

November 22, 1935.

Mr. S. S. Yates, President,
Chicle Development Co.,
300 Fifth Avenue,
New York City.

Dear Mr. Yates:

Re: "X" Matter.

The preliminary hearing with the United States Department of Agriculture, on November 20th, was very valuable, because it developed two important facts of fundamental significance.

The first fact is that the government has found the detained chicle to contain up to 22 parts per million (or, as I understand, 1.50 grains per pound) of "X", which amount when calculated upon the basis of the proportionate maximum amount (20 to 30%) of chicle is gum, largely exceeds the official tolerance. Now this is manifestly a serious fact. It may be true, as Dr. Kehoe suggests, that the government's method of analysis has exaggerated the amount of "X" in this chicle. But the question remains whether this exaggeration exists and, if so, whether, when this exaggeration is corrected, the resulting amount of "X" in gum transcends the tolerance. On the other hand it may be true, as the government contends and Dr. Horwitt informed me, that any error in the government's finding of "X" in chicle resulting from the use of its present method of analysis favors the importer. But between these two views the fact remains that the government is satisfied that its method is reasonably adequate for law enforcement here and that its aforesaid maximum 22 parts per million finding stands as its basis for law enforcement, until some modifying development occurs which is not yet in sight. Now the fact of this maximum finding is serious because it means that the government will eventually exclude the importation of chicle containing "X" in an amount which, when calculated upon the basis of the foregoing maximum chicle content of gum, exceeds the tolerance. For such exclusion will become a matter of public record. I state this meaning upon the basis that it is not practicable to recondition such chicle to take out all or the excess amount of "X". But, of course, this last statement opens up another

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remedial avenue here. It is the avenue of so reconditioning any exceptional (I presume it is exceptional) chicle, containing an excessive amount of "X", to get it imported without law enforcement exclusion, in order to avoid a public record of such exclusion and notwithstanding such chicle may be unfit for subsequent gum use. But whether this remedy is practicable is a question I am unable now to answer. And it involves the further difficulty of taking care of chicle importations by others which are excluded from importation because of excessive "X" content. Assuming, however, that for one reason or another the plan of securing condemned chicle entry is not practicable, upon a reconditioning basis, either as to our three importers or generally, then the only remaining remedy here is to develop a control at the point of foreign production or shipment which will make certain, by representative analyses, that no chicle is offered for importation which does contain an excessive amount of "X". We are unquestionably required, as a matter both of company policy and food law enforcement, to develop a control over chicle production which is effective to prevent "X" external contamination. And if "X" is a natural ingredient and a public record of chicle import exclusion for excessive natural "X" is to be prevented, then the additional analytical control before importation shipment must be instituted. For this record of exclusion will soon get around the country and the Consumers' Research and other agencies will thereby be positioned to raise the public issue of "X" in chewing gum, as a damaging commentary. It is true, of course, that the very fact of this chicle exclusion for excessive "X" is effective to safeguard gum composition as to "X", presumptively speaking. But the point I am making is that once there is any basis for raising this "X" public cry by those who are interested to do so, the damage is done in a practical sense. And the problem is to remove the basis for that damage.

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The second fact is that the government will only collaborate with our chicle importers, upon the basis of an adjourned hearing to complete our scientific investigation and of a suspension of additional chicle detentions in the meanwhile, if the gum manufacturers institute a due practical "X" control plan which will be effective to safeguard public health, during this intervening period, from the standpoint of the food law. Naturally the government cannot temporarily suspend that law or temporarily desist from its enforcement as to chicle containing "X" in an amount, which when proportionately reduced to the figure represented by the maximum chicle content of gum, exceeds the tolerance, unless a compensating effective commercial control is immediately instituted. We did not know that the detained chicle does contain such an excessive amount of "X" until this preliminary

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It follows, therefore, that I must be prepared to submit a plan of such effective commercial control, at the Washington hearing, and to state that this plan is now in execution. Moreover it is essential from the standpoint of each gum manufacturer that, as a matter of policy and necessary self-protection, he put this plan into effect. For he must make reasonably sure that he markets no gum containing "X" in an amount transcending the tolerance. And while the planned gum analyses by Dr. Kehoe are good material for the final hearing, they have but a limited value. For the fact is that "X" in chicle is a variable condition. It may be in some chicle and not in other chicle; its amount in chicle ranges from a minimum to a maximum; and the maximum (when translated as aforesaid) may exceed the tolerance, with respect of gum. So that while the gum analyzed by Dr. Kehoe may contain no "X" or "X" within the tolerance, other gum may contain "X" exceeding the tolerance; the extent to which it does nobody knows; and the government has the responsibility of preventing the interstate marketing of such gum. What I am endeavoring to say is this. The government's finding of this excessive amount of "X" in this chicle has squarely presented the question that there must be some effective control to prevent the marketing of gum containing "X" in violation of the tolerance. And if we ask the government to waive its control, temporarily, we must substitute an equivalent effective commercial control. And even if we do not ask any temporary waiver of government control and as a matter of plainly required company policy this commercial control must be instituted in any event and as a permanent thing. In short, we have the double problem of getting by this law enforcement difficulty upon some basis satisfactory to both sides, and without damaging publicity, and also of instituting an effective commercial control policy for permanent duration. And in dealing with this problem we must consider how the other gum manufacturers will be brought under this control. For the government must also have them in mind.

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Now it is clear that this commercial control first includes (a) action to prevent external "X" contamination in production and subsequent handling; and (b) action to prevent the shipment for importation of chicle which contains natural "X" in an amount which, when translated, exceeds the tolerance. In my letter yesterday I asked you to submit a practical plan of the (a) control. In this letter I have presented the question of the (b) control.

It is also clear that this commercial control next includes (c) action for the representative analysis of imported chicle, to discover any that contains an excessive amount of "X" for due correction or disposition accordingly; (d) action for the representative analysis of the manufactured mixture com-

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of "X" for due correction or disposition accordingly; and (f) action for the biologic examination of gum containing the known maximum amount of "X" negatively to establish its non-injurious character in a health sense.

If a due plan for the foregoing control is developed and instituted, then it is a fair basis for the requested government collaboration. And, in any event, such control is practically required, to safeguard the gum business in its health and financial aspects. I realize that this control plan presents a new problem and many difficulties. But obviously it must be immediately effectuated, in sheer self-protection and to get out of this law difficulty upon a basis satisfactory to both sides.

My policy is to do everything to avoid publicity of this law situation and to avoid any resulting lawsuit. Our gum manufacturers cannot afford even to have a successful lawsuit, because of its damaging publicity. But if I am to bring them safely through this unavoidable law enforcement situation, then they must cooperate by developing this required commercial control plan and put me in the position of announcing it at the final hearing in Washington.

Therefore please act and advise me at once accordingly.

Sincerely yours,

Charles Wesley Dunn

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