In addition, there are 44 States in which the law says you cannot substitute. So, although there is available to the Defense Supply Agency and to New York City, perhaps 25 versions of the same compound—under generic and brand names—competitive bids are possible. In the retail market, on the other hand, competition does not exist, and that is why the price can be 25 times as much as in the institutional market. Therefore, if you use the wholesale price as a standard, you have no guideline at all.

If the VA and the DSA are using it as a standard, they ought to get rid of it in a hurry because the taxpayers are getting cheated by it.

Mr. CROWTHER. There is no question about the fact that the selection process determines which drug is to be procured, and there are a large number of sole source drugs that are used in all Government facilities. Certainly, that raises the question of competition.

The problem on the wholesale price as a standard, however, is there is not much of an alternative at this point for sole source drugs. They can negotiate with the manufacturer but until we change the selection process, we are in a difficult position to say that there is a better standard to use, with all the defects that exist in the wholesale standard.

Senator NELSON. Well, if it is sole source but available in Europe, the Federal Government can compare the domestic price with the price over there.

Mr. STAATS. That is true.

Senator NELSON. And it has been done a couple of times. If there is anything that will make the seller reasonable in a hurry, it is to buy overseas, if the domestic price is exorbitant. If a drug which is available overseas, meets USP and NF standards, is, for example, one tenth the American price, it seems to me that Defense Supply Agency and the Veterans' Administration ought to say to the American company: "You are the sole source here, but if you are going to charge this price we are going to buy it in Europe."

Some of our witnesses thought this was a good idea, but they had never checked the European prices of the drugs they were buying. It seems to me that that would be the first thing they should do. If the foreign price is dramatically lower than the domestic price, then consideration should be given to purchasing the drug abroad.

Would that not be a reasonable approach? The law provides that the Federal Government is not bound by the exclusive license of the American manufacturer or the patent of the American manufacturer. Is that not correct?

Mr. CROWTHER. The problem with that, of course, is that we are not in much of a position to say that if a patent infringement suit were to follow, the results of the suit may actually reduce the price. We have not had that——

Senator NELSON. No. I am talking about the right of the Federal Government to purchase even though *x* company is the sole supplier in the United States by license, and nobody else may sell it in the marketplace, or even though *x* supplier in America has the patent in America. If the same drug is available in another country, the