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AMENDING THE STANDARD CONTAINER ACT OF 1928

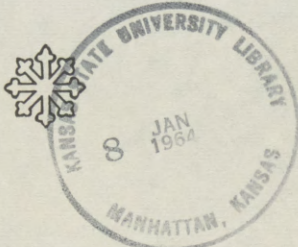
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HEARINGS BEFORE THE COMMITTEE ON SCIENCE AND ASTRONAUTICS U.S. HOUSE OF REPRESENTATIVES EIGHTY-EIGHTH CONGRESS FIRST SESSION ON H.R. 5792 SUPERSEDED BY H.R. 9334

OCTOBER 2 AND DECEMBER 3, 1963

[No. 7]

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ACT OF 1938

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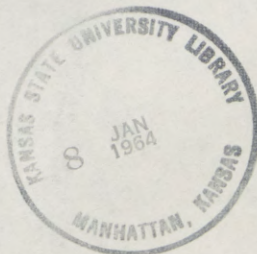
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H.R. 5792, 88TH CONGRESS, 1ST SESSION

A BILL To amend the Act of May 21, 1928, relating to standards of containers for fruits and vegetables, to permit the use of additional standard containers

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the first sentence of the first section of the Act entitled "An Act to fix standards for hampers, round stave baskets, and splint baskets for fruits and vegetables, and for other purposes", approved May 21, 1928 (15 U.S.C. 257), is amended—

(1) by striking out "One-eighth bushel" and inserting in lieu thereof "One-sixteenth bushel, one-eighth bushel";

(2) by inserting "seven-eighths bushel," immediately after "three-fourths bushel,"; and

(3) by inserting "one-and-one-eighth bushels," immediately after "one bushel,".

(b) The first section of such Act of May 21, 1928 (15 U.S.C. 257), is further amended—

(1) by redesignating paragraph (a) as paragraph (aa) and by inserting immediately preceding such paragraph the following new paragraph:

"(a) The standard one-sixteenth bushel hamper or round stave basket shall contain one hundred and thirty-four and four-tenths cubic inches.";

(2) by inserting immediately after paragraph (d) the following new paragraph:

"(dd) The standard seven-eighths bushel hamper or round stave basket shall contain one thousand eight hundred and eighty-one and sixty-two one-hundredths cubic inches."; and

(3) by inserting immediately after paragraph (e) the following new paragraph:

"(ee) The standard one-and-one-eighth bushel hamper or round stave basket shall contain two thousand four hundred and nineteen and twenty-two one-hundredths cubic inches."

SEC. 2. (a) The first sentence of section 2 of such Act of May 21, 1928 (15 U.S.C. 257a), is amended by inserting "fourteen-quart basket," immediately after "twelve-quart basket,".

(b) Section 2 of such Act of May 21, 1928 (15 U.S.C. 257a), is further amended by inserting immediately after paragraph (c) the following new paragraph:

"(cc) The fourteen-quart splint basket shall contain nine hundred and forty and eight-tenths cubic inches."

THE HISTORY OF THE UNITED STATES

A HISTORY OF THE UNITED STATES, FROM THE FIRST SETTLEMENTS TO THE PRESENT TIME.

By J. W. FULTON, Esq. of the City of New York.

Published by J. W. FULTON, No. 10, NASSAU ST. N. Y.

NEW YORK: J. W. FULTON, No. 10, NASSAU ST. N. Y.

1847.

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AMENDING THE STANDARD CONTAINER ACT OF 1928

WEDNESDAY, OCTOBER 2, 1963

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SCIENCE AND ASTRONAUTICS,
Washington, D.C.

The committee met at 10 a.m., pursuant to call, in room 214-B, Longworth Building, Hon. George P. Miller (chairman) presiding.

The CHAIRMAN. The committee will be in order.

This morning we will take up the legislative item, an amendment to the Standard Container Act of 1928. We have identical bills proposing these amendments; four of them sponsored by members of this committee and the fifth sponsored by our colleague, the gentleman from Florida, Congressman Matthews.

The first witness this morning will be our colleague, Hon. D. R. (Billy) Matthews, of Florida. Others to be heard on the matter: Mr. Floyd F. Hedlund, Director, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture; Dr. R. D. Huntoon, Deputy Director, National Bureau of Standards; Mr. Alvin A. Voges, secretary-manager of the American Veneer Package Association.

Following the disposition of this matter we will pass on to H.R. 5838 and S. 1064, both of which Dr. Huntoon will be a witness.

The first witness then that I am very happy to call is our colleague, Hon. D. R. (Billy) Matthews, of the great State of Florida.

STATEMENT OF HON. D. R. MATTHEWS, MEMBER OF CONGRESS, STATE OF FLORIDA

Mr. MATTHEWS. Mr. Chairman and gentlemen of the committee, please, first of all, let me thank you sir, for having a hearing on this bill and for the privilege of testifying for it.

H.R. 5792, as the chairman has said, gentlemen, is the bill under discussion and as he has also said four distinguished members of this committee have introduced identical legislation.

As I'm sure most of us know, the principal containers for the packing and shipping of fresh fruits and vegetables are baskets and hampers, wirebound crates, nailed wood boxes, and corrugated cartons. Basket and hamper sizes are regulated under legislation enacted in 1928. The sizes and shapes of wirebound crates, nailed wood boxes, and corrugated cartons, are not similarly regulated and manufacturers of these containers can, and reportedly do, make any size and shape of container their customers desire. Considerable attention has recently been devoted to congressional hearings on unfair and deceptive packaging and labeling of food and other items. Some rather unhappy conditions existed in this regard when in 1928 the Standard

Container Act was passed. Both prior to and since that time, considerable effort has been devoted to standardization of all types of containers for fruits and vegetables.

When this legislation was enacted back in 1928 coverage extended over most of the container field, however, today this act which H.R. 5792 proposes to amend pertains to the containers of only about 10 percent of the fruits and vegetables shipped to terminal markets.

The containers for the remaining 90 percent are unregulated. Moreover, the standardization of crates, boxes, and cartons, has not developed due to certain opposition and we find then that containers regulated under the Standard Container Act of 1928 are placed in a rather unfavorable competitive position. Those who manufacture wooden round stave baskets and hampers and splint baskets, may I emphasize, Mr. Chairman, have no quarrel whatsoever, with the act of 1928, and the intent of the act.

Let it be said, of course, there are some disadvantages encountered by these manufacturers due to its enforcement, but in the industry, the industry sincerely believes the act of 1928 has effectively reduced the number of sizes and possible deceptive appearance of baskets and hampers regulated under the act. This is very much to the good.

Before the 1928 legislation there were approximately 75 different sizes and shapes of hampers. I don't know just how familiar we are with these items we are talking about. We have a little picture here of hampers and round stave baskets and splint baskets. When Mr. Hedlund testifies, Mr. Chairman, I am sure he will explain more in detail and I might want to pass this little picture around to the members of the committee so they can see it. But let me emphasize again now, before the 1928 legislation there were approximately 75 different sizes and shapes of hampers, some 20 to 25 sizes of round stave baskets and an equal number of splint baskets in more or less common use.

The act reduced this number to nine sizes. It was amended to 10 in 1954 for baskets and hampers and 6 sizes splint baskets. The act further provided for the protection of the public by indicating regulated containers should not be deceptive in appearance. Baskets and hampers are in $\frac{1}{8}$ -bushel gradations from $\frac{1}{8}$ bushel through $1\frac{1}{4}$ bushel but exclude the $\frac{3}{8}$ bushel and $1\frac{1}{8}$ bushel sizes. One and one-half and two bushel sizes are also permitted.

Splint baskets are limited to 4-, 8-, 12-, 16-, 24-, and 32-quart sizes. The general adequacy of these size ranges is supported by the fact only once in over 35 years' time has Congress been asked to amend standard container legislation. That was in 1954 when three-eighths bushel baskets and hampers were added. However, between 1928 and 1963 substantial changes have occurred in marketing conditions and practices. These changes have created a need or demand for additional sizes of containers, containers which by present law cannot be supplied by makers of wood round stave baskets and hampers and splint baskets but which can be produced by their regulated competitors.

H.R. 5792 and the other bills before the committee, propose to amend the Standard Container Act of 1928 to permit the manufacture and use of and baskets hampers of the sizes $\frac{1}{16}$ bushel, $\frac{1}{8}$ bushel and $1\frac{1}{8}$ bushels and a 14-quart splint basket.

Representatives of the industry, I'm sure, will justify these specific justifications of these sizes. So, in other words, Mr. Chairman, all

this legislation proposes to do is to grant to the manufacturers of these containers the privilege of manufacturing these several extra sizes. It's my understanding that perhaps the industry this morning would beg your indulgence in permitting them to ask for one other additional size to take care of some shipments to Canada.

May I say that if that be true, as author of this legislation I would certainly be in favor of that. I would have no objection to it.

Let me emphasize, Mr. Chairman, this legislation does not want to do away with any of the regulation that was made possible by the act of 1928. It's just to give to the industry these several extra sizes of containers. It's my understanding that the Departments of Agriculture, Commerce, and Health, Education, and Welfare, have all responded favorably to this legislation; but with a suggestion that the container size be stamped on each container.

And, may I say, as author of this particular bill, I certainly would have no objection to that amendment if the committee saw fit to include it.

It's my sincere belief that the passage of this legislation would permit a relatively small industry to make several sizes of baskets and hampers not now permitted. The manufacture of these sizes would allow them to compete on a more favorable basis with their competitors who require no such legislative sanction.

I believe it is noncontroversial and I myself have found no opposition to this legislation.

Mr. Chairman, thank you so much for this privilege of being with you this morning.

The CHAIRMAN. Thank you, Mr. Matthews.

Are there any questions of Mr. Matthews?

Mr. FULTON of Pennsylvania. I have one.

Under what clause does this regulation occur? Is it the commerce clause?

Mr. MATTHEWS. I would say, Mr. Hedlund—is it the commerce clause?

It's under the weights and measures clause of the Constitution, I believe, Mr. Fulton. Let me hasten to say, sir, I am not a lawyer and I may have to get some help to answer some of these questions. I say that very frankly.

But that's one answer that it would seem to me to be rather logical.

The CHAIRMAN. The enforcement of this is in the Department of Agriculture.

Mr. MATTHEWS. Yes, sir, that is correct, Mr. Chairman.

Mr. FULTON of Pennsylvania. I imagine both are under weights and measures as well as under the commerce clause.

Mr. MATTHEWS. That sounds logical.

Mr. FULTON of Pennsylvania. The next question is, Why can't the States regulate this packaging and container size? Why does the Federal Government have to expand its authority?

Mr. MATTHEWS. May I say that the question is most interesting to me because I don't believe in the Federal Government participating in these matters any more than necessary but again I say the answer would be these articles move in interstate commerce shipped, of course, to all the States and into some foreign countries, I believe.

Mr. FULTON of Pennsylvania. It is refreshing to find somebody south of the Mason-Dixon Line in Congress recommending expansion of the commerce clause of the U.S. Constitution—I congratulate you.

Mr. MATTHEWS. I say to my beloved and distinguished colleague, the gentleman from Pennsylvania, that this does not involve any expansion of the commerce clause.

Mr. FULTON of Pennsylvania. What will this legislation cost budget-wise for the Federal Government?

Mr. MATTHEWS. In my opinion it would be a very relative and minor cost. Mr. Hedlund of the Department will testify later as an expert witness.

If you ask Mr. Hedlund, I am sure he could answer that.

Mr. FULTON of Pennsylvania. How do you enforce such a statute? What kind of penalties are there?

I will delay that also.

Mr. MATTHEWS. Mr. Fulton, again, I would be grateful if you would ask the expert witness who is going to testify a little later. Frankly, I just do not have the answers at this time.

Mr. FULTON of Pennsylvania. Is a requirement of stamping on the container, the size, and so forth, an interference with the freedom of contract?

Mr. MATTHEWS. It would be my opinion it would not. I think all of us who are proposing this legislation want to do everything possible to see that the consumer is not deceived or the customer is not misled. Let me emphasize, I am sure there would be very little deception without the stamping of the container size; but I think the industry would certainly agree to the stamping of the container size if this committee felt the customer should be protected in that regard.

Let me emphasize I believe there would be very little deception. I don't know how desirable and necessary it is, but the departments have recommended that be done as you recall.

Mr. FULTON of Pennsylvania. That would cause me some legal concern. If the requirement of container size is not connected with the prevention of a deception on the purchasing—

Mr. FUQUA. Mr. Chairman, will the gentleman yield?

Mr. FULTON of Pennsylvania. Yes, sir.

Mr. FUQUA. Mr. Fulton, I have in a proposed amendment—you have on your desk—I planned to offer it at an appropriate time; that will require the size to be stamped on and it will be crystal clear; the consumer will not be deceived. I understand most all manufacturers of these voluntarily stamp the size on, but this will make it mandatory, so if it's on a 5-pound bag of sugar or something you buy in the store the consumer will have a knowledge of what the contents are.

The CHAIRMAN. Would the gentleman yield?

Mr. FULTON of Pennsylvania. Yes.

The CHAIRMAN. May I call your attention to the fact all canned goods must have the contents stamped on them and that in the case of the sale of any types of liquor under the Federal law the contents of the bottle must be put on the bottle. It is a good precedent for what is being done here.

I think this has been carried out in other areas. This is an application in this particular case.

Mr. FULTON of Pennsylvania. Of course, on the statutory basis when we are expanding Federal power, I want to see there are certain

limits set and as you have all pointed out these powers can be expanded into other fields so that being a southern Congressman from south Pittsburgh, I want to see that we are not unduly expanding the commerce clause because if I send a box of candy to a colleague signed "bushels of love," it is a container, so I might have to designate the number of bushels.

Mr. MATTHEWS. I think the gentleman's point is very well taken.

The CHAIRMAN. May I remark, the gentleman is a bachelor and nobody but a bachelor would think of that.

Mr. WAGGONER. Mr. Chairman, may I remark, I hope the gentleman won't have the same attitude when we attempt to expand the commerce clause 7182.

Mr. FULTON of Pennsylvania. May I comment on this?

The CHAIRMAN. This is not before this committee.

Mr. FULTON of Pennsylvania. As a matter of fact, I do feel the commerce clause is being unduly expanded and it should not reach into every facet of every industry and the lives of all the people so that I am against the Federal Government overreaching on the commerce clause and that's a very amazing statement to say, but I think it is an error of the present administration to talk about expanding the commerce clause; I think we are in a precedent-setting point here. We should examine rather closely to see that we are not expanding the commerce clause unduly.

The question then comes; why don't the States handle these problems themselves and, secondly, why don't the particular industries set their own standards on a voluntary basis so that we do not have the requirement of Federal control.

Mr. MATTHEWS. I think the industry would just be very, very delighted to handle all these matters on a voluntary basis but, of course, the answer to that is that Congress in its wisdom back in 1928 said, "You can't do it." And then again the only answer I believe I could give as to why we should have this type of Federal control is it is an example of goods moving in interstate commerce and I don't believe this legislation would establish any precedent but it rather is just a continuance of the precedent already established. May I again very humbly say, as the gentleman knows, I am not a lawyer.

Mr. FULTON of Pennsylvania. You do very well. You are an expert on various things, I believe. You are one of the experts on boiled peanuts.

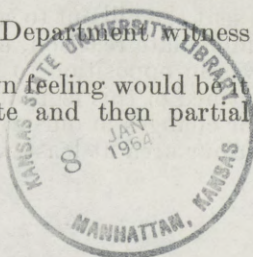
The CHAIRMAN. Let's hurry along.

Mr. FULTON of Pennsylvania. We should point out that this legislation only applies to goods in interstate commerce and therefore does not apply to containers within States when the goods are not contemplated to cross State lines. Is that not correct?

Mr. MATTHEWS. Well, I would say to the gentleman—I don't believe I would agree there. I would imagine some of these goods are shipped within the State. Many of the vegetables would stay right within the State but since—

Mr. FULTON of Pennsylvania. I will ask the Department witness for that.

Mr. MATTHEWS. If you would, please. My own feeling would be it would be a partial movement within the State and then partial interstate movement.



Mr. FULTON of Pennsylvania. You do not feel this is adding something on interstate commerce which is an added burden?

Mr. MATTHEWS. No, I do not think it is an added burden.

Mr. DAVIS. Mr. Chairman, will the gentleman yield on that point?

Mr. FULTON of Pennsylvania. Yes.

Mr. DAVIS. I would like to read from a section of the Constitution designated arbitrarily section 120 in this little book compiled by Lewis Deschler. This section of the Constitution gives the power to the Federal Government to coin money, to regulate the value thereof and of foreign coin, and fix the standard of weights and measures.

Now, this strikes me as being purely and simply performing one of the functions which was granted by the Original Colonies to the Federal Government and that is to fix a standard of measures.

I can't see how the commerce clause is involved. That was one of the things our Founding Fathers quite readily perceived to be a necessary function of a central government and that would be to have measures that applied in all of the—what were then Colonies and what are now States.

The CHAIRMAN. Would the gentleman yield?

Mr. DAVIS. Well, Mr. Fulton has the floor.

The CHAIRMAN. You are just about going to lose it. Your 5 minutes is up.

Mr. FULTON of Pennsylvania. We formerly said it was under the weights and measures clause of the Constitution. My question was, Is it also under the commerce clause?

Mr. DAVIS. You brought that in. I say it does not need to be brought in. It's not involved.

The CHAIRMAN. Mr. Hechler?

Mr. HECHLER. Does the gentleman agree if this were done by State laws or by voluntary action in private industry, you would have a hodge-podge of differing standards and the whole purpose of having it done by the Federal Government is to provide a uniform system?

Mr. MATTHEWS. I think the gentleman is correct, yes.

The CHAIRMAN. Will you yield? I was going to say there'd be a little confusion down in Miami if we brought down there and tried to sell a Los Angeles lug, though. This is a container we use in intrastate California. Doesn't go outside the State.

Any other—Mr. Patten?

Mr. PATTEN. Well, the statement, Mr. Hedlund is going to give makes it plain this is just like coining money. The Federal Government has a duty to fix this. This applies to intrastate as well as interstate.

The CHAIRMAN. Well one forces the other. Any questions?

Mr. Mosher?

Mr. MOSHER. The growing and marketing of fruits and vegetables is an extremely important industry in my area of Ohio and I'm interested in the statement that this is noncontroversial legislation because I sent the bill out to several spokesmen for the industry there and their immediate reaction, although they admit it was uninformed reaction, was in opposition to the bill. They said that they had not been informed of this legislation in any way. There was no demand or need for changes in our area and they were very fearful that the net result in our area at least would be complication and confusion that would

not be necessary, that would not only confuse the industry, but confuse the public.

They raised very seriously the question of the public being misled by these new sizes. Now, the marking of the baskets might help, but pending further word from them on the basis of the testimony I will send them from today's committee hearing, I would think I would have to be in opposition to the legislation.

The CHAIRMAN. Thank you. Mr. Randall?

Mr. RANDALL. Thanks again to our colleague, Mr. Davis, for bringing this out. The point which carries on the decisions of the Supreme Court here told the question of States rights is not involved. It is a Federal right. It is a constitutional right to establish these within the State and not interstate commerce involved whatsoever.

The CHAIRMAN. Any other questions?

Mr. DAVIS. Mr. Chairman, may I ask Mr. Matthews a question?

The CHAIRMAN. I just recognized Mr. Rumsfeld.

Mr. RUMSFELD. I'd be happy to yield.

Mr. DAVIS. I simply want to ask Mr. Matthews if he knows where these containers are manufactured. Are they manufactured in the same areas where the fruit is grown or shipped in from other areas?

Mr. MATTHEWS. If I may, in an aside, sir, consult with a representative of the industry and let me say that I think they would be in other areas sometimes close by.

If you will just give me 1 minute.

May I add to that now, sir, the manufacturers ship these cartons sometimes close to where the vegetables are, but at other times at some distance and across State lines.

Mr. DAVIS. Well, Mr. Matthews, my question had in mind a little more practical political implications, which is: Which congressional districts will be affected? Where are these baskets made?

Mr. MATTHEWS. If the gentleman again will wait until the representative of the industry gets here—

Mr. DAVIS. I will be glad to.

Mr. MATTHEWS. I believe he can supply that information and let me say I know he will be glad to.

Mr. RUMSFELD. Mr. Chairman, Mr. Matthews mentioned letters in addition to Commerce, Agriculture, and HEW. Are these letters available?

The CHAIRMAN. We are going to hear the other witnesses as soon as Mr. Matthews has finished.

Mr. RUMSFELD. I see. There is not a letter he sent as he suggested.

The CHAIRMAN. We have the reports that have come in and they are available.

Mr. ROUDEBUSH. Mr. Chairman, I certainly want to congratulate Mr. Matthews on his appearance here today and, as he pointed out in his opening remarks, I am an author of a similar piece of legislation, H.R. 7709. I think this is good legislation. I think one thing probably escapes or maybe has escaped the members' attention is the fact that this regulation will affect the containers used in only about 10 percent of the shipments of fruits and vegetables. Actually now fiberboard or what we call cardboard cartons are already free and can use many sizes that can't be used by the maker of this particular type of container.

This merely gives the manufacturer of this type of container the authority to use different and additional size containers for shipment.

in interstate commerce. It gives industry the right to compete with sizes and containers already in use, generally in about 90 percent of the shipments.

I think it's good legislation. I think it is permitting a very fine industry to compete with a competing type of container. I recommend its acceptance by this committee. I think it's good legislation.

I congratulate the gentleman, the first author, of legislation in behalf of this problem.

The CHAIRMAN. I am recognizing Mr. Mosher.

Mr. MOSHER. Mr. Chairman, I raise one question. I realize this sort of legislation is brought about because of the tricks of the trade, if for no other reason. I can't help comment on Mr. Davis' quotation from the Constitution when he says the Constitution delegates to the Central Government the authority to establish the standards for weights and measures; to me it is conceivable what the framers of the Constitution had in mind was, that the Federal Government could say 16 ounces make a pound and 4 quarts make a gallon. That is as far as they intended for them to go and maybe we are, as Mr. Fulton says, going just a little bit further.

The CHAIRMAN. Thank you.

Mr. FULTON of Tennessee. Would you yield?

Mr. FULTON of Pennsylvania. I already yielded back my time, but if the chairman will allow me to yield I will.

The CHAIRMAN. I think we have to move along.

Mr. GURNEY. Mr. Chairman.

The CHAIRMAN. Mr. Gurney?

Mr. GURNEY. I don't think much can be added to the very able presentation Mr. Matthews of Florida has made to describe the issues involved. I simply want to lend my own support to the legislation, having introduced one of the bills. It seems to me it's very simply a question of one group of people who manufacture containers are at a disadvantage with another group who manufacture containers, because the group who is here asking for this legislation are regulated by the Federal Government and the other group aren't, and it would seem very fair for the committee to give a more competitive position to this group here before us.

In answer to the point made by our colleague, Mr. Mosher, I think it is well to point this out; it's hard to see where the fears of his correspondents really have too much weight because the sizes now authorized are 16 in number and the people here before us are asking for new sizes of only 4 in number. So, it's hard to see where that could confuse the public a good deal. I think it's good legislation and I hope the committee passes it.

The CHAIRMAN. Any others who haven't spoken?

Mr. FULTON of Tennessee. I would just like to compliment the author of this bill and associate myself with it, for I think it will have more far-reaching effects. It will benefit the consumer as well as those people engaged in the production of the baskets and the packaging of these fruits and vegetables.

The CHAIRMAN. Thank you very much, Mr. Matthews for doing a good job.

Mr. FULTON of Pennsylvania. May I thank Mr. Matthews for an excellent appearance.

At this point I would like to file for the record the statement of Hon. Oren Harris of Arkansas, who is unable to appear this morning.

(The statement referred follows:)

STATEMENT OF HON. OREN HARRIS, MEMBER OF CONGRESS, STATE OF ARKANSAS,
CHAIRMAN, INTERSTATE AND FOREIGN COMMERCE COMMITTEE

Mr. Chairman, I appreciate very much the opportunity to present to you and your committee my feelings about the proposed new container standards set forth in H.R. 5792.

The reasons for the proposed new sizes have been explained carefully by other witnesses, and I do not want to consume more of the committee's time in reiteration of the need. The competitive position of an established industry is at stake. Unregulated container manufacturers have no limitations on the container sizes they may market, and are, as a result, making substantial inroads on established and regulated producers of containers because they have been able to adapt more readily to the changing preferences of their customers.

The industry seeking this legislation designed to expand their range of container sizes has not sought any changes since 1954. They now find themselves in a position where their support of and compliance with regulation of container sizes is working a great hardship on them. They do not propose to eliminate controls or standards. They only ask for four additional containers which will enable them to meet the requirements of their customers in a continually changing market.

The producers of certain products find that it would be of great benefit to them to have a container just a little smaller than the one authorized under present standards. For example, in my area this would apply in the packaging and marketing of peaches.

It is found that in the transportation and marketing of peaches, this additional size, though only slightly smaller, would contribute greatly to convenience and efficiency. It is a matter of being realistic in meeting the changing needs of producers and packagers.

Mr. Chairman, I strongly urge favorable consideration for this very reasonable request.

The next witness will be Mr. Floyd F. Hedlund.

The CHAIRMAN. Mr. Floyd F. Hedlund, Director, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture. You have a prepared statement, I believe.

STATEMENT OF FLOYD F. HEDLUND, DIRECTOR, FRUIT AND
VEGETABLE DIVISION, AGRICULTURAL MARKETING SERVICE,
U.S. DEPARTMENT OF AGRICULTURE

Mr. HEDLUND. Mr. Chairman and members of the committee, my name is Floyd F. Hedlund, Director of the Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture. I have a brief statement to make on H.R. 5792.

The act of May 21, 1928, as amended (15 U.S.C. 257-257i)—sometimes referred to as the Standard Container Act of 1928—establishes certain sizes for hampers, round stave baskets, and splint baskets used for fresh fruits and vegetables. This act provides that it shall be unlawful to manufacture for sale or shipment, to offer for sale or shipment, or to ship any of the listed containers, either filled or unfilled, that do not comply with the specifications of the statute. The law was enacted under the weights and measures clause of the Constitution and, hence, applies to intrastate as well as interstate transactions.

The major objectives of the act of May 21, 1928, are (1) to restrict the manufacture of hampers, round stave baskets, and splint baskets to certain listed sizes, and (2) to assure that those manufactured shall meet the capacity requirements established by this act.

Since the enactment of the Standard Container Act of 1928, only one new container size has been added under the act—a $\frac{3}{8}$ -bushel round stave basket or hamper—added by an amendment of June 28, 1954.

The act of 1928 establishes 10 standard sizes for hampers or round stave baskets; it also provides for 6 standard sizes of splint baskets. H.R. 5792 would amend the act of 1928 by providing for three additional sizes of hampers and round stave baskets (one-sixteenth bushel, seven-eighths bushel, and $1\frac{1}{8}$ bushels), as well as one additional size for splint baskets (14 quart). If H.R. 5792 were enacted, this would mean that (by adding the $\frac{7}{8}$ -bushel and the $1\frac{1}{8}$ -bushel sizes) hampers and round stave baskets could then be manufactured in $\frac{1}{8}$ -bushel capacity intervals from the $\frac{1}{8}$ -bushel size through the $1\frac{1}{4}$ -bushel size.

At present, splint baskets may be manufactured in 4-quart capacity intervals from the 4-quart size up to the 16-quart size. For larger sizes, there are 8-quart capacity intervals. Addition of the 14-quart splint basket, as proposed in H.R. 5792, would result in 2-quart capacity intervals between the 12-quart and the 16-quart sizes.

The Department has received no information from fruit and vegetable growers, shippers, receivers, or other potential users of the container sizes proposed in H.R. 5792 to indicate an interest in or need for these additional containers.

The Standard Container Act of 1928 was enacted at a time when bulk shipment of produce, such as potatoes and cabbage, was common and when baskets and hampers were used for a large part of the fresh fruits and vegetables shipped in containers. However, since the passage of the act of 1928, there have been many changes in shipping containers for fresh produce. New containers not in existence at that time have been developed and have become important factors in the handling of fresh fruits and vegetables. Among the types of containers now most commonly used are numerous different kinds of nailed and wirebound crates, lugs, boxes, fiberboard cartons, and bags. These containers may be manufactured in any size or shape as they are not regulated by Federal law. It is estimated that, at the present time, considerably less than 10 percent of the fresh fruits and vegetables are shipped in containers regulated under the act of 1928.

Since the proponents of H.R. 5792 state that the principal reason for requesting authority for manufacture of additional sizes of hampers, round stave baskets, and splint baskets is to meet the competition from other types of containers, consideration might well be given to removing all restrictions of the Standard Container Act of 1928 by repeal of the act.

The only Federal statutes establishing standard sizes for fresh fruit and vegetable containers, other than the act of May 21, 1928, are the act of August 31, 1916 (15 U.S.C. secs. 251-256)—called the Standard Container Act of 1916—and the Standard Barrel Act, approved August 23, 1923. Barrels have become obsolete in shipping containers for fresh fruits and vegetables. The Standard Container Act of 1916 establishes standard sizes for climax baskets, till baskets, and berry boxes for small fruits, berries and vegetables. These are commonly used as retail packages. On the other hand, packages authorized under the Standard Container Act of 1928 are primarily

shipping containers used in wholesale trade and, with the exception of the smaller sizes, are not used as retail packages.

Section 4 of the Standard Container Act of 1928, provides that the specifications of containers covered by the act shall be approved by the Secretary of Agriculture if such containers are of the prescribed capacity and not deceptive in appearance. This approval is given in the form of a certificate of approval which bears a factory identification number which may be used by the manufacturer to identify the containers. The use of this factory identification number is not compulsory. However, manufacturers usually stamp each container produced with the factory identification number to show that the sample container has been submitted to and approved by the U.S. Department of Agriculture. The certificate of approval is issued only after the dimension specifications are submitted by the manufacturer and after examining the container to determine that it is of proper capacity and not deceptive in appearance.

No samples or suggested dimension specifications for the new sizes of containers proposed in H.R. 5792 have been submitted to the Department and, for this reason, we are not in a position to determine whether they would be deceptive in appearance when compared with the containers now permitted under the act.

In order to minimize the possibility of deception, however, it is recommended that the act be amended to require manufacturers to stamp the capacity on each container permitted to be manufactured under the act. With the many gradations in sizes of containers available, we believe that the differentiation of one size of container from another through the suggested marking is necessary and desirable. Therefore, we suggest that the portion of the first sentence of section 5 of the Standard Container Act of 1928 (15 U.S.C., sec. 257d) which precedes the word "*Provided*" be amended to read as follows:

That it shall be unlawful to manufacture for sale or shipment, to offer for sale, to sell, to offer for shipment, or to ship, hampers, round stave baskets, or splint baskets for fruits and vegetables, either filled or unfilled that do not have the capacity in bushels or quarts clearly stamped or marked thereon and do not otherwise comply with this act, or parts of such hampers, round stave baskets, or splint baskets that do not comply with this act: * * *

Department regulations issued pursuant to the Standard Container Act of 1928 presently provide a manner in which containers may be marked or identified by the manufacturer but such marking is optional.

The Department believes H.R. 5792 should be considered in the light of the extensive changes in the types of shipping containers used for fresh fruits and vegetables which have taken place since enactment of the act of May 21, 1928. Of particular significance is the fact that many new types of containers, not regulated as to size or capacity under Federal law, have come into common use, while hampers, round stave baskets and splint baskets which were extensively used in 1928, now are used for well under 10 percent of fresh fruit and vegetable shipments.

While the Department does not object to the enactment of H.R. 5792, we believe that each container covered by the act of May 21, 1928, should be stamped or marked as to the capacity thereof.

Exhibit A attached indicates the sizes of containers now authorized by the Standard Container Act of 1928 and the additional sizes proposed under H.R. 5792.

EXHIBIT A

SIZES OF CONTAINERS AUTHORIZED UNDER STANDARD CONTAINER ACT OF 1928
AND ADDITIONAL SIZES PROPOSED UNDER H.R. 5792

SIZES NOW AUTHORIZED

$\frac{1}{8}$ -bushel hamper or round stave basket
 $\frac{1}{4}$ -bushel hamper or round stave basket
 $\frac{3}{8}$ -bushel hamper or round stave basket
 $\frac{1}{2}$ -bushel hamper or round stave basket
 $\frac{5}{8}$ -bushel hamper or round stave basket
 $\frac{3}{4}$ -bushel hamper or round stave basket

1-bushel hamper or round stave basket

$1\frac{1}{4}$ -bushel hamper or round stave basket
 $1\frac{1}{2}$ -bushel hamper or round stave basket
 2-bushel hamper or round stave basket
 4-quart splint basket
 8-quart splint basket
 12-quart splint basket

16-quart splint basket
 24-quart splint basket
 32-quart splint basket

SIZES PROPOSED TO BE ADDED UNDER
H.R. 5792

$\frac{1}{16}$ -bushel hamper or round stave basket

$\frac{7}{8}$ -bushel hamper or round stave basket

$1\frac{1}{8}$ -bushel hamper or round stave basket

14-quart splint basket

The CHAIRMAN Mr. Hedlund, the Secretary of Agriculture has the responsibility for administering the provisions of the Standard Container Act. Does the amendment proposed by these bills simplify the administrative procedure in this respect?

Mr. HEDLUND. No, I don't think it would simplify it. Neither do I think it would make it any more difficult. We merely certify as to the sizes and dimensions of containers that are submitted and approve them for manufacture. This would provide a few additional containers but I doubt if the difference would be of any significance.

The CHAIRMAN. What we are really doing is moving the present law ahead to meet the current conditions in the trade, in many cases as a result of new techniques of manufacturing, are we not? Some years ago, nearly all of these things were put into wooden baskets or stave baskets. Now a minimum go into it. Is that not correct?

Mr. HEDLUND. Yes, that's true, Mr. Chairman. As I understand it, the main reason here that the proponents would like this legislation is to provide those sizes of containers that their competitors are providing and they want to meet the competition.

The CHAIRMAN. Trying to meet the competition.

Mr. STAEBLER. Mr. Chairman.

The CHAIRMAN. Any questions? Mr. Staebler.

Mr. STAEBLER. Yes, I would like to refer to the paragraph that begins on the bottom of page 2 in Mr. Hedlund's statement. He is developing the point here, and I wonder if I understand it thoroughly; that the other containers—other, that is, than these baskets and hampers, are not subject to regulation as to size. Is that right, Mr. Hedlund? Do I understand this correctly?

Mr. HEDLUND. They are not subject to any regulation under Federal law. There may be, in some instances, some regulations under State law.

Mr. STAEBLER. But none under Federal law. All the other types of containers, that is, fiberboard, wirebound crates, wooden boxes—these are not subject to regulation?

Mr. HEDLUND. That's correct.

Mr. STAEBLER. Do I understand also that these unregulated containers carry something like 90 percent of the fresh fruits and vegetables that are sold?

Mr. HEDLUND. Yes, sir, that is our estimate.

Mr. STAEBLER. And the regulated containers only 10 percent?

Mr. HEDLUND. Yes, sir, we estimate it is less than 10 percent. We have no way of knowing absolutely the precise amount that is carried in these containers.

Mr. STAEBLER. When we say that the 90 percent are unregulated, do we mean that literally or is there some kind of practice that is subject to control—is it subject to the matter that the chairman mentioned, a while ago, that these other containers do have to carry a stamp indicating the size, and contents?

Mr. HEDLUND. What I meant, sir, is that they are not regulated in the sense that they have to comply with any particular size or dimensions.

Now, obviously, a person cannot market something in a carton and put half a bushel in it and call it 1 bushel. Certainly, they can't do that under regulations that prohibit misrepresentation. But, there is no regulation that says that they have to meet a particular size or a particular dimension.

Mr. STAEBLER. So that the 90 percent of the containers are subject only to administrative control. Is that what you are referring to? The kind of control that the Department of Agriculture presumably maintains?

Mr. HEDLUND. Well, I'm trying to say they can't be deceptive. For example, you can take a bag of potatoes. Potatoes can be marketed in any size bag that the person wants to market, but he has to—if he labels it at all, he's got to show the correct contents of it. If it is labeled a hundred pounds then it has to contain a hundred pounds of potatoes.

Mr. STAEBLER. What are these regulations that require the marking—this is a missing piece of information. If I did more shopping at supermarkets maybe I'd know the answer. What is it?

Mr. HEDLUND. Well, the marking regulations, sir, are primarily the concern of the Food, Drug, and Cosmetic Act. It requires the labeling of packages. We have an act administered by the Department of Agriculture known as the Perishable Agricultural Commodities Act and it provides that nobody can misrepresent by labels or otherwise any of the commodities covered by that statute. In other words, if somebody is marketing potatoes in hundred pound bags and marks it "hundred pounds" he can't put in less than that under that particular statute, but the general labeling requirements most generally used are those in the Food and Drug Act.

Mr. STAEBLER. Do I gather the difference between the two types of containers that might account for this difference in treatment, is that all the other containers are closed containers and, therefore, when you stamp them you have indicated what's inside; whereas the containers we are talking about here are open containers and is there some difference in control for that reason?

Mr. HEDLUND. No, sir; I don't think I could quite agree with you. Most of these containers we are concerned with here are used as closed containers. There is a lid on that bushel basket of peaches when it is sent to market and that lid is quite well fixed so that it can't pop off easily.

I think the main distinction between the regulated and the non-regulated containers is that the regulated containers refer to those containing a specified cubic measure—for example, a bushel or 12 quarts. Now, most of your other containers like bags and boxes, and so forth, pretty much, I think, go on the basis of weight rather than of measure and that's the best distinction I can find between the regulated and the nonregulated.

Mr. STAEBLER. Now isn't there a problem? Don't I hear of a problem of packaging involving these odd dimensions?

Isn't there some problem arising right now in the packaging field, precisely on this question?

Mr. HEDLUND. I have heard of that particular problem that is the subject of a hearing of a different committee, but I think that most of what I have heard or read, that is in the manufactured foods field.

I have not heard any particular references to that in the fresh fruit and vegetable field. I don't know that you can say that so many of the packages are deceptive. I'm one of those who believes that if the container is well marked with the contents, then the buyer, at least, has a way of knowing what's in there.

Mr. STAEBLER. The question, as I recollect, arises because some of the packages become an exercise in mathematics. You are confronted in the store with an article at 49 cents that has 14¼ ounces and another article for 59 cents that has 16⅞ ounces and—which is the better buy.

Mr. HEDLUND. I have gone through that same mathematics, and sometimes I find myself needing a slide rule to find out what the price per ounce is.

Mr. STAEBLER. Maybe one of the arguments for the control of these containers as distinguished from the alternative that you mention here, is that these are at least multiples of a common fraction, that they are frequently used in roadside markets where people don't have a chance to exercise the maximum kind of control, and they are used in a business that has less evident—on which there is less opportunity to check up, that in other fields where there are other containers.

Would that be a justification for retaining—

Mr. HEDLUND. I think you have a good point there.

Mr. FULTON of Pennsylvania. Mr. Chairman.

The CHAIRMAN. Unfortunately, the question has been raised and you have extended over 5 minutes.

Mr. FULTON of Pennsylvania. It hasn't been raised.

The CHAIRMAN. You had 10 minutes to agree.

Mr. FULTON of Pennsylvania. I just want when it comes my turn—the same. I have some questions, too.

The CHAIRMAN. Mr. Rumsfeld.

Mr. RUMSFELD. I would just like to say, on your statement, page 3—

consideration might well be given to removing all restrictions of the Standard Container Act of 1928 by repeal of the act—

concerns me. It seems to me logically from what you said and it was a very fine statement, this committee should either on the one hand, give consideration to repealing the act of 1928 or if these restrictions are in the public interest then we should give consideration to including those containers which are covering 90 percent of the business.

If it's right, it's right for more than simply the 10 percent and from your statement I would conclude possibly the best course we could take would be to repeal the 1928 act.

What would your reaction be as a representative of the Department of Agriculture, to that?

MR. HEDLUND. Well, until the last thing you said, I thought you got the message very well.

We are not proposing repeal. We merely wanted you gentlemen to know of this aspect and consider it.

MR. RUMSFELD. I can read from your statement. My question to you, as a representative of the Department of Agriculture, I am asking you the question—is what I say logical or not logical, that either we should repeal it or we should include the other 90 percent of the packages?

MR. HEDLUND. Well, I think that's a good point of view. I am a little disturbed trying to explain why we have this segment over here under rigid control and this one over here, not. Now, I'm not one of those who thinks everything should be regulated either, and as the gentleman said earlier, I'd go along if the States would do this, I'd be very happy. But the simple fact is, they haven't and I don't think they are going to. But while I am not urging repeal, I think the committee should give attention to that particular question.

MR. RUMSFELD. Certainly, I would be reluctant with respect to this particular piece of legislation to provide some additional sizes and in the process avoid this opportunity of really looking at the question.

I think this would be an appropriate thing for our committee.

THE CHAIRMAN. Mr. Fulton?

MR. FULTON of Pennsylvania. I want to ask some questions on the letter of September 25, 1963, of the General Counsel of the Department of Commerce. I ask it be put in the record at this point.

THE CHAIRMAN. Without objection.

(The letter of September 25, 1963 is as follows:)

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., September 25, 1963.

HON. GEORGE P. MILLER,
Chairman, Committee on Science and Astronautics,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your request for the views of this Department concerning H.R. 5792, H.R. 7116, H.R. 7335, and H.R. 7735, and H.R. 7709, identical bills to amend the act of May 21, 1928, relating to standards of containers for fruits and vegetables, to permit the use of additional standard containers.

The act of May 21, 1928, established standard sizes for certain fruit and vegetable containers made of wood, including hampers, round stave baskets, and splint baskets. It is our understanding that the original purpose of the act was to limit the number of sizes of such containers to those actually necessary and, by selecting standard sizes with sufficient differences in volume, to make these standard sizes self-identifying; that is, a $\frac{3}{4}$ -bushel basket can readily be distinguished from a 1-bushel basket by observation.

The bills would amend the act of May 21, 1928, by adding three new sizes to that portion of the act dealing with hampers and round stave baskets and one size to that section dealing with splint baskets. Addition of these sizes one-sixteenth, seven-eighth, and $1\frac{1}{8}$ bushels and 14 quarts) would impair the self-identifying feature of the act. For example, the average person cannot readily distinguish by observation the difference between a $\frac{3}{8}$ -bushel basket and a 1-bushel basket, or between 14- and 16-quart splint baskets. For this reason the proposed amendment seems to run counter to one of the basic principles of standardized packaging. Loss of the self-identifying feature may no longer be of particular importance, however, since we understand that at present the purchasers of bulk produce in containers covered by the act of 1928 are not consuming households so often as they are retailers and wholesalers who in turn repackage for sale to the public.

Since 1928 many new containers have come into prominence in the packaging of fruits and vegetables. Fiberboard cartons and wirebound crates, for example, are not subject to the standards which were established for wooden baskets and are produced in numerous sizes and shapes. These are adaptable to the particular packing, shipping, and marketing practices associated with a wide variety of fruits and vegetables. Proponents of the bills contend that the additional sizes which it would authorize would enable the wood basket industry to compete more favorably with producers of nonstandardized containers. While we are uncertain whether the limitation of standard sizes is a significant factor in the unfavorable competitive position of the wood basket producers, it does appear that there is a basic inequity which could affect the competitive position of the producers of the standardized containers.

In view of the problems mentioned above, we would have no objection to the enactment of legislation for this purpose, provided the act of May 21, 1928, is further amended to require that each container authorized under the act, as well as similarly used containers which are presently unregulated by that act, be conspicuously labeled so that their size may be readily determined when filled with produce. However, we further feel that the basic reason for imposing legal limits of sizes and shapes for round stave baskets and hampers also applies to other kinds of containers for the same bulk packaging of fresh fruits and vegetables which presently are unregulated. We, therefore, suggest that attention might well be given by the Congress to the broader question as to whether all fruit and vegetable containers should be accorded uniform treatment, as to size standards.

We have been advised by the Bureau of the Budget that there would be no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

ROBERT E. GILES.

Mr. FULTON of Pennsylvania. From my point of view as an attorney of some experience, the act of May 21, 1928, as amended (15 U.S.C. 257-257i), is unconstitutional. Has the act of May 21, 1928, as amended, ever been before an appellate court in this country on the constitutional question involved?

Mr. HEDLUND. I believe not.

Mr. FULTON of Pennsylvania. Next, has the Attorney General ruled on the proposal within this bill to add extra classes which are still limitations?

Mr. HEDLUND. I have no knowledge that he has or that he has not. I just don't know.

Mr. FULTON of Pennsylvania. All right, I ask the Chairman to have the Attorney General of the United States rule on this particular question I am bringing up, because in my opinion under the coinage, weights, and measures section of the Constitution there can be established various measures, sizes, quantities, which become standard, but unless the legislation is placed under the commerce clause there can be no limits on manufacture or shipment in disregard of those sizes.

And then, the limitation can only be on interstate commerce.

Now, my point had been right straight through, that I believe that this is an unnecessary statute because 90 percent of the commerce—is not carried in containers other than those covered by this 8 to 10 percent we are now speaking of.

Is that not correct?

Mr. HEDLUND. Yes, sir.

Mr. FULTON of Pennsylvania. Now then, the amendment proposed here and referred to in the letter of September 25, 1963, of the General Counsel of the Department of Commerce, Mr. Robert E. Giles states—is commented on in the second paragraph.

For this reason the proposed amendment seems to run counter to one of the basic principles of standardized packaging.

Have you read that letter, and would you comment on that, because the Department of Commerce does not approve this legislation. The Department, simply through its General Counsel says, we would have no objection to the enactment of the legislation with a proviso.

Mr. HEDLUND. I have not seen the letter.

Mr. FULTON of Pennsylvania. I wish you could submit that as a statement later. I won't press it at this time.

The Department of Commerce Counsel said on page 2 of his letter:

However, we further feel that the basic reason for imposing legal limits of sizes and shapes for round stave baskets and hampers also applies to other kinds of containers for the same bulk packaging of fresh fruits and vegetables which presently are unregulated.

Therefore, the same principles which we apply to this bill should be applied to the 90 percent of the unregulated commodities, should they not?

Mr. HEDLUND. Well, as I told the gentleman earlier, I think there is a good reason for treating everybody alike.

Mr. FULTON of Pennsylvania. I am asking your opinion at this point. Should it not be extended to the others?

I would like you to say "yes" or "no" on behalf of the Department of Agriculture on that particular point of policy.

Mr. HEDLUND. Well, I don't think I would like to say "yes" or "no," Congressman, if I can satisfy you otherwise.

Mr. FULTON of Pennsylvania. Can you get a departmental ruling on that, if you will?

(The information requested can be found in the committee files.)

Now, on page 3 of your statement you say:

Since the proponents of H.R. 5792 state that the principal reason for requesting authority for manufacture of additional sizes of hampers, round stave baskets, and splint baskets is to meet the competition from other types of containers, consideration might well be given to removing all restrictions of the Standard Container Act of 1928 by repeal of the act.

You say "consideration might be given" but what is the Department of Agriculture's policy?

Should we repeal it—and my answer to that is "yes"—what is the Department's policy?

Mr. HEDLUND. I think the Department's position is we ought to treat everybody alike.

Mr. FULTON of Pennsylvania. Can you have the Department give us a comment on that for the record later?

There is no doubt there cannot under the present statutes be deceptive packaging. That is already taken care of by other statutes, is it not?

If you will put a reference to it—have your counsel get it and put it in here, I would like to have that.

The other question should be on the question of deceptive packaging, requiring every package, not just this type of package, have the designation on it of what it contains—some unit of measurement which is plain to the purchaser whether wholesale, factory, or consumer.

Mr. HEDLUND. Yes, sir, I am in favor of correct and legible labeling.

Mr. FULTON of Pennsylvania. Why shouldn't this be turned into a statute which requires over and above deceptive packaging, because we have a law on that already—that Mr. Fuqua's amendment be the act, that it states plainly on its surface when the package is manufactured or prepared for State or interstate or foreign commerce or intrastate commerce; that there be a specific designation in common units that the average person can make a decision as to price, based on size or volume?

What do you think of that?

Mr. HEDLUND. That sounds all right with me, yes, sir.

Mr. FULTON of Pennsylvania. Would you recommend it as the Department policy?

Mr. HEDLUND. Well, I certainly would recommend that packages be labeled as to their content so that the purchaser or consumer can tell how much is in it.

Mr. FULTON of Pennsylvania. Well, I think that's a fine approach and I would compliment you on it.

Now, in questioning as to the industry acceptance of these particular proposals, just what industry inquiry has been made by the Department of Agriculture?

I, of course, represent a district in and near the city of Pittsburgh, so we are interested in the H. J. Heinz Co., of Pittsburgh. I guess every Congressman legislatively will think of his own people, too, so I would ask you have you consulted with the H. J. Heinz Co., one of the largest processors and manufacturers of food products in the country?

Mr. HEDLUND. No, sir, we have not.

Mr. FULTON of Pennsylvania. I would suggest, before this committee acts, I would agree with Mr. Mosher if there are doubts within the industry, that we should hear them and, secondly, if there are parts of industry that have not been consulted; as Mr. Mosher says, that they then be advised of this proposed legislation.

My other point is this: What associations in the manufacturer processors, shippers, large store chains, as well as small individual stores, have you consulted as to whether this legislation is good for the industry or, as I brought up earlier, whether it makes another clog on interstate commerce.

Mr. HEDLUND. The only association we have heard from is the American Veneer Package Association which I think is represented here today.

Mr. FULTON of Pennsylvania. Are they manufacturers of boxes and containers or are they users?

Mr. HEDLUND. I believe they are manufacturers of the containers regulated by this act of 1928.

Mr. FULTON of Pennsylvania. But there is no user that you know of nor public purveyor that has been consulted as to how this will affect their consumer interest nor their purveyor interest if they are dealing with the general public.

Mr. HEDLUND. That is correct.

Mr. FULTON of Pennsylvania. Don't you think that should be done?

Mr. HEDLUND. I think it would be desirable.

Mr. FULTON of Pennsylvania. Thank you. That is all.

The CHAIRMAN. I would say just for the record we have favorable letters from manufacturers in the States of Indiana, Kansas, Arkansas, North Carolina, and Florida.

Now, Mr. Mosher?

Mr. MOSHER. Bearing on my earlier comments; the third paragraph on page 2 of Mr. Hedlund's testimony interested me very much. It supplements very much what Mr. Fulton is saying.

The Department has received no information from fruit and vegetable growers, shippers, receivers, or other potential users of the container sizes proposed in H.R. 5792 to indicate an interest in or need for these additional containers.

Now, that's the point I was making a few minutes ago. The growers in my area—their immediate reaction was one of opposition because they think it will increase their costs, increase the complications of their job, and they are very skeptical of the need or value of this legislation.

Mr. Chairman, I would like to ask if there is to be any testimony here today from growers or shippers or receivers or whether these people have been notified and given an opportunity to appear here.

The CHAIRMAN. Well, I know they have not been notified. They are given an opportunity to appear, but none of them have written in, or asked to be heard, or this sort of thing and I don't know that the committee could undertake the dissemination of this information to apprise where it goes out and herald it forth. It is public knowledge. Their own organizations generally pick these things up and let us know.

Mr. MOSHER. The indication in my area is they were completely unaware. I think this is their own fault. I agree.

The CHAIRMAN. You wouldn't want to put the burden on us—

Mr. MOSHER. No, but you have not—there is no one to testify here, except the manufacturers. Is that right?

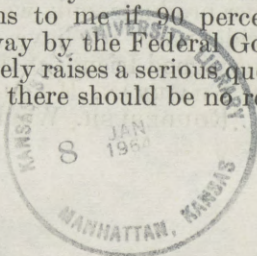
The CHAIRMAN. That is right, so far as we know. The manufacturers—and there is a letter that has come in quite recently from an organization opposing the bill, and I was going to put the letter in for the record, at the proper time.

(The information mentioned can be found in the committee files.)

Mr. MOSHER. I certainly will want to send the testimony out to the people in my area and if they oppose, they may want to come in and represent themselves before the committee.

Mr. FULTON of Pennsylvania. Would you yield?

Mr. MOSHER. I would like to associate myself also with Mr. Rumsfeld's comments. It certainly seems to me if 90 percent of these containers are not regulated in any way by the Federal Government, but this small group is, this immediately raises a serious question before the committee as to whether or not there should be no regulation or further regulation.



The CHAIRMAN. Or further regulation.

Mr. FULTON of Pennsylvania. Would you yield, Mr. Mosher?

✓ The point that you make is well taken, and my belief is that it is the Department of Agriculture which should find out the conditions in the industry rather than this committee or any particular part of the industry.

We should have the survey by the Department and I have already asked for it.

The other point is you have commented on page 4 of the statement of the present witness:

No samples or suggested dimension specifications for the new sizes of containers proposed in H.R. 5792 have been submitted to the Department and, for this reason, we are not in a position to determine whether they would be deceptive in appearance when compared with the containers now permitted under this act.

Consequently there has not been made, the proper research by the Department of Agriculture.

The CHAIRMAN. The time of the gentleman has expired.

Mr. PATTEN. Mr. Chairman, for a noncontroversial subject we have gone far afield here. No. 1. For the desire of protecting Congress there is another committee of Congress that has been working 6 months with loads of witnesses about packaging. This is an enormous subject. I don't think that's our concern this morning. There has been a great deal of work this year in this Congress on this whole question protecting the public. I don't think that is our job.

No. 2. You are dealing with wholesalers for the most part. You don't have to worry about the fellow using the fiberboard or the like. I guarantee, any wholesaler buying truckload or carload, whether Heinz' soup or Campbell's soup, they will check their quantity. We have no problem. We are creating a problem. The only thing for us to look at here is that we are dealing with people working in this good old wood. I like these containers and you see they lost 90 percent of the business and you want to help them, in the competition.

As to protecting the public and how they buy, that is an enormous subject. We don't have to take it up here today just to help these people make these wooden packages. I guarantee the wholesalers get these things, getting them in cartons and boxes—know how to get true weight. If you ever worked around the wholesale house you'd know they go by weight, but you can take a bushel of potatoes and ride here from Baltimore you will have a half basketful sometimes. The problem and need for regulation is in these containers. You don't care how large the bag of potatoes is. You put it on the scale and you know whether it is 98 pounds or a hundred pounds. We weigh the potatoes. If you weigh them, that is one thing. If you buy a bushel, you know how much a bushel will be—depends on how long you travel or how much it is shaken up. You are not going to repeal the act, because this was made as a protection against fraud and double bottoms and deceptive packaging, and so forth. So you are going to keep the act of 1928.

It is a very simple thing these people have a tough time with cheaper products, only want to be put in a better competitive position.

Incidentally, we have a couple of plants in New Jersey—two of my very good friends make these baskets.

The CHAIRMAN. If you would yield to me——

Mr. ROUDEBUSH. Would you yield?

The CHAIRMAN. Just a minute. He is yielding to me.

I should be against this legislation because I have some of the biggest paperboard baskets and containers for agricultural things in my district; but I think I am not going to be that parochial and take care of my district.

The gentleman has the floor. Just about to lose it—go ahead.

Mr. ROUDEBUSH. I'll make this very quick, Mr. Chairman.

I'd just like to ask the gentleman, this type industry has lost 90 percent of the business. Ten percent of this—of the vegetables and other produce—shipped in unregulated containers indicates the need for additional size.

Mr. PATTEN. That is right, we won't hurt these people. We won't have to get into other questions here.

The CHAIRMAN. The time of the gentleman has expired.

Mr. Fuqua.

Mr. FUQUA. Mr. Chairman, I'd like to say, regarding the Department not having information from people requesting these additional sizes, I don't think it would be proper for these people requesting these sizes to go to the Department of Agriculture. These people, the manufacturers, of these boxes, are interested in doing this because the people they sell to are interested and have inquired of them, "Can't they do that?"

They are hamstrung by legislation passed by this Congress and I think what this simple bill does is take some of the stranglehold out and let them have sizes as Mr. Roudebush pointed out and Mr. Patten, these can be competitive with some of these crates, also in any district and not in the boxes.

Mr. FULTON of Pennsylvania. Why don't you leave them open?

Mr. GURNEY. I think Mr. Fuqua makes an excellent point, the same point I was going to make in answer to the question, Is there a need for this?

Seems to me the answer is most simple, these people wouldn't be here for additional sizes unless some users wanted to add sizes and they had to meet the need. That's the reason they are here.

The other point is this, and we ought not to lose sight of this. This point was made by Congressman Rumsfeld and also the witness here from the Agriculture Department, either you ought to have no regulation or all regulation, is a good point.

I would subscribe to that basically, but let's see what we are faced with when we face that.

I don't think this committee is going to take off the regulations.

Then that means there would be a question of regulating all the industries, including the paperboard people.

Obviously, this committee isn't going to do that without extensive hearings which would require a great deal of time. Seems to me it would be a great hardship on these people that represent a small segment of the industry, to have to wait for their really simple and slight amendment here on complete hearings to revolutionize the industry and I don't think that would be fair.

The CHAIRMAN. Would the gentleman yield, so we can keep this thing in perspective.

Mr. GURNEY. Yes.

The CHAIRMAN. We now have 16 types of containers under the law. We propose adding four more, so we're going to add a $\frac{1}{16}$ -bushel hamper. We already have $\frac{1}{8}$ -bushel hampers.

Then we are going between the three-quarter bushel and one-quarter bushel. We are going to add $\frac{3}{4}$ -bushel hampers.

Between the 1-bushel and $1\frac{1}{4}$ -bushel basket we are going to add $1\frac{1}{2}$ and between the 12-quart splint basket and 16-quart splint basket, we are going to add the 14-quart splint basket.

You are not taking anything away. You are merely broadening the spectrum—amending the law to allow these people to meet competition with other groups.

Now, when I was a young man, we grew a great deal of strawberries in our district and they always came in wooden baskets. Today in California you see practically no wooden baskets. They are not paper baskets. They are made out of—

Mr. HEDLUND. Plastic.

The CHAIRMAN. They are plastic baskets, but there is no difference in the size; and all we are doing here is that we are not handling all of the industry and we are not trying this case to see whether it is constitutional. We are just adding four sizes in a field pretty well covered, to make it complete on the basis $\frac{1}{2}$ -bushel sizes and 2-quart sizes fill in the gaps.

Mr. GURNEY. I certainly agree.

Mr. FULTON of Pennsylvania. Will you yield, Mr. Gurney?

Mr. GURNEY. Yes.

Mr. FULTON of Pennsylvania. The problem comes up whether you are really for free enterprise or whether you are for limited enterprise. I feel I am for free enterprise, so I want restrictions on it.

The second point is, if you free them by giving them four more sizes by statutory authority, why not better free them entirely and repeal the act of 1928 and make them exactly equally competitive with the other 90 percent of the industry that has no regulation whatsoever on containers.

Mr. GURNEY. This, I don't argue and I think your point is well made.

Mr. PATTEN. No.

Mr. GURNEY. I simply say we obviously can't do that here. Obviously, have to have full and complete hearings and bring in the whole industry to do this. In the meantime if we don't go ahead with the amendment we have made here, what are we doing? We are killing your idea of free enterprise because we are not allowing these people to compete more favorably with the other people unregulated.

By passing this amendment, we are doing free enterprise a favor.

The CHAIRMAN. People who make fiberboard make $\frac{3}{4}$ -bushel fiberboard boxes but these people can't make the $\frac{3}{4}$ -bushel box.

Mr. Patten?

Mr. PATTEN. You are not going to repeal the act of 1928. That is to protect the public.

The CHAIRMAN. Let's get on.

Now, Dr. Weaver?

Dr. WEAVER. Can you tell us, is the Agriculture Department moving in the metric system of weights and measures?

The CHAIRMAN. Not yet.

Mr. HEDLUND. I think we are discussing it like a lot of other people are. I think it probably is some little distance off yet.

Dr. WEAVER. I see. In other words, you don't see in the near future any transferring from one system of weights and measures to the metric system.

The CHAIRMAN. Doctor, may I answer that for you?

Dr. WEAVER. Yes, sir.

The CHAIRMAN. We have a bill before us that is studying the application on the metric system and they couldn't move to the metric system today until legislation is provided. That has to be the chicken. Now, you are getting back to the chicken and the egg. I don't like to argue with the man who knows biology. One of them has to come first anyway.

Dr. WEAVER. I was thinking, Mr. Chairman, if we are going in that direction, and apparently there is an international movement that way—should these be labeled also in the metric system as well?

The CHAIRMAN. I know in the canned goods industry, most canners, not all of them—there are little ones who are not in the State—are in foreign commerce, may not label their cans—but you take such outfits as California Packers Corp. which is one of the largest, you'll find so many ounces and so many centimeters on every can. They have had to do that if they want to move in foreign commerce, it's got to be done and sooner or later I think we have to come to this.

Dr. WEAVER. My point is, sir, if we are moving in this direction, slowly, as maybe we have to do these things gradually, wouldn't it be better to label it both ways as we go on—the baskets as well as any new laws or acts we pass, of the alternate system of labeling?

The CHAIRMAN. May I say I think we are crossing a bridge? If, I presume we ever adopt the metric system, we will also provide in law the standards that are now set up—will be either interpreted in the metric system or we'll change the whole thing to the metric system at that time.

I think it's a little premature, frankly, to bring that in now because this study is going to take some time and it's estimated it will take nearly a generation to get accepted.

Dr. WEAVER. Thank you.

The CHAIRMAN. Any other questions?

Mr. STAEBLER. Mr. Chairman, would it be in order to ask whether those of us who have this industry—

The CHAIRMAN. Will you just yield—Mr. Fulton, before you leave, you asked me to obtain an opinion from the Attorney General. The Attorney General, I am informed, is only allowed to give opinions to administrative or executive branches of the Government. We have to look to the Comptroller General.

Mr. FULTON of Pennsylvania. That is a good point.

The CHAIRMAN. We will have to contact the Comptroller.

Mr. STAEBLER. Would it be in order for me to make a suggestion? Those of us who have not followed Mr. Mosher's good example in consulting the industry in his area, might have say, 2 weeks in which to do this.

The CHAIRMAN. This is one of the things I have in mind. What I would like to do now is get on with the other witnesses, to get them before you so you will have further information.

Are there any other direct questions of Mr. Hedlund?

(No response.)

The CHAIRMAN. Are we going to hear from Mr. Voges?

Would you mind then, Dr. Huntoon, if Mr. Voges goes on next?

Mr. VOGES. May I have just a minute?

STATEMENT OF ALVIN A. VOGES, SECRETARY-MANAGER, AMERICAN VENEER PACKAGE ASSOCIATION, INC., ACCOMPANIED BY MR. CALLOWAY OF THE ATLAS GENERAL INDUSTRIES, INC.

Mr. VOGES. I do want to thank you and the members for having this hearing and allowing us to appear. With your permission I would like Mr. Calloway to sit with me. He is a manufacturer. Mr. Calloway is from Maryland.

The CHAIRMAN. We welcome you, Mr. Calloway.

Mr. Calloway is with the Atlas General Industries, Inc., of Hebron, Md., and Suffolk, Va., and is engaged in this business. Will you both be seated, gentlemen.

Now, have you a statement, Mr. Voges?

Mr. VOGES. My name is Alvin A. Voges, secretary-manager of American Veneer Package Association, an association of wooden fruit and vegetable container manufacturers, round baskets, hampers, and other kind of baskets in this field. The statement has been made and well made that we are a minority interest in the field of fruit and vegetable packaging. At the time these acts were instituted, we were the very major portion of the field.

At that time, and even since then, and this is by hearsay—it's my understanding there has been repeated attempts to standardize sizes in and among the other competitive containers of wood boxes, of paperboard boxes and of bags, but this has never quite come to a conclusion and actually, if you were in the business of growing agricultural products and packaging them, you could understand that there would be innumerable difficulties in standardizing these rectangular or square containers that are other than ours. This, by reason of a peach grown in one area, isn't necessarily the same weight as a peach grown in another area. A 3-inch peach is a totally different thing than a 1¾-inch peach, so they do need to vary their sizes. In fact, they may vary their sizes in almost minimal amount, maybe an eighth of an inch or a quarter of an inch, they can and do make their containers in sizes according to their whims.

In the field of apple packaging, for example, at the present time, I believe there are some 70 different containers that are used in this packaging and we are—a few of these 70, the rest being paperboard or woodbox-type containers who need to change their dimensions to obtain a given amount of fruit in the containers themselves if for no other reason than a need to accommodate to the varying sizes of the fruit.

A while back I believe, we provided all you gentlemen with a background information sheet which you may have before you, or may not, at least the clerk was given copies to be given out today.

This, largely, is our testimony.

(The background information is as follows:)

AMERICAN VENEER PACKAGE ASSOCIATION, INC., ORLANDO, FLA.

Senate: S. 1950 (Mr. Holland). House: H.R. 5792 (Mr. Matthews), H.R. 7116 (Mr. Fuqua) H.R. 7335 (Mr. Gurney) H.R. 7709 (Mr. Roudebush), H.R. 7735 (Mr. Patten)

A BILL To amend the act of May 21, 1928, relating to standards of containers for fruits and vegetables, to permit the use of additional standard containers

BACKGROUND INFORMATION

Industry

The industry of wood round stave basket and hamper manufacture and splint basket manufacture produces containers which almost exclusively are used for the bulk packing of fresh fruits and vegetables at shipping point and occasionally at wholesale level. Few of these containers reach the consuming households.

Standard Container Act of 1928

The act and its attendant regulations limits the sizes and shapes of round stave baskets and hampers which the industry may manufacture. The industry is permitted to manufacture 10 sizes of these baskets and hampers in $\frac{1}{8}$ -bushel gradations beginning with one-eighth bushel to and inclusive of $1\frac{1}{4}$ bushel but not including $\frac{7}{8}$ or $1\frac{1}{2}$ bushel; it is also permitted to make $1\frac{1}{2}$ - and 2-bushel sizes.

In the type basket known as splint the industry is permitted to make 4, 8, 12, 16, 24, and 32 quart.

History

Prior to and since 1928 considerable thought and effort has been given to standardizing all type containers for fruits and vegetables.

Opposition to standardization of boxes, crates, and cartons has effectively prevented the passage of legislation governing manufacture of these containers in a manner similar in intent and purpose to the Standard Container Act of 1928.

The act of 1928 has effectively achieved its purpose of reducing the number of sizes and the possible deceptive appearance of the type of baskets and hampers included in the act.

Manufacturers of nailed wood boxes and crates, wirebound boxes and crates and paper (fiberboard) cartons are and have been free to make and market any sizes or shape package without regard to standardization.

ROUND STAVE BASKETS AND HAMPERS

Competition

Principal competition to round stave baskets and hampers are nailed wood boxes and crates, wirebound boxes and crates and paper (fiberboard) cartons.

Marketing practices

In the era of 1928 and until recent years fruits and vegetables were largely marketed in terms of bushels and fractions thereof and/or in weights that corresponded to such measure. Today, with modern marketing techniques and equipment many changes in marketing practices have occurred and these practices dictate the sizes of units that best meet the convenience of such changes. Many fruits and vegetables now move to market in package sizes that do not have any indicated relationship to the bushel measure.

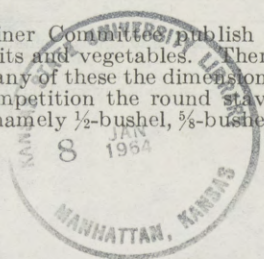
Package size changes

Each year, in recent years, the competitors to round stave baskets and hampers introduce new package shapes and sizes in profuse number. As example, we at this time have before us proposals by competitive container manufacturers for a total of 18 new packages for fruits and vegetables, all of them proposed between January 1, 1963, and April 12, 1963.

None of these proposed new packages are wood baskets and hampers. In fact the round stave basket and hamper industry has not proposed a new package since 1954.

Container tariffs, railroad

The railroads jointly through the National Container Committee publish a synopsis of containers approved for rail loading of fruits and vegetables. There are published upwards of 70 containers for apples, in many of these the dimensions differ only in fractions of an inch. To meet this competition the round stave basket and hamper industry has listed but four sizes; namely $\frac{1}{2}$ -bushel, $\frac{3}{4}$ -bushel, $\frac{1}{4}$ -bushel, and 1-bushel round stave baskets.



The 1962 peach shipment tests

In 1962 the USDA conducted tests of peach shipments in which three of the four test packages were manufactured by competitors of the round stave basket and hamper industry. These three packages had nominal cubic content capacity of: fiberboard carton, 1,981 cubic inches; fiberboard carton, 2,000 cubic inches; wirebound fiberboard and veneer container, 1,987 cubic inches.

It is to be noted that these capacities are in a range less than a bushel (2,150.42 cubic inches) and more than three-fourths bushel (1,612.8 cubic inches). For packing peaches, it is indicated that 50 cubic inches are needed for each pound of peaches. Existing marketing practices call for a package with 38 to 38½ pounds of peaches. Theoretically about 1,900 cubic inches are needed for such weight. The cubic capacity of ¾-bushel would be 1,881.62 cubic inches and, if the round stave basket and hamper industry were permitted to make this size package it could adequately meet this competition.

Round stave basket and hamper sizes and use

For commercial bulk shipment of fruits and vegetables, the sizes of round stave baskets and hampers used are ½-bushel, ¾-bushel, 1-bushel, and 1-bushel. Sizes smaller than ½-bushel are generally roadside stand or local use items. Sizes 1¼-bushel and larger are mostly used as picking (harvest) baskets and do not find their way into the markets.

As a practical application, the industry has four sizes of packages with which to meet the great number of package sizes of its competition for intrastate and interstate shipments of fruits and vegetables.

Competitive package sizes

Herewith is a partial list of competitive packages that are of sizes the round stave basket and hamper industry cannot presently approximate but with which the industry could be competitive if permitted to market ¾- and 1¼-bushel containers.

CUBIC CAPACITY OF SEVEN-EIGHTH BUSHEL IS 1,881.62 CUBIC INCHES

Category	Package use	Cubic inches
Nail wood	Celery hearts	1,760
Wirebound	(1)	1,827
Do	(1)	1,842
Do	Pineapples	1,917
Do	(1)	1,826
Do	Citrus	1,820
Do	Corn, cucumbers, eggplant, escarole, peppers, squash, tomatoes	1,890
Do	Tomatoes	1,940
Do	Peaches	1,987
F/B carton	Oranges and grapefruit	1,823
Do	Tomatoes	² 1,821
Do	do	1,935
Do	do	1,860
Do	do	1,778
Do	do	1,970
Do	Citrus	1,739
Do	Tomatoes	³ 1,764
Do	Peaches	1,981
Do	do	2,000

CUBIC CAPACITY OF ONE AND ONE-EIGHTH BUSHEL IS 2,419.22 CUBIC INCHES

Nail wood	Apples	2,431
Wirebound	Corn	2,350
Do	(1)	2,386
Do	(1)	2,448
F/B carton	Apples	2,319
Do	do	2,431
Do	Tomatoes	⁴ 2,325
Do	do	2,522

¹ Authorized in railroad container tariffs for the packing of many fruits and vegetables.

² May be made any size from 1,821 cubic inches to 1,935 cubic inches.

³ May be made any size from 1,764 cubic inches to 2,130 cubic inches.

⁴ May be made any size from 2,116 cubic inches to 2,522 cubic inches.

SPLINT BASKET

In general, the competitive position of splint baskets is typified by the prior parts of this letter except that sizes smaller than $\frac{1}{2}$ bushel are used in commercial bulk shipments.

For the packing of Bibb and/or leaf lettuce 12-quart splint baskets are used. But when the lettuce heads are of large size, it is difficult or impossible to put the desired poundage into a 12-quart splint basket and for this particular need and for other needs, it is desirable that a 14-quart basket be authorized for manufacture and marketing.

SUMMATION

The request made of Congress to amend the Standard Container Act of 1928 is for the inclusion of sizes not now authorized, namely:

$\frac{1}{16}$ -bushel round stave basket or hamper, $\frac{1}{8}$ -bushel round stave basket or hamper, $\frac{1}{4}$ -bushel round stave basket or hamper, 14-quart splint basket.

The $\frac{1}{16}$ -bushel size of round stave basket or hamper is wanted, not as a package for bulk shipment of fruits and vegetables, but for retail use particularly at roadside stands and local retail markets. Its cost of manufacture and resulting comparatively high selling price would not permit its general commercial use nor would its size and shape permit it being shipped by common carrier without it being packed into a master container.

The $\frac{1}{8}$ - and $\frac{1}{4}$ -bushel size of round stave basket or hamper are wanted for the purpose of meeting existing marketing demands and to meet competition.

The 14-quart splint basket is wanted for the purpose of supplying the proper size to properly pack and ship produce that, at times, cannot adequately be handled in 12-quart-size baskets.

It is axiomatic that to successfully compete in present-day markets an industry must be in position to furnish customers their needs, to meet marketing demands, and to be able to meet competitors' offerings.

The basket and hamper industry today, by reason of limitations imposed on it by law, can only manufacture a limited number of package sizes and shapes. The basket and hamper industry's principal competitors are not so governed, they can and do make and market all sizes and shapes of packages without restraint.

Between 1928 and 1963, marketing conditions and practices have materially changed. The request made of Congress is that the 1928 act be amended to include sizes of packages the basket and hamper industry now finds in demand under present-day marketing conditions.

Mr. VOGES. Again, in the field of peach packing, it's common usage now for buyers of peaches to expect 38 pounds of peaches as a quantity for a package to deliver peaches to them and this particular weight has no real relationship with anything corresponding with fractions of a bushel.

Actually, it would probably calculate, their present containers are manufactured for a cubic content of about 88 or 90 percent of a bushel, but these, again, as has been remarked, are not mandatory. In fact, we are the only ones who manufacture only sizes designated by Federal law.

The provision that was talked of, of marking baskets by quantity is largely followed by our people today.

I would suspect that 85 or 90 percent of the baskets and hampers and other baskets that move via this act, are marked; marked with a capacity of a bushel or fraction thereof.

Mr. FUQUA. Mr. Voges.

Mr. VOGES. Yes.

Mr. FUQUA. Then you would have no objection to this amendment I plan to propose to make it mandatory so it will remove any doubt among the consuming public or buyers of this as to exactly what the sizes are and remove the doubt that you are trying to confuse the public with these additional sizes.

Mr. VOGES. We are heartily in accord with it. I say this simply because it has been common practice among our manufacturers to do this sort of thing for our own protection.

If you will permit me, I will read the statement we did send out, and this, perhaps, is the easiest way to find the position to talk about.

The industry—

The CHAIRMAN. Mr. Voges, in the interest of time, because I'd like to get it—couldn't you summarize this? You have pretty much and we'll put it in the record and every member of the committee has it and they now have it. They can study it themselves along with the other thing and save a little time.

Mr. VOGES. Mighty fine.

At page 3 there is listed a number of packages, the cubic content of which is not necessarily in relationship to a bushel or portions of a bushel. Meeting this competition, our container doesn't come up to or is less than the cubic content measurements that are shown. A cubic content container of 1,881.62 cubic inches is seven-eighths of a bushel. At the present time, our gradation sizes don't permit us to manufacture in this area, and we are 300 cubic inches away from being able to meet competition.

It's true, the whole revolution of food distribution has rapidly changed since 1928, and we have very seriously avoided making an appeal until, at this time, when we are simply in a position of either coming to these sizes, meeting this competition, or passing along and out of business.

As an example of my conversation I'd like to read into the record five different types of containers that were used in the 1963 peach deal. We call it deal in agricultural processes.

One of them was a wirebound crate with 1,987 cubic inches. Another was a three-piece paperboard container, 2,063 inches.

Another was a two-piece telescope paperboard container, 1,921 cubic inches.

Another was a partly telescoped container made of paperboard, 1,996 cubic inches and another was a partly telescoped paperboard container with 2,118 cubic inches.

Well, since our three-quarter bushel basket is 1,600-odd cubic inches—1,640, as I remember it—we are a great distance from these containers at that cubic content and since our next size is 2,150 cubic inches, we are 150 inches in the opposite direction.

So, you see, we can't meet this competition which develops to 38 pounds of peaches for the market and in accommodation with market practices.

We haven't consulted with growers or shippers directly to interest them or to hear their reactions to it, but as hearsay evidence it can be said that in Ohio and I believe—wasn't it Mr. Fulton, isn't he from Ohio—it's the same answer.

The CHAIRMAN. Mr. Mosher.

Mr. VOGES. Lettuce is packed in a splint basket in Ohio and in Indiana. During the course of the season at the early part, the 12-quart container is quite sufficient for the purpose. Later in the season as the heads get larger, the 12-quart container won't accept the proper number of heads and so for this purpose we need a 14-quart container.

Mr. Fulton remarked about the H. J. Heinz Co., and their reaction at Pittsburgh. The H. J. Heinz Co. uses a considerable number of

our containers but they use them from the point of growth to the point of processing and not through any retail channels. They are simply carried into the processing plant, dumped, and sent back out into the field for filling.

The CHAIRMAN. I think Mr. Fulton, Mr. Voges, was simply stating the H. J. Heinz Co. had a plant in his district he was interested in because H. J. Heinz also has a plant in my district. I haven't heard from them and I know them pretty well.

Mr. VOGES. The second question I heard asked, and I don't remember by whom, is: Where are these manufacturers located?

Largely, they are located in the Southwest, in Texas and Arkansas, in Florida, in South and North Carolina, in Virginia, New Jersey, in Michigan, in Maryland, in Tennessee, and in Indiana. For all practical purposes, nothing west of Texas. There is one manufacturer in California.

These baskets are used very extensively in interstate commerce rather than intrastate commerce. To us, this act is a beneficial one. It reduced, at its origin, the number of containers that were manufactured by our people from several hundred, down to a very few. It was a very healthy thing. We liked it. We continue to like it because we believe that it is saving us money and is a control factor. We also believe that the continuance of this Standard Container Act, at least now, appears desirable because it does establish a comparison in all States and wherever they may be shipped interstate, it does establish a comparison of buying habits.

There is no real difficulty with any of our competitors. We know of no reason why any competitor should complain and, certainly, in the field, all that the farmer wants is the ability to pack according to the market's desire. These things we are attempting to meet by this legislation and we, indeed, hope that you will see fit to carry on with us for our position is difficult.

The CHAIRMAN. Any questions?

Mr. Roudebush?

Mr. ROUDEBUSH. Mr. Voges, you do not favor, then, the repeal of the act of 1928?

Mr. VOGES. No, sir; we do not. We believe it's a healthy thing.

The CHAIRMAN. Mr. Bell?

Mr. BELL. Mr. Voges, do you anticipate in the future you may want to amend this again, maybe these sizes aren't enough and that perhaps later on you will find need for increasing, or changing them, and so on?

Mr. VOGES. Mr. Bell, you have brought up a question that gives me the opportunity to make a statement that I was not sure I was going to be able to make.

Canada, as you folks know, does import—excuse me.

Mr. FUQUA. I might have the letter you are looking for.

Mr. VOGES. Yes, you do, Mr. Fuqua.

Canada does import from our country, products of agriculture and they, too, have a container act. The 12-quart splint basket which we have in the act at the present time, has been going into Canada with tomatoes and is a well liked and well used package. Mostly these tomatoes originate in the New England or North Atlantic States territory.

I have a letter here from the Canada Department of Agriculture. With your permission I would like to read it into the record. It is addressed to me at Orlando:

I have your letter of August 20 with reference to the possibility of your 12-quart veneer basket being accepted as a package for shipping tomatoes in this country. You, apparently, quite correctly see the situation as it is and realize the 12-quart basket is not or never has been a standard container in Canada. The fact that shipments to Canada have been made in this container merely points up that until the present time enforcement of our container regulations has been something less than should have been.

As far as a third possibility raised in your letter is concerned, I am afraid that stamping a minimum net weight of 20 pounds on a package that is known to contain 23 to 25 pounds would hardly meet our requirements particularly as the tomatoes in question were in the 12-quart basket whether or not such basket was stamped with the capacity.

Insofar as a third alternative is concerned in the very near future it is expected we will be having a meeting with representatives of the industry with the committee on this whole question of containers and I will bring up the status of the 12-quart basket at that time.

This is signed by Eric V. Eardley, Director of the Department of Agriculture in Canada.

Canada's regulations call for an 11-quart basket which is used there for this purpose. The difference between the 11-quart basket and the 12-quart basket is 67.2 inches—a very small difference and you can't put 3, 4, or 5 pounds of tomatoes in 60 cubic inches.

This might mean then, Mr. Bell, that if we are to continue having this business out of Canada it would be desirable for us then to be allowed to manufacture an 11-quart basket. Otherwise we are not being realistic with the trade between the two countries and, certainly, they are a friendly country and we do like doing business with them.

The CHAIRMAN. We also like getting back some of the money that goes up there, so if we can sell them anything it's to our advantage.

Mr. VOGES. Well, Mr. Chairman, in the same vein, I have had some pretty bitter remarks made to me by Canadians, "Why don't you fellas buy more from us? You are getting too much of our money."

It works both ways.

Mr. STAEBLER. Mr. Chairman, may I ask what prevents the manufacture of 11-quart baskets now, for export purposes?

Mr. VOGES. We can export the basket to a foreign country. We can make any size basket for a foreign country, but cannot ship it into a foreign country, Canada for an example, filled with produce to meet regulations that exist in Canada and these tomatoes are grown in the New England area—New York, New Jersey.

Mr. STAEBLER. Putting it into our produce trade—that is forbidden?

Mr. VOGES. Yes, and there is——

Mr. BELL. So it is possible you may want an additional amendment?

Mr. VOGES. This is conceivable. We think we would be hurt. We lose a great volume if we are not able to send these 11-quart baskets to Canada.

Now, Mr. Calloway is a manufacturer who does manufacture 12-quart baskets and whose baskets have been used going into Canada for years with tomatoes and only now do they find difficulty through embargo. Mr. Eardley's letter is dated the last of August.

This new need came to us since H.R. 5792 was originated.

Mr. BELL. You cannot—

Mr. VOGES. Any question you want to address to Mr. Calloway, he'd certainly like to answer.

Mr. BELL. You cannot anticipate, Mr. Calloway or Mr. Voges, this situation may reoccur periodically for increased changes in sizes.

For example, Mexico or some other country you may be dealing with, importing or for other reasons. Is it possible this could be changing periodically?

Mr. CALLOWAY. It is possible; however, as a manufacturer we will certainly wait until we are forced into it, more or less, because we don't want to manufacture several different kinds. In other words, for every size you make you have to have different heads and different machinery to make it. We would certainly like to make it standard as much as we could; yet we'd like to stay in business. At this time, this particular 12-quart basket he is talking about, we have several thousand of them made and can only ship them to the United States here on out. Canada permitted it during the fall and then had restrictions on it and then gave permission to go ahead for a couple of more weeks. Before the season was over, they outlawed again and the people shipping to Canada also supply the whole United States—and Canada is a good market for tomatoes.

Mr. BELL. I take it you'd like to amend this bill?

Mr. CALLOWAY. I'd like to see that amended.

Mr. BELL. You can't see anything you'd like to amend it again to place another size?

Mr. CALLOWAY. No. We'd certainly be forced into it before we'd ask for it.

Mr. ROUDEBUSH. Mr. Chairman.

The CHAIRMAN. Mr. Fuqua was next.

Mr. ROUDEBUSH. Go ahead.

Mr. FUQUA. While he's still here, I'd like to direct a question to Mr. Hedlund. The Department of Agriculture's position would not change with an amendment to include the 11-quart basket?

Mr. HEDLUND. That is correct.

Mr. ROUDEBUSH. I am not quite clear in my own mind about this, Mr. Staebler's question that was directed there a moment ago, why these regulations would prevent you at this time from manufacturing a specialized basket for Canadian trade only.

Mr. VOGES. Fine. If we can ship the empty basket into Canada—that's all right, but when it's filled with produce it cannot move.

Mr. ROUDEBUSH. I see.

Mr. CALLOWAY. May I add one other thing there? It would be a tremendous hardship on the shipper. He might pack today's field of tomatoes. He don't know whether it is going to Canada, New York, or where. He might put them in an 11-quart basket and Canada or the United States might want them.

If he is permitted to ship it in the United States he wouldn't be in any difficulty there, you see.

The CHAIRMAN. Mr. Rumsfeld?

Mr. RUMSFELD. In answer to a question by Mr. Roudebush, you said you'd prefer to see the act of 1928 continued.

Mr. CALLOWAY. Yes, sir.

Mr. RUMSFELD. You would not want it repealed. You didn't say why, and it strikes me the only reason that you could feel this way—only reason why you would resist deregulation would be to protect yourself from yourself or else put yourselves collectively, the people you represent, into a position you are competitively better off than someone else or anyone else wants to come in the business because you learned to live with regulations.

What other reason would there be for resisting the repeal of this act of 1928?

Mr. VOGES. For the welfare of the public in general, terms of bushel, quarter bushel, or what have you—is a known household word and regardless of how Mr. Miller's people back in California package nevertheless these terms do continue there. We consider that this act in itself without considering any benefit to us, is beneficial to the whole of the produce industry in maintaining standards in which to be contained.

I don't know whether that answers your question satisfactory or not.

Mr. RUMSFELD. Mr. Patten made the statement before, this didn't go into the public. This is handled by wholesalers, and you go by weight anyway.

Mr. CALLOWAY. This is correct. This does go primarily, if not wholly, to wholesalers.

Mr. RUMSFELD. Then how could this be protecting the public today?

Mr. CALLOWAY. A manufacturer of wooden boxes out in Mr. Miller's territory of California can manufacture to any cubic content capacity he wishes, but it's always brought back into relationship to a bushel. The Department of Commerce recording the shipments of any given item of produce over a period of a year reports mostly in bushels or fractions of a bushel. This is the basis for their considerations. These may not be substantial reasons, yet they are good theoretical reasons that this is a restraining influence on manufacturers at different levels.

Mr. MOSHER. Mr. Rumsfeld, do you yield?

Mr. RUMSFELD. I'd just like to make one observation before I do.

What you are saying, basically: 90 percent of the industry, not regulated at the present time, should be.

Mr. CALLOWAY. I would agree with that. Yes, sir.

The CHAIRMAN. Yes, Mr. Mosher.

Mr. MOSHER. In regard to a statement you made a while ago, I have the impression in our area a substantial part of the marketing of fruits and vegetables retail, particularly, the vast roadside stands we have, as well as other markets, is done in this kind of container and does go directly to the consumer.

Now, I suspect that is true in the Chicago area, too.

Mr. RUMSFELD. It was my understanding this type container got to the public far more frequently than Mr. Patten indicated.

Mr. MOSHER. I may be wrong.

Mr. RUMSFELD. I may be wrong. I see our time is up. I don't want to go on.

Mr. VOGES. I do say this to you in full sincerity, the type of containers here talked about do not, in general, reach the public at all. They only reach the wholesale market. I think you would find it true, these people who have containers in your roadside stands in

Indiana, plus the roadside stands elsewhere are a small minority of the whole. The great bulk is in the wholesale channels.

Mr. MOSHER. And yet that group must be considered—the public.

Mr. CALLOWAY. Twelve quart, eleven quart, or what have you. They are considered.

The CHAIRMAN. Before you leave, Mr. Roudebush—when we adjourn, we will adjourn to meet at 10 o'clock tomorrow morning and take up those other two bills and I shall accept the suggestion of Mr. Staebler and put this bill over for at least 2 weeks and maybe 3 weeks to give you a chance to contact those people and find out what it's all about.

We won't get to you today, Dr. Huntoon, but I think we will want you in connection with some other things shortly.

We will come down tomorrow and take care of those.

Mr. RUMSFELD. Could I wind this up, just with one sentence before you close.

I am not satisfied with your argument against the repeal of the act of 1928 at all. I don't think they are too sound and if there are better arguments I would be interested hearing them at some future point. Certainly, we don't have time this morning.

Mr. CALLOWAY. May I add this, from the manufacturer's standpoint, we ship 38 different sizes and types from our Suffolk plant and Hebron plant. Suppose someone in one State wants one size and someone in another State, another size. This would be a tremendous problem on us. From the manufacturer's standpoint we would rather have standard package, a bushel used in Florida would be used in Maine.

Mr. RUMSFELD. From a free enterprise competitive standpoint if some outfit can work this size package better than you can, they deserve the business.

Mr. CALLOWAY. I say, they should be regulated the same as we are. I wouldn't want the act repealed. They would be included—not the whole thing repealed.

Mr. RUMSFELD. This is the same thing we got before, and it doesn't satisfy me.

One limits competition rather than encourage competition.

Mr. PATTEN. Someone may be old enough to remember—my recollection is that the 1928 act started as a result of public clamor against fraud in these wooden baskets and everything.

Mr. RUMSFELD. This, of course, is not the argument they are making.

Mr. PATTEN. No; but that is my recollection of how the act started. I was just going to the law act and my recollection was, there was an exposé on double bottoms and a lot of false appearances and that was what prompted the Congress to act to protect the people.

Mr. RUMSFELD. Very well. I would like to yield back all of my time.

The CHAIRMAN. The committee is adjourned to meet at the call of the Chair.

(Whereupon, at 12:05 p.m., the committee was adjourned.)

AMENDING THE STANDARD CONTAINER ACT OF 1928

TUESDAY, DECEMBER 3, 1963

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SCIENCE AND ASTRONAUTICS,
Washington, D.C.

The committee met at 10 a.m., pursuant to call, in room 214-B, Longworth Building, Hon. George P. Miller (chairman), presiding.

The CHAIRMAN. Without objection, the committee will come to order, and, without objection, we will proceed. If someone would raise a point of order, we are one shy, but I am certain another member will come in.

The first bill before us today is H.R. 5792, a bill by Mr. Matthews to amend the act of May 21, 1928, relating to standards of containers for fruits and vegetables, to permit the use of additional standard containers.

The CHAIRMAN. This is a bill we heard some time ago. Certain objection was raised to it, and we put it over to see if we could reconcile some matters.

Mr. Mosher, I think you are one that had not raised any objection to it, but you wanted to check.

Mr. MOSHER. Yes, Mr. Chairman. There were indications from informal discussions with the fruit and vegetable people which indicated they might be opposed. I requested and you generously agreed we ought to give them an opportunity to come in if they wanted to be heard.

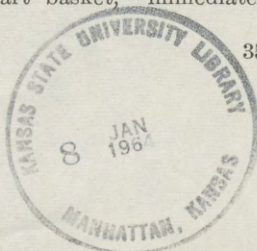
Since then, I sent them copies of the testimony of the first hearings, and they examined all that material and have notified me, both the vegetable people and the fruit people in my district have notified me that although they still have some doubts, these doubts aren't serious enough to raise any objections to the bill, and they withdraw any objections, and so I would withdraw my objections and would vote for the bill.

The CHAIRMAN. There are certain amendments to the bill. Will you read the amendments, Mr. Ducander?

Mr. DUCANDER. Yes, sir.

The first amendment was one brought up concerning making an 11-quart basket which could be used in the Canadian trade. To put this in, we rewrote the section so that section 2 of the bill will now read:

SEC. 2.(a) The first sentence of section 2 of such Act of May 21, 1928 (15 U.S.C. 257a), is amended by inserting "eleven-quart basket," immediately after "eight-quart basket," and by inserting "fourteen-quart basket," immediately after "twelve-quart basket".



That latter part is rewriting.

(b) Section 2 of such Act of May 21, 1928 (15 U.S.C. 257a) is further amended by inserting immediately after paragraph (b) the following new paragraph:

"(bb) The eleven-quart splint basket shall contain seven hundred thirty-nine and two-tenths cubic inches."

(c) Section 2 of such Act of May 21, 1928 (15 U.S.C. 257a) is further amended by inserting immediately after paragraph (c) the following new paragraph:

"(cc) The fourteen-quart splint basket shall contain nine hundred and forty and eight-tenths cubic inches."

Mr. FUQUA. Mr. Chairman, I move adoption of the amendment.

The CHAIRMAN. It has been moved the amendments be adopted. Is there objection? Without objection, the amendments are adopted.

Mr. FUQUA. We have one other requiring the stamping of the size on the container.

Mr. DUCANDER. I don't think it was actually adopted.

The CHAIRMAN. Will you read that?

Mr. DUCANDER. This was recommended by the Department of Agriculture.

SEC. 3. That so much of the first sentence of section 5 of such Act of May 21, 1928 (15 U.S.C. 257d) which precedes the word "provided" be amended to read as follows:

"That it shall be unlawful to manufacture for sale or shipment, to offer for sale, to sell, to offer for shipment or to ship hampers, round stave baskets, or splint baskets for fruits or vegetables either filled or unfilled that do not have the capacity in bushels or quarts clearly stamped and marked thereon and do not otherwise comply with this Act, or parts of such hampers, round stave baskets, or splint baskets that do not comply with this Act: * * *"

Mr. FUQUA. I move the adoption of the amendment.

The CHAIRMAN. It has been moved that we adopt the amendment.

Mr. ROUDEBUSH. Mr. Chairman, I move to report the bill as amended in committee, that the Chairman be authorized to take such necessary steps to report the bill as amended favorably to the House of Representatives.

The CHAIRMAN. It has been regularly moved and seconded that the Chairman be instructed to take such parliamentary steps as are necessary to see the bill is enacted into law. Is there any discussion? If not, all those in favor signify by saying "aye," contrary-minded—

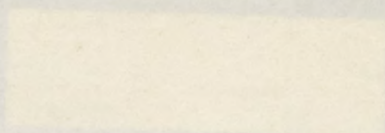
Mr. FULTON of Pennsylvania. No.

The CHAIRMAN. Well, then, the ayes have it. Let the record note Mr. Fulton voted "no." The ayes have it and the bill is formally reported.

We will file a clean bill to incorporate the amendments.

(Whereupon, the committee proceeded to further business.)







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