both these cases could lead to greater compliance by business, but they might also make businesses less willing to participate in voluntary surveys, especially price surveys.

to a follow-up telephone call from BLS asking why they failed to send in a particular price. Sellers who discriminate but who use a “sophisticated” method like the advertising example given above may well report but are not likely to report a correct transactions price to BLS.

#### 9.4 What Can Be Done to Improve Reporting of Transaction Prices?

Now that BLS is using a probability sample and has a clearer idea of its response rate, perhaps it should reconsider the universal applicability of its policy of pricing commodities with highly detailed specifications. In its effort to obtain a pure price measure, BLS seems to be pursuing a policy that maximizes specificity. Response rate seems to be viewed as something independent. If my hypothesis is correct, the two are closely related, and there may be a trade-off between them. A system of somewhat less detailed specification might elicit a higher response rate and be optimal with respect to BLS’s ultimate objective—obtaining information on the monthly behavior of prices in each industry. The PPI system, in which nonresponse is more than one-third, would seem to require a reconsideration of the entire approach.

For example, if BLS used somewhat broader commodity specifications at the individual firm level, this might permit the firm to combine customers more easily, and this in turn would make it easier for the firm to conceal special deals. The case for broader classifications is strengthened when one remembers that, under Robinson-Patman, a true price cut can be masked by an apparent change in specifications. Another method of combining could take the form of averaging over a period of time. At present, BLS seeks the shipments price on Tuesday of the week containing the 13th of the month. Perhaps if the prospective cooperator were given the option of reporting on a monthly or quarterly average basis, willingness to participate at initiation and steady participation in repricing would be improved.<sup>15</sup>

In this regard, it is encouraging to see that the steel industry may at long last be reporting transactions prices to BLS (Betsock and Gerduk, chap. 8 in this volume). Large steel companies that in the past would report only list prices for flat-rolled steel products now seem willing to report transactions prices. While expressing uncertainty about why the industry has changed its attitude about reporting, Betsock and Gerduk note that companies are reporting with a one-month lag *average* transactions prices applicable to well-defined commodities. They admit the possibility that a changing mix of customers may introduce distortions into the average prices being reported; this would give the appearance of price change where none existed. Unless that is demonstrably biased, it would seem to be a small price to pay—together with the one-month lag—for obtaining transactions prices in this particular industry.

15. According to Thomas Tibbetts of BLS, “a fair number” of respondents submit average monthly figures to BLS as a compromise offer.

Steel is not unique among American industries. From past studies (e.g., Flueck 1961) there is reason to believe that many other commodities suffer from the biases that were evident in flat-rolled steel. Now that BLS has introduced probability sampling, it could pay special attention to those industries where response rates give the appearance of being well below average. BLS might consider offering such industries the same arrangement that was worked out for flat-rolled steel. For this paper, I would have examined detailed industry response rates, but I was given access to response rates of only a limited number of detailed industries.

There is a large body of price data available from the General Services Administration and the Department of Defense covering items bought by the federal government. Researchers could make comparisons of the behavior of federal prices with comparable prices in the revised PPI in order to highlight problems. As indicated earlier, this was done on a large scale by Flueck for the Stigler Report; it was also carried out on a much smaller scale by Ziemer and Galbraith (1983, 164–73).

## 9.5 Concluding Remarks

BLS should pay close attention to laws and regulations that may affect the data that they are collecting because the kind of data that business is willing to submit is to some extent a function of business compliance with the law. Field agents need instruction in these matters. The solicitation of help from outside groups such as the American Bar Association should be undertaken with this in mind. Most important, BLS questions should be framed so as to maximize response of good-quality data. Improving the low response rate in the PPI survey may mean a greater BLS acceptance of averaging over time and/or greater acceptance of broader commodity specifications.

## Appendix

### *Revenue Procedure 76-36*

***26 CFR 601.204: Changes in accounting periods and in methods of accounting. (Also Part I, Section 472; 1.472-1.)***

Rev. Proc. 76-36

*Sec. 1. Purpose*

The purpose of this Revenue Procedure is to modify the provisions of Rev. Proc. 75-36, 1725-2 C.B. 565, relating to the furnishing of financial data to the Bureau of Census (Census) and the Bureau of Economic Analysis (BEA),



which are agencies within and under the jurisdiction of the United States Department of Commerce.

### *Sec. 2. Scope*

The scope of this Revenue Procedure is limited to those taxpayers who provide Census with information concerning inventory, for which the taxpayers employ the last-in, first-out (LIFO) inventory method, as described in section 472 of the Internal Revenue Code of 1954.

### *Sec. 3. Background*

.01 Rev. Proc. 75-36 sets forth the procedure to be used by the Internal Revenue Service in the examination of Federal income tax returns involving the LIFO inventory requirements of section 472(c) of the Code for the taxable year in which the taxpayer elects or reelects to use the LIFO inventory method, or extends an existing LIFO election to cover all or a greater portion of its inventories, and Census or BEA requests that the taxpayer furnish certain financial information to the appropriate agency.

.02 Section 472(c)(2) of the Code and the regulation issued thereunder provide, in part, that once the LIFO method is elected, it must be used in all subsequent taxable years, unless the Secretary of the Treasury or the Secretary's delegate determines that the taxpayer has used some procedure other than the LIFO method for any such subsequent taxable year in order to ascertain the income, profit, or loss of such subsequent taxable year, for the purpose of a report or statement covering such taxable year to shareholders, partners, or other proprietors, or beneficiaries, or for credit purposes.

.03 Census collects data on inventories of manufacturing and wholesale firms in the economic census conducted every five years. Similar data are also collected in monthly and/or annual surveys for manufacturing, wholesale, and retail firms. These data are collected under the authority of title 13, United States Code, 1.3 U.S.C.A. section 9 (Supp. 1975) (title 13). Section 9 of title 13 states that the information collected may not be used "for any purpose other than the statistical purposes for which it is supplied" and further prohibits "any publication whereby the data furnished by any particular establishment or individual under this title can be identified." This section also does not permit "anyone other than the sworn officers and employees of the Department or bureau or agency thereof to examine the individual reports."

.04 Under the provisions of title 13, data collected in Census surveys are exempt from disclosures under the Freedom of Information Act. Data on individual firms may not be released because (1) they are "specifically exempted by statute," and (2) they are "commercial or financial information obtained from a person and privileged or confidential." (Section 552(h)(3) and (b)(4) of title 5, United States Code, 5 U.S.C.A. section 552 (Supp. 1975).)

.05 Census requires taxpayers to submit financial information in the year of the LIFO election, reelection, or extension, as well as in subsequent taxable

years. Certain of the required information is not available on a LIFO basis (for example, inventory on a location basis) and some taxpayers have been reluctant to submit the required information because Rev. Proc. 75-36 is limited to the year of the LIFO election, reelection, or extension.

.06 The information to be furnished to Census will not be furnished by the taxpayer to any other persons nor will it be furnished to other government agencies unless otherwise authorized by the Service.

#### *Sec. 4. Application*

In the examination of returns, a taxpayer's LIFO election will not be terminated for Federal income tax purposes solely because the taxpayer has furnished financial information required by Census to Census on a non-LIFO basis, for the year of the LIFO election, reelection, or extension, as well as for subsequent taxable years. This Revenue Procedure applies to all financial information collected by Census under the authority of title 13, and exempted from disclosure under the Freedom of Information Act, under the authority of title 5, United States Code, 5 U.S.C.A. section 552 (Supp. 1975). . . .

#### *Sec. 6. Effect on Other Documents*

To the extent provided herein, Rev. Proc. 75-36 is modified.

#### *Sec. 7. Inquiries*

Inquiries in regard to this Revenue Procedure should refer to its number and be addressed to the Commissioner of Internal Revenue, Attention T:C:C, 1111 Constitution Avenue, N.W., Washington, D.C. 20224.

*26 CFR 601.105: Examination of returns and claims for refund, credit or abatement, determinations of correct tax liability. (Also Part I, Section 167; 1.167(a)-11.)*

Asset depreciation range system; aircraft and air transportation assets. Asset guideline classes, asset guideline depreciation periods and ranges, and annual asset guideline repair allowance percentages are set forth for aircraft and air transportation assets first placed in service after April 15, 1976; Rev. Proc. 72-10 modified.

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## Comment Robert W. Crandall

Betsock and Gerduk deal with a rather common problem in the measurement of industrial prices: the use of list prices versus transactions prices. For many years the Bureau of Labor Statistics (BLS) had relied on list prices for steel industry prices in the producer price index (PPI). This may have been satisfactory if list prices moved with actual transactions prices, but in the 1980s changes in list prices clearly did not mirror changes in transactions prices. BLS discovered in 1982 and again in 1986 that transactions prices and list prices moved in opposite directions. As a result, BLS was forced to reexamine its approach to collecting price data in its 1990 resampling of the industry.

Betsock and Gerduk point out the difficulties in linking a new set of steel prices to the old price series when transactions data are not available for earlier years. They also discuss the effect of changes in industry structure on steel price reporting. The new, competitive minimills generally provide transactions prices for bar and rod products, but the older integrated firms sell in two quite different markets, in which prices may diverge. For sheet and plate products in particular, the large steel companies sell to large buyers under annual contracts. Month-to-month deviations in these contract prices are likely to be quite small. In addition, the larger mills also sell on the spot market, often through steel service centers. The mix of contract and spot sales is unfortunately changing, further complicating BLS's problem.

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The authors distinguish between actual price quotations at a point in time versus average monthly prices, suggesting that BLS has traditionally preferred the former for the PPI. Why this preference should exist is not clear to me. Nor is the problem of trying to obtain price data from different divisions or even from buyers seemingly an insuperable one. If the PPI steel series is to measure the movement in prices received by manufacturers, it would seem desirable to check price quotations with both buyers and sellers—a point made by Stigler and Kindahl (1970) two decades ago.

In their revised paper, Betsock and Gerduk tell us that BLS was finally able to persuade most of the large integrated producers to submit average transactions price data with a one-month lag. The authors seem somewhat surprised by these firms' change of heart. For decades, they had refused to supply transactions prices, preferring instead to give BLS unrealistic list prices. But, with the continuing growth of competition from minimills, reconstituted integrated companies, and imports, it now appears that the industry has essentially given up on the notion that it can prevent price cutting from announced list prices. The minimills are now invading even the sheet products and are poised to drive the integrated firms from the structural steel market. "Administered pricing" for steel has been relegated to the dustbin of history.

The authors are rather oblique in their discussion of the current steel price sampling methodology. It would be very helpful if they explained more precisely their current procedures, including the number of reporters, the number of contract price reports, the number of spot price reports, and their distribution by steel mill product.

Foss's paper takes up an important issue that is raised by Betsock and Gerduk: the reluctance of sellers to report transactions prices. He carefully reviews the response rate of firms to other government surveys and finds that the response rate to the PPI is somewhat lower than for all the other surveys in his study. He concludes from this that firms are more reluctant to report price data than any other type of economic information.

Foss's explanation for the low response rate to the PPI survey is that firms are afraid that such responses could be the basis for Robinson-Patman Act actions even though BLS assures businessmen that their individual responses will be protected from other agencies' inquiries. If this explanation were correct, one would expect to find that industries subject to the greatest probability of Robinson-Patman Act actions would have the lowest reporting rates. Moreover, one would also expect response rates to vary with the degree of Robinson-Patman enforcement over time. Given the recent inactivity of the Federal Trade Commission (FTC) in Robinson-Patman litigation, one would expect businesses to be less and less fearful of providing price data to the BLS. Foss reminds us, however, that private treble damage suits are still a threat in this area.

I believe that there are at least two other explanations for the low response rates to BLS price surveys. First, businesses in some concentrated industries

may not want anyone to know when they depart from tacitly collusive list prices to expand their market share. Second, the fear of the possible imposition of price controls may inhibit firms from reporting actual transactions prices. If the tacit collusion theory is correct, response rates should vary across industries, with the most concentrated having the lowest response rates. If the price control theory is valid, response rates should fall after periods of price controls but rise again after long periods of relative price stability.

Interestingly, the steel industry has engaged in a variety of pricing practices that have been claimed to be overtly or tacitly collusive. The Judge Gary dinners, of course, are legend. In the 1930s and 1940s, the use of basing-point pricing by steel companies became quite controversial, and the FTC was eventually successful in attacking this pricing policy in the *Triangle Steel Conduit* case in 1948.

Foss's theory deserves to be tested against the evidence, but I am skeptical that the Robinson-Patman Act alone explains much of the variance in response rates. I would add a few more dimensions to the theory of firms' reluctance to comply with BLS requests.

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