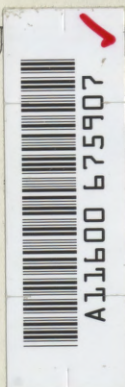


PACKAGING AND LABELING LEGISLATION

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON ANTITRUST AND MONOPOLY

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

EIGHTY-EIGHTH CONGRESS

FIRST SESSION

PURSUANT TO

S. Res. 56

ON

S. 387

TO AMEND THE CLAYTON ACT TO PROHIBIT RESTRAINTS
OF TRADE CARRIED INTO EFFECT THROUGH THE USE OF
UNFAIR AND DECEPTIVE METHODS OF PACKAGING OR
LABELING CERTAIN CONSUMER COMMODITIES DISTRIB-
UTED IN COMMERCE, AND FOR OTHER PURPOSES

APRIL 24, 25, 26, 1963

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Printed for the use of the Committee on the Judiciary



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PACKAGING AND LABELING LEGISLATION

WEDNESDAY, APRIL 24, 1963

U.S. SENATE,
SUBCOMMITTEE ON ANTITRUST AND MONOPOLY
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2226, New Senate Office Building, Senator Philip A. Hart presiding.
Present: Senators Hart and Hruska.

Also present: S. Jerry Cohen, assistant counsel; George E. Clifford, assistant counsel; Peter N. Chumbris, counsel for the minority; Ronald D. Raitt, counsel for the minority; Abbott A. Leban, counsel for the minority; Kirkley S. Coulter, economist for the minority; Paul S. Green, editorial director, and Gladys E. Montier, clerk.

Senator HART. The committee will be in order.

It was at the close of the last series of hearings on March 22 that I announced the closing date for further requests to testify as March 27. In the days for which we have now scheduled hearings, we shall hear witnesses who did make requests for an opportunity to testify in response to that suggestion. We welcome them, and I am sure they will make constructive suggestions for the further refinement of the bill we are considering, S. 387, the truth-in-packaging bill.

Since the date of that last hearing there was an occurrence which I think will be helpful in dispelling some of the lingering doubts some have concerning the necessity and desirability for passage of this bill.

The President's Consumers Advisory Council, a group of citizens dedicated to the public interest who are concerned with consumers and their problems, has announced its strong support for the principles and purposes of the bill we are considering, the truth-in-packaging bill.

I would like to underline the importance of this action by inserting into the record as the first action of this series of hearings the Council's statement. I recommend it to all who are concerned with this problem. The Council has recommended that at least in regard to basic items of the family budget, standardization of sizes and shapes be made. This, of course, goes beyond the provisions of the present bill. The recommendations, together with other suggestions received, I am sure, will be given attention by the subcommittee. The applicable section of the President's Consumers Advisory Council's report will be printed in the record.

(The information referred to may be found on p. 795.)

Senator HART. The first witness scheduled for today is Mr. D. Beryl Manischewitz, who appears on behalf of the National Association of Manufacturers as chairman of the NAM Marketing Committee.

Mr. Manischewitz is also the chairman of the board of the B. Manischewitz Co., of Newark, N.J. He has held that post since 1949.

He attended the University of Cincinnati, and as I have mentioned, is a member of the board of directors and is the chairman of the Marketing Committee of the National Association of Manufacturers.

Mr. Manischewitz, in addition to his corporate and trade association responsibilities, has been active in many civic and philanthropic organizations, including his membership on the Executive Committee of the American ORT, the Organization for Rehabilitation Through Training, and the Central Board of the World ORT.

Mr. Manischewitz, we welcome you. Is there someone with you? Will you just identify them and have them join you?

STATEMENT OF D. BERYL MANISCHEWITZ, CHAIRMAN, THE B. MANISCHEWITZ CO., NEWARK, N.J., AND CHAIRMAN, MARKETING COMMITTEE, NATIONAL ASSOCIATION OF MANUFACTURERS; ACCOMPANIED BY JOHN A. STUART, COMMITTEE EXECUTIVE, NAM MARKETING COMMITTEE, WASHINGTON, D.C.

Mr. MANISCHEWITZ. Thank you very much, Senator Hart.

I appreciate this opportunity to be here and to testify. I would like to introduce to you Mr. John A. Stuart who is a member of the staff of the NAM, and is the committee executive of the marketing committee.

In the interest of brevity, I am going to read the statement, making some cuts in it, but I would appreciate it very much if in the record it would appear in its entirety.

Senator HART. The statement in full will appear in the record and you may make such comment about it or additions to it as you wish as you go along.

Mr. MANISCHEWITZ. Thank you, sir.

My name is D. Beryl Manischewitz, I am chairman of the board of the B. Manischewitz Co., and I appear here today as a representative of the National Association of Manufacturers in my capacity as chairman of the marketing committee of the association.

The National Association of Manufacturers is a voluntary, nonprofit organization of companies of all sizes, from every State and engaged in the manufacture and marketing of goods and services of virtually every type and description. Our views in the particular areas of discussion today have been developed by a marketing committee of leading marketing, legal, and other executives of member companies, who are concerned mainly with national developments bearing on the marketing function, as does this proposed legislation. A fundamental policy statement, bearing on the issue, has been adopted by our board of directors, and is attached.

The specific provisions of this bill before us are well known to this subcommittee and do not require further citation. In summary, the bill calls for 12 new, mandatory categories of rules controlling, in great detail, the packaging and labeling of consumer goods.

These regulations would prescribe not only the nature, size, and location of the printed and pictorial matter appearing on labels, but go further to enable the regulation of package sizes, shapes, volumes and, ultimately, we believe, the nature of the product itself which manufacturers may offer to consumers.

While some have been designated as mandatory upon the enforcing agencies, and others as permissive, the enabling power is present and our marketing people have no illusions as to the sweep of market controls intended under the bill. To give vitality to the act, the so-called permissive regulations must be used—for there is no other way in which the enforcing agencies can serve the purpose of the bill.

Our association does not wish to be misinterpreted in its position before this committee. We support full and fair enforcement of the laws against deception and unfair trade practices, and also those based upon public health and safety considerations. We support enforcement of equitable laws to prevent monopoly and restraints of trade.

We feel it necessary to enter this point because we have noted flamboyant and inaccurate statements that when goods are offered in varying quantities, the unit price "half the time" is the same regardless of package sizes.

One witness has charged that producers faced with higher costs reduce the quantity rather than the prices of their products "for the sole purpose of misleading the consumer."

Extreme statements of this type find their way into published reports and are themselves a deception. They not only damage consumer confidences in all our commercial institutions, but induce demand for Government controls which will prove, in our opinion, far more damaging to the consumer and to the economy than any abuses which may now exist.

From a legal point of view, the bill offers the consumer no broader protection from false and misleading matter than that now supplied by both the Federal Trade Commission and the Food and Drug Administration, and is therefore a needless proliferation of Federal laws.

It does, however, change the whole nature of our antitrust laws. We find it is not a law to prevent "deception," not at all, but to prevent alleged "confusion" of shoppers in choosing from a variety of consumer goods.

From an economic point of view, we believe that the proposed regulations in the long run will lessen competition, increase the cost of distribution and inhibit technological innovation and national growth.

From the standpoint of efficient production and marketing, the manufacturer and marketer will find compliance with the bill not only prohibitive in cost, but in some cases, technically impracticable to apply.

For the consumer, who has an interest in all these viewpoints, enactment of the proposals can be expected to reduce the number, variety, and quality of the goods he buys. It will tend to increase prices both immediately and in the long run.

Laws like these, in fact, not only would fail to help the consumer make a wise choice of goods, but would act to regiment consumer choice.

In short, this type of Federal regulation is a package no housewife will want to buy if she reads the fine print. It will put scientific progress in safe, healthful, timesaving, appealing, protective packaging into a deep freeze of rules and regulations.

It will put more pennies onto the price tags at the supermarket. It will cause her more confusion, not less, as to what real values she is getting in the boxes, bags, and cans she puts into her shopping cart.

It has been said that a \$70 billion industry is involved. It is much greater than that. The effect of this bill, if enacted, will flow into hundreds of communities in every State, influencing the commerce and industry, the payrolls, and the economies of those places.

The jobs of designers, artists, engineers, molders of glass and plastic, steel and tinplate workers, machinery workers, and employees in paper mills, printing plants, advertising agencies, and many others will be regulated or jeopardized by this bill.

In one way or another you may expect a disruption of these enterprises, their employees, their suppliers, their investors, and the smaller services which surround them.

In the course of the instant hearings, the presiding chairman of the subcommittee has said that S. 387 is—

directed against statements not false and misleading but that confuse the shopper to the point of frustration, whether she has her glasses on or off.

This statement is a clear and surprising admission first that the bill before us deals with no basic concept of wrongdoing ever known to require civil or criminal action by a government.

Instead, it sets up as a series of new civil and criminal offenses anything which a seller may do in packaging his goods which in the mind of the regulating officials will "confuse" the buyer of that package. We believe that if the practices complained of before this committee are not in fact deceptive, false, or misleading, the Congress should not act in any way. If the practices are found to be deceptive, false, or misleading, then laws already on the books to prevent deception should be relied upon.

What this bill really attempts to do, therefore, is to substitute the word "confusion"—a subjective word to be applied without criteria—for "deception" as a standard in our basic laws to protect consumers. Yet no one has defined it except in terms of deception.

We believe there can be no degrees of deception, as this bill seems to suggest. The burden is upon the advocates of the bill to define what they mean by "confusion" and to say how they will apply it to a shopper who may have her glasses on, and to another who may have her glasses off.

While the power of the statutes of both the FTC and the FDA are clear as to false, misleading, and deceptive practices, we offer in further substantiation the concise and forthright testimony of the chief officers of those regulatory agencies.

On March 28, 1962, Chairman Paul Rand Dixon of the FTC cited specific instances of his agency's experience in protecting the consuming public from false and deceptive packaging practices, and made this unequivocal statement:

There can be no doubt that the Commission's general power under existing law would authorize it to issue such (cease and desist) orders when false or misleading packaging or labeling result in consumer deception.

More recently, the Commission Chairman has said he nevertheless welcomes the passage of this bill because at present—

the Commission must, based upon reliable, probative and substantial evidence, find that the practice is likely to deceive the public.

Under this bill, no such evidence is required. We submit that, to the contrary, Government agencies should not be empowered to hold a business practice wrong without being required to prove it so.

As all know, the Federal Trade Commission Act broadly and fully empowers the Commission to prevent—

unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce.

Under this act, the FTC has successfully moved to prohibit an almost limitless range of commercial practices—from fraudulent warranties to television commercials. In these cases, some practices were subjected to court review and of these some were curbed, but under this bill, they would have received no review by the courts.

On April 3, 1962, Commissioner George P. Larrick of the Food and Drug Administration testified:

The Federal Food, Drug, and Cosmetic Act, enacted on June 25, 1938, is fundamentally a consumer measure. In addition to requiring that foods be clean, sound, and wholesome, it has provisions designed to inform the consumer about the food in the package and thus permit her to make intelligent selections at the marketplace.

Commissioner Larrick further spelled out the more specific requirements of the Food and Drug Act as to identity, quality, and fill of containers; as to location of printing and graphic matter; as to deceptive packaging; as to legibility of the disclosures, and other requirements. We observe that while Commissioner Larrick has also endorsed this bill, he rests his testimony likewise upon the difficulty of proceeding in the courts on a case-by-case basis.

Again, we state our belief that the Congress should pause before delegating to administrative agencies not only more of its own powers, but the power to abrogate the rights of citizens to a fair trial based upon the law and the truth.

The difficulty of case-by-case enforcement is not a justification for this new law. The fact that the Government has lost several cases distorts the true picture—since the record is clear and indicates that thousands of FDA complaints are settled by consent or without litigation at all.

Proponents are not satisfied by the unquestioned power of these agencies to prevent deception. In the fine print of this bill you will find a new power of censorship which would apply to whole industries, regardless of the presence or absence of deception. For this new law would empower the Government (sec. 3A(g)) to compel a manufacturer or seller to submit to it a sample of "each package and label used or to be used" for distribution in commerce.

Any failure to submit such samples will subject the firm and its executives to a fine of up to \$1,000 or imprisonment of up to 1 year, or both.

Except in protection of public health and safety we do not believe the Congress should permit its citizens to be prosecuted for failure to submit their packaging plans and promotional writings, and their

manufactured products, to a Federal Government bureau for prior approval.

The bill begins with a curious premise and proceeds to a faulty purpose. It is entitled "a bill to amend the Clayton Act."

The Clayton Act was enacted by the Congress in 1914 as an anti-trust measure to supplement the Sherman Act of 1890 by preventing monopolies in their incipency. Under this act, The Federal Trade Commission through the years has concerned itself with discriminatory treatment and trade restraints among buyers and sellers at various levels of distribution and with mergers and acquisitions, the effect of which in its judgment "may be substantially to lessen competition or tend to create a monopoly."

At the same time, it has moved vigorously under its own generic act, the Federal Trade Commission Act, to detect and to prevent, "unfair or deceptive acts or practices in commerce."

These "deceptive practices" as applied to dealings between business units also were believed capable of leading to monopoly.

In fact, it was not for many years that the FTC moved to interpret this act as empowering it to prevent deceptions upon the consumer, that is, to protect the consumer for the consumer's sake. This was a regulatory and moral role then solely fulfilled by State laws against consumer deception and by sealers of weights and measures in every community of the land.

The bill, in fact, ignores these locally responsible officials and the law, if adopted, we believe ultimately would discourage and supersede State and local responsibilities for consumer protection. Not until the Wheeler-Lea amendments of 1938 did the FTC obtain the same power to act upon consumer deceptions.

In this proposed new legislation, however, the Congress is asked to introduce into the Clayton Act a series of affirmative rules on the minutiae of the packaging and wrapping of goods and of the designing, printing, and promotional functions of the marketing and merchandising process.

It is asked, thus, to convert the purpose of the antitrust laws, which are fundamentally to prevent the monopolistic market domination by a single seller, into a device to dictate the manner in which a seller presents his product to a consumer.

Nowhere is there established in this bill any rationale as to the relationship between rules for manufacture and labeling of containers, and any tendencies toward monopolistic acts or practices in restraint of trade.

Moreover, during many days of investigative hearings in 1961 and 1962, there was not one fact or shred of evidence of such relationship presented to the Congress.

There is a further unique result. By empowering the Food and Drug Administration to proceed under the Clayton Act, this agency will be converted likewise into an antitrust enforcement arm. FDA actions under this bill no longer will be based upon the general welfare and the health and safety of consumers, as are its other actions, but upon the more dubious premise that monopoly is an inevitable outgrowth of violation of its regulations.

Another fundamental change would be in the historic role of the Federal Trade Commission. The FTC was described by its founder,

President Wilson, and many generations of Commission Chairmen since, as adviser and friend of business, which "substitutes counsel and accommodation for the harsher processes of legal restraint."

Under such a law as proposed here, we believe you will be serving to convert the FTC from counselor to business—educating and stimulating businessmen toward maximum voluntary compliance—into an agency charged with the development and enforcement of some of the most needless and burdensome rules which have been imposed upon the marketplace. We think the Congress should take note, also, that the Commission itself is divided on the merits of the bill.

In sum, with the adoption of this bill we can look forward to an era of confusion within both Government and business. The FDA not only will be sharing antitrust responsibilities with the FTC, but it will be administering a completely new antitrust concept based upon terminology which is also not only new, but indefinable.

We find in some prescribed rules no standards whatsoever to test the culpability of an accused; in others, entirely new standards are introduced.

In the latter case, for example, section (c) (5) provides for exceptions of certain goods with the proviso that "no exception may be made if that exception would deprive consumers of reasonable opportunity to make rational comparisons between or among competing products."

This language would set up as a Clayton Act test, the phrase "reasonable opportunity to make rational comparisons" to supplant that of a "substantial lessening of competition" or a "tendency to create a monopoly."

We believe it would be many years before the courts arrive at understandable interpretations of such new terminology.

Finally, in certain other rules the basic standard of "deception" is introduced, as in the case of (c) (6) relating to a pictorial matter, and also (e) (2) controlling sizes and shapes of containers themselves. We believe it significant that the most ardent proponents of this type of legislation, under questioning, sought to justify their views by falling back upon the key concept of "deception."

It is difficult to understand why the test of "deception" was introduced into some, but not all, of the sections of the bill.

We believe the Congress also should consider the testimony of another major witness, Mr. J. Lyle Littlefield, chief of the Foods and Standards Division of the Michigan Department of Agriculture. Mr. Littlefield, with great experience in consumer protection, responded to questions concerning inadequate labeling of the contents of packaging, which is at the heart of this bill, as follows:

Well, we have to rely on this term "conspicuously labeled" and this becomes a matter of opinion as to what is conspicuous. And maybe you can see it a foot away and maybe I can see it 2 feet away, and this becomes one of these decisions that finally has to be resolved in some court. And we have had one of these cases where one of the witnesses said, "Well, I cannot see this," and the judge said, "I cannot either." And in this case he said it was not conspicuous. *But I think each case has to stand on its own merits.*

Our statement has added the emphasis to this final conclusion of Mr. Littlefield because we agree also that in matters where the issue is deception, each case must stand on its own merits, as now required in existing law.

On March 8, of this year, Mr. Littlefield in a public address further stated in reference to this proposed legislation that "we have sufficient statutes on our books today to handle most incidents of deceptive packaging and labeling."

He also asked industry to consider what would happen under "too great Federal power."

Those who are concerned with preserving many of our most vital legal rights in administrative cases will find cause for concern for lack of legal safeguards in the procedures of the bill, set forth in section (f)(1).

It provides for unilateral decision by each of the enforcing agencies, subject only to consultation with other competent agencies of Government, and "reasonable opportunity for consultation" with industry or affected persons. Publication in the Federal Register is required, but public notice is not protection from violation of constitutional rights. The bill makes no provisions for public hearings; contains no requirement for a showing of substantial evidence and provides for no court review.

We note the reference to the Administrative Procedure Act, but we find this no guarantee of hearings on particular new regulations carrying the force of law and having the most profound effect on the production and marketing of a consumer product.

Let us now turn to an examination of the challenge which this type of legislation automatically raises as to the role of the marketing process in our American economy.

While the rationale presumed from the title to the bill is that consumer "confusion" leads directly to monopoly, the rationale of many of its chief supporters is founded upon an entirely different thesis.

Many otherwise knowledgeable witnesses, in fact, seemed wholly unaware of the monopolistic aspect of the issue which has finally appeared in this bill. The have testified, rather, that packages which are not really deceptive—but rather merely "confusing"—as to design, volume, price labeling, and so forth—prevent the consumer from making a "rational" choice of goods.

Because of such "irrational choice," "wrong signals" are sent into the marketplace. The result, according to these proponents, is a faulty disposition of income and hence misallocation of national resources, which is then termed "economic waste."

The way to correct this situation, it was contended, is to insure that goods are sold on the basis of "price" competition, and to take steps to discourage or to prohibit "nonprice" competition, such as the appeal of product differentiation, advertising, packaging and labeling.

"Nonprice" competition was said to be particularly favored by oligopolists, and although it was not clear whether this was the cause or effect of oligopoly, it was held by theorists to be the root evil of our economic waste. It can be prevented, the theorists say, by standardization of wrappings, weights and volumes, container shapes and major emphasis on price-per-ounce labels, such as sought in this bill. To accomplish their avowed purpose, it would be necessary to extend the coverage of this bill to the activities of the ultimate retailer and, Mr. Senator, I understand the retailer is specifically excluded from the provisions of this bill—and I wonder about that.

These theories have been advanced for many years and with many variations. They are conceded by the bill's supporters to have originated in the writings of the economist Edward Chamberlain in 1933.

To this day, although embodied in a number of bills, the Congress has not adopted any legislation which espoused the theory of monopolistic competition. It is now being asked to do so, and the Congress should know what it is enacting.

Should Congress enact legislation of this character, it will be adopting at the same time theories that trace back not merely to 1933, but more than 1,000 years to the marketplaces of England and continental Europe, prior to the industrial revolution.

This was the period when quantities and prices were indeed fixed by law, with the assistance of the artisan and manufacturing groups of that day.

Only recently, on March 4, Chairman Paul Rand Dixon of the Federal Trade Commission took occasion in an address on the historical aspects of antitrust law to point out to his audience:

In France, for example, a regulation promulgated by Colbert sought to curb the weaving industry's undue tendency toward initiative by requiring that fabrics woven in particular towns were to contain a precise number of threads, neither more nor less. At Avalon, fabrics were to contain 1,376 threads, neither more nor less.

Chairman Dixon went on to note that:

The industrial revolution with its burgeoning factories and mass-production machinery burst all of these bonds with a wrench that shook society to its very foundations.

Implicit in this bill are the philosophies of a school of economists, which also have held that national resources are wrongly allocated in today's society. They say that the culprit in this instance, however, is the power of our mass advertising and promotional efforts to create irrational desires for unwanted and unneeded consumer goods, such as television sets and nonfunctional tailfins on automobiles.

Their solution is to impose higher tax rates, and hence channel a greater part of our national income into such public works as aid to education, medical benefits, and other Federal programs.

They thus pose the issue of national growth as a contest between public spending and private spending—or as one put it—private indulgence or public need? It is ironic that their prescription for economic growth is today being diametrically opposed by the national administration. The President, as you know, has called for massive reductions in both personal and corporate income taxes as the best means of stimulating our national growth.

The first leg of the theory of "irrational buying" is, of course, that the truest and hardest competition of all is strict "price competition" and that "nonprice competition" has been introduced deliberately by manufacturers to induce irrational buying and to avoid competitive pricing.

We believe the theory does not comprehend the meaning of the word "price." It may not be difficult, for example, to convince the average housewife shopper (as some economists apparently are convinced) that she is interested in "price" above all things. If stated in those terms, she will readily agree.

We suggest, however, that if she be asked whether she is not even more interested in getting the best use, or quality, or other satisfaction for that same price, she will agree even more readily.

In the first question it is argued that price competition is the most meaningful measure of consumer choice, and that nonprice factors are to some degree a deception. The housewife was given only half the equation. The second half of the equation includes the values which are purchased for that price.

We believe that every consumer's basic objective is to obtain a certain value with his price, and that neither the consumer nor economists can separate the two.

Let us examine these nonprice values, for they take many forms. They include appeals to the consumer's convenience, health, capacity for storage, sense of esthetics, and many others.

In the normal sense, convenience may consist of a package with a tear strip to facilitate removal of the top; or with a spout for easy pouring of the contents; or a sponge or tiny pump for ease in applying the substance. A health value may be found in the plastic tube which encases the modern toothbrush, symbolizing the article was untouched by human hands. A storage value exists in the size of the package itself, and perhaps the first "convenience packager" was the man who first broke the bulk of a cracker barrel.

It has been contended, for example, that it is "irrational" to provide containers or packages which satisfy the consumer that he is in the forefront of progress or fashion, or simply that he has the affluence to acquire it.

The bill may outlaw various forms of this appeal—as an urn-shaped container for a standard household liquid. It is strange that manufacturers must defend themselves in adding these values to their products. True, these examples of individual taste are difficult to explain. But no more difficult to explain than why more than half a million persons gathered in the city of Washington recently to view the 400-year old masterpiece portrait, Mona Lisa.

Those who cannot understand this, will not be able to understand why millions of American women find an urn-shaped container of a toiletry with a golden stopper more appealing than a standard jug or bottle. The sole value is in the personal satisfaction they receive from displaying the one upon the ornamental glass shelves of their bathrooms while hiding the other behind a cabinet door. It is disturbing that Congress should be preparing at this moment to legislate against such values, however they may be described.

In the view of any single consumer, the choice of another consumer may appear to be irrational. So let us concede for a moment that consumers make what appear to be irrational purchases, buying what pleases them at the moment.

But we should not assume that a buyer will make the same choice repeatedly, day after day or week after week, without finding values in his purchase—without having any rationale whatsoever. That he would do so is not even in the realm of speculation. We deny it completely.

Even so, we find the issue of price competition versus nonprice competition a false economic issue. The critics of "confusion" assume that

20 competing varieties, sizes, and shapes of a standard household product are all manufactured and displayed on a supermarket shelf to appeal to the individual customer.

The fact is, our product and our package diversification are not designed to appeal to one "typical" consumer. The purpose, as any marketer knows, is to appeal to 20 highly individualistic consumers, each with differing ideas of the values he wants.

Undoubtedly, the lone shopper facing 20 packages on the market shelf would not be able to make an immediate and precise evaluation of their relative weights, volumes, and contents.

However, she is sure to find at least 1 of these packages which meets her own needs, and we believe most of them are smart enough to realize that the other 19 packages will meet the needs of other women.

We should add that, in actuality, however, no one is likely to see 20 package sizes or even half that number in a single outlet—even though a producer may find it necessary to carry that many in his full line. It is a known fact that retailers themselves limit the assortment that they will place upon their shelves based upon their particular needs and their particular trade and clientele.

We submit that products are conceived, developed, manufactured, and marketed in a variety of sizes, shapes, quantities, and qualities to meet the myriad desires of a diverse population. These desires or wants are not frivolous or unreal. Your committee hearing record of the past 2 years carries documentation of these consumer wants—differing as to age, sex, family size, nature of employment, mode of living, and a score of other human characteristics. This is an observable *de facto* situation. The goods are being purchased daily, and repeatedly, in these varieties by consumers in vast numbers. If there are 20 such groups there are 20 markets and there will be 20 product offerings. There will be competition for each of them.

To reduce the offerings to five sizes and shapes will be to permit manufacturers to produce goods for only five markets. To do so, of course, would be to deny large groups of people the right to fulfill their particular desire for a product of different quantity, shape, quality, color, or price. It also will be to reduce competition, not to increase it.

The core of the truth here, and the facts of business life are, that no manufacturer would risk bringing a new product to the market without offering a solid value to the consumer that will lead to repeat orders, without which no item can commercially exist. More succinctly, we believe that there are not two forms of competition in our economy, price competition and nonprice competition. There is only one kind of competition and that is to satisfy the consumer's sense of value, even though it may be only a new and pleasant fragrance in a box of cleanser—and that one really happened. Competition is total competition, however, it arises.

If there should be lack of emphasis on the price factor of our values today, this bill is indeed a strange vehicle to correct it. The limitation of section (c) (4) on "cents-off" or other bargain offers on the manufacturer's labels directly inhibits price appeal. Such promotional offers save money in absolute terms to the consumer, and the practice on its face is a manifestation of price competition in its purest form.

The subcommittee already has heard testimony that the imprinting of these offers helps to insure that the price reduction is bought forcibly to the attention of the consumer at the retail level.

Similarly, those producers who have turned to progressively larger packages are not only meeting changing social demands, but are engaged in a fierce price competition.

Contrary to testimony regarding any exceptions before this committee, producers of volume packages are simply offering more goods at smaller unit prices to appeal to those who seek maximum savings. We do not understand how this can be considered in any light other than pure, hard, price competition.

Fortunately, if we are concerned that today's packaging and labeling practices are today following Chamberlin's theoretical pattern of fewer sellers, restricted production, higher prices and ultimate monopoly, we have several ways to test the wind.

In the food industry, for example, in the face of a steady decline in the number of units engaged in the growing, processing and sale of food, our diet itself has improved in terms of taste, quality, nutrition, and character of food product.

If all this had been achieved at higher prices forced by monopoly methods, it surely has not been evident in the profit margins of the industry which have declined absolutely since the thirties.

If costs of production and distribution were excessive or growing because of wasteful packaging, unwise use of resources occasioned by irrational buying, or monopoly forces, it is not evidenced in the price-wage ratios of our national statistics. The fact is that—with increased quantity, quality, safety, convenience, esthetics, and other values we receive—we as a nation are spending less of our total wages on food than any people in history, and it is declining.

Even if all these things were not so, it is futile to isolate any one element of an industry's marketing activities, such as packaging and labeling, and to conclude that such practice is responsible for an increase in monopoly, restricted production, or higher prices. A marketing plan consists of many elements, each of which interacts with and strengthens the efficiency of the others. Marketing executives do not rely upon the measurement of any single element.

However, none of the claimed evils appears to be present in our economy. To the contrary, our economy has provided consumers with a wider variety of goods, at lower "real prices" in terms of earning power, than at any point in history.

As to economic waste, some of the packaging materials used today may well be more costly than those used a decade or two ago. Some are less costly—for example, the popular "six-pack" of beverages has been a forward step in packaging economy.

Some packages which may be more costly to fabricate in absolute terms may nevertheless result in economical use of the contents—such as the roll-on or aerosol applicators.

Shelf life has been extended in some instances; in others the product is protected from breakage or spoilage in the home, with reduced waste to the consumer.

The marketplace quickly weeds out the unsound and the unwise. Government efforts to make these judgments merely substitutes a few opinions for the numberless opinions of the market. The decisions of

Government cannot be equated with those of the market, for no one knows what will do a job for consumers—except the consumers themselves.

We suggest that those who believe there to be excessive use of materials in our modern packages, move with extreme caution before drawing off-handed conclusions as to net effect upon the use of our national resources. The implications of the packaging revolution, we believe, are strongly toward net economic savings, not waste.

The sponsor of the bill and chairman of the subcommittee has publicly declared himself against standardization of products. We believe that each of these provisions requires standardization, and that the force of all of them will bring standardization in many harmful forms.

Standardization of consumer choice products is a far different process than standardization of the tools of productions. Standardization has been introduced into industrial equipment—not to freeze the choice of producers—but to give flexibility to the manufacturing process.

It has led to longer production runs, simpler tooling, faster production and better quality. The net result has been a greater variety and abundance of end products for the consumer than would otherwise be possible. The standardization of consumer products works in the reverse. A smaller variety of goods will be produced. It will deny choice to some groups of consumers, and limit the choice of all. Economically, it is bound to limit competition, not promote it.

Controls inevitably bring more controls. During World War II, it was deemed desirable to impose price control. But price control could not work without corresponding control of wages, a major ingredient of price. And wage control could not work without production control and manpower control. In the end, we had forbidden the free movement of our citizens.

Today, in a peacetime market, the Congress is being asked to place the force of the Federal Government behind a drive to promote net quantity over any other value of the package. It is idle to debate whether this sustained emphasis will not influence the character and composition of the contents themselves.

It is claimed, in fact that one of the effects of the bill would be to influence the contents. The result, however, could well be poorer quality instead of the improved quality envisioned by the advocates of standardization.

Why should anyone believe, first, that a manufacturer who would deliberately seek to deceive the consumer by varied sizes and shapes of packages, will be less eager in his deliberate dilution of quality if the price-volume ratio is his major means of making an impact upon the consumer?

Second, on a much larger scale, you must contend also with the long-range tendency of such compulsory laws to lead producers to minimum standards; reducing the competitive drive to improve quality.

For example, the present complaint is that an odd-size or fancy bottle of a household cleaning agent may mislead the consumer.

Under the proposed law, the attention of the consumer will be directed sharply to the comparative weights. Now, a new type of com-

petition will be set up to produce the heaviest package or the greatest volume at the best price. It may be done by a new formulation, or even more readily by reducing the active ingredients and cleaning quality.

At present, there is claimed confusion based upon package size alone.

Later, it will be weight of the contents. In one case, the force of the market is responsible for any "confusion," and the force of the market can correct it. In the other, it will be compelled by force of law, and may never be corrected.

Then, Congress will be faced with a new request. It will be asked to enact supplementary legislation to control the quality and efficacy of these products. For, if the housewife is to find on the supermarket shelves a variety of packages of the same size but with varying prices per ounce, she must have some further measurement as to which ounce is worth more, in terms of effectiveness. She must be protected as to product effectiveness.

Clearly, if the purpose of the bill is to bring about buying based upon price, it must provide for the control of ingredients, and to make price emphasis effective, the Congress will have to extend its power to the grading of all commodities.

Thus, as in our wartime experience with price controls, we will have a pattern for control of the American market.

You cannot control the label without controlling the package.

You cannot control the package without controlling the quantity.

You cannot control the quantity without controlling the composition of the contents.

You cannot control the contents without controlling the allocation of the resources of our society, and limiting consumer choice.

Finally, as to the expected effects on competition, the advocates of the bill's approach suggest that under conditions of greater standardization, consumers will make rational comparisons between the dominant and the lesser advertised brands.

This is a most improbable outcome. If quality and performance claims are suppressed or deemphasized in favor of a price-volume appeal, the advantage of the larger business unit will be further enhanced through the lower costs of high-volume production, and new barriers to market entry by competitive innovators are raised, and it will be much harder for a small competitor to exist than under present circumstances.

Now, in regard to innovation, we ask the committee to consider—as one of the practical marketing problems—the impact of the proposed procedures upon new advertising, promotional, and merchandising ideas of consumer goods companies.

You are asking them to go before a Government body and expose these plans to their competitors, jeopardizing both their preliminary investments and the success of their sales efforts. We believe that marketing innovation, and competition as well, cannot help but suffer under such conditions.

Gentlemen, I know that there has been considerable testimony on this point already before you and I can only urge that you give it careful and weighty consideration because it is a very important aspect.

Lastly, we ask you to remember that the restrictive rules will be imposed upon small manufacturers as well as large. Large concerns have no monopoly on ingenuity, particularly in the merchandising field. In fact, our experience is that the small producer or marketer relies more heavily upon innovation than the large company for maintaining his market or entering a new one.

In this situation we can think of nothing the Government could do which would lead more surely to the supremacy of leading manufacturers in national markets, and the disappearance of their smaller competitors.

Since the beginning of these hearings, members of our association who are manufacturers of consumer products, including those who would not be directly affected, have been deeply disturbed over the implications of these proposals.

Much has been made of truth telling to the American housewife. We find this bill is not a truth-in-packaging bill. It is a compulsory standardization bill. It has been admitted that the bill is not directed at untruthful labeling. Standardized packages mean standardized products and standardized quality, and we believe no housewife wants that. Regimentation of the product is regimentation of the housewife.

The inevitable effect of the bill will be to roll back the packaging and marketing revolution of this generation. Had we lived in recent years under such a law, we would not buy our products as fresh, as clean, as unbroken or unspoiled, as accurately measured, as easily handled or as cheaply as we do today.

The industries which have grown up around squeeze bottles, unbreakable containers and the aerosol package might never have developed. The new, the unusual, the breakaway from tradition would have been discouraged. The housewife's choice of goods would have been limited; her choice of product quality would have been less, and her ability to compute real values would have been impaired.

If guidelines are needed to prevent outright deceptions, there are many existing laws to prevent them, as previously discussed. The proposals of S. 387 introduce the wrong kind of guides into our buying-selling process, and promote misconceptions to the buying public. This is consumer education in reverse.

As we have seen, the Federal Trade Commission and the Food and Drug Administration, in addition to programs for voluntary compliance, are fully empowered to outlaw any deceptive package. The FDA may even seize such packages to prevent their sale.

These are not the only police powers of government. The Columbia Law Review has stated that in the Federal Government alone 21 agencies are involved in policing advertising. Nearly every municipality has its sealer of weights and measures. Every State has controls in this area, and 43 or more have adopted the famous "printers' ink" statute of 1911 prohibiting deceptive statements. In every State, too, there are common law remedies against deceit, fraud, and breach of contract or warranty.

Add to all this the most powerful force of all—the relentless drive of companies to satisfy their customers in order to merit continued patronage and maximize their profits. Evidence of that drive appears in industry's expenditure of millions of dollars in elaborate and painstaking consumer research.

We believe therefore that, for any abuses which exist, the legal, economic, and moral forces in our system are capable of dealing with them. Adopt this bill and you will be giving away something from all of these vital forces. You will be giving away a great deal of the ingenuity and the innovation which has worked to the benefit of every consumer. You will be giving away the established philosophy of our antitrust laws.

As marketing people, we ask you to consider whether it will be worth it.

We think not, and we ask the subcommittee to reject the proposed legislation and to permit the hard competition of the marketplace, backed fully by enforcement of existing law, to protect our consumers and our customers in their right to products of honest value and at honest prices.

Thank you very much, Mr. Chairman.

Senator HART. Mr. Manischewitz, thank you very much. Your statement reflects much thought on your part and that of your associates.

Very early in the course of your testimony we were joined by the distinguished Senator from Nebraska, Senator Hruska.

I think that after 8 days of hearings which we have had on this bill, the questions that I might raise in response to some of the concerns which you have expressed and the alarm bells that you have rung would not be surprising and indeed not even needed.

I just want to make one comment or perhaps two, because I want at least to try to reassure those whom you describe as "our marketing people."

At the top of page 2 of your statement, I was struck by the fact that you say while the bill itself establishes permissive measures, in that it authorizes the enforcement agencies, the Food and Drug Administration and the Federal Trade Commission, to do certain things, you say that your marketing people have no illusions as to the sweep of marketing controls intended.

You say:

To give vitality to the act, the so-called "permissive" regulations must be used—for there is no other way in which the enforcing agencies can serve the purpose of the bill.

I just want to reassure those marketing people that, as one of the authors of this bill, it is intended that the regulatory agencies exercise discretion. It is not a direction to them to do other than that. I would disagree wholeheartedly with your marketing people's reaction to this.

But the one comment I would like to make, rather than extending this by questions, is this: You make a very clear statement, also on page 2, where you assure that the National Association of Manufacturers supports full and fair enforcement of the laws against deception and unfair trade practices, and also those based upon public health and safety considerations.

I compare that with this NAM board of directors' statement that you attach, a short statement which says: "Efforts to impose mandatory labeling regulations regarding the composition or content of particular lines of products may lead, in some cases, to deception of the public as to the quality or functional use of the article. Industry

believes, therefore, that laws requiring the labeling of products, unless clearly related to the health or safety of the public, are not necessarily in the consumer interest, and constitute an unwarranted intrusion by the Government into normal marketing practices."

Now, the only reference to deception in what you describe as the basic statement of the NAM, the only reference to deception there—and this seems almost fantastic—is that laws requiring labeling showing the content and quantity of products may deceive the consumer.

That is in the first sentence.

Then in the second sentence I think there is an equally remarkable thought. To paraphrase it a little, I would say that the NAM Board is saying that since laws requiring honest labeling may deceive the public unless they are clearly related to the public health or safety, it is possible that they are not in the consumer interest and constitute an unwarranted intrusion by Government into marketing practices.

Now, that basic statement, it seems to me, is wholly out of tune with the kind of world in which we live, and is unrelated to reality.

Indeed, I know how sensitive the NAM is to caricature—and who isn't; certainly the politicians are—but if somebody had set out to hire a person to do a caricature, an attack on the NAM, he couldn't have done better than to come up with those sentences; with those thoughts. That is not to say, sir, that some of the suggestions and the cautions which you voice do not give me concern, too, and we should be very careful in our analysis of the bill.

Senator HRUSKA?

Senator HRUSKA. Did you have any comment on that latest suggestion by the chairman, Mr. Manischewitz?

Mr. MANISCHEWITZ. Yes, Senator, I would like to comment briefly on it.

This was to cover more than just consumer packaging. I think there was—

Senator HRUSKA. When you say this, what do you mean?

Mr. MANISCHEWITZ. The resolution of the board.

Senator HRUSKA. In 1959 to which reference was made?

Mr. MANISCHEWITZ. Yes.

At that time there was a proposal—and I think the example that comes to my mind concerns the labeling of shoes. There were very, very cheap shoes that were made of all leather and there are much better shoes that are made of a combination of leather and other content, perhaps fabric or plastic or what have you. It was felt by us that if you labeled a cheap shoes "all genuine leather" you could make it sound like a much better thing than it really was.

Whereas another shoe which was not made only of leather, and which said "made of leather and plastic" or "leather and fabric" would sound or could be made to sound as though it were not as good a shoe, whereas in reality, the exact opposite would prevail.

This is an example that immediately comes to my mind. I am sure I could dig up a number of others similar to that. That was the intent of saying that labeling in itself could deceive the public, and where it wasn't clearly related to health and matters of that kind, which would include food products or drugs and what not, we didn't think it was necessarily an advantage to the public.

I think that is all this statement intends. It does not try to conceal anything from the public.

Senator HRUSKA. Of course, it is always dangerous to make a definition or statement of position too concise. If anything—

Senator HART (interrupting). Or too precise.

Senator HRUSKA (continuing). Or too precise, exactly.

I would imagine, however, if that statement of the board of directors of June 25, 1959, were related to the discussion that you have on pages 20 and 21 of your statement with reference to the inevitable and logical result of labeling requirements in statutes, once they are started, if it was considered in conjunction with that, it would mean something very, very much different than the critical mind, perhaps might attribute to it if it is considered only within the eight lines that it is spread over in that mandatory labeling statement of the board of directors, because, as I understand it, as I understood your statement on pages 20 and 21, we start out with a standard package, and we lean heavily on standardization, we lean upon size, and we lean upon bulk and so on, but there comes a time when that preshave lotion, for example, has just a little more water in it than it otherwise would have and it is not quite as effective on the face just before you apply the electric shaver, and yet the bulk and the quantity requirements of the label are abided by, aren't they, and if then, in the marketing of that thing a guy gets awfully sick and tired of having nothing but a little diluted water on his face, what does he do?

He has two choices, hasn't he? He can buy some other preshave lotion or he can come to a congressional committee and say, "My gosh, I have been gypped. The lotion that I used is not efficacious," as we used to say in the drug hearings, and that is a fancy word for saying that it is not very good. "So I want a law that will make a preshave lotion work and work good," and then we get into quality control.

Isn't that what you are trying to say on pages 20 and 21, Mr. Manischewitz?

Mr. MANISCHEWITZ. Yes, sir, you have said it much better than I could and that is exactly what we mean. I think perhaps the resolution of the board ought to be amended more clearly to bring out and to state the true meaning we had, because if it has been misunderstood and misinterpreted, as it has just this morning, then I think it is incumbent upon us to modify it because that was not our intention. I am certain that the National Association of Manufacturers has no such thought in mind as Senator Hart expressed, that is bad—

Senator HART. One moment. I was reading what you said, was I not?

Mr. MANISCHEWITZ. We have done a bad drafting job and we ought to improve it but our intention was not correct as you voiced it.

Senator HART. Is it not correct that I read you what the NAM's position was, in so many words?

Mr. MANISCHEWITZ. I believe so, yes.

Senator HART. I read it from your statement and you now suggest that it should be changed?

Mr. MANISCHEWITZ. Well, I didn't understand it the same way that you did, but when you explain how it sounded to you and the manner in which you interpreted it, I can see that we could by modifying the language make the position a little clearer and more understandable.

Senator HRUSKA. Mr. Manischewitz, while we are still on that point, what is wrong with having the Government go into the quality and efficacy of products?

On page 21 you say the Congress will be asked to enact supplementary legislation to control the quality and efficacy of those products. What is wrong with that?

Mr. MANISCHEWITZ. Well, Senator, I believe we have grown to the size and the state of affluence that this country enjoys based upon the natural economic laws that we enjoy under the free enterprise system.

I believe that the natural economic laws by which consumers tend to select the greatest values, through fierce competition for their favor, produces the best results for all of us.

If someone interferes with this normal economic activity and says, "These are the standards" or "This is what you must do," you destroy a certain kind of initiative on the part of the producer and at the same time you prevent the consumer from having a free choice, and this will, in my judgment, result in a diminution of our standard of living very, very generally.

Senator HRUSKA. It would mean, wouldn't it, ultimately, that the judgment of the marketplace, the composite judgment of thousands of purchasers, which is pronounced upon a producer's guess as to what the market needs and wants, the judgment, the composite judgment of the marketplace would be eliminated, and the venture quality, and the venture nature of production, that all would be thrust to one side and the judgment of somebody sitting in a bureau as to how much water preshave lotion should have in it will then prevail.

Mr. MANISCHEWITZ. Precisely, that is correct, sir.

Senator HRUSKA. And you have an idea that is not good?

Mr. MANISCHEWITZ. No, sir, I think it is bad. I feel it is very bad. The basic idea of modern marketing is not to come up with something which in the judgment of a manufacturer or any individual is what the public ought to have, and then to try to push this down the throat of the public. That hasn't been modern marketing's point of view for many years.

Modern marketing seeks to find out what the public needs, what its wants are. Sometimes the public isn't even aware of it, and this sounds funny. But I can give you an example which I am sure you will agree with.

The modern photocopy machine is a perfect example of a want that nobody knew was there. We didn't know we needed photocopy machines. But some enterprising manufacturer in making a study of the needs of people and of business discovered that there would be a very useful and valuable place for a machine of this kind, and out of that has sprung a large industry by supplying a great unfilled need and a want, and lots of employment, all the good things that flow out of this kind of thing, and that is a perfect example of good marketing.

On the other hand, such things as have been mentioned at different times about the fact that advertising or the pressure of a manufacturer can force the public to take unneeded and unwanted things, this just isn't so, and an example of that, sir, is the beautiful case of the Edsel automobile.

Nobody ever put more money and more effort and more advertising and more push into any product to try to get the public to accept it, and the product didn't fill the need the public felt it wanted and the Edsel automobile was a failure.

This is, I think, in my judgment, the natural free action of economic laws, of economic realities.

If you interfere with those, you are bound to find that the mistakes of a few people will not automatically be canceled out because you can't say that the millions of consumers are wrong. They are always right.

Senator HRUSKA. Let's get to another phase of your statement.

It has to do, on page 2, with this idea that there are in the bill certain things which the Food and Drug Administration must issue by way of regulations, and then it has this category of permissive regulations, and you make the point to give vitality to the act the so-called permissive regulations must be used.

Of course, it is suggested that as long as the very competent and able chairman of this subcommittee has anything to say about it, by golly, that will not be transgressed, if I understand you properly, and it will not be abused and it can be only permissive and it will be.

But I have an idea, Mr. Manischewitz, that once this bill becomes law, if it ever does, and God forbid, I say, once it ever becomes law then your jurisdiction here in the Congress kind of ceases, doesn't it, and it becomes a matter for a law enforcement agency, and in this case, the Food and Drug Administration, to take charge, and it does take charge.

We don't have much to say about it except to call hearings now and then and make speeches and one thing or another. Isn't that your experience with other governmental agencies with which you come in contact?

Mr. MANISCHEWITZ. Yes.

Senator HRUSKA. As a businessman?

Mr. MANISCHEWITZ. Yes, sir, that is the case, and I think it is well known in the history of this sort of thing, this is very clear. It follows the line you have given exactly.

Senator HRUSKA. We have known of such things as Parkinson's law and that is when a bureau once becomes established then it is its first rule to become bigger by addition of more employees thereby insuring its immortality and thereby insuring a glorification of those originally in charge so that they become firmly entrenched. That is generally recognized as one of the laws of government these days.

In more recent years we have had a corollary to that law that was pronounced first, I think, in the form of a published book called Lowell Mason's "Corollary" and the corollary to Parkinson's law is that as soon as Parkinson's law has been complied with then it becomes the inherent urge of that agency, whatever it is, to spread out its jurisdiction, sometimes far beyond what Congress intended, but nevertheless going on and on and on until they are cut off either by Congress or by the courts, and in my observation that has been a pretty good—there has been a pretty good demonstration of that.

Would you say that the listing of permissive regulations within a law would help or hurt with reference to this urge of the Food and Drug Administration to go as far as it can and maybe a little further, if no one catches it?

Mr. MANISCHEWITZ. Well, I think that the Parkinson law and Mr. Mason's corollary adequately answers that.

I believe very strongly in the separation of powers. I think this country has become very great because its founders foresaw the advantage in the separation of the legislative and the judicial and the executive powers, and anything which goes toward creating a backward step from this so that the power of investigation or the power of judgment and the power of enforcement are all in the same hands tends to destroy the foundation and the important keystone upon which many of our liberties and many of the successes of this country have been founded.

Senator HRUSKA. Of course.

But the Food and Drug and the Federal Trade Commission get in here and say, "Look, we can't get any convictions in the courts. We want the rules changed so that we can get convictions."

How would you go about getting convictions for them, Mr. Manischewitz?

Mr. MANISCHEWITZ. Well, I am not sure that they need convictions, Senator, unless—if they have on a case-by-case basis an act of deception or an act which is contrary to law, they can win their case in court, but normally they don't have to.

I understand from some of the testimony here earlier, there was a statement that only six cases had been won or had gone all the way through the courts. But there are thousands of cases which have been settled by consent, before they ever got even into litigation, and thousands of them that have been settled by consent without having to be acted upon by a court decision, and this has pretty much operated to enable the food and drug agency to enforce the existing laws to the benefit and safety and protection of the public, and I see no reason why, because they have lost six cases or because a case-by-case basis is more difficult, they should adopt a set of rules where they won't have to do this, but can just simply lay down a rule that will apply to everybody regardless of how the individual case fits it or not.

Senator HRUSKA. Is it one of the principles of jurisprudence, as you understand it, you are a businessman, of course, I don't know that you are trained in the law, but is it one of the principles of jurisprudence that a conviction should follow when a case is filed in court?

Mr. MANISCHEWITZ. Oh, no, oh, no; I think that businessmen have a great faith in the courts of this country.

We believe that the courts are basically objective. They are well trained to understand the law, and they take a point of view which I think is fair. I wonder, though, whether or not this same objectivity could exist—and I am saying this as a layman, I am not a lawyer and I don't have legal training—I am wondering if the same objectivity could possibly exist when, if in the hands of one agency, there would be an investigation, a charge, and a judgment made all in the same place. Where is the objectivity, where is the balance of power?

Senator HRUSKA. Of course, the contention of some of the witnesses here has been that they now have a hard row, they have to go on a case-by-case proposition, and I can't quite follow that.

I don't know how justice can be dispensed wholesale. After all, even under the regulations which will have the force of law, which the

proposed bill would result in, even there they would still have to bring their charges and they would still have to pursue the case-by-case method.

I don't know how else you can do it. But except if they simply say, "The burden is now on the other side. We judge you guilty," that is, the agency itself will say to the merchant. "You are guilty and it is up to you to disprove yourself now." It is a shifting of the burden because they have the initial finding to make.

But it is at that point, as I understand it that you take a little different position that the bill does and say that is not so good. That you would rather have the separation of the law enforcement from the administration or the charge of violation of law.

Is that a fair statement of your position?

Mr. MANISCHEWITZ. I think it is, sir.

As I understand it, there wouldn't be a hearing on the merits of the case. An individual would simply be charged with having broken the rule. It wouldn't be on the merits of the individual action at all.

As you say then it would be up to him to prove he had not broken the rule or that in his individual case he was innocent. I always thought that our concept was that a man is innocent until he is proven to be guilty, and this reverses that; doesn't it?

Senator HRUSKA. It would seem in many cases that is true.

For all practical purposes, as I understand it, under the Administrative Procedure Act just about the only thing the court reviews in the agency ruling is—is there any evidence which would sustain the result which was obtained in the examiner's or in the administrator's finding.

So perhaps to that extent it might be true.

I was interested also in your observations as to the objective of this bill the way you read them, of being to prevent confusion.

I just wondered in the enacting clause we have the proposition made that a new section be added to the Clayton Act which has to do with "unlawful restraints and monopolies and for other purposes" where confusion fits into this business of building—confusion in the minds of the buyer fits into this business—of unlawful restraints, monopolies, and that sort of thing.

Where does it fit in?

Mr. MANISCHEWITZ. We just don't know what confusion is, and it hasn't been defined as far as I can see, and the attempts at definition have all relied on the definition of deception, and if it is deception we claim there already exist laws for that.

But confusion, to rely upon this, it is a very indefinite thing and what may confuse one person may not confuse another, or it may confuse them differently. It is impossible in our judgment to make an accurate definition of just what confusion would be upon which you could render a sound judgment as to whether or not a particular product or activity was in violation of the law.

It would be so much a matter of judgment on the part of whoever happened to be judging it that you could expect five different people to come up with five different ideas about it because it is that different.

Senator HRUSKA. We had a witness here who said he took his glasses off and he couldn't read the printing on the label of the weight of the package and, therefore, he was confused.

I notice you are wearing glasses, Mr. Witness, and I am. I have an idea if I were asked to sign a document and took my glasses off and refused to read the the document or put myself in a position where I could read it, I would be very confused if the sheriff came along 6 months later and asked me to pay the \$5,000 that agreement called for.

This business of confusion, isn't it something that is pretty subjective in character, and people are different, and if we are going to legislate for people who take their glasses off when they go to shop around for things, that is going to impose a little burden on the manufacturer; isn't it?

Mr. MANISCHEWITZ. Yes, sir, I think so. Indeed, it would.

Senator HRUSKA. You make reference to this idea that standardization of consumer products would lead to a smaller variety of goods that would be produced and put on the market.

Could you elaborate on that a little bit, and why that would happen?

Mr. MANISCHEWITZ. An example in the testimony is if you take, let us say, 20 different kinds of hand lotion, and reduce it to 5 standard sizes, it can only exist in certain sizes, you are going to limit the choice of people who in the past wanted a particular size, maybe because they had small shelves or maybe because they had particular needs which would not be met by the 5 standardized sizes, and you are going to compel them either to give up the product or to buy it in a way in which they didn't want.

This reduces, let us say, 20 choices down to 5. I think it has been a well-known fact that the rate of consumption or the total use of anything that is consumed in the home or by individuals, which is the kind of product that we are covering in this bill, tends to increase as the freedom of choice expands and the more items there are the more people have a choice to select from, and the more they will use it because it fits their particular need. The less they have to choose from the less they use.

This is something which I think has been proved time and time again in the marketplace.

Senator HRUSKA. We have now in this country the practice of filing with insurance companies, with insurance departments of States, the type of policy that any company proposes to issue and delivery to buyers.

In a few States, of course, the rule is a little more stringent. It not only requires filing of that policy, but it requires an affirmative approval by the director of insurance before that particular policy form may be used.

There are thousands of such things. They, of course, involve very vital and very valuable property rights and contract rights and through the decades now we have found that to be a good American custom. We have learned to live with it, and it performs a lot of good.

Now, however, we are getting into a field where I understand there will be some 8,000 items in a normal grocery store or supermarket, but before any of them can be put on the shelves the label for each of them must be submitted and filed, as I understand it, with the Food and Drug Administration and sort of be approved.

Does that strike any note of terror or jubilation on your part, Mr. Witness, one or the other?

Mr. MANISCHEWITZ. Certainly not jubilation. As I testified, I think this is one of the most undesirable aspects of this bill.

A great deal of the success of a product can depend upon the ability of its manufacturer or its inventor to get the benefit of his invention by being there first and by developing a program which will be ahead of his competitors.

If you are going to require every new product, even in its inception stage, to be put on file, you are going to thereby alert every competitor of what the man has in mind, and so he knows in advance that if it is a good idea they will all have it as quickly as he will.

This takes away the incentive and the possibility of making a good profit out of his inventiveness, and when his incentive is impaired, he is naturally not going to take the kind of action, and the whole basic concept of the innovation and the effort and the inventiveness and this kind of activity will be seriously impaired.

I think we have made our greatest progress because people have been inventive and they have attempted to do things, to make improvements, because of the hope of a reward for their inventiveness, and you are going to destroy this really.

Senator HRUSKA. What of the role of the small manufacturer, the little guy who has a brilliant idea and he puts it on the market? Hasn't he more at stake on this thing than the big outfit that has research department and has all these methods and procedures whereby they can constantly keep hammering at it? They have a pretty good chance. They have made it. Maybe they started out with the kind of operation that the small guy would have but wouldn't he be particularly penalized in this type of thing which would snarl things up in delay and perhaps a good deal of negotiation and expense and all that sort of thing, all on the basis of the idea that if he is allowed to do it alone he might do it wrong and cause confusion?

Would you have any comments on the little fellow about whom I am talking?

Mr. MANISCHEWITZ. I think he would be the worst sufferer of all, because he must rely upon inventiveness and ingenuity more than anybody else, and he is basically the fellow who can turn more quickly and who can innovate in an effort to steal a march on his competitors and thereby retain or gain a market for himself.

The big man, while he has all of the research facilities you have mentioned, has no monopoly on brains and no monopoly on inventiveness. The little fellow with only one man can get a bright idea, sometimes much more quickly and better than can emerge from a large laboratory, and if you destroy his opportunity to capitalize on his bright idea he is finished. He can't compete on the basis of mass production with a man who has all the facilities and tools and means at his control as you have indicated, Senator.

I think the little man is going to suffer much more than the big one.

Senator HRUSKA. What effect will that have on lessening competition?

Mr. MANISCHEWITZ. I think, as we see that sort of thing develop, you will get down to a few giants who will remain in the field, people will be forced to choose between the names which are extremely well-known to them on standardized products. It is a lot easier for a man

having a very large production and a very low cost of operation because of a very big mass producing capacity, to outmaneuver the small man, to outprice the small man, and I think that you will create a condition where you will do the very reverse of what we all want, and that is you will tend to set up this oligopoly on a much firmer ground than those people who complain about it now find.

Senator HRUSKA. Mr. Chairman, you have been very courteous and kind as you always are.

You have listened to these aberrations with patience and tolerance and I thank you.

Senator HART. Mr. Manischewitz, the committee does appreciate your coming.

Mr. Cohen, do you have any questions?

Mr. COHEN. Possibly you might just clear up one matter here.

On page 12 of your statement you say something about extending the coverage of this bill to the activity of the ultimate retailer.

Do I understand from that statement that it is the position of the National Association of Manufacturers that if this bill be passed, it should include the ultimate retailer within its purview?

Mr. MANISCHEWITZ. No, sir. We don't think the bill should be passed at all, and we have no such affirmative recommendation whatever along that line.

We just made the comment, I just made the comment, that I thought that one of the weaknesses of the whole structure is that you are taking a position here to the consumer and have eliminated one whole segment of the distribution process.

Mr. COHEN. That is very true. We, of course, have done that deliberately because the purpose of the bill is to get at the source of the kind of practices with which this bill is concerned, and the source, of course, has been the man who puts the product into the package, not the retailer.

I trust you understand that.

Mr. MANISCHEWITZ. Yes, I understand that.

Mr. COHEN. May I just ask you this, and I don't ask it of you facetiously, but I ask so I won't be in position of asking any embarrassing questions.

Have you read this bill yourself?

Mr. MANISCHEWITZ. I am not a lawyer. I have looked through it and I have read it, but I have had very excellent counsel. We have good legal people who have studied the bill, and with whom I have discussed it, and I base most of my opinions upon their counseling of me.

Mr. COHEN. Of their interpretation of what the bill means?

Mr. MANISCHEWITZ. Yes.

Mr. COHEN. The reason I ask is that I find in your statement, on five or six occasions, statements concerning the bill that just are not in it. It is just about as simple as that. I am not going into all of them but I would, for instance, mention the one you are talking about—prior approval of the label. This bill does not require prior approval of labels. It is, of course, required in the Department of Agriculture in regard to meat and poultry products which have been exempted from this bill. In the drafting of the bill we had considered this specifically, and we have rejected it.

The purpose of having the manufacturer send the label or the package he intends to use to the Food and Drug Administration is to facilitate enforcement. We felt that, as opposed to having a flood of inspectors going into the plants and looking at the packages and labels, it really would be more convenient for the manufacturer to send a sample of what he intends to distribute.

You do not have to wait under this bill until they approve it. It is just an aid to the enforcement process and one which we felt would save the Government money and would be a convenience to the manufacturer.

Now, with that explanation of what this bill really says, does this change your opinion on this section?

Mr. MANISCHEWITZ. Will you forgive me for a moment?

Mr. COHEN. Certainly.

Mr. MANISCHEWITZ. If I understand the provision of the bill it requires that a new product or its package, and this may not necessarily be only the label, but if someone invented a new type package like a squeeze bottle, for example, it would have to be submitted in advance.

This is what I understand. If I have the language correctly, "used or to be used."

Now, you know there is a leadtime that will vary—

Mr. COHEN. I don't mean to cut you off but the answer to your question right there is no, that is not required under this bill.

Senator HRUSKA. Mr. Counsel, is there any place in the statement that he does say that it is required?

Mr. COHEN. Yes.

Senator HRUSKA. If so, will you direct our attention to it? There is some reference to it at the bottom of page 6 of the witness' statement.

Mr. COHEN (continuing). Senator, on the top of page 7:

We do not believe—

Mr. CHUMBRIS. It starts at the bottom of page 6 and continues on top of 7.

Mr. COHEN. Top of page 7. This is the part I am referring to.

Except in protection of public health and safety we do not believe the Congress should permit its citizens to be prosecuted for failure to submit their packaging plans and promotional writings, and their manufactured products, to a Federal Government Bureau for prior approval.

Of course, the bill has no requirement for prior approval.

Senator HRUSKA. But no place does he say it is required, Mr. Counsel. Read those first two sentences preceding. He correctly refers to the law and then he states that he would very much oppose and does not approve of having a system whereby prior approval should be made but he never said that this law required prior approval.

I don't see in it here and I think at this point we should put in that entire paragraph so that the witness'—

Senator HART. The entire paragraph will be put in and I suggest it is an ideal example, if educators are seeking a handy one, of a straw man.

(The paragraph referred to follows:)

Proponents are not satisfied by the unquestioned power of these agencies to prevent deception. In the fine print of this bill you will find a new power of

censorship which would apply to whole industries, regardless of the presence or absence of deception. For, this new law would empower the Government (section 3A (g)) to compel a manufacturer or seller to submit to it a sample of "each package and label used or to be used" for distribution in commerce. Any failure to submit such samples will subject the firm and its executives to a fine of up to \$1,000 or imprisonment of up to 1 year, or both.

Senator HRUSKA. Well, perhaps so, Mr. Chairman, perhaps so. But it is peculiar, isn't it that here, unless a man in a bureau gets his labels from the man he is asking for, somehow or other he is judged to be a recalcitrant man from the very beginning and the imposition of a thousand dollar fine or one year in prison is going to be visited upon him unless both penalties will be inflicted upon him.

My, what a vicious set of businessmen this country is really faced with that they will not answer a letter of the thousands of letters they get from Government employees, and his record is so bad that he is going to be threatened with a thousand dollars and a year's imprisonment if he doesn't answer promptly that man, and give him every label he is going to use.

What a concept for a free country with free enterprise.

Senator HART. How much more tragic than the sorry plight of the poultry-and-meat man who not only has to do that but also wait until we decide. That is the law now. It hasn't strangled our society.

Senator HRUSKA. That is the law now, involving purity and I won't quarrel one iota with the chairman on that. We are not dealing with purity here but we are dealing with a customer who may be confused, and maybe he started out in a state of confusion before.

Senator HART. The appropriate agriculture act will speak for itself but I think it goes to the point of avoidance of deception and the requirement is that they must wait until there is approval given. We don't do that in this legislation.

Senator HRUSKA. The same thing is true in the drug business and that is the way it should be.

Senator HART. That was a conclusion reluctantly arrived at.

Senator HRUSKA. Not at all.

There was great demand for it and we went along, all of us went along, on that idea.

Now, as to the mechanics there was a difference of opinion and as to some of the extreme measures like destroying the patent system and two or three other things it was not only opposed but they actually were kept out of the bill and the way it turned out it was a good bill.

Senator HART. Mechanics and effectiveness are interchangeable in the mind of some of us. But all we are doing at this point is confusing the record. [Laughter.]

Senator HRUSKA. Mr. Counsel, have you finished with your illustrations of where the witness may have misconstrued the law because I am sure he would want that cleared up in the record.

One instance has already been cleared up. Have you any other instances where he may have misconstrued the law?

Mr. COHEN. The reason I asked about this one, sir, is that this specific provision was put in the bill partly because, of conversations we have had with various manufacturers who felt that it would be much easier for them just to send the package or label to the Food and Drug Administration or to FTC rather than have inspectors coming down to

their plants in force. I explained the intent so as to get Mr. Manischewitz's reaction to this.

If this is not prior approval but merely what I have explained, would you still be in favor of having this taken out of the bill?

This was really for the convenience of manufacturers.

Mr. MANISCHEWITZ. We don't see it as a convenience at all. I think that it endangers the opportunities for people to gain the advantage of their own inventiveness and ingenuity, and if you were to compel a man to reveal his intentions in advance you have taken away his opportunity to gain an advantage over his competitors, and you have thereby tended to reduce and to lessen the whole competitive urge because the reward will be very much reduced as you can very well imagine.

I can't understand how you are going to require this to be submitted in advance of the actual operation and use, and I did say there is sometimes a very long leadtime. It would be very simple if you said, "Well, the package should be submitted the day that it is to hit the market," but when you are talking about the advertising and the plans and the whatnot, sometimes there are 6 and 8 months' leadtime on this and they are conducted in the utmost secrecy and all of these things have to work together.

Mr. COHEN. We appreciate your comments, sir. I asked you this to get your honest and fair opinion.

Would you still object to a provision that the manufacturer shall submit his package or label after the product has been marketed?

Mr. MANISCHEWITZ. You mean instead of what, instead of submitting them in advance?

Mr. COHEN. That is right.

Mr. MANISCHEWITZ. Well, I don't think they should submit their packages at all as far as I can see for approval on the part of any Government agency, except as presently required by Food and Drug.

Senator HRUSKA. Would counsel yield?

Mr. COHEN. Yes.

Senator HRUSKA. After all, we have certain labeling requirements now. We have had them for many, many years, and, by golly, you have got to state the ingredients in there, for example, whether it is tomatoes or salt and pepper, chopped-up celery, whatever there might be in that chili sauce, and that bears on the ingredients and also their purity.

Does the manufacturer now, with reference to that very vital point, submit his label in advance to any agency?

Mr. MANISCHEWITZ. No, sir, he follows the rules that are laid down and he knows he has to do certain things and he produces a label that conforms with the regulations, and if he doesn't perform and if he doesn't conform he is subject to being——

Senator HRUSKA. If he has any doubt what does he do?

Mr. MANISCHEWITZ. He can go and ask.

Senator HRUSKA. Does he meet down there and go over it with them?

Mr. MANISCHEWITZ. Yes, he can go and ask.

Senator HRUSKA. If they have any doubt they write the manufacturer and say, "Will you please send me the labels on all your tomatoes or all your beans and peas."

Has there ever been any instance where they refused to do it, that you know of?

Mr. MANISCHEWITZ. No, sir; I don't know of any.

Senator HRUSKA. Is it a convenience that is so convenient to the manufacturer that he has to be urged with a thousand-dollar fine and a year in jail so that he will exercise his convenience?

Mr. MANISCHEWITZ. I have never heard of it; no. I think that it is as you have already indicated, not the right thing.

Senator HART. From something you said in response to Senator Hruska, maybe we can agree on a general proposition.

It is helpful to the producer if the regulations and the rules are clear; isn't that right?

Mr. MANISCHEWITZ. Oh, yes.

Senator HART. This reflects in part why those of us who introduced this bill thought it a good thing for industry as well as the consumer. You see, we regard these as establishing clearer rules.

Senator HRUSKA. May I make this observation at that point?

They are not only more clear but they are rules which will be uttered, published, and promulgated by an administrative agency and they will have the force of law and in some cases they will have criminal penalties attached for a violation thereof, and I would think one of the best ways to enact this law would be to have this enacting clause and then simply say, "The Food and Drug Administration should make rules as it decides are proper and necessary in its judgment to be very, very clear and also very, very stringent and also very, very retrogressive in their nature by result."

That would, three lines would do the job, and then the regulations would be clear, wouldn't they, Mr. Witness?

Mr. MANISCHEWITZ. Yes, sir; they would.

Senator HRUSKA. It wouldn't be very much in conformance with our way of legislating as we traditionally have done it in this Republic. Wherever we can, Congress tries to hang on generally to as much of its prerogatives, as many of its prerogatives as possible and not to sign them away, and that is what is being done here, isn't it, as to the permissive as well as the mandatory features?

Mr. MANISCHEWITZ. Yes, sir; that is correct.

Senator HRUSKA. Clarity is one thing, expediency is another. But we have our day in court and we have our division of this power into three departments and three branches and a lot of rules and fundamental principles which some of us aren't willing to see frittered away anymore than they have been, and I think this bill is one example, with all due deference to the declared objectives and the very clear sincerity of its introducers and its sponsors, with all due deference to them this bill has many of the seeds of this sort of thing.

Mr. MANISCHEWITZ. We feel that the question of deception is already adequately covered.

We are certainly in favor of a clear understanding and clear rules regarding anything but I don't think that these are necessary. I feel we already have enough existing law to take care of the problems that I believe these gentlemen are concerned with. I think that anything along the lines in this bill would, as the testimony tried to indicate, be retrogressive, as you have said, and not for the best interests of the country.

Senator HRUSKA. Thank you, Mr. Witness.

Mr. COHEN. If I may just go into one more thing, you talk about the bill interfering with the inventiveness and ingenuity of the manufacturers.

Do you think that the requirement that the net weight be put on the front of the package would interfere with the inventiveness or the ingenuity of the manufacturer?

Mr. MANISCHEWITZ. No, of course, it wouldn't, and I think it is on food packages now, and I have no objection to having the net weight on a package. Wherever the weight of a product is of any consequence or importance I certainly have no objections and I am in favor of informing the consumer so that she knows what she is buying in such matters and instances where it counts. I don't think the weight on an automobile means anything or the weight on certain other kinds of things that she may buy, but where it is pertinent I think there is no objection on my part.

Mr. COHEN. Do you think the prohibition against using a description like "a giant half quart" or "the big 3 ounces"—the prohibition of the adjective modifying the net weight—would interfere with inventiveness or ingenuity?

Mr. MANISCHEWITZ. I don't think it has anything to do with it. But if it is deceptive it should be stopped. But if it doesn't have anything to do with it—

Senator HRUSKA. Would counsel direct our attention to the place where reference in the witness' statement is made with respect to inventiveness. Talking about strawmen, I think I see two or three popping out of the bushes right now.

What page is that on?

Mr. COHEN. I will try to give it to you.

Senator HRUSKA. If he made that statement, I don't know that he intended it to apply to everything in the bill for everything that might occur to counsel's mind by way of a question, if he did; maybe he did.

Mr. MANISCHEWITZ. I missed that.

Senator HRUSKA. I wasn't asking a question of you. I was asking a question of counsel here.

Mr. COHEN. In the course of this 23-page statement—I wrote it down on a paper in order to ask the question—it was my understanding that your statement was that the thrust of this bill would interfere with the inventiveness and ingenuity of the manufacturers.

Mr. MANISCHEWITZ. Yes, I said that this bill would do that, yes.

Mr. COHEN. All I was asking was what specific provisions you thought would do this so we could give greater attention to those provisions than other provisions in the bill.

What I am doing now is going through the provisions of the bill as they were submitted.

As to the prohibition against deceptive illustrations, do you think that would interfere with the inventiveness and ingenuity of the manufacturer?

Mr. MANISCHEWITZ. Mr. Cohen, we are against anything deceptive and if you are going to say an illustration is deceptive we are against it and we would want to see it stopped, and I think the power for doing that already is in existence.

Mr. COHEN. But notwithstanding, you don't feel this provision would interfere with the inventiveness or ingenuity of the manufacturer?

Mr. MANISCHEWITZ. What provision, sir?

Mr. COHEN. The provision of the bill prohibiting deceptive illustrations; it is in this bill, S. 387.

Mr. MANISCHEWITZ. Well, I am not sure I know exactly what you mean but I say that anything that is deceptive is already covered and should be prevented, and that you don't need it in this bill because you already have provision in the law to take care of that.

Mr. COHEN. Your answer to that would be we don't need it because it is already in the law. But it certainly doesn't go to the interference with the ingenuity and inventiveness of the manufacturer to have a provision of this type in the law.

Mr. MANISCHEWITZ. If I understand correctly what you are driving at, Mr. Cohen, we feel that the totality of this bill, and the accumulation of the various provisions lead to an undesirable end; that they lead to regulation which in itself leads to further regulation, which leads to standardization and a freezing of a situation which destroys initiative, destroys opportunities, and I think tends to be a bad thing for consumers as well as manufacturers.

Mr. COHEN. I was not driving at anything, I was trying to find out what specific provisions in the bill you think would interfere with the ingenuity or inventiveness of the manufacturer that is all.

Mr. MANISCHEWITZ. I think in a totality they produce this result, and if you are going to take things apart one by one and out of context, I don't know exactly how I could answer each one because I am not a lawyer and I am not familiar with the individual provisions of each one of the things.

I could look them up and answer you individually, if I could. But I think that it is in the total effect, by reason of the accumulation of these various matters, that we get a result which does lead to what I say. I don't think it is any one thing specifically and nothing else. I think they all contribute toward this end result.

Mr. COHEN. There was a purpose for this question. Before I came down here today I went through some of your products in the supermarket and based on what I saw, all of the things this bill requires you already do. You have the weight on the front of the package, you don't have slack fill, at least in the packages I saw, and I don't see how this bill would have any effect on your own business. Of course, I am sure you can speak about that with far more authority than you can on the bill itself.

Mr. MANISCHEWITZ. I probably could speak far more authoritatively on my own business.

Mr. COHEN. That is why I asked the questions; when we get into your area you have a greater knowledge.

Mr. MANISCHEWITZ. I see no objection of putting the net weight of a package where I think it is applicable and I think it is applicable in food products and I think in food products they do have the net weight clearly marked and if they don't have they should have.

I think our packages and packages of most food companies are not slack filled and if they are slack filled they are already deceptive and there are already laws against that and they should be enforced.

I think that in the sense that you are now raising this question, and as I said before, I feel where applicable there is no reason for these things not to be done at all. I think it is mandatory on food packages. So certainly we are not against that.

Senator HRUSKA. Will counsel yield on that point?

I thought I understood your statement to say, Mr. Manischewitz, that what you objected to was to put in the hands of the Administrator of the Food and Drug Administration or whoever else it might apply to, the power to say, "That your construction of the adequate labeling of your product is no good." But theirs is better and not only better but it will have the force of law and your judgment will be supplanted by his judgment.

Mr. MANISCHEWITZ. Precisely, sir.

Senator HRUSKA. You have a company that has been pretty successful. You make a lot of sales, the goods are on the shelves and that is the best judgment and decision; that is, presumably they get off the shelves or they wouldn't be there at all but you made that judgment and isn't one of your main points in this statement that you made, as I read it and as I understood it, that your judgment in that case will be supplanted by somebody who may have a different idea on it?

Mr. MANISCHEWITZ. Precisely; that is right. He didn't ask me that question; that is why I answered him as I did. But I certainly feel as you indicated that we want this privilege. We feel best qualified to exercise it, and if we violate any law, if we are deceptive, if we do anything that is deceptive upon the public we should be convicted and we should be prevented from doing it and so should anybody else, and you already have laws for that. But lacking that, I think the privilege should be ours as to design of our own package, and to make it as effective as we possibly can, and to try thereby to gain as much business for our products as we can, and this should be true of anybody making consumer products.

Mr. COHEN. Except, and this is a caveat, you don't believe this is true to the extent that it will deceive the consumer, is that correct?

Mr. MANISCHEWITZ. To the extent of what, sir?

Mr. COHEN. You believe the manufacturer should have this right except to the extent that it could deceive the consumer. This is the one caveat, I think, you would make to your statement; is that correct?

The manufacturers should have the right to do anything they want with the package or label except to the extent that it was deceiving the consumers, is that a proper summation?

Mr. MANISCHEWITZ. Yes, I think he should; yes. We should have the privilege of making a mistake and making a bum package that nobody will want to buy. If he makes a mistake this is his responsibility and he will suffer for it and if he does a very excellent job and thereby attracts additional business he should benefit from it.

But under no circumstances should deception of the public be permitted and there are already laws and we are for strict enforcement of those laws.

Senator HRUSKA. Of course, on that point this bill does not go, does it, to truth, really, and deception?

Mr. MANISCHEWITZ. It goes to confusion.

That is part of our argument.

Senator HRUSKA. That is part of your statement, and therein lies another major vice to the thing namely there are already laws on truth and deception. If we are going to make a new law on confusion, we don't want confusion to reign and we are going to legislate it out of business; that was the statement that was made, it is directed to the confusion to the points of frustration where she had her glasses on wrong, isn't that the point?

Mr. MANISCHEWITZ. That is the point; yes, sir.

Mr. COHEN. Rather than beating it to death any further, I would recommend to you, at this point, that you read the statement of Professor Irston Barnes who testified earlier in this hearing. Have you read that?

Professor Irston Barnes is a professor of political economy in the School of Business of Columbia University; in his statement this precise point is explored in even more pages than your own—36 pages.

Mr. MANISCHEWITZ. I would be happy to read it.

Mr. COHEN. And possibly after you have read it we will have a chance to confer again.

Mr. MANISCHEWITZ. Would you make that available?

Mr. COHEN. I would be very happy to.

Senator HART. At least as long as one of the lady Members of the Senate is not present, the chairman has the chance of the last word.

I just want to make it very clear, that even if S. 387, truth in packaging, is not enacted, I still argue that confusion should not reign.

Thank you very much.

Mr. MANISCHEWITZ. Thank you, sir.

Senator HRUSKA. If we abolish confusion and make it illegal, Mr. Chairman, a lot of us in the U.S. Government would lose our jobs. [Laughter.]

Mr. MANISCHEWITZ. Thank you.

Senator HART. Mr. Stuart, thank you for sitting with us.

Our next witness, and the last witness before the luncheon recess, is the president of the Communications Workers of America, Joseph A. Beirne. Mr. Beirne also is the vice president of the IUD of the AFL-CIO.

Mr. Beirne, we apologize for having you wait so long. If I read the paper right this morning, you have a luncheon.

Mr. BEIRNE. I do, with the former Governor of Michigan who is now an expert on Africa and places far away. But I enjoyed and learned while sitting here.

Senator HART. Thank you, very much.

Mr. Beirne, we welcome you and your statement has been delivered to us. We welcome your reading it, or such excerpts as you care to.

STATEMENT OF JOSEPH A. BEIRNE, VICE PRESIDENT, INDUSTRIAL UNION DEPARTMENT, AFL-CIO, AND PRESIDENT, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, WASHINGTON, D.C.

Mr. BEIRNE. My name is Joseph A. Beirne and I am, as you said, vice president of the Industrial Union Department, AFL-CIO, and also the president of the Communications Workers of America, AFL-CIO.

This morning I appear on behalf of both organizations in support of S. 387 and its objectives.

Now, the Industrial Union Department represents some 6 million industrial workers. My own union, 1 of the 58 in that department, represents some 350,000 workers in the communications industry. Our members and their families are an important part of the consuming public and we have an immediate and a positive interest in the legislation before you.

It is our belief that your subcommittee has performed an invaluable public service with these hearings and those of previous years. There is a need for a continuing review of consumer interests and problems by the Congress. The consuming public has a right to know about business practices that affects its living standards to such a great degree.

These hearings and those that preceded them have generated tremendous public interest. We can attest to that interest from the response we have received to a pamphlet the IUD recently published on this subject, a copy of which you should have and if you haven't yet received it we will certainly make it available to the subcommittee.

Senator HART. Mr. Beirne, just this one interruption. The committee has seen and studied the pamphlet that you refer to. The title is "It's What's Inside That Counts." It has been made a part of the record earlier in the course of these hearings. I should say now what I said then. I am glad to know that it is creating wide interest and is getting broad circulation. I think I have never seen a publication bearing on a pending piece of legislation that is more informative and helpful than the one you have produced. As I said earlier in the hearings, I congratulate you upon this fine work in the public interest.

Mr. BEIRNE. I might say, Senator, in addition to the pamphlet put out by the IUD it is a matter of AFL-CIO policy as carried out through its community services committee, to conduct, as they have conducted, a number of consumer clinics wherein we have received tremendous response out in the countryside, not only from members of the union and their wives, but from friends and neighbors who having attended one of our clinics wherein we point out some of the guidelines that are sometimes needed for good shopping to get the most value for the dollar, has had a tremendous success and the interest is indisputable.

While I don't want to digress too much, having heard the discussion about law and now legislating confusion out of the picture, actually to me, and from the discussions you will find with housewives and people who meet this as a day-to-day problem, confusion and deception are very interchangeable in this particular area. I think what you want to legislate out of existence as quickly as you can, so that the fiber of America's life is not any further weakened, is deception.

That, I think, is what this bill is designed to do.

Our members are vitally interested in the packaging and labeling problem because their daily lives are so intimately affected. We have learned that it does us little good to negotiate a wage increase only to have it taken away from us through deceptive packaging practices and other unfair raids upon the paycheck.

Like other consumers, workers cannot be expected to enter the supermarket equipped with slide rule, charts, calculators, and notebooks.

Modern packaging, however, has made intelligent shopping almost impossible unless the consumer is a combination scientist, engineer, and detective with plenty of time to spare. In part, this was why the AFL-CIO 1961 convention pledged support "to the cause of the consumer" and urged affiliates to cooperate in consumer education and to support "consumer interest programs" on the State and National levels.

Packaging is a \$20 billion industry which, without doubt, contributes significantly to better living. But the American people now spend almost as much for wrappings and containers as for all private medical care. We spend a third more than on our public school system and nearly as much as on new cars. Packaging costs are equal to almost half the total revenues of our State and local governments.

Your chairman has estimated that the average family is taxed \$190 annually, or \$16 monthly, for containers which almost inevitably end up in the garbage can. The drain on the family budget is far from negligible. The drain on our natural resources is considerable, although packaging adds significantly to raw gross national product figures.

Author Vance Packard has described ours as a "throwaway age," noting that Americans "have used up more of the world's resources in the past 40 years than all the peoples in the world had used in 4,000 years of recorded history up to 1914."

Our store of resources is not limitless and conservationists have reason for concern, as should the business community which has a tremendous stake in its future sources of supply. While war and armaments have accounted for much of recent resource exhaustion, modern packaging is contributing mightily to make ours the most expensive garbage dumps in the world. The experts have predicted that container costs will probably rise by half in the next 5 years—at the rate of about \$2 billion annually.

The consumer pays for the package. Let's make no mistake about that. He has little to say about the size, contents, measure, or manner of display. The very container that he takes home to discard has become the high-pressure salesman of the supermarket.

If packages could shout, the uproar within the supermarket would be deafening. Packages and labels have become modern pitchmen who commonly distort or blur the truth, and who sometimes resort to outright lies. Product claims have become utterly fantastic and the supermarket has been transformed into the western equivalent of the oriental bazaar.

President Kennedy pointed out in his message on consumer protection to the 87th Congress that "in many cases the label seems designed to conceal rather than to reveal the true contents of the package." He has noted that the consumer is faced with myriad odd shapes, sizes, weights, and measures. He has urged action to protect both the consumer and the fair manufacturer.

Most Americans do the bulk of family shopping in the supermarket. Those have grown to more than 30,000 in number and account for more than 70 percent of food sales. Supermarkets stock an increasing number of nonfood items, and some are even adding discount appliance sales space. The age of giantism has arrived in foot and staple retailing.

The number of items on supermarket shelves has increased from about 4,300 in 1954 to almost 8,000. Supermarket sales last year approached the \$55 billion mark. Of this consumer outlay, more than \$10 billion went for cartons, cans, bottles, and other kinds of containers.

Nearly a fifth of the consumer food staple outlay was spent on the package. Certainly, the consumer is entitled to truthful packaging for such hard-earned dollars paid out.

As things stand, the consumer is more victim than monarch in the supermarket. Although industry forever prates of freedom of choice, that freedom has all but evaporated in the great bazaar of the Western World.

Gresham's law has invaded the supermarket where product labeling is often intended to make the inferior appear superior to the better product value. Competing packagers answer each other with ever more fanciful claims, shapes, colors, and ever odder weights and measures.

Consumer good faith has been abused; caveat emptor has returned in the form of "2 cents off" and the sexy plastic bottle. Motivational research has replaced product worth and competitive pricing.

While few of us want to go back to the cracker barrel, the old-fashioned grocery had its value. The customer and the grocer were often personal friends; the grocer valued the trade and advised accordingly.

Lack of modern preservatives was usually a guarantee of food freshness. The customer watched the grocer weigh out a pound or half-pound of the product and the butcher cut the meat according to the housewife's instructions.

Things are different indeed in the supermarket. The customer must accept the worth of the words printed on label or package. Often, the words are designed to confuse and obscure rather than to clarify. The meat—lean and appetizing face up—too often turns out to be fat and bone underneath.

A former Republican Senator, Alexander Wiley of Wisconsin, asserted some years ago that economic freedom means neither anarchy nor dog eat dog. He was of the view that labeling and packaging are mere "parts of our system of weights and measures in modern dress."

The distinguished Republican said that while he recognized as legal the doctrine of "let the buyer beware," it is another thing to require the buyer to become a part-time detective.

The ways of deception are many and are predicated upon the willingness of the average consumer to buy in good faith. The consumer picks up the package because he wants a detergent; he looks at price and apparent size. He cannot be expected to make a minute inspection of the package in his effort to determine just what's inside and to make price comparisons on a cost-per-ounce basis.

It would defy the intelligent shopper to tell from a look at the boxes and the descriptions on them which is the best value in detergents. All make the same claims and there is no way of telling whether the chemical composition of one is any better than the others. All are designated as "regular," "jumbo," "economy," "giant," "king size," and the like. The same is true of the bottles, where shapes and sizes verge upon surrealism.

The Greenbelt Cooperative—the Washington area local co-op stores—has reported that it checked 180 packages of dry detergents of various sizes and brands and found that only 5 had the net weight printed clearly on the front panel. Usually, it's necessary to be a magician to determine whether the worth of a king size is greater than that of the giant size.

The co-op reported that one leading detergent had four strange sizes—20 ounces, 49.25 ounces, 83.75 ounces, and 257 ounces.

The co-op further reported that “giant” size can mean anything from 1 pound, 15.5 ounces to 3 pounds, 7 ounces. With such a situation, it would take a quiz kid mentality to figure out relative values.

In days long gone, lack of modern preservatives was usually a guarantee that food was fresh. Today, the words on the package or the label are the only guide. The words tend to be a jumble of confusion if not deception. The average consumer simply can't be expected to know and I hope I pronounce it right, just what “nordihydroguariaretic acid” or “butylated hydroxytoluene” is or does, or whether it's safe or nutritious or whether it is good or bad, but it is on a label.

It has become common practice to mislead by picturing the product in a quality or color far superior to that inside the can or carton. Complicated or misleading advice regarding nutritive value and even calorie count has become common.

Thursday is display ad day in food supplements carried by the local District of Columbia press. The following is taken from a recent Thursday supplement Safeway Store ad:

Pear halves in 17-ounce cans
Tomato juice in 46-ounce cans
Cake mixes in 19-ounce boxes
Creamed corn in 17-ounce cans
Frozen broccoli in 10-ounce packages
Frozen green beans in 9-ounce packages
Canned milk in 14½-ounce cans
Dog food in 15½-ounce cans
Detergent in 49½-ounce boxes
Gelatin in 4-ounce boxes
Soap powder in 20½-pound boxes

Safeway is hardly alone with such offerings. Its advertising simply reflects the general state of affairs. Even the local co-op stores advertise 10½-ounce cans and 14-ounce bottles because the competition must be met and popular brands come in such sizes.

America has long boasted the advantages of standardization and mass production. It is fast surrendering those advantages and their ensuing economies in the supermarket where mayhem is being substituted for the metric system.

A pound's not a pound any more; most likely it's 15½ ounces. That little half ounce can add up to big dollars for the packer and processor. Grain products illustrate what a half ounce less in every pound can mean.

Per capita consumption of grain is 148 pounds annually. Total consumption is about 30 billion pounds. A half ounce taken from every pound would mean nearly a billion pounds of grain. The loss to the consumer runs into many millions of dollars.

Unless there is contrast between the color of type and the background on which it is printed, the printed matter is difficult to read. It's quite a trick, for example, to read pale yellow type on aluminum foil, with or without glasses.

Supermarket merchandising misses few such tricks and takes advantage by printing ingredients, size, weight, and other relevant information in colors that match more than they contrast. The consumer isn't prone to spend too much time on the problem and is victimized accordingly.

Even when there's enough contrast for the type to be legible, weights and ingredients are often printed in microscopic type. Usually, the weight is hidden in an inconvenient place on the container so that it can't readily be found.

The great national con game often is played out to the tune of optical illusion. King-size bottles may look bigger but do not necessarily contain more than the regular size. Giant size has come to mean small and super is usually regular.

The fight among packagers for space on store shelves is deadly. The contract between the retailer and the packager usually calls for the display of a standard number of the packager's product on the retailer's shelves. Because the package is the salesman, the object is to crowd others off the shelves and overshadow rival brands.

Surveys have shown that about 70 percent of supermarket purchases are unplanned. This impels the packager to resort to outlandish color schemes and shapes to catch the eye of the buyer. It also accounts for the "2 cents off" which may turn out to be little more than a come-on upon closer examination.

A Du Pont study, filed as evidence with your subcommittee last year, has given away the packagers' show. It reported that an 8-percent increase in a number of packages bought by the average consumer during the usual shopping expedition was partly due to multiple purchases of the same item and the addition of new supermarket items and departments.

The study added that the "new" items are the higher profit products which afford the merchandiser a profit double or more for many items he sells.

The new, higher profit items combined with the supermarket's regular lines afford the customer a greater selection. This helps to account for the fact that she (the housewife) is now spending an average of 27 minutes per shopping trip as compared to less than 18 minutes 5 years ago, and buying more merchandise—

the Du Pont study reported.

As in all oriental bazaars, there are always big bargains at the supermarket. It's 2 cents off, 7 cents off, and sometimes more. It would appear that the packageers have joined hands to cut the cost of living for the American consumer. If the Bureau of Labor Statistics market-basket index says otherwise, it might be because nobody ever really tells the buyer "how much off of what original price." The consumer has only the word of the packager that there really is a regular higher price.

Air has become one of the Nation's more expensive commodities. It's an easy trick to reduce the count of paper napkins or other products and fill the same size box as before. Air can be used to make up

the difference and few customers will remember the count before air was added. True, somewhere on the container the new count will be stated in small type and muted color.

A leading brand of paper napkin has unwittingly exposed the practice in its TV advertising, which now stresses that a smaller streamlined box has the same count that a bigger box had before. Making a special virtue of simple honesty, the advertiser breathtakingly reveals that the air has been squeezed out.

You have heard the story of slack fill, so there is no need for details here. But air fills many a package which has been made to look larger although it contains less. Slack fill goes beyond normal settling despite denials by the packagers. There are enough packages around that are filled out with excess air to prove that too much of slack fill is deliberate.

Boxed air is anything but free. It costs money to make the bigger box and it costs more to ship it from point of manufacturer to point of sale. No practice is more crass or destructive of good faith.

Paper and cardboard are far cheaper than cookies, candy, and other processed foods. They can be used to fill out packages and make them feel heavier. Despite FTC action in some particularly blatant cases, the practice of filling out the package with cardboard or paper is still commonplace.

Present packaging practices sometimes result in shameless overpricing. A study made by the Consumer Council of the State of California found that a well-known brand of canned tomatoes which sold at three cans for 49 cents cost more than double on a cents-per-pound basis than when sold at two for 57 cents in the 1-pound, 12-ounce can. How can the consumer know without an advanced course in mathematics and slide rule?

As we see it, the measure before you is a decisive step in the right direction. It will assure the consumer greater free choice. It will help to establish fair competition among the manufacturers and merchandisers.

Congress has been specifically charged with the responsibility of regulating weights and measures and assuring free flow of commerce. The investigations of this body have shown that our system of weights and measures is being eroded by present packaging practices, and that these practices restrain trade by inhibiting consumer free choice. Congress has an obligation, therefore, to legislate in this field.

S. 387 would require publishing the quantity of the product offered for sale in a container where it can easily be seen. It would establish minimum standards of type size. It would rule out the "giant" and leave the quart.

The measure would reestablish real price competition by ending the "2 cents off." It would not in any way prohibit marking down prices in any legitimate sale.

We applaud that provision which would outlaw the use of color and pictures to deceive. Modern packaging denies the customer the right to see what's inside. Industry has failed to offer consumer protection. Government now has the obligation to enforce fair standards.

Proper use of the discretionary powers given the Health, Education, and Welfare Secretary and the Federal Trade Commission should do much to end deception through the use of odd shapes, sizes, and

dimensional proportions. It should help greatly in insuring reasonable weights and measures in the supermarket.

The California study found a leading liquid detergent selling at 46.7 cents per pint in the 12-ounce size; 47.3 cents per pint in the giant size; 39 cents per pint in the king size which was then advertised at 11 cents off. There is no rational reason for such practices.

A pint has become a "full" pint; a quart is a "giant" quart; a pound is a "jumbo" pound; a gallon is an "economy" affair. And as one witness pointed out to this, it doesn't necessarily follow that there's chicken in the chicken soup. Chicken noodle soup is likely to be in a 1-to-1 ratio—one chicken to a carload of noodles.

No longer does the label inform that an artificial preservative has been added. The consumer is informed instead that citric acid in propylene has been added to improve stability.

There are more than 3,000 artificial preservatives and food additives, some of dubious value, and others that could be harmful in specific circumstances. The use of chemical names on labels means nothing to the average consumer, who has no way of knowing what propylene is or why it is used. Consumers on restrictive diets for health reasons have every right to know whether additives or preservatives can harm them.

The need for legislation to curb packaging and labeling abuses has long been evident. The measure before you has the support of most consumer and labor groups as well as the administration. Opposition seems to come almost alone from the packagers and merchandisers.

Most of us have purchased the four-serving package only to find that two persons might make a meal out of the contents. Discretionary powers given HEW and FTC to establish standards for servings should curb this kind of abuse.

While the best labeling laws cannot guarantee full and meaningful information to the consumer in these days of advanced chemistry, the worst abuses can be corrected and misleading labels can be outlawed. We applaud that provision of the measure which would require sufficient information prominently displayed upon the package or label.

I must confess that I am not greatly moved by the fears expressed before your committee by the packagers and merchandisers. Industry has had many years in which to police itself, but the situation has progressively worsened.

Industry's opposition to this measure bespeaks small concern for the consumer. There is nothing in the law which would adversely affect the fair manufacturer. Further, the law provides for full consultation by all affected parties.

The vice president for research and development of a major corporation recently told your subcommittee:

Emphasis on weight as a measure of value could also have a detrimental effect of encouraging product debasement—the introduction of inert, bulk, or weight-building additives which may not harm the consumer but would certainly do little to help her. (Testimony of J. G. Pleasants, Procter & Gamble.)

Such a comment does little to make us believe that industry should be free to go its own way. If product debasement should, indeed, result from application of this bill, the cure might well lie in further strengthening the law. Certainly, if cost per ounce cannot be counted

upon as a measure of value for competing products, the free-enterprise system is indeed in very sad shape. The consumer has no other possible standard for judging value in the supermarket.

The proposed law would mark a long step forward from the present inadequate case-by-case approach which enforcement agencies have had to follow in combating deception and fraud in packaging. It would permit the establishment of fair rules for entire industries which would be equally affected.

Canada has a labeling law under which U.S. firms compete successfully. It is time to call upon our packagers to compete fairly at home so that the consumer can again reign in the marketplace. The new law will establish no huge bureaucratic machine to badger the affected industries. It will simply enable HEW and FTC to determine whether a product is being marketed according to the rules. If it isn't, action can quickly be taken to end deception.

The business community should be the first to champion this legislation. The American people already are skeptical of packaging practices. If they lose faith in the integrity of the packagers the results could be tragic.

Finally let me say: Beyond all the more obvious questionable practices of the supermarket huckster is the very real contribution to moral delinquency. How many millions of mothers and grandmothers, fathers and grandfathers go to the store with young girls and boys and in counseling them what to pick up from the shelves advise them about the hoax of the big bottle; of the big box.

In destroying the myth of some advertising and merchandising practices are we adding still another bad notion of our society to a mind in its formative stage? Isn't simple honesty and effective business practices still the best policy for any society.

Senator HART. Mr. Beirne, thank you very much for a statement that is characteristically to the point, and does not introduce any confusion as to your own views on what we should do.

Since I share those views, I think it is a fine statement.

I do welcome your reminder to the committee that our neighbor to the north, the Dominion of Canada, for the last couple of years now has had on the books a new packaging and labeling requirement law and that I recall the earlier testimony of at least one industry witness who is in production up there, too. He not only described it, but testified that he found it desirable or at least manageable in terms of his operation.

The second and the last point that I would like to comment on—because I am sure Senator Hruska will want time and you do have a luncheon commitment—is your reminder of the basic proposition that it is the Constitution of the United States that tells the Congress of the United States to be busy about weights and measures. It isn't something that arrived from Moscow. This is part of this document that laid down our charter and included in it even in those early days when one might think that other pressure, just sheer survival facing the country, would have shunted to the rear of the line the notion of weights and measures as a Federal responsibility. Nonetheless, the Founding Fathers did tell the Congress of the United States that "This is your business" and that is what we are working on today.

I am glad you reminded us.

Thank you very much.

Senator HRUSKA?

Senator HRUSKA. Mr. Chairman, all of us know that Mr. Beirne is a frequent visitor to Congress and to its committees on the Hill. He acquits himself by delivering interesting and challenging statements. Sometimes they are taken exception to by different people but that is part of his office, but he discharges it well by advancing and advocating his views with a great deal of competence.

I have only one area in which I want to ask one or two questions.

On page 7 of your statement you refer to some unpronounceable names like nordihydroguariaretic acid and butylated hydorxytoluene and so on. I wonder why are those on the labels in the first place, Mr. Beirne?

Mr. BEIRNE. I think to tell the people buying the product that something has been added which apparently is good for them, and good for the contents of the package, I think that maybe what was in the mind of the person who conceived that kind of a word saving the acceptance or the paragraph, that might otherwise be described in saying what these chemicals do and what they are.

Senator HRUSKA. On page 12 you make the further statement, in that same general field, no longer does the label inform that an artificial preservative has been added.

Is that the fact?

Mr. BEIRNE. I don't know whether these acids that I mentioned or the chemicals I mentioned are artificial preservatives, I do not know, and I am a little bit smarter than the average housewife, I believe. She doesn't know. I put myself with her. Having studied a little bit of chemistry and having studied a little bit of the sciences, I don't know what those things do. If you tell me they are preservatives that are good, and I assume that is what they were, because I believe that most manufacturers are pretty honest people.

Senator HRUSKA. Of course, on the next page, on page 13 you refer to the fact that there are 3,000 artificial preservations and food additives, some of dubious values and others that could be harmful in specific circumstances, and so on.

I would like to submit, Mr. Beirne, that the field of food additives, and of artificial preservatives is somethings which has been dealt with legislatively and in great detail for over a half century. There are detailed requirements and they are punishable by law if the label does not spell out exactly what the law says.

I find nothing in the present bill which deals with preservatives and food additives, and there is a good reason for it, and that is because the law we now have deals with such great specificity on the subject.

Section 403 of the Food and Drug Act up to section 404 and others are very, very detailed and they are requirements and if they are not complied with, jail or fine or both.

Now, have you any way that you would like to improve on that?

Mr. BEIRNE. Oh, sure, what I am saying here, we can pick out of this one section a number of things that are on the label. It may be fine to have a law that does the things you say. I have read some of the efforts being made by governmental agencies to correct additives.

I saw the making of a national scandal when a good doctor in one

of our Federal agencies kept a certain medicine off the market until it was found that it deformed people.

Well, the manufacturer and the merchandisers in a book were selling that darned stuff.

Senator HRUSKA. Not in America under our law, Mr. Beirne.

Mr. BEIRNE. That is correct. But we came near a national scandal—if that good doctor, whoever she was, had not kept her feet under the table and resisted the pressure.

What I am saying is here we have permitted, and this is what we should take a good healthy look at, all of us, whether we like this particular bill or not, we should all take a good healthy look at what we are doing in this buying area, which is a rather large one, so, let us save the moral fiber of America.

Now, the poor fellow with a bum body and I am no doctor, but he has a bum body and he can't take a certain salt, let us say, and he is now grown used to our supermarket.

Have you ever been to one, Senator, to see these huge boxes to go buy them and fill the basket; it is fun.

Senator HRUSKA. Mr. Beirne, I am one of the best-trained husband shoppers in a supermarket that I know of in Arlington, Va.

Mr. BEIRNE. Wonderful—then you know what I am talking about. The best male supermarket shopper better have a list from his wife or he will be in trouble because he even gets trapped in buying two for one and good economy-minded husband that he is—if he has a good wife as I have, she will point out where the trap is, that you never buy that stuff.

Now, but here is the whole atmosphere, that the salesman is no longer behind the counter, it is the box.

Senator HRUSKA. I know, but we are talking about a label, Mr. Beirne.

Mr. BEIRNE. All right.

Now, the label—

Senator HRUSKA. And artificial preservative, let's not get the whole statement all over again. I am asking about your statement. No longer does the label inform that artificial preservatives have been added and I say if it hasn't then this law, which I hold in my hand here, very detailed and very specifically is being violated and there are criminal penalties attachable.

Mr. BEIRNE. The law is being violated.

Senator HRUSKA. What is the source of your information that the label does no longer inform that the artificial preservative has been added?

Mr. BEIRNE. It doesn't; now we get to the acids.

Senator HRUSKA. But, Mr. Beirne, this statute says that must be put on the label and if it is not being put on, this law is being violated.

Mr. BEIRNE. Well, it is being violated after a man dropped dead because he didn't know that that particular acid had salt and he had the kind of an organic condition that wouldn't permit him to take salt and so what this law is trying to do is to get back—it will not, as I say, it will not be the cure-all, this particular bill is not the cure-all.

Senator HRUSKA. I am glad to hear that.

Mr. BEIRNE. But it will start getting us back to simple honesty in the marketplace.

Senator HRUSKA. Mr. Beirne, I am asking about your statement that the preservative is no longer required to be printed on the label. What has that got to do with simple honesty? It does appear there; the law requires it. Do you want another law?

Mr. BEIRNE. Yes, I want this law.

Senator HRUSKA. You want this law?

Mr. BEIRNE. Yes.

Senator HRUSKA. To put the preservative on the label?

Mr. BEIRNE. I mean so we could end what could then become a wonderful semantic discussion I would concede there is a contradiction in my statement in one place I say preservatives are published in names you can't pronounce, but now we ended that one.

Senator HRUSKA. How can you call citric acid anything but citric acid if that is in there? What would you call it, sir? How would you describe citric acid or how would you put it on the labels?

Mr. BEIRNE. I am not prepared to answer. However, but I think it should be on there.

Senator HRUSKA. We want it right.

Mr. BEIRNE. I think the label should be clear as to price, contents, weight. I think we should get back to the weights we teach in our own school.

Senator HRUSKA. I am talking about additives.

Mr. BEIRNE. 16 ounces is a pound, not giant.

Senator HRUSKA. I am talking about additives and preservatives now.

Mr. BEIRNE. Yes.

Senator HRUSKA. And you make the statement there are 3,000 such preservatives and additives that could be harmful, that the use in the label means nothing to the average consumer. He has no way of knowing what they mean and yet the manufacturer is required by law to put the chemical name of the preservative on there. What would you have us do, repeal this law?

Mr. BEIRNE. No; because that law is being violated and there are being charges brought and people going to jail for it. Keep that law, pass this law, and then we will get the easy way for the merchandiser and the manufacturer to begin to approach his label from the consumer's interest and viewpoint, which I think was behind the law requiring additives to be labeled.

But now you put some of the ingredients that are in such a thing as soap. Did you ever try to read what is in the soap with or without glasses, Senator?

Senator HRUSKA. I am here to ask questions, not to answer them, Mr. Beirne.

Mr. BEIRNE. I am trying to display something.

Senator HRUSKA. Unfortunately, there may come a time when the position may be reversed.

Mr. BEIRNE. This is my answer to you. My answer is coming in the form of a question because here is the answer: On a package of soap, I can read without glasses. I can read with glasses and I have difficulty either way. That is telling me what the ingredients are.

Senator HRUSKA. Is there a preservative in it?

Mr. BEIRNE. I don't know. I don't know. I would have to—

Senator HRUSKA. Then you are confused, aren't you?

Mr. BEIRNE. I would have to stand here—I am showing what a label does which will include on some labels a preservative.

Senator HRUSKA. Would you advocate abolition of labels or packages? You seem to have inveighed against them for 16 pages of your typewritten statement. You are against packages and labels?

Mr. BEIRNE. No; I am against this waste. I am against having the package destroy certain basic things, like our weight system. I would like to have 16 ounces to a pound, and to go and buy a pound of something I wanted, not to have to remember, shall I get giant, super or jumbo, because I want only so much.

When I want to buy something—to find out what is in it—I would like to read it on a label.

Senator HRUSKA. Suppose we attached a booklet to each bar of soap, would that help, telling you all about the soap?

Mr. BEIRNE. Yes, *reductio ad absurdum*.

Senator HART. Would the Senator yield?

Let me ask Mr. Beirne if he would like to have the weight on the soap?

Mr. BEIRNE. The weight?

Senator HART. Yes.

Mr. BEIRNE. Sure, it is on there now if you can find it. Do you want me to show you where the weight is on this one?

Senator HART. The reason I ask that question, unless it is a medicinal soap, the law does not even require the weight to be on it.

Mr. BEIRNE. This may be a medicinal soap, I don't use it myself. It is Princess Dial and I am reading now very small print, I wish I was a printer so I could tell you the size of the type because this is of the smallest, "Use Princess Dial soap daily as you would ordinary soap. Net weight" I am not fooling on this. It is just difficult to see whether there is a three-quarter or two and one-quarter ounces. "Made in USA. Active antiseptic ingredients," and then it goes on to tell what is in it. Right after that it is "Patent pending," "Other patents pending," Armour & Co.

Senator HRUSKA. Can it be said that the witness at this point after reading that label and feeling that bar of soap, can it be said he is confused about it?

Mr. BEIRNE. No, I can't say that this witness is confused about what he read. But I will say this, that the housewife, the consumer who does most of the purchasing, who, according to the Du Pont study is now spending almost twice as much time trying to figure the stuff out to begin with, she will get confused when she gets to the soap rack; and, if, instead of sitting in this room, I was at the soap rack of a Giant Store and figured out what I wanted to buy to make my penny count the most, I would be confused, yes. Today reading this from a label, no, I am not.

Senator HRUSKA. Thank you very much, Mr. Chairman.

The witness must get to lunch, and we wish him well on his journey and hope he gets there in time.

Senator HART. Thank you very much, Mr. Beirne.

The committee will recess until 2:30 to resume in this room at which time we will hear Mr. E. S. Pattison, Mr. Thomas F. Baker, and Mr. William Heckendorn.

(Whereupon, at 12:45 p.m., the committee recessed, to reconvene at 2:30 p.m., the same day.)

AFTERNOON SESSION

Senator HART. The committee will be in order.

Our first witness this afternoon is the secretary and manager of the Soap & Detergent Association, Mr. E. Scott Pattison. Mr. Pattison, will you please come forward?

I am going to insert in the record, if there is no objection, a biographical statement which indicates the qualifications of Mr. Pattison. For those who are not present, but who will have a chance to read the record, this indicates that, among other factors in the background of Mr. Pattison, is the fact that he is a chemical engineering graduate of Rensselaer Polytechnic Institute, and later studied business administration at MIT as an Alfred P. Sloan fellow.

I knew one other such fellow, and I know we are going to be benefited by your testimony.

(The biographical sketch may be found on p. 838.)

STATEMENT OF E. SCOTT PATTISON, SECRETARY AND MANAGER, THE SOAP & DETERGENT ASSOCIATION, NEW YORK, N.Y.

Mr. PATTISON. Well, I certainly thank you very much.

One thing I was thinking of this morning was I thought I could pronounce "butylated hydroxytoluene." They seemed to be having a little difficulty with it this morning.

Senator HART. If Rensselaer Poly had not done that, we would sue for a refund. (Laughter.)

Mr. PATTISON. As you so kindly stated, Senator Hart, I am manager of the Soap & Detergent Association which represents about 125 manufacturers of cleanliness products. Our membership includes dozens of small companies having one or two specialized products or areas of sale, as well as the large companies whose brand names show up in every supermarket, and whom we heard something about this morning.

This is a highly competitive business. A wide range of package sizes, shapes, and designs are among the chosen instruments of this competition. Basically, we contend that many of the controls which are proposed or inherent in this bill will restrict this competition. We feel they will add to the costs and difficulties of doing business without any real benefit to the purchasers of our products, and we also feel that the passage of this legislation could have a promonopoly, rather than an antimonopoly effect.

In view of all the testimony already on the record, and the fine statement that was made this morning by the National Association of Manufacturers, I will try to avoid repetition and generalities applying to all packaged products. There are about five points which are particularly germane to soaps and detergents, however, which may not have been fully taken into account.

The first point that I would like to make is that the buyer of soap and detergent products is already fully protected from any significant economic loss from deceptive packaging or labeling.

Now, the reason for this is that in every soap and detergent package there is one unfailing built-in protection against the economic cheat. That is, no producer can build a successful business on a one-time or first-time sale.

Unlike the snake-oil man who comes into town and gets out, the soap manufacturer has to be back on the shelf talking to his customer again and again. Repeat business, the act of coming back for more, is the key on which products and their packages must justify themselves. A housewife may be spending \$100 a year on such products, but does so in increments of 50 cents or so per unit. A product or package which fails to deliver goods value, however conspicuously labeled as to weight, is headed for failure. Nothing can be gained by marketing a product which gets action at the store, but reaction at the sink. When the housewife says "never again," the producer has been disciplined by a force more potent than the FTC.

When it comes to a truly rational comparison between competing products in the soap field, the housewife must be standing at the sink or washer, not in the store. A comparison between weight or volume of brand A detergent and brand X detergent is meaningless. The cleaning satisfaction per dollar is a highly individual thing, depending not only on product composition but on individual habits of use.

I might point out here that our products are generally jointly used with other things. For example, you use a detergent product in a particular type of washer, with a particular water temperature, particular type of soil or clothes.

Now, product A may be fine for customer No. 1 who has a certain combination of these other elements. Product B may be better for customer No. 2, and the relative weight or size of the package does not determine whether the product is going to suit customer A or customer B most effectively.

Furthermore, if there were any real chance for profit in consumer deception in this business, the standardization of package weight, size or dimension would in no way inhibit it. The product could always be "built-up" or watered-down to the desired next-larger unit by the unscrupulous manufacturer.

This does not mean, however, that the consumer is without recourse when it comes to making weight comparisons between the same product in different package sizes. I know there has been a lot of discussion on this 27½ ounce size package and so on. Our industry has supported the State model weights and measures law, as recommended by the National Conference of Weights and Measures officials. We believe the requirements of this law for conspicuous weight marking offer sound economic protection for the comparison shopper. Prior testimony has been given that housewives are frequently foiled by the arithmetic involved in fractional weight packages. In fact this reasoning has been used as the basis, one of the bases for the proposed legislation. But really this is not a matter of deception—it is simply a question of inconvenience. If we are going to start to legislate convenience—that is really stretching the Clayton Act, and the whole question of convenience packages comes into the picture.

The fact is that the intent of fractional weight packages is not deceit, and not deliberate inconvenience. Most of our companies are packaging a number of different products whose specific gravity—that is, weight per unit of volume—are not the same. If package weights are always the same, pound-and-a-half, pound-and-a-half, then their package sizes on their different products are going to have to vary, and if the package sizes are going to be uniform in size then the weights are going to have to fall as they come. Packaging equipment and adjustment costs will be greatly increased if properly filled boxes must be made smaller or larger, every time a production line is shifted from one product to another of a different specific gravity. This, of course, is entirely apart from the fact that units of use—multiples of one cupful, for example—or one measureful, which are most convenient for the user, may not correspond with even units of weight.

Now, my second point for particular emphasis is this: I wish Mr. Beirne, who was here this morning, was here when this point was discussed, and that is the cleanliness value per dollar being delivered to the housewife today is greater than ever—certainly more than her grandmother received, back in the days when soap bars were the only choice. A simple, unadorned soap bar in 1913 sold for 5 cents—that would be 15 cents in terms of today's dollars. However, a day or two ago I spotted on a supermarket shelf a soap bar of the same size, but better quality, selling for 11 cents; that is, appreciably less than its cost 50 years ago on an adjusted dollar basis. An average American factory employee in 1913 had to work 14 minutes to buy a cake of soap. Today he can buy it for 4 minutes' work.

There was talk about the packages being a tax on the consumer. The point is if the consumer wants to use the same old bar of soap his grandmother used, he does not have to pay this tax, because this is not where the fancy wrapping comes in.

So what about the boxes and bottles of powders, liquids, and tablets that are dressed up in our more elaborate packages? Has so-called nonprice competition lured or tricked or deceived the customer to her disadvantage? It would appear that those who want low-cost-without-special-convenience features can get it—and those who want to exercise their freedom of choice in the direction of greater convenience or product variety can do the same.

You can even buy a package of bath product which has a little cartoon character for a container, and if the housewife chooses to buy that rather than the unadorned bar of soap, I do not quite see why this act should prevent it.

The arbitrary restriction of this choice to Government-specified shapes and sizes cannot possibly serve the housewives' interest, and this is mentioned specifically in the bill where it refers to the right to establish the dimensional proportions of the container.

Now, my third point has to do with "cents-off" labeling, which S. 387 would specifically restrict. In a previous statement before the committee, Mr. A. N. Halverstadt of the Procter & Gamble Co. testified to the effect that retailers do pass on to the consumer the "cents-off" reductions which the producer makes possible from time to time as one of his competitive tools. But more significant than a manufacturer's opinion, or certainly of my opinion, is that cents-off provision was opposed by a strong proponent of the present bill. Mention

was made this morning of reading the testimony of Dr. Irston R. Barnes, economist of the Graduate School of Business of Columbia University.

I am glad to say I did read Mr. Barnes' testimony, and he said in regard to this cents-off provision:

I would strongly recommend elimination of subparagraph (4) from paragraph (C). * * * I would urge—

said Dr. Barnes—

that cents-off promotions are a form of genuine price competition * * * and that they are beneficial to the consumer.

I will not repeat Dr. Barnes economic arguments in full—but would note that he feels any deception arising out of the improper use of cents-off promotions can be adequately met by existing laws against fictitious pricing.

My fourth point, and I think one that should be of great concern to this committee is this:

Many features of this bill will be particularly damaging to the smaller or newer producer who must depend on innovation in his product or package to get his business going—as compared to the mass production economies of a large, well-established competitor.

Here, I would like to quote briefly from one of our members who was a small company until just a few years ago, and has now substantially enlarged his household soap and detergent business:

Disallowing "price-off" labels or other price promotions, standardizing packages and packaging language, standardizing what constitutes a serving of a product, and standardizing other quantitative standards for products, would serve as a real deterrent to new entries into the competitive arena and to small concerns already struggling to achieve a foothold.

The new firms and the small firms must, if they are to survive, innovate, offer improvements in package and/or product, and they must extensively promote their wares. This proposed legislation would practically emasculate such efforts as it would require the new and the small producer to standardize and this, in most instances, is the exact opposite of innovation and giving the customer something new, different, and exciting. Thus, the incentive for new and small concerns would be drastically reduced.

This is a statement from a company that over the past 7 or 8 years has gone exactly through this stage of development.

Note, too, that Dr. Barnes, who was previously referred to, cites cents-off promotions as giving a smaller competitor "a fighting chance against his larger and well established rivals."

My fifth and concluding point is simply this:

It would appear that S. 387 is not motivated by any substantial evidence of consumer losses, or deprivation resulting from such losses, so far as cleanliness products are concerned. Rather, it is motivated by a theoretical economic philosophy that promotional competition—involving differentiated products, and a deliberate differentiation of products, and packages—is somehow "impure" competition and disadvantageous to the buyer.

Here we must come to grips with the faulty economic concept behind this bill. Back in the 1930's a Harvard economics professor theorized that standard, or virtually identical products, competing on a direct price-per-pound basis, would somehow be best for the customers' interest. This, in contrast to the kind of competition that op-

erates through product differences, products improvements, and the promotion of these exclusive benefits to the user.

If this theory of the thirties were true, any move to require standardized products and directly comparable packages and prices, such as this bill proposes, would benefit the customer and the economy. This issue of whether or not it is true really seems to me is at the root of these proposals.

But, in the real world, as opposed to textbook theory, pound-for-pound price competition of standard commodities has seldom benefited the customer or the economy, and in fact has generally led to industrial stagnation or governmental regulation. Agricultural commodities like cotton or sugar are examples as against differentiated products such as automobiles or detergents, which cannot be compared on a price-per-pound basis.

The cotton textile industry, when it was only manufacturing a single basic type of commodity, was always in economic trouble. Recently the cotton textile industry has gotten itself out of trouble by introducing specialized products so that manufacturer A had a cotton cloth that was quite different from manufacturer B's.

We have no apologies to make for competing on the basis of product differentiation and package differentiation. We are giving the customer far more cleaning power for his money than in bulk soap bar days, and in addition are stimulating all kinds of economic activity, from package design to television programing, and even if you don't like the program it is contributing to the economic background of the industry, and certainly I would have liked to ask Mr. Beirne this morning as to whether the many printers of packages who work for the AFL-CIO would have been delighted to have the packaging industry cut back to half its size.

The whole history of our business, since the days of the unwrapped soap bar, has been one of increased performance per unit of cost based on the housewife's own opportunity for comparison of what works best for her. Repeat sales of an intangible might be based on a continued illusion of good value. I can visualize something that you might be fooled into thinking was good value, after you bought it time and time again, but I certainly cannot visualize it in the field of soap and detergent products where you roll up your own sleeves and use the product, and if the 25-cent product does not deliver as much value as you expect, you don't buy it again.

While I will not go into the technical reasons here, it is clear that the cost to our industry of compliance with S. 387 and the regulations to be expected under it would—when added to product prices—be a far greater economic burden to the consumer than the occasional error in buying judgment arising from a trick package, a fractional weight unit, or a band that says "3 cents off."

In conclusion, let me say I am not defending every extreme in promotional packaging which a soap or detergent marketer may occasionally have attempted. But the corrective lies not at the Federal level, but at the consumer level. At a time when pressure is on to hold down the costs of government, the housewife at the sink or washer is our fully competent, least costly enforcement agent against deceit.

Needless to say, we respectfully recommend that your committee disapprove S. 387 in its entirety. Thank you.

Senator HART. I liked especially the last sentence in case we had not gotten the point. [Laughter.]

Sir, the statement was a succinct one and that is good. It echoes in large part the testimony that we have heard from the witnesses from Procter & Gamble, so that I do not want to burden the record with a repetition of the type of questions that I raised with them, because I am reasonably certain that my questions would be about the same, and the responses, too, would be the same.

For all I would like to do at this point, if there is no objection, is to insert in the record an editorial that appeared subsequent to the Procter & Gamble testimony. It is an editorial from the March 25, 1963, issue of *Advertising Age*, the national newspaper of marketing. That, in my book at least, is a trade journal which is not the enemy of the manufacturer.

Let me read the editorial, and if you have a comment, fine. In any event, let us put it in the record because it goes to this cost per pound on detergents.

Mr. PATTISON. Yes.

Senator HART. Where you and Procter & Gamble have insisted it makes no sense, this is not a factor or ought not to be a factor.

Mr. PATTISON. That is right.

Senator HART (reading):

During the Senate Antimonopoly Committee hearings on Senator Philip Hart's, Democrat, of Michigan, labeling bill, a Procter & Gamble witness had some interesting things to say about cost-per-ounce comparisons of detergents.

Arguing against the setting up of Federal standards in order to help consumers buy through such comparison, J. Gibbons Pleasants, Procter & Gamble vice president for research and development, had this to say:

"If all detergents were exactly alike, cost per ounce would be a meaningful basis of comparison." But he maintained that no two detergents have precisely the same formulation, so such comparisons are not significant, "just as cost per pound of an automobile, or the cost per ounce of a dress is not significant.

Anyone who travels to the supermarket and immerses himself in the myriad offerings in the soaps and detergents department will probably disagree strongly with Mr. Pleasants' reasoning. Maybe there are differences in formulation, but net weight of contents is the major factor when it comes to pricing. When looking at two different brands of detergents, in comparable sizes and at the same price, the shopper expects them to be of the same weight. With so many brands in so many different sizes confronting the consumer, it is unrealistic to expect the consumer to carefully search all over for the correct weight.

No one expects the manufacturer to display size and weight information so prominently that they drown out the brand name and selling copy on the package. But it does seem reasonable to ask manufacturers to standardize their various sizes and to present pertinent contents data in a prominent enough position, so that consumers can be spared unnecessary confusion.

Mr. PATTISON. Well, I hope I didn't imply by what I said that we have any objection to putting net weight in a prominent and conspicuous place on the package.

I went on, however, to say that I do not think it is particularly significant as a buying point for the consumer, and so far as size is concerned, the same thing applies because some people like a product which is spray dried in a way that is quite fluffy. Other people dislike that.

Why do people have these different preferences? Well, one person may have a type of washing machine in which she puts the product in the top, and maybe the fluff comes up in her nose. Another has

one in which she puts it in the front and the fluff does not come up, and she can see it a little better down there.

So these are personal preferences, and so long as we come to the ultimate conclusion that the price of the product for the satisfaction delivered has not been increased by this variety, I do not see why there is any objection to having this variety. If she wants to go by weight she can still go by weight because it will still be on the package.

(The editorial previously referred to may be found on p. 821.)

Senator HART. I do understand the way you feel, and I insert the editorial in the record because it indicates that there is greater concern here on the part of many who are not unfriendly to the industry, and who do appreciate the industry's great contribution to the development of the American supermarket for service of the American consumer, than some of the producer trade association testimony would have admitted.

Senator HRUSKA.

Senator HRUSKA. Thank you, Mr. Chairman.

Of course, in that editorial which winds up like this, "It does seem reasonable to ask manufacturers to standardize their various sizes and to present pertinent contents data in a prominent enough position, so that consumers can be spared unnecessary confusion," and in this bill we are asked to outlaw and to eliminate, to cast out, confusion all over again in the name of preventing restraint of trade and monopoly, and so on. Would you have any comment on that as a solid principle for the purpose of legislation, Mr. Pattison?

Mr. PATTISON. Well, it seems to me that the connection is rather tenuous between confusion and restraint of trade.

Senator HRUSKA. That is the thing the editorial is concerned about. They do not go one step further and say, "This bill will successfully legislate confusion out of existence." They have got a big order on their hands, have they not, to get the minds of men, for which a great battle is being waged ideologically and in other ways, to get them to conform by way of reaction to certain things; and the Government bureaucrat will say, "I know the answer to that." Isn't that about the size of it?

Mr. PATTISON. Well, I think there is also an implication that the average American consumer buying a product that she uses herself is not—the implication is she is not—as bright as she really is. The average American woman who is using a product herself is a darned good judge of value, and many of the detergent products that have come on the market and that have been swept off the market within 2 or 3 months because they did not deliver good value are evidence of that.

I would agree that if somebody is buying vitamins that they need a Federal regulation because no woman can judge whether vitamins are delivering good value or not, and they are, of course, labeled on the package.

But when it comes to something like soap, goodness, how dumb do they think the housewife is?

Senator HRUSKA. On page 5 of your statement you refer to a Harvard economics professor who theorized back in 1930 that standardi-

zation of virtually identical products would somehow be to the customer's best interest.

My recollection goes back to a brand of thinking way back there which, at least when it first came to my attention, I think it was in the days of the TNEC when hearings were held on this general subject, they never quite converged to a point that this bill does, but there was one theory advanced back there that we should not have all kinds of tomatoes, we should not have Del Monte and My Best and Family Favorite. We ought to have a No. 10 can of No. 2 canned tomatoes, or No. 3 canned tomatoes, and all that would appear on there would be a rubber stamp appearing, No. 2 tomatoes, No. 10 can.

It does not make any difference who makes them. It does not make any difference as to their origin or what part of the country they come from, according to this theory. All that the customer should know is here is a number 2 kind of tomatoes, and it has a certain consistency. All they have to do is read an encyclopedia as to what the consistency is and how big the pieces are for No. 2 tomatoes.

Is that the same guy to whom you referred in your statement?

Mr. PATTISON. I do not know. This was Prof. Edward Chamberlain that I referred to. As a matter of fact, I took a course under him once so I know a little bit about the theory.

I think that some of his colleagues pointed out later on that one of the things that his economic analysis did not take into consideration was the need that a company has for research money and how very often the research money, when it is plowed back into the business, can bring about product improvements that will result in a greater benefit to the consumer than if he had to sell on a pure price basis and never was able to reserve enough funds to put anything into research.

Then we would still be using the same old bar of soap that you used to cut off, that the grocer had, you know, to cut off with a cleaver, you see. But it is the research money that has made it possible to move the thing along and ultimately to benefit the consumer.

Senator HRUSKA. Did Chamberlain write a book?

Mr. PATTISON. Yes, he did.

Senator HRUSKA. On this subject?

Mr. PATTISON. Yes.

Senator HRUSKA. What would be the title of it?

Mr. PATTISON. "The Theory of Monopolistic Competition."

Senator HRUSKA. Is that still a good theory in the judgment of—

Mr. PATTISON. You see, I do not think there was anything wrong with Mr. Chamberlain's analysis. He was a good economist—as I remember it in the dim distant days of my past, there was nothing wrong with his analysis, but it was the interpretation that was put on his analysis by other people who lifted a straight economic theory, I mean like Adam Smith had a lot of good ideas in economics. But some of those were used to inveigh, you know, against child labor laws. Well, this was not—Adam Smith was not in favor of child labor. He merely put out certain propositions which were interpreted against child labor.

In the same way, I think Edward Chamberlain was really interested in setting forth certain differences between competition when you have

many suppliers and competition when you have a few suppliers or oligopoly, as it was called.

I think that this was misinterpreted by some of the other people as meaning that undifferentiated standardized competition would benefit the customer.

Senator HRUSKA. Thank you, Mr. Witness. Thank you, Mr. Chairman.

Senator HART. Mr. Cohen.

Mr. COHEN. Just one question. You quote Dr. Irston Barnes on cents-off. I think that was three pages of a statement that he gave to the subcommittee. Is there anything else in the 33 pages that Dr. Barnes said that you agree with?

Mr. PATTISON. Well, I really cannot recall whether I agreed with many of his other statements or not at this late date. As I recall, I did not agree with most of the rest of it.

Mr. COHEN. One of his points was that this bill would benefit the small manufacturer.

Mr. PATTISON. I think that is what he said, yes.

Mr. COHEN. Thank you, Mr. Chairman.

Senator HART. Thank you very much, Mr. Pattison.

Mr. PATTISON. Thank you.

Senator HART. Our next witness is the executive vice president and general manager of the American Bottlers of Carbonated Beverages, Mr. Thomas F. Baker.

If you will introduce your associate as you come forward, we will be glad to have your testimony.

**STATEMENT OF THOMAS F. BAKER, EXECUTIVE VICE PRESIDENT
AND GENERAL MANAGER, AMERICAN BOTTLERS OF CARBO-
NATED BEVERAGES, WASHINGTON, D.C.; ACCOMPANIED BY
DWIGHT C. REED, ASSISTANT EXECUTIVE VICE PRESIDENT**

Mr. BAKER. Thank you, Senator. I am joined here at the table by the assistant executive vice president, Dwight C. Reed.

Senator HART. Before we have the testimony, may I insert in full in the record a biography of Mr. Baker which reflects a background of great experience in the field, as well as an active responsible participation in community affairs. We will print it in full.

(The biographical sketch referred to may be found on p. 837.)

Mr. BAKER. Well, Mr. Chairman, as you indicated, I am the executive vice president and general manager of the American Bottlers of Carbonated Beverages, the national trade association of the soft drink industry.

The soft drink industry consist of approximately 4,300 independent businessmen who manufacture and package a food product. These enterprises are local in nature and small in size. They are to be found in some 1,800 communities across this country and, as determined by the 1958 Census of Manufactures, 75 percent of these plants employ 20 or fewer employees. Combined, they annually add more than \$11½ billion in wholesale value to the U.S. economy. At retail, the value of their yearly volume is in excess of \$2 billion.

We appreciate the opportunity to participate in these hearings and bring our views of Senate bill 387 before the subcommittee. Having

followed these hearings closely, we feel we should express at the outset that statements of legislative intent which the chairman has placed in the record have served to lessen our initial anxiety. Nevertheless, the only legislative language to which we may direct comment is the language of S. 387 as now written.

We have given this language our serious study and are concerned over the severe impact such legislation could have upon the practices of our member manufacturers; practices which are both ethical and fair, and which historically have been an integral part of the competitive characteristic of this industry's operations.

We will try to illustrate those areas where in our view such impact would or could occur.

In relating the question of packaging and its regulation to the soft-drink industry, the first and most significant fact which must be considered is that the industry, our industry, employs a reusable container; that is, a container filled by the bottler and distributed through the retailer to the consumer, and then returned through the retailer to the manufacturer for refilling and reuse. The single trip, disposable container was unknown to soft drinks for both technical and cost considerations, generally speaking, until 1954. Since that year one-trip containers have grown in use, but 95 percent of this industry's volume today still remains in a returnable, reusable container.

There are many reasons for adherence to a uniform type of package in our industry, among which are product recognition, invested capital in manufacturing and material handling equipment, established distribution methods, and requirements of containing, protecting, and displaying the product; but perhaps the primary reason can be found in the final cost of the finished product.

An economical container is essential since soft drinks are a low-cost consumer item. Despite increased costs of labor, equipment, ingredients, and taxes to this industry—increases experienced by all business—the consumer has a very well established idea of about what a soft drink should cost. And like it or not, the bottler feels he must price his product generally within the confines of that traditional value concept. In 1920 you could purchase 6 ounces of bottled soft drink for 5 cents plus 2 cents deposit on the container. Today, you can purchase a 12-ounce bottle of soft drink for 10 cents, plus 2 cents deposit. This has been made possible to a great extent by continued industry reliance upon a reusable container.

This same reliance has resulted in an enormous investment in containers which have accumulated over the years. At the present time, the soft-drink industry has an estimated stock of more than 28 million gross reusable bottles and cases in inventory, representing an investment in excess of a quarter of a billion dollars. The packages represented by this investment are collectively known as the "container float." They are to be found in the bottler's plant, en route to the outlet, in the outlet, in consumer homes and garages, and a limitless variety of other places. If the industry were to completely discontinue annual purchases of glass for replacement and sales growth, which it could not do, it is estimated it would require as many as 10 years to totally reduce the container float through normal return and attrition.

Section 3A(e) (1) of the proposed legislation, as now written, would empower a Government agency with the authority to wipe out a considerable segment of that investment, we believe, with a regulation establishing quantities not necessarily representing those container sizes in float.

With Government imposed standards of quantity, a soft-drink manufacturer would be denied the right to use a container size of his choice. We do not think that right has been abused, and we feel its preservation should be insured by law, not endangered. If the right is to be denied, it should be only after abuse is determined on the facts, in a court of law. If uniform quantities were dictated to this industry by regulation, we believe it would destroy one of the most fundamental and basic areas of competition to the detriment of both the industry and the consumer.

For 30 some years, the industry has offered the public its product in three broad classifications of size. For purposes of illustration we may refer to them as the single drink size, the multiple drink size, and the party or group size. These classifications are in being because over the past 50 years manufacturers have learned that consumers prefer these three increments of sizes. Within each size class, quantity variations are a basic competitive feature. In the single drink category, soft drinks can be purchased in 6- to 9-ounce quantities. Some consumers prefer to buy a favorite brand in 6 ounces rather than a competitive brand in 9 ounces. Some prefer to purchase a brand in the 8-ounce bottle; and quite obviously, some consumers prefer to purchase the greatest quantity for the money, regardless of brand. Competing manufacturers, therefore, cater to these consumer preferences by selecting the size within this category they feel is or will be most in demand.

In the multiple drink package or middle size group, the same circumstances exist. As a consumer, you can purchase a soft drink to serve more than one person in a 10-ounce, 12-ounce, or 16-ounce package. Again, you may be wedded to a brand name or flavor taste, or you may elect to buy on an ounce-cost basis. If a manufacturer decides to appeal to the consumer who purchases on the basis of most for the money, and if he can profitably distribute 12 ounces for the same price a competitor distributes 10 ounces, he is competing for the consumer's choice in one of the most fundamental ways he knows.

Generally, soft drinks are priced in competition with one another in these same size classifications. A 9-ounce drink is generally priced to compete with a 6-ounce drink as two, single-drink, competing products. Few manufacturers believe that the taste of their beverage is so unique or so exclusive, they could long survive with a premium price on their product. If in our industry the Federal Government were to eliminate variability of size from the consumer's options by standardizing quantities in each of these three major categories, it would reduce competition to the area of taste preference. Without size offerings available to him, the private brand bottler could not compete against the heavily advertised national brand. In our opinion, under these circumstances, the existing brand names, which now exceed 200, would soon be reduced to a mere handful.

This industry does not claim to know the ideal quantity in a one-drink package, a multiple drink package, or a party size container.

In fact, quite the contrary is apparent in that each manufacturer believes he has a better answer than does his competitor. But after generations of experience, hundreds of thousands of dollars invested in consumer studies and research, and with one-half billion dollars in capital equipment riding on our judgment, we do believe we know more about the collective consumer preference in soft drink sizes than any other source in being. A satisfying amount to be consumed from a vending machine by a truckdriver is not the same as the amount desired by a housewife during afternoon cards. And both quantities are insufficient for the sweating field hand during his mid-August lunch break. Meeting these varied and individual consumer wants—more perfectly than his competitor—is the goal of every manufacturer in this industry. And we are fearful that the proposed legislative language would provide the means of making that goal unattainable through arbitrary package determinations.

Subsection (e)(2) is alarming in that it would seem to enable a Government agency to restrict package size, shape, and dimensional proportion if unspecified conditions of deception are present. We do not quarrel with the legislative intent of this section, but we are seriously concerned with the unbridled authority it would create. Whether a package may convey some element of deception, considering the requirements of containing the product, technical requirements of filling and handling, and despite the desirable and necessary properties of distinction, appeal, and attractiveness, is clearly difficult to determine.

Indeed, with the requirement that the amount of content be clearly and factually stated upon the package, and if that requirement is adequately met, we wonder how deception could be practiced by manipulation of package, size, shape, or dimensional proportion. It seems evident that 12 ounces of a product is 12 ounces, regardless of physical characteristics of the package. While it is justifiable and unquestionably desirable to deny a manufacturer the use of a label which fraudulently represents the net contents of a package by untruth or misstatement of fact, it would appear something apart to deny his choice in package size, shape, and dimension when he has truthfully conveyed net content in clear and prominent terms.

Although we do not believe that section 3A(e)(3) would work serious injury at this time to the soft drink industry, we express concern over its provisions as it would attempt to establish a Government censor. We profess not to know the difference among "giant size," "king size," "large size," and "super size." We do know, however, that if a product contains 12 ounces and sells for 10 cents, the per ounce cost remains unchanged regardless of adornment with descriptive adjectives. There is scarcely a commodity merchandized without qualifying designations which are by their nature less than precise. We do not believe the Federal Government is any more qualified to designate how large "large" is, or should be, or must be, than it is to categorically define a "stately" home, a "luxury" automobile, a "fast" horse, or a "beautiful" view. Again, we do not support or condone misstatement of fact, but confining manufacturers to a Federal lexicon in the use of relative phrases goes considerably beyond a requirements for "truth in packaging." And definitive words and phrases, such as weights and measures, appear to have been adequately standardized.

Section 3A(c), requiring mandatory regulations, is undesirable almost in its entirety. Subparagraph 1 of that section ignores completely the question of how hundreds of millions of reusable packages in the industry are to be recalled and relabeled. It ignores the insurmountable obstacle to many manufacturers of financing such an operation, even if that were feasible, which it is not. Basically, it presupposes, and we feel incorrectly so, that if the net quantity is not stated on the front panel it is then obscure. This is an unwarranted restriction and regulation of manufacturers whose statement of contents is now prominently displayed, but not on the front panel.

We confess not to know which is the front panel on many of this industry's products which are displayed under varied circumstances. If a bottle is offered to the consumer in an open-top cooler, the crown or bottle cap is generally the only surface exposed to the purchaser. This same bottle may be packaged in a carry-home carton, in which the carton itself is the largest and most prominent panel exposed to the purchaser. Manufacturers who exercise the right to place the content statement in a location of their choice, and at the same time comply with the prominence and clarity requirements issued under the Food, Drug and Cosmetic Act, have demonstrated no cause why that right should be legislated or regulated away.

Subparagraph 2 contains the same basic doctrine of punishing the many for the convenience of catching the few. In addition it could easily involve the Federal Government in the design and styling of container appearance. Such involvement we feel will interfere with and needlessly impede legitimate advances in these areas of packaging. Subparagraph 3 is a sweeping generality which would seem to prohibit words or phrases without regard to deceptiveness whatsoever. Apparently statements such as "a convenient 7 ounces," would be illegal under this section. If such an interpretation is correct, we feel the prohibition is an unwarranted intrusion into the rights of a producer. Our concern over subparagraphs 5 and 6 have to do with omissions of criteria and the generality of language which we believe could confer authority beyond the degree intended. For instance, we have no way of knowing what a "reasonable opportunity" to make a rational comparison is. We are not certain as to the required elements of a comparison in order that it qualify as rational. We do not know with what tools the promulgating authority "may determine" such opportunities to exist or not exist. We are uncertain how permitted and prohibited pictorial matter are to be distinguished. In clarifying statements placed into the record by the committee as to what would or would not be done under these provisions, we have found no area for disagreement. However, we feel the language of the bill as now drafted fails to confine the regulator to the intent expressed by those statements.

The soft drink industry in no way disagrees with the intent to insure that consumers are provided factual knowledge concerning products which are offered to them for purchase. We believe consumers have the right to know, and manufacturers the obligation to provide, honest information as to what product is being offered and in what quantities it is being offered. And while we are confident these are the objectives of S. 387, we must respectfully subscribe to the opinion of the many producer representatives who have testified that the bill goes far

beyond such requirements in its general regulatory provisions. We frankly believe these provisions could unfairly deny legitimate and historical rights of choice to honest manufacturers.

We submit that the very nature of the container used predominately by the soft drink industry renders it exempt from the underlying philosophy of this proposed legislation. Due to its reusable characteristic, it is a container which must be placed before the consumer time and time again, without change or alteration. Through repetition of use, the consumer is thoroughly familiarized with each and every characteristic of the package and is in a knowledgeable position to either accept the commodity or reject it on the ground of this familiarity. It would be erroneous to believe that after repeated displeasure or disappointment or dissatisfaction with an identical package a consumer would continue to purchase a product so contained.

Because of the size of the typical soft drink manufacturer and the limited capital resources available to him, his package decision, both as to type and size, is a long-range commitment. He places his package on the market at a deposit value of approximately one-fourth its replacement value, and to recoup that cost he must rely upon multiple trippage. He cannot adopt a promotional package or a container for limited consumer exposure.

The package decision to a soft drink bottler is a decision which encompasses the nature and entirety of his proprietary investment. And he does not—he could not, without exercising a total absence of business sense—base that investment on a philosophy of temporary deceit or consumer deception.

We do not believe the majority of manufacturers, or even a sizable quantity, base their prosperity, their future growth, their very economic lives on a philosophy of deceit and deception. On the contrary, every honest producer knows that future guarantees of business success can only come from consumer favor and satisfaction, demonstrated by repeated and continued customer patronage. As long as competitors are free within the realm of honest practice to strive for consumer pleasure, the consumer will continue to exercise this final authority. We believe S. 387 could seriously impair that freedom by needless and unjust regulation.

Manufacturers who have long felt the authority of the consumer know her pleasures are many and varied. They cannot be reduced to so simple a formula as equal parts of price and measure. Value is basically a complicated equation of satisfaction with total product performance and the cost of such performance; both tempered by the degree of need for performance and the ability to meet the cost. It is further compounded by such factors as eye appeal, design of package, convenience in handling and storage, and many others. These are areas as fully competitive as are price and quantity, and they effectively serve to keep the consumer king. We feel in general that S. 387 endangers the survival of such competitive areas through the imposition of conformity and regulation to the injury of many manufacturers and ultimately to all consumers.

During the extended course of these hearings, the subcommittee has been most willing and anxious to hear the views of all interested parties. We are most grateful to you for that consideration which has made possible our being here today. As you have observed, our

industry is concerned, seriously concerned, about this legislation since it contains regulating machinery or other elements which could seriously affect what we consider our unabused, inherent competitive rights, and secondly, because of the very practical consideration of it giving rise to a system which could place in jeopardy some part—perhaps significant—of the important reusable container dollars invested by our many members. Our search of the hearing record to this point failed to show adequate discussion of this type package, and it is our feeling that the subcommittee—in its deliberate course of fairness—would want to have this information. Thank you.

Senator HRUSKA (presiding). Thank you, Mr. Baker.

Senator Hart was called out of the room for a little while on another assignment of official business, and he asked that we proceed with our hearing nevertheless, in temporary charge of the acting chairman.

Mr. COHEN, have you any questions or observations with respect to the witness?

Mr. COHEN. Mr. Baker, I take it that the unique problem you have that the other industries who have been here do not have is that of returnable bottles, the float, I think you called it; is that correct?

Mr. BAKER. I described it in my statement as the container float. The record to this point does not show that the reusable or returnable container has been discussed earlier, but we pointed out our use of that container and did not necessarily confine our remarks to it. We commented on other areas.

Mr. COHEN. I ask this question because I think it is very good to have this kind of testimony. In my recollection this particular problem has not previously been considered by the committee. But in one way don't you think that this is a good argument you have given for the approach that the present bill takes? In other words, its flexibility, the necessity of the administrator, first of all, to show necessity; second, the compulsory consultation, so that your technical problems are taken into consideration; third, the use of the Administrative Procedure Act provisions under the bill and as Senator Hart has indicated, the possibility of formal hearing procedures at least insofar as a few of these provisions are concerned? Don't you think this flexibility, these safeguards would pretty much take care of the expressions of concern that you express to this subcommittee?

Mr. BAKER. I do not really believe so, Mr. Cohen.

I believe, first, you have got to show a need for the legislation, and I do not believe that has been demonstrated, in our industry's opinion.

Certainly, if such legislation does, in fact, become the law of this land, then it must necessarily take into consideration the various relief, special cases that exist.

I think it was Mr. Cohen with Food and Drug who, during these hearings when commenting on the necessity for a hearing under these various areas, indicated that they would not, in their opinion, in every case, find it necessary to hold a hearing or review when developing a standard for a product or package. We believe a regulator views his job under any regulation as a requirement to regulate and in many cases despite qualifying remarks, criteria, or exemptions, his action would appear to go beyond the intent of the legislative requirement.

Mr. COHEN. If the formal hearing procedures were to be written into the bill, at least insofar as (e) (1) and (e) (2) were concerned, would this help to assuage the concern you have over this bill?

Mr. BAKER. I believe the consumer is entitled to know that he is not going to be taken advantage of or deceived. I do not believe again, in all sincerity, that the need for the legislation has been established, and just by picking at various areas here and saying if we do that would it make it acceptable, I do not believe the bill itself is acceptable. So any language that you put in there I do not believe makes it any more acceptable.

Mr. COHEN. Well, there could be some language that would make it more unacceptable, I believe.

Mr. BAKER. Obviously, that is right.

Mr. COHEN. As you are well aware, an increasingly large number of consumer witnesses have urged that the bill contain reasonable weights and measures provisions written directly into it for basic commodities as they have in England. I would imagine that a bill such as that would be far more distasteful to you than the present version?

Mr. BAKER. Reasonable weights and measures certainly should be acceptable to anybody. But I have no familiarity with the law in Great Britain.

I do know this, at one time they were quite a power in the world. For some reason, economic or otherwise, they are not today. I do not know what the reason for that is, but I do not think we can compare them with our country, with our economy or manufacturing capabilities.

Mr. COHEN. I hope you are not suggesting that the rise and possibly the decline of the British Empire is in any way due to their standardization of weights and measures on basic commodities?

Mr. BAKER. No, sir; I do not. I just added that as a thought. I have no familiarity with the law in England. I could not comment on it. If you would like for us to take a look at that law and give you a supplemental statement I will be happy to do that.

Mr. COHEN. Mr. Clifford suggests that the reason for the possible decline of the British Empire was the Irish Republican Army.

I have no more questions.

Senator HRUSKA. Of course, however you dress it up, Mr. Baker, the provisions here with reference to consultation before regulations are put into the law, regardless of how you dress it up, it is still the Food and Drug Administration legislating, is it not?

Mr. BAKER. That is absolutely right.

Senator HRUSKA. And it is a little bit hard for some people to understand why a legislative process in such a very important area involving so many things should be vested in a Bureau, the members of which, and the administrators of which, are not responsible to the people of the United States. They never have their names on ballots, do they?

It is a chastening proposition to have a name on the ballot now and then. It amounts to saying to the electors, does it not, "Boys and girls, how am I doing?" Sometimes they say, "No, we don't think you are doing any good," and we do not have this factor here.

The language in the bill is that persons who would be affected should have reasonable opportunity "for consultation." It does not say hear-

ing, does it? A hearing is different from consultation, is it not, Mr. Baker, in your opinion?

Mr. BAKER. This is what concerns us. We do not know what criteria will be set down.

Senator HRUSKA. If you received a letter from the Administrator of Food and Drug, and he says, "We are proposing to limit all bottle sizes to 6 ounces or 8 ounces and 16 ounces, please give me your views, or wait 5 days for an answer," have you been consulted in that area?

Mr. BAKER. No.

Senator HRUSKA. Certainly not to an effective degree, have you?

Mr. BAKER. We have not been consulted at all if the letter is the first evidence that they are even thinking of that.

Senator HRUSKA. They ask you for your views.

Mr. BAKER. Oh, yes. No, we have not been consulted.

Senator HRUSKA. I suppose that could be changed to hearing, but the books are full of those things on administrative law and, of course, many of us know that far too often by the time the hearing stage is reached the thinking of the bureau or the agency or the administrator has become pretty well crystalized and it is very difficult to overturn.

On page 2 of your statement you get into this matter of reusable containers. You say that there are great investments in capital, manufacturing, material, handling equipment, distribution methods and so on, and those would all be put in potential jeopardy by vesting in a bureau the idea that they can say, "We want this kind of a package or that kind of a package."

Could you elaborate on that a little bit?

Mr. BAKER. Yes, sir.

Senator HRUSKA. As to the things that are involved.

Mr. BAKER. The whole manufacturing, inventorying and distribution system in the carbonated beverage industry is tied into the container. The speed of your filling line is geared to the size of the package, the bottle; the length of time it takes to go through the washer, the number of washing compartments in your washer, is a gage as to how fast you can run your filling equipment, and how many people or what type of equipment you are going to have at the discharge end of the filling line; whether you have an automatic packer or whether you work from a scrambling table with employees or whether you employ materials-handling trucks, lift trucks, to take the palletized product and store it in the inventory area or if you take and load it directly on your trucks. The truck itself, the truck body, is designed for that type of container. Whether it is a number of decks or whether it takes a whole pallet at one time, all of this is geared to our package, and if you change the size, then you are going to affect our whole line and our entire manufacturing and distribution procedures and equipment.

Senator HRUSKA. Of course, you would have to start in a factory that makes the bottle, wouldn't you?

Mr. BAKER. That is right. The factory that you buy the bottles from.

Senator HRUSKA. They would have to change their molds, their machines, and a host of the things which are very expensive equipments and which somebody would have to pay for, I presume.

Mr. BAKER. We generally end up paying for those molds and those screens and things of that nature. They are part of the cost of the bottle.

Senator HRUSKA. And, of course, even the size of iceboxes would be affected, wouldn't it, refrigerators?

Mr. BAKER. The vending machines, for example have pockets in them. The automatic dispensing devices that are triggered with your nickel or dime or quarter, they are designed for a certain size bottle within a limit. If you were to change this or decree that it will only be that size bottle, then conceivably you could place into jeopardy thousands of dollars in these vending machines that are sitting around at every type of conceivable location.

Senator HRUSKA. A little bit later in your statement you refer to this idea of maybe there might be prohibited pictorial matter on your labels or on your bottles. You mean to suggest maybe we will no longer be favored with the label portraying the land of sky blue waters, for example? On the idea that there is no land involved or no sky, no blue water? Do you suppose that is conceivable?

Mr. BAKER. I think maybe you have in mind a competing product, but perhaps they might not be able to talk about the land of the sky blue waters.

Senator HRUSKA. Of course, if that picture or that phrase would bring confusion into the minds of the customer, the man who makes that product might be pretty much on the defensive, might he not? It depends on who is construing the confusion.

Mr. BAKER. That is right, and who is regulating. And the degree that they want to go.

Senator HRUSKA. Thank you, Mr. Baker, very much. I agree with counsel here. You have opened some thoughts in a unique field. I will defer to you, Mr. Cohen, because you have been here much more regularly than I, and my own staff. This is the first time this type of thing has arisen by way of the impact that this law might have on the reusable container.

Mr. BAKER. Thank you so much, Senator. We are grateful for the opportunity.

Senator HRUSKA. Anything further, Mr. Cohen, on your part?

Mr. COHEN. When the bill refers to illustrations, I wish to assure the witness it is not concerned with the wood nymph looking into the water.

Mr. BAKER. I didn't quite hear.

Mr. COHEN. I was referring to the picture of the wood nymph who looks into the water.

Mr. BAKER. Oh, yes. Let's don't do anything to her.

Senator HRUSKA. Of course, in your own field, the pause that refreshes has some familiarity and maybe somebody might say, the way people drink Coca Cola, there isn't any pause, they just take it on the run. Therefore, we should not have the slogan "The Pause That Refreshes." Would that make sense?

Mr. BAKER. No. Not at all.

Senator HRUSKA. All right.

Mr. BAKER. Nor "Twice as Much for a Nickel too," that this industry originated.

Senator HRUSKA. Thank you very much, Mr. Baker, and also your associate, for coming down here.

Our next witness is William Heckendorn, executive secretary of the American Seed Trade Association of Washington, D.C.

Will you identify your associate please, Mr. Heckendorn?

Mr. HECKENDORN. I have my assistant with me, Mr. John Sutherland.

Senator HRUSKA. Will both of you be seated and proceed in your own fashion, Mr. Heckendorn, to testify as you wish.

Mr. HECKENDORN. Thank you, Mr. Chairman.

**STATEMENT OF WILLIAM HECKENDORN, EXECUTIVE SECRETARY,
AMERICAN SEED TRADE ASSOCIATION, WASHINGTON, D.C.; AC-
COMPANIED BY JOHN SUTHERLAND, ASSISTANT**

Mr. HECKENDORN. My name is William Heckendorn, and I am the executive secretary of the American Seed Trade Association, located in Washington, D.C. I would like to add for the record at this point that the American Seed Trade Association is a national organization consisting of about 543 active members and 104 associates and affiliates. It is well to understand the difference between an active member and an associate. Active members are those who actually produce, harvest, condition, and distribute seed. Associate members are associations of State seed associations or suppliers of goods and services such as machinery and equipment.

Now, I will continue with my statement.

We have carefully studied the provisions of S. 387, and would urge the following amendments:

Amend section 3A(k), page 10, line 10, by inserting a comma after the word "pursuant" and adding, "the Federal Seed Act or".

Our reason for seeking such an amendment is based upon the following facts: In 1939, the U.S. Congress enacted the Federal Seed Act, which has since been amended a number of times to cover changes in the seed industry. The purpose of this act is to—and I quote from the act—

regulate interstate and foreign commerce in seeds; to require labeling and to prevent misrepresentation in seeds in interstate commerce; to require certain standards with respect to certain imported seeds; and for other purposes.

Title II of the Federal Seed Act, entitled, "Interstate Commerce" under section 201, states as follows, and I quote from the act again:

It shall be unlawful for any person to transport or deliver for transportation in interstate commerce (a) any agricultural seeds, or any mixture of agricultural seeds, for seeding purposes unless each container bears a label giving the following information in accordance with rules and regulations prescribed under section 402 of this act:

I will describe the provision a little later.

Section 201(b) carries a similar provision with respect to the labeling of vegetable seeds.

In brief, the required information on the label covers the kind of seed; kind and variety of seed; kind and type of seed; lot number or other identification; origin of certain kinds of seed. My statement should be corrected at that point because I have the word "types" in there and it is "kinds" instead of "types."

Percentage by weight of weed seed; kind of noxious weed seed; percentage by weight of agricultural seed; percentage by weight of inert matter; predominance of certain seeds in the mixture; and the name and address of the person who transports or delivers for transportation the seed for interstate commerce. Similar information for the labeling of vegetable seeds is also required.

At the present time, flower seeds are not included under the provisions of the Federal Seed Act, although a number of States have such regulations.

We concur in the statement made by President Kennedy in his consumer message to Congress when he stated—

that consumers have a right to expect that packages will carry reliable and readily usable information about their contents.

We contend that packages of seed meet this definition and that there is no further need for additional regulations.

Due to the regulations under the Federal Seed Act and the respective State seed laws throughout the United States, as well as weights and measures laws, there are no "slack filled packages" that would be deceptive or misleading to the consumer.

It must be understood that seed is a living organism, and sometimes requires a type of package that would not be used if the contents were to be used for purposes other than planting.

I would like to hand to each of you some packets so that you will know exactly what I am talking about. May I have one, too, John.

I believe each of you has three packets of seed. We picked these up this morning in one of the local stores and you can tell by feeling the packets that there is something in them. The formats of these packets are all the same. Still the contents of the packets are all different.

Now, you will note on the back of two of the packets, the lettuce and the beets, certain information is included and to a large extent the planting directions are the same on the packet of lettuce as they are on the packet of beets.

Now, if you will pick up your packet of petunias and feel of it, and don't crush it too hard, you will note that it is entirely different. I would like to have you open the packet very carefully and you will take out another container. In that container you will find a packing material, and removing that packing material, you will get down to a container that has the seed in it.

Now, if you are gardeners, don't do what I am going to do but take the seed home and let your wife plant them. There are 150 seeds in the packet. Now, I am going to press those seeds—don't do it with yours—because in the crushing of those seeds I have destroyed the life of a number of them. So that is the reason why this particular package is put up the way it is. It is not to mislead the consumer and the consumer thoroughly understands it.

Now, there are other types of containers used, of course, but we have millions and millions of these packets that are distributed every year. Probably there are in excess of 200 million packets distributed. The cost of containers alone becomes a very substantial figure. And to the extent that we can standardize our packet without misleading the consumer, we are able to hold our costs down. This type of business has been going for a long, long time. The American Seed Trade

Association was organized in 1883 and it is one of the oldest trade associations in the United States today. And this is a business that has been built up over the years. It is a business that has cultivated the confidence of its consumers.

Now, you walk into the store and you look at the commission rack, those of you who are gardeners, and this is probably what you are looking for, the picture on the container. Now, that picture has got to be reasonably accurate.

Now, here is black seeded Simpson lettuce. Those of you who are familiar with that either can tell the difference in that picture from Oak Leaf or any other varieties of Red Night that would stand out very distinctly. So our plea is that inasmuch as we have been regulated so many years by State and Federal seed laws, that it is not necessary to include seeds in this particular amendment to the Clayton Act.

So, now, continuing with my statement, there is a high degree of uniformity among the respective State seed laws and the State weights and measures laws, insofar as the labeling and commerce in seeds for planting purposes is concerned.

While the Department of Agriculture does not maintain a large group of Federal seed inspectors throughout the United States, they do have a working agreement with all State seed enforcement agencies whereby their inspectors report to the Federal Government on any violations discovered in the channels of interstate commerce.

In addition to the foregoing information required by law, the purchaser of the container of seed for planting purposes, also receives: a reliable estimate of the number of days that elapse between normal planting and normal maturity; the recommended zone in which the seed will perform best; the date the seed was tested; the germination of the seed that might be expected under normal conditions; the hard seed content; and the total germination and hard seed.

In certain types of packages, it is necessary to give the kernel or seed count, especially in new varieties.

It is especially important that the consumer buying grass seeds for lawn and turf purposes should have an analysis of the different grasses included in the mixture, as planting conditions vary from area to area.

State and Federal laws require that seed should be removed from sale if not sold within the statutory period for which the test is valid. This period ranges from 9 months, under Federal law, to upwards of 12 months in States. States are now extending this period to 24 months or more when the seed is packed in certain types of improved containers.

We conclude that no useful purpose would be served by placing additional regulation upon the seed industry and that it would only be an added burden complicating inventories and packaging requirements.

There is already included in the bill an exemption for packaging and labeling of materials covered by the Federal Insecticides, Fungicides, and Rodenticides Act, administered by the Secretary of Agriculture. Therefore, in line with the facts as set forth in this statement, we urge a similar exemption for seeds covered by the Federal Seed Act and the several State seed laws.

That concludes my statement, Mr. Chairman.

Senator HRUSKA. Thank you very much, Mr. Heckendorn.

Counsel Cohen, have you any questions or observations to make?

Mr. COHEN. At this point let us be sure that the record shows that Senator Hart is absent from the committee room and it would certainly be presumptuous of either myself or of Mr. Clifford on his behalf to indicate his position on any specific proposals of the bill. Nevertheless, having discussed the general philosophy of the bill with him, it is the belief of both Mr. Clifford and myself that the seed industry does not fall within the definition of consumer commodities that this bill has set up. We certainly will give you every assurance that Senator Hart will give this his earnest consideration, and if it does appear that it could fall within the definition as I have indicated—we don't believe it does—certainly Senator Hart will give a great deal of consideration to the recommendation for an amendment to be made.

Naturally we can't give any assurance of what his final decision will be in this matter, but certainly this is the feeling of Mr. Clifford and myself.

Senator HRUSKA. This witness brings a very interesting note to the hearings. I am sure that Senator Hart and others who are interested in this bill—I think one of their purposes was to avoid proliferating, as it were, jurisdiction over any given product and that certainly is borne out by their painstaking enumeration of some of the specific exemptions. We are grateful to you for calling this one to our attention, Mr. Heckendorn.

If there are no further questions, we will recess the hearing. The witness is excused, and we will recess these hearings until tomorrow morning at 10 o'clock pursuant to announcement previously made.

Mr. HECKENDORN. Thank you very much.

(Whereupon, at 4:05 p.m., the subcommittee adjourned to reconvene at 10 a.m., Thursday, April 25, 1963.)

PACKAGING AND LABELING LEGISLATION

THURSDAY, APRIL 25, 1963

U.S. SENATE,
SUBCOMMITTEE ON ANTITRUST AND MONOPOLY
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:10 a.m., in room 2226, New Senate Office Building, Senator Philip A. Hart presiding.
Present: Senators Hart and Hruska.

Also present: S. Jerry Cohen, assistant counsel; George E. Clifford, assistant counsel; Peter N. Chumbris, counsel for the minority; Ronald D. Raitt, counsel for the minority; Dr. E. Wayles Browne, Jr., economist; Paul S. Green editorial director; and Gladys E. Montier, clerk.

Senator HART. The committee will be in order. We are delighted to have an opportunity to welcome our colleague, the distinguished Senator from Oregon, Mrs. Neuberger.

If one was crowded against a wall, and forced to identify just one Member of the Congress of the United States who consistently and most effectively voices the concern of the consumers of this country, I suspect that Mrs. Neuberger's name would rank first. It certainly will with me. Having indicated that I am a prejudiced audience, you go right ahead, Mrs. Neuberger.

STATEMENT OF HON. MAURINE B. NEUBERGER, A U.S. SENATOR FROM THE STATE OF OREGON

Senator NEUBERGER. Thank you, Senator Hart, for that very generous comment. In fact, my fame in Oregon sometimes just seems to hang on the fact that I once did something about colored margarine in our State, and though I am very proud of it, I do say that I would like to live it down to some extent in that I did manage to get a bill passed which provided tax deduction for child care for working working mothers, aid to retarded children and a few other things.

But I do think that it typifies the great interest in the consumer problem because that happened a long time ago, and yet the women, wherever I go, in speaking with groups, always recall it, and if anybody testifies before this committee that the women of America are not interested in consumer legislation, then I think they are misinformed.

In fact, the last 2 days I have been spending quite a bit of time downtown at the Labor Department where I am a member of the President's Commission on the status of Women, and we are writing our final report getting ready to submit it to the President, and I

was interested that in a good many pages in the report there is a great deal of talk of need for homemakers' information; views on household management now come from advertisements rather than from any training—according to the paper submitted by the Education Committee.

There is such a welter from which to choose that the need for training in how to circulate among the many tempting things offered to the consumer, is felt necessary.

Deceptive packaging and labeling continues to confront the consumer who attempts to select judiciously products for the family shopping cart. As a consumer and as a Senator I hope to see my Government give assurance that the buyer wastes his money willingly but not unknowingly.

I say that if he chooses to buy some of the wonderful convenience foods, delightful appealing foods which may be more costly because of the packaging and labeling that is his privilege, but he should have the information so that knowingly he can make the distinction.

Convenience foods are much more popular, have increased the numbers of products available, and have given variety to family budgets. Even meat and fresh vegetables and fruits are purchased neatly wrapped and sealed and ready for the pot. With such technological progress one would think that the packaged foods and goods lining the shelves would act efficiently as their own "silent salesman."

Unfortunately this is not the case. While no one would wish to return to such an undertaking as boiling the family soap, a trip to the store can prove to be a job for an Einstein.

Place yourself in front of the detergent shelf for a moment. Arrayed before you is a confusion of plastic bottles of all sizes and shapes. Of course, you want the best soap for the best price, but which is the best buy?

Confronting you is an array of squeezeable, narrow-waisted, slant-shouldered containers apparently designed to avoid comparisons. Labels—giant, king, regular, large—give no clues as to the amount of soap inside. Powdered soaps offer no relief. One newspaper chuckled in its column "Detergents soon may come in four box sizes: regular, giant, colossal, and *full*."

Remembering that figures should give an answer, you begin to look for the price. After much flipping, turning, and squinting, you discover that brands *x* and *y* offer 1 quart at 89 cents, 1 pint and 6 ounces at 62 cents, and 12 ounces for 35 cents.

Brand *z* has a slight variation—1 pint and 6 ounces for 8 cents off. Five other makers will sell you 12 ounces for sums ranging from 27 cents to 31 cents including numerous cents-off offers. With the aid of pencil and pad, if not slide rule, to chart these amounts and prices, it just may be possible to figure out the better priced size.

Hardly any shopper can go to these lengths. The housewife has been pulled away by eager children, the working wife by demands of time, and the men by sheer impatience. All have grabbed the nearest bottle or the most familiar name brand and gone of down the aisle, undoubtedly to yet more tricky shopping.

The detergent tale doesn't end here incidentally. There is one dispenser of detergents the shopper hasn't bargained for—the water faucet.

Around the country housewives are drawing long drafts of white sudsy water from kitchen taps. Some housewives have been forced to purchase bottled water. Detergents able to decompose and prevent this source of pollution have been developed, but are not available. At least they are not available until advertising programs have been amortized.

Testimony has been presented to this committee regarding the self-regulating abilities of the manufacturing industry. Yet repeated warnings from scientists and public health officers have not resulted in one independent movement by industry to manufacture decomposable detergents. S. 1183, which I have introduced, would require that soaps manufactured for use in the United States be decomposable. Florida even has a county forbidding their use.

The tortuous paths to self-regulation appear to be too difficult for the food industry to follow. Despite rumors that packers are weary of slack-filled packages, of having to produce new package ideas, of being agents for china, silverware, and flower seeds, and of buying cardboard, little has been done to relieve the exhaustion. Consumers are still "buying a lot of paper at cookie prices" as *Mad* magazine noted.

I know the committee has heard numerous comments from manufacturers who say that it would be too costly to make the changes in labels required by S. 387. Yet month after month I notice frequent changes in size of packages, in colors of labels, in slogans on cans and bags. Manufacturers are able to put on and take off "cents offs" at will despite their claims that only retailers can set the final prices of goods. It would seem to me that one additional change in label will have no greater economic effect than the renovations I now notice in the store.

In addition, if sales are slumping it seems to be a habit of these manufacturers to bring out the word "new" which appears in large letters on the package. This evidently doesn't cause them great inconvenience.

I was interested to follow the hearings yesterday in which one of the witnesses testified that if we had some kind of standardization it would cost the consumer more. I wonder now if any consumer who has walked down that long line of soap products—and I seem to be especially concerned with soap today working on the detergent bill—has been able to discern much difference in price. There seems to be an economic theory that competition drives prices up because the manufacturer of one kind of soap will say, "I must charge as much as my competitor or else the housewife will think mine is not as good."

So right now I don't think the housewife has very much choice when it comes to price.

Tricky, confusing packaging and labeling has long been a complaint of consumers. While not injurious to the health of the family, ailments in the family budget can become an acute problem. A few pennies or a nickel or dime saved in the weekly shopping trip when multiplied by millions of families amount to many dollars, dollars which could be spent for additional goods and services.

Deceptive labeling and packaging has a psychological effect as well as an economic one. Mildred Brady of Consumer Reports testified that readers now write in hoping the publication will comment on

honestly packaged goods and products they have found in the stores. Consumers add "It's the principle of the thing."

It's kind of like taxes. I think every person who appreciates the value of the defense of his country, the satisfaction he gets out of driving over federally built highways, doesn't mind paying the taxes for them as long as he knows that everybody is paying his share fairly.

The food industry might take a cue from one housewife who wrote:

I wonder if the manufacturers, advertisers, and retailers realize the extent of the suspicion and dislike they have earned from the people who buy, and have to buy, their goods. I used to be reasonably trusting; if a new, "improved" package was advertised, I had the curious idea that the improvement might be for the consumer's benefit. I have learned better, and now I believe absolutely nothing.

The packaging picture is not all black. Mione Packing Co. of Newberg, Oreg., was recently gifting customers with an extra $1\frac{1}{4}$ ounces of chicken. Despite the small firm's claims that it was using the available fruit jars labeled "16 ounces" because of economic necessity and that the jar looked better completely full, the poultry inspection division of the Department of Agriculture ordered the "deceptive" practice discontinued. Obviously the safeguards in the bill are necessary to avoid such extremes. No consumer would want to turn down a better than best buy.

Although the Clayton Act was amended in 1938 to declare "unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce" unlawful, S. 387 is not duplicating this language.

Such extensive evidence is now demanded before the FTC may issue a cease and desist order that cases of deception have been known to be "in the fire" for as long as 4 years.

Meantime, the consumer has no protection. S. 387 will clarify the ability of the FTC to prevent deceptive and misleading packaging and labeling by issuing regulations requiring that the statement of net weight content be on the front panel of a package; that standards with respect to the location and prominence of the net weight declaration be formed; that additional qualifying words as to quantity be prohibited; that "cents-off" legends not be an integral part of a label; and that deceptive pictures not appear on packages.

I was especially interested, Mr. Chairman, in your story about the cherries. I felt there might have been another motive in your counting cherries because I know that Michigan is a great producer of cherries, along with Oregon and we would like to see them get into the mouths of consumers as much as possible.

The use of the metric system, I might add, could give us a still easier way to compare weights of products. Measurement in the system is in units on 1, 10, 100 and so on. Our money is based on the decimal system—1 cent is one-tenth of a dime, a dime is one-tenth of a dollar.

In the grocery store the housewife could have an easier time computing prices, that is, with the metric system.

For example, under the present system in order to find the price per unit of a product labeled $1\frac{1}{8}$ quarts the consumer must know: First, that there are 16 ounces in a quart, and second, be able to juggle

the fractions and do the necessary division. In his head he must multiply 8 times one-eighth, add the extra one-eighth, and multiply nine-eighths times 16 to find the 18 ounces in $1\frac{1}{8}$ quarts.

Using the metric system fractions are eliminated and calculations may easily be made using decimals.

For example, if you wish to change 2.2 liters to the next smaller unit of measure, the decimal point is moved one place to the right and you have the answer—22 deciliters. The prefix deci- tells you that that there are 10 deciliters in each liter.

The consumer would quickly catch on to the metric system if products could be labeled simultaneously in both units of measurement. Agonizing fractional division problems before the grocery shelf would no longer frustrate the harried shopper.

Customers want to be able to judge products on a quality and price basis. If manufacturers are truly weary of the packaging and advertising merry-go-round, it is "time for a change." "Silent salesmen" can be good salesmen instead of picking our pockets as we pass by the shelves.

Those of us in Government are confronted daily with the pressures of big farm organizations, big medical associations, big shipping interests, big drug industries, big labor unions. Surely, Government can, at least, be a counterirritant on behalf of the housewife, while the merchant remains free to compete in service, quality, and price if not guile. It is now time for Congress to lay down some rules for the game.

Thank you very much.

Senator HART. Thank you very much, Senator Neuberger.

It is comforting to have you testify as you have, comforting for those of us who feel that this bill is a worthwhile effort.

The committee has been told here rather frequently that the American woman is the world's greatest computer, that she carries it around right in her head, and this doesn't fool her a bit. They make surveys and they haven't found anybody who was really unhappy about this. Besides that, they say, if you do this to us, you will have a Russian-looking supermarket, drab, and who wants that?

I take it that you speak as one member of that group known as the American housewife.

Senator NEUBERGER. Well, Mr. Chairman, I have just spent 2 years of quite diligent work on the President's Commission on the Status of Women, and one of the great discussion subjects that comes up frequently is consumer aid, consumer help, consumer information. I speak to a good many women's groups around the country.

I have one this weekend in Oklahoma, the Business and Professional Women's group. I asked them what they wanted me to talk to them about, consumer problems, consumer legislation. This is going to be a statewide convention, and I think there is a great deal of interest. I have just returned from attending an international meeting in Geneva, Switzerland. The last day I was there I walked through some supermarkets to see how they were selling and packaging. I found a wonderful array of foods. They have copied our system of convenience foods. But we noticed particularly the use of the metric system and the ease of determination of the cost per unit of packaged foods.

I talked to women in Switzerland about it, too, and I find women everywhere are interested in the subject.

Senator HART. I am very grateful that you saw fit to cosponsor the bill. This identifies both of us as prejudiced, so we will now turn it over to Senator Hruska.

Senator NEUBERGER. Don't tell me he is not interested in women.

[Laughter.]

Senator HRUSKA. Well, Senator Neuberger, I want to join the chairman in his welcoming of the very gracious Senator from Oregon to these committee quarters. We always look forward to any statement that you have to make. You always make your testimony interesting. It is always so sincere, and advanced in good faith and we always learn a great deal about the subject when you contribute to the record.

I was wondering, Senator Neuberger, of course, we have in your testimony, as we do in a great many statements these references to tricky and misleading statements, statements that are deceptive and being unfair and so on.

Of course, the bulk of these are treated, aren't they, in legislation we already on our books? For example, deception, misbranding, mislabeling, unfair trade practices.

Isn't that true?

Senator NEUBERGER. Well, I would say that "cents-off" is a good example of deceptive packaging. It suggests that when you walk up to the checkout counter that you may have so many cents off, and yet you find that you do not. You pay the price that is stamped on the package.

I think the dangling "than"—this package is larger than, bigger than, greater than—larger than what, bigger than what, greater than what? This is the thing that housewives are beginning to wonder about. I think that is deceptive.

Senator HRUSKA. But my question was whether or not there are now statutes on the books which deal with deceptive advertising, unfair trade practices, which include such misleading or distortion statements.

Senator NEUBERGER. You mean under the Clayton Act?

Senator HRUSKA. No; under the Federal Trade Act, the Food and Drug Act.

Senator NEUBERGER. Has the Senator been suggesting that the law has been ignored all this time if we find the "cents-off"?

Senator HRUSKA. If we have, we have been appropriating a whale of a lot of money to many thousands of inspectors and enforcers. No; they are quite diligent in their efforts to—after all the Federal Trade Commission came into being in President Woodrow Wilson's first term, as I remember back in 1913 or 1914. They have been busy at it ever since and from its very inception we have misbranded food, we have unfair trade practices, we have deceptive practices.

Senator NEUBERGER. I don't quite know the point the Senator is making. That the Food and Drug Administration has authority to prevent such expression as "cents-off" on a package.

Senator HRUSKA. No; it doesn't have that authority. It has authority to prohibit and to get cease-and-desist orders if there is any deception practiced to a point where it will be an unfair trade practice, for example.

Senator NEUBERGER. Well, as I cited, cases can be brought before some of the regulatory agencies and it can be 4 years before they are ever acted upon.

Senator HRUSKA. Will there be any assurance that there will be any quicker action if this law is passed?

Senator NEUBERGER. Well, I find when I have some complaints, and I have one right now from Oregon that happens to do with an anti-septic, and when I take it to the Food and Drug Administration and show the harm that is being done, in this case not to the consumer but to the manufacturer by a cease-and-desist order, that I was able to get attention to it, because there is —

Senator HRUSKA. That shows the law is effective, doesn't it?

Senator NEUBERGER. It wouldn't apply in this particular case that I am referring to here. As I say it is the manufacturer's end of it.

But when I talk to them about it, and I talk to FTC about an advertising program that affects my State, they are woefully far behind in working on them and they haven't considered, they haven't been giving the weight to the consumer end of it.

All of these cases have to do with the manufacturer and the producer, not the consumer.

The consumer is not getting the help.

Senator HRUSKA. Well, Senator Neuberger, the complaints that are filed, the investigations that are made and so on are on behalf of the consumer. That is what they purport to be in the business for. I don't know any of these agencies that are out there battling for the manufacturing merchants. They have—and that is what the rationale of the entire act is and I am just wondering if the enactment of one more law which will put additional burden will speed up or whether it will slow up this business of enforcement of laws we have on the books.

Senator NEUBERGER. The Senator is arguing for exactly the same principle that was involved in the Drug Act last year. Sure, the consumer wants to feel confident that somebody is looking after his interests, and the passage of that drug law to tighten and strengthen the inspection and the safety of drugs has, I would think, given great benefit, if nothing else, comfort to the consumer of drugs.

Senator HRUSKA. No question about it, and the Senator from Oregon is now exchanging words with one of the Senators who had a very, very big part in that act.

Senator NEUBERGER. I remember that.

Senator HRUSKA. One that was long overdue, one where nothing had been done for over 25 years and it did bring it up to date. However, we found in the exploration of the subject by us, and the record shows that the Food and Drug Administration did not use nearly a fraction of the powers they clearly had in the law as it existed prior to the time the 1962 act was passed.

Now, to try to correct that kind of a situation by giving them even more power in areas where they already have power, it seems to me, would or should deserve very close scrutiny.

Senator NEUBERGER. So the Congress passed an act which showed "We want you to give more attention" and that is exactly what we are asking for consumers.

I am sure the Senator would agree with me we have many agencies in the Government now that really were originally created for consumer protection, and I often make this point in a speech, in fact, I looked it up once and I think there are 22 agencies that were thus created.

But every so often we have to show by cinching a point that we want them to know the emphasis that is necessary for consumer consideration.

According to the Senator's argument then we didn't need that law to strengthen the Food and Drug Administration.

Senator HRUSKA. Not at all. Not at all, and I think reference to the debates in the committee and on the floor of the Senate will show that is not true. The Senator advocated it, and, in fact I thought I took some part in the thing which made the law a more workable and acceptable and more effective law. Not at all, because many of the elements involved there were in the matter of procedures, of procedures.

I notice in your statement from time to time you refer to the confusion of plastic bottles; of this, of that, and the other thing. I am wondering if you would agree with a statement that was made by the presiding chairman of our subcommittee here when, during the course of these hearings, he said that S. 387 is directed against statements not false and misleading but that confuse the shopper to the point of frustration whether she has her glasses on or off.

Would you agree with that statement?

You refer constantly to the business of confusion, and the large number of packages and the many—

Senator NEUBERGER. If it were properly labeled I suppose not. But one of her bases of comparison is by size and content so she doesn't have to stop and go through the arithmetical procedure that I discussed.

Senator HRUSKA. That goes to confusion, doesn't it?

Senator NEUBERGER. Well, it is lack of information.

Senator HRUSKA. Lack of information?

Senator NEUBERGER. Yes.

Senator HRUSKA. Well, the weights are on the packages; aren't they?

Senator NEUBERGER. Of course they are, surely. But are they by ounces or pound?

Senator HRUSKA. Yes; well, I say that goes to convenience and confusion, doesn't it, to which you refer so often in your statement?

Senator NEUBERGER. I would continue to say there is great confusion to the shopper, yes.

Senator HRUSKA. That was the point that was made, and which Senator Hart stated in the opening statement. He said that S. 387 is directed against statements not false and misleading but that confuse the shopper to the point of frustration.

Senator NEUBERGER. Well, I would go further.

Senator HRUSKA. Whether she has her glasses on or off.

Senator NEUBERGER. I would go further and say against false labeling such as the examples I have already given.

Senator HRUSKA. That they would what?

Senator NEUBERGER. I would also say against false labeling.

Senator HRUSKA. Oh, yes; we have provisions against that now, against false labeling. So if that was the sole purpose of this bill, you see it wouldn't add very much; would it?

Senator NEUBERGER. Well, the Senator—will he pardon me for turning to him and asking him a question? I gather from the exchange that the Senator thinks that no legislation is necessary?

Senator HRUSKA. I say that this bill is not necessary, and that in many respects it is highly harmful and detrimental; that is my position, yes.

Senator NEUBERGER. Detrimental to whom?

Senator HRUSKA. To the consumer, primarily to the consumer, and I am concerned about the 185 million consumers who will be denied the type of market that we have if shackles will be placed upon the production, distribution, and merchandising to an extent that will deny them that freedom of choice and that ability to make a decision in the marketplace which has brought America to the place where she is now.

My concern—and that is a fallacy of so many people who turn to legislation—they say: "But we ought to have a law, and we will protect the consumer. The law says it is going to protect the consumer."

I say to you we have economic laws and laws of psychology and business practice that have grown up long before our Congress ever existed and to that extent I would say, we—those of us who oppose this bill on the grounds that I recite—are for the consumer.

Senator NEUBERGER. I am glad to know that you are for the consumer.

Senator HRUSKA. I am glad to know you are, Senator.

Senator NEUBERGER. Consumers will be very glad to know that, I am sure.

Senator HRUSKA. Again, I want to thank you very much for your appearance, Senator Neuberger. You have added a great deal to the record, and it will fill it out very, very well in the points that you covered.

Senator NEUBERGER. Thank you.

Senator HART. May I make a comment.

Senator Hruska has emphasized the fact that I feel this bill will have the effect of eliminating some confusion. The thrust of the bill is to get rid of some of the confusion in the marketplace. I could have suggested from the very outset of these hearings that some of the packages which I saw, which are part of the exhibits, were deceptive; but that would go to the motive of the man who produced them.

I contented myself with saying that their effect was confusing, and I think the hearings have progressed a little better because of that. But confusion is a result of something, and in many cases it is the result of deception.

Then we hear, "But the law prohibits deception now. What are you worried about?" But how does it prohibit it?

The Trade Commission Act says something about unfair methods of competition. The food and drug law prohibits packages or labels that are so formed as to be false or misleading. Therefore, you don't need any more law, they say.

That, to me, is somewhat analogous to saying that if the only law on the books relating to human conduct was that you shall not act un-

reasonably in regard to another human, when the police bring a fellow in who has beaten another human up, the case is indefinitely more difficult than if there is a law on the books that says assault and battery is illegal. It is the latter kind of specific direction in advance that I think your bill and mine is intended to develop.

Senator NEUBERGER. That is a very good statement.

Senator HRUSKA. Of course, Mr. Chairman, the big complaint of the Food and Drug Administration has been, "We can't get convictions in court."

The provisions as to misbranded food are very specific. I read the first sentences of section 403:

A food shall be deemed to be misbranded if its labeling is false or misleading in any particular, if it is offered for sale under the name of another food, if it is an imitation of another food unless its label bears in type of uniform size and prominence the word "imitation" and therefore the name of the food imitated; if its container is so made, formed, or filled as to be misleading.

Very specific, as specific as assault and battery. And all the other crimes that might be listed in the books. But the complaint of the Food and Drug Administration, as I understand it, is, "We cannot get convictions in court. So let us be the judge, then we will get convictions. We will make the laws, we will make regulations that will have the force and effect of law and we will try the case, and we will get convictions, we guarantee you that we will get convictions." And why shouldn't they?

If they make the laws and they make the investigation and get the facts and then pronounce judgment on the facts, of course, they are going to get convictions. But that is a far cry from the office of the Congress of the United States saying in specific words like this what the law shall be, and legislating and then letting that body enforce the law.

That is one of the issues involved in this bill.

So that some of the other considerations exist that we get into and we have been pursuing.

Senator HART. Senator Neuberger, you have noticed in the record that Commissioner Larrick said that six of the nine specific items in our bill were beyond reach of his agency under present law.

Senator NEUBERGER. I always think it doesn't hurt for us to affirm our belief and our stand. I think that elected Members of the Congress represent the people of the United States. I see no harm in our stating for those people what our attitudes and beliefs are in this area and that is why I am heartily in support of this bill.

Senator HRUSKA. I want to subscribe to that sentiment most heartily but I do object when Congress abdicates its ability to say its beliefs in legislative terms and abdicates that power which we as elected representatives of the people have and we say we will abdicate that power in favor of a bureau which is beyond the influence or control or any supervisory powers of the electorate. There they are, and they are going to legislate and the regulations they make by this bill will have the force of law with criminal penalties and that goes just a little farther than the American Civil Liberties Union normally puts up with and a lot of the other bodies who are interested in constitutional liberties.

Senator HART. They haven't asked to testify.

Senator NEUBERGER. Thank you.

Senator HART. Thank you very much.

Our next witness is Jerome Greene, and in addition to Mr. Greene, we will hear Mr. Gilbert H. Weil, if they would join us at the witness table.

Mr. WEIL. Mr. Chairman, I am Gilbert Weil. If it is agreeable with you, sir, and the subcommittee, might we have the statement of Mr. Greene presented first since it will serve as a foundation for some of the remarks that I intend to make.

Senator HART. Indeed, yes. You proceed in whatever fashion you wish.

Mr. WEIL. Thank you, Senator.

**STATEMENT OF JEROME GREENE, VICE PRESIDENT, ALFRED
POLITZ RESEARCH, INC., NEW YORK, N.Y.**

Mr. GREENE. Mr. Chairman, my name is Jerome D. Greene. I am a vice president and project director of Alfred Politz Research, Inc., 527 Madison Avenue, New York, N.Y. I have been employed by my firm since 1947, the year in which it was incorporated, in the State of New York.

Alfred Politz Research is an independent firm in the field of market research, specializing in consumer and industrial surveys, typically, for manufacturing companies. Among other things, our surveys concern product usage and attitude, reactions to new product features and advertising sales points, and testing of new products and advertisements.

Among business clients we currently serve are: Anheuser-Busch, Inc.; Brown & Williamson Tobacco Corp.; the Coca-Cola Co.; Edward Dalton Co.; Mobil Oil Co.; S. C. Johnson & Son, Inc.; Joseph E. Seagram & Sons, Inc.

Among associations we have served are: American Bankers Association; American Dairy Association; Automobile Manufacturers Association.

Federal Government agencies we have served are: Department of the Interior; Bureau of the Census; Bureau of Internal Revenue.

Alfred Politz, president of our firm, introduced probability sampling into commercial market research. This is the type of sampling used by the Bureau of the Census in its sample surveys, and is the only type of sampling which permits valid and precise estimation from the sample to the population from which the sample was drawn, within known margins of sampling variation.

In February 1963, the Association of National Advertisers, Inc., commissioned our firm to conduct a national survey of women shoppers' preferences among four kinds of special offer made by manufacturers—cents-off sales, coupons, premiums, and contests; also, of women shoppers' opinions about a law which would make cents-off sales illegal.

ANA set the objectives of the survey, and my firm is responsible for the specific questions asked, the sample, the interviewing, the tabulating, and the reporting of results.

One thousand and four hundred personal interviews were made in early March of this year, with a national probability sample of women who are the principal grocery shoppers for their households. The survey methods and its detailed findings are given in the attached research report.

Let me summarize just a few of the survey findings. I will report each finding to the tenth of a percentage point because that is the precise value found in the sample and our closest estimate of the value among all U.S. women shoppers.

I should note, however, that these findings are subject to margins of sampling variation plus or minus, which are given in our research report. For instance, the odds are 19 to 1 that a sample finding of 60 percent differs from the population value by no more than 4.5 percentage points.

According to our survey, 61.3 percent of women shoppers liked cents-off sales best, among the four special offers studied. No other offer was liked best by more than 19.3 percent of women shoppers. Thus, cents-off sales were overwhelmingly preferred.

Two point eight percent of women shoppers liked cents-off sales least, among these four offers. Among this small group, 1.4 percent disliked cents-off sales because they believe they do not get as much off the price as indicated or they believe the offer is not true.

Sixty-three point eight percent of women shoppers thought Congress should not pass a law making cents-off sales illegal; 8.9 percent thought Congress should pass such a law, while 27.1 percent expressed no opinion. Of the group expressing no opinion on the legislative matter, the majority still preferred cents-off sales to the other offers.

Of the minority of women shoppers who preferred another offer to cents-off sales, most of those expressing an opinion still wished Congress would not make cents-off sales illegal.

I think you for the opportunity of submitting this statement, and will be glad to answer questions about our survey. I ask your permission to identify the research report on our study and enter it in the record with this statement.

Senator HART. The survey will be received and made a part of the record at this point, and the summary of the survey that you have just given us, Mr. Greene, is, I am sure, of interest to each of us.

(The report referred to may be found on p. 796.)

Senator HART. Senator Hruska, do you have any questions?

Senator HRUSKA. No. not at this time. I presume Mr. Weil will be available for questions on this general subject, is that correct?

Mr. WEIL. Not on the technical aspects, Senator, since I am not expert in that area. But Mr. Greene will remain here and if during the course of our joint presentation any questions occur to any of you all, I am sure that we can answer them depending on who is best equipped to answer.

Senator HRUSKA. Thank you. Then on that basis, I will ask Mr. Greene only one question.

You indicated in your statement that you had preferences among four kinds of special offers and they included coupons, you mean trading stamps?

Mr. GREENE. The coupons mailed to the housewife in her home which she can redeem.

Senator HRUSKA. What are premiums?

Mr. GREENE. A fountain pen or some other kind of a gift packaged in the box with the product for sale.

Senator HRUSKA. And contests, of course, that is where you write in and tell in 10 words why you should use a certain type of merchandise?

Mr. GREENE. Yes, the characteristic feature being that you sent in a box top or something.

Senator HRUSKA. I see.

Did you get into the business of trading stamps?

Mr. GREENE. No, sir.

Senator HRUSKA. Isn't that a method of cents back?

Mr. GREENE. Yes, it is.

Senator HRUSKA. You didn't get into them?

Mr. GREENE. No, our survey didn't cover that.

Senator HRUSKA. What is your opinion as to whether or not trading stamps—if a proposal is made to illegalize them, what reception would it have in the hands of the housewives of America?

Mr. GREENE. I don't know, sir.

Senator HRUSKA. You don't?

Mr. GREENE. I am not expert in that field, only what our survey covered.

Senator HRUSKA. Have efforts in the State legislatures to abolish trading stamps come to your attention?

Mr. GREENE. No, sir.

Senator HRUSKA. They have not.

Thank you, Mr. Greene.

Senator HART. Mr. Clifford.

Mr. CLIFFORD. Mr. Greene, a question or two on the mathematics, and let me say at once that I am not challenging the validity of your sample as I am not accepting it; I am not discussing its validity. But just as to the numbers at the moment. I did want to have you explain something about the number of persons interviewed, and I think these figures are found in the last section of your report, in the appendix and on page 1. That, Mr. Chairman, is the section marked with a yellow tab at the bottom, "Appendix" and on the first page following that tab. If you will look at that, Mr. Greene, the record on field calls.

Mr. GREENE. Yes, I have that in front of me.

Mr. CLIFFORD. Now, you testified about the number of persons comprising the sample. Is that called a population?

Mr. GREENE. I am sorry, sir, the number of people comprising the final sample is only 1,400 and is by no means the population.

Mr. CLIFFORD. I mean 3,066.

Mr. GREENE. That includes households which do not contain a woman shopper and is a mechanical stage at arriving at the sample but bears no relationship to the population.

Mr. CLIFFORD. I will abandon the word "population." You started with 3,066, is that correct?

Mr. GREENE. Right.

Mr. CLIFFORD. We agree on that.

Now, I am still on page 1 of the appendix. Your interviewers found that of those 3,066 households, 168 residences were not occupied, right?

Mr. GREENE. Right.

Mr. CLIFFORD. And another 168, the same number, were households that would not cooperate.

Mr. GREENE. Right.

Mr. CLIFFORD. And 139 where the woman shopper in the house would not cooperate.

Mr. GREENE. Right.

Mr. CLIFFORD. And 848 where no one was at home, correct?

Mr. GREENE. Correct.

Mr. CLIFFORD. You correct me if I err.

And 118 where there was no woman shopper.

Mr. GREENE. Correct.

Mr. CLIFFORD. And 223 where the woman shopper was not at home. All right, so far?

Mr. GREENE. Yes.

Mr. CLIFFORD. Now, at the bottom you total the number of women shoppers interviewed and that is 1,402. You had started out with 3,066 households.

That page does not use the figure, and I don't know whether you ever used it, but I think that the total of these figures, of these persons whom you were not able to interview is 1,664, is that correct?

Do you have that figure before you?

Mr. GREENE. I will have to add that up, sir.

Mr. CLIFFORD. 3,066 is your first number.

Mr. CLIFFORD. Your first number is 3,066.

Mr. GREENE. Yes.

Mr. CLIFFORD. Minuend 3,066, subtrahend 1,402.

Mr. GREENE. Did you have 1,664?

Mr. CLIFFORD. Remainder 1,664, exactly.

Mr. GREENE. Yes, sir.

Mr. CLIFFORD. So it seems to me—I am very weak at mathematics—that your interviewers did not interview more persons than you did interview. Is that so?

Mr. GREENE. That is correct.

Mr. CLIFFORD. That is right.

I presume, Mr. Greene, and again please correct me if I err, for this is not my field, I presume in every survey not-at-homes are a problem. Is that true?

Mr. GREENE. Yes, sir, and particularly refusals.

Mr. CLIFFORD. When not-at-homes are reported, what methods are available for accounting for them?

Mr. GREENE. Not-at-homes?

Mr. CLIFFORD. Yes.

Mr. GREENE. There are several. The one used in this survey which I would, of course, be happy to amplify if you would like.

Mr. CLIFFORD. If you please.

Mr. GREENE. Yes, sir, and also callbacks.

Mr. CLIFFORD. Callbacks.

Did you use the callback method?

Mr. GREENE. No, we used a different and preferable method for the survey.

Mr. CLIFFORD. You did not answer my question. Did you use the callback?

Mr. GREENE. No, we did not, sir.

Mr. CLIFFORD. You did not callback. Instead, if I read your summary correctly, you lumped in with those who were interviewed this greater number who were not interviewed and you allocated to them the same proportionate findings as those who were interviewed?

Mr. GREENE. That is true of the refusals but not of the not-at-homes. I have to make a distinction between the two.

Mr. CLIFFORD. All right.

Would you clarify what you did?

Mr. GREENE. On the not-at-homes, forgive me, it is little technical.

Mr. CLIFFORD. That is all right—

Mr. GREENE. But the procedure used—

Mr. CLIFFORD. We have a stenographer here.

Mr. GREENE. The procedure used is as follows: We questioned each person interviewed, in this case the principal woman shopper, on her frequency of being at home in the week preceding the interview. You perhaps noticed those questions in our questionnaire in the appendix. From this we discovered for each woman interviewed the proportion of time that she is home.

Now, let's take, for example, a group of women who are home half the time. These are the ones who are interviewed now, I will come to those who were not interviewed in a moment.

For the women interviewed who are home half the time we know that we should have gotten twice as many of such women as we did get, and, therefore, a weight of two is applied to the women interviewed who are home half the time.

If I may take one more example and then I think you will see the pattern.

Similarly, there is another group of women who on questioning of how long they are at home—these are the ones interviewed now—were home one-third of the time in the week preceding the survey. We know, therefore, for each such woman interviewed there are two others whom we missed because we did not happen to call on them when they were home, and this group is then given a weight of three, and so on. I think you see the pattern involved.

Now, the one indispensable requirement is that the interviewing must be done at random times in the evening, and that provision was met in the survey.

Mr. CLIFFORD. Sir, that seems to go more to the probability of people being at home.

Mr. GREENE. Yes.

Mr. CLIFFORD. Is that responsive to what I asked you?

Mr. GREENE. You asked me, I believe, what did we do to represent not-at-homes and I think I answered it.

Mr. CLIFFORD. Yes, but I mean to weight them in the results.

Mr. GREENE. By proper weighting of those at home.

Mr. CLIFFORD. What is proper? How did you arrive at that?

Mr. GREENE. As I just described. You mean could I cite precedent for proper?

Mr. CLIFFORD. It does seem to me to verge on the gratuitous, to take a vast number of women, in fact more than you interviewed, and say they would have gone along in the same proportion as those whom you did interview.

Mr. GREENE. That is not so, sir; because, let me explain. I explained we treated differently those who were home with different probabilities, and there are indeed vast differences between these kinds of women. It is only as a consequence of isolating each woman interviewed and finding out her particular probability of being home and weighting her accordingly, that we account properly for the differences which really exist in opinions the survey measured between women regularly home and those who were not.

The procedure, by the way, sir, is a commonly used and very accepted one.

Mr. CLIFFORD. It is commonly used, you say?

Mr. GREENE. And accepted.

Mr. CLIFFORD. Is it the best method?

Mr. GREENE. For this survey it is.

Mr. CLIFFORD. For this survey. Did your clients say, "We want a cheaper one"?

Mr. GREENE. No, sir. We ourselves.

Mr. CLIFFORD. What do you mean "for this survey"?

Mr. GREENE. I think I can answer that, sir.

We ourselves use both this procedure which is known technically as the not-at-home weighting procedure, and callbacks depending on the objectives of the particular survey. One is sometimes better, another is sometimes better to provide the greatest reliability for a fixed expenditure or a fixed number of interviews.

Mr. CLIFFORD. For a fixed expenditure?

Mr. GREENE. Yes, sir.

Mr. CLIFFORD. I see.

Is this possible, sir, and you tell me, if you will, that you had arrived at a certain point, more than 61 percent of those who did answer according to your result—and we will touch upon that later—said that they favored cents-off.

Did you report that to the clients at that time?

Mr. GREENE. This book that you have—

Mr. CLIFFORD. No, that's not my question.

Mr. GREENE. No, we did not. The survey was given all at once to our client when completed in exactly the form in which you have it.

Mr. CLIFFORD. I will leave the mathematics there and I think that the record will make clear what the figures show, that you had set out with a number of more than 3,000, you actually interviewed only—I will give you the exact number—

Mr. GREENE. 1,402.

Mr. CLIFFORD. 1,402; and you failed to interview 1,664. To me, without call-backs, that is not too convincing.

I move on from there to the actual interviews.

Mr. GREENE. Sir, may I make one technical comment?

Mr. CLIFFORD. Certainly, sir.

Mr. GREENE. Of that 1,664 group which you were worried about our not interviewing may I point out that——

Mr. CLIFFORD. Sir, I did not worry about it. I note it, I point it out.

Mr. GREENE. May I point out that that includes 168 vacant homes in which there was no person, in which there would not be any person, for call-back?

Senator HRUSKA. May I suggest counsel permit the witness to answer. These frequent interjections are not only disconcerting to the witness himself but to those listening.

Senator HART. I don't know how the record will appear but I would like to suggest to both counsel and witness that they feel free to complete any thought they have.

Mr. GREENE. Thank you.

Mr. CLIFFORD. I apologize, sir. I didn't intend that.

Mr. GREENE. I just wanted to point out that 168 of that group come from vacant homes, there was no person there, no amount of call-backs could or should have produced anything. And furthermore 118 are households in which there was no principal woman shopper. Since the objective of the survey was to interview and represent the opinions of principal woman shoppers and there are some households in the United States consisting perhaps of male students who have no such woman, obviously we could not have made an interview there regardless of the number of call-backs, either.

Mr. CLIFFORD. That is fine.

Now, sir, if you will turn to page 2, still in the appendix. And, as I understand this mimeographed sheet before me, this was the form followed by the interviewer; he had this in his hands.

Mr. GREENE. Yes; it is headed "Study 1918" at the top of the page?

Mr. CLIFFORD. Yes.

Mr. GREENE. That is right.

Mr. CLIFFORD. And after the identification which I presume he would fill out afterwards in the making of the report, he would come down to "Introduction, Read Verbatim."

Mr. GREENE, am I correct in assuming that the interviewer had this paper in his hand and he read this, and the person interviewed did not have the paper in her hand; is that correct?

Mr. GREENE. That is correct.

Mr. CLIFFORD. I see. So that whereas he was able to read it, she was compelled to listen. All right.

Now, this section headed "Introduction, Read Verbatim" describes four types of merchandising promotions. I wish to keep aloof from this and not be accused of coloring your words or your firm's words by my voice, and what follows here is quite brief, and so may I ask you to read it paragraph by paragraph. With the beginning, "We would like your opinion," would you kindly read, sir, that paragraph?

Mr. GREENE. All right.

Senator HART. This is the way the question would be presented to the principal shopper in the household?

Mr. CLIFFORD. At this point, Senator, the introduction describing the four types of promotion.

Mr. GREENE. Up to but not including question 1.

Mr. CLIFFORD. But at this point would you just kindly read the first paragraph?

Mr. GREENE (reading) :

We would like your opinion on a subject that deals with grocery shopping. Let's imagine you were shopping for something like coffee or packaged soap or some other frequently purchased item.

Now, as you know, manufacturers of such products are anxious to have consumers try their brand and they often offer various kinds of inducements.

Mr. CLIFFORD. Yes.

Now, Mr. Greene, suppose we take each of the next paragraphs, and I propose to ask you a question or so at the end of each one of them, if that is satisfactory.

The next, "For example"—

Mr. GREENE. You would like me to read it now?

Mr. CLIFFORD. Yes.

Mr. GREENE (reading) :

For example, some companies run some contests. In order to enter the contest and try to win a prize you have to send in a box top.

Mr. CLIFFORD. "You have to send in a box top." A bit of work involved there, isn't there?

Mr. GREENE. Yes.

Mr. CLIFFORD. The next one, please.

Mr. GREENE. I am sorry.

Then other companies send coupons through the mail. If you take the coupon to the store you can buy the product at a saving.

Mr. CLIFFORD. Again—"If you take the coupon to the store you can buy the product at a saving."

A burden, however slight; isn't that true?

Mr. GREENE. An action required; yes.

Mr. CLIFFORD. All right, now the next.

Mr. GREENE (reading) :

Still other companies give a gift or premium which is packed inside or attached to their product such as scissors or a pen. If you buy the product you get the premium with it.

Mr. CLIFFORD. Yes.

Sir, your educational background is—are you a psychologist?

Mr. GREENE. No, sir.

Mr. CLIFFORD. I am not expert in this field, either, but some persons who are versed in it tell me that many persons have a hostility to sharp objects such as a scissors or a pen. You never heard of it?

Mr. GREENE. No, sir.

Mr. CLIFFORD. You did not. All right. I wondered why you chose a scissors or a pen, instead of, say, a Lone Ranger badge or something like a dish, a salt cellar, or a pepper shaker.

Do you know whether scissors or pens are frequently given?

Mr. GREENE. Yes, sir, they frequently are.

Mr. CLIFFORD (reading) :

Another kind of offer is made by—

I am sorry.

Mr. GREENE. You want me to read it?

Mr. CLIFFORD. Yes.

Mr. GREENE (reading) :

Another kind of offer is made by the manufacturer who marks on the package that the product is for sale at a certain number of cents off the regular price such as 5 cents off or 7 cents off.

Mr. CLIFFORD. Now, Mr. Greene, in that final question which identifies the subject matter that you are actually testing, the person interviewed, the prospective consumer, has nothing to do like going to the store.

Mr. GREENE. Yes, we tried in each case to identify each of the four offers in the way they really exist in real life.

Mr. CLIFFORD. No, sir, I am sorry, maybe I did not make myself clear. I say as to that fourth, the cents-off deal, you have no words in your description as to that as in coupons, "If you take something to the store."

Mr. GREENE. No, there are no words that state that an action is required.

Mr. CLIFFORD. Or you have to go to the store, as you said about contests, you have to send in a box top.

Mr. GREENE. I agree with you, there is no statement of action required.

Mr. CLIFFORD. All right. I shall leave that page.

Now, we turn to page 3, the introduction is out of the way, and the question is about to be asked.

Going down to item 4 on that page 3, would you kindly read that, Mr. Greene?

Mr. GREENE. Is this page 3 of the same questionnaire, two pages beyond the page we were before?

Mr. CLIFFORD. I see. It is what I have arbitrarily labeled page 3 because that is the way it appears in the sequence. It is page 2 of study 1918.

Mr. GREENE. Page 2, all right, sir. Excuse me, you would like me to read aloud what?

Mr. CLIFFORD. Item 4.

Mr. GREENE (reading) :

There was an article in the paper the other day that said Congress is considering a bill that would make it illegal for a manufacturer to offer his product to the consumer on a cents-off kind of sale. In other words, by law the manufacturer could not lower his price and mark the saving on the package accordingly. What do you think about this? Do you think that Congress should pass such a law or not?

Mr. CLIFFORD. Now, Mr. Greene, there are three sentences here, and I particularly direct your attention to the second sentence and I shall read that and I shall try to keep the coloring of voice out of it.

In other words, by law the manufacturer could not lower his price and mark the saving on the package accordingly.

Mr. Greene, is that your understanding of what is involved in the cents-off?

Mr. GREENE. I believe so, sir; yes. That is the marking, the saving on the package.

Mr. CLIFFORD. What is that?

Mr. GREENE. Yes, I understand that cents-off involves marking the savings on the package.

Mr. CLIFFORD. Did you write this question?

Mr. GREENE. I did.

Mr. CLIFFORD. Did you do this under instruction or after conference with your client?

Mr. GREENE. On the subject matter of the survey we had conference with our clients, after which we were responsible for the questions.

Mr. CLIFFORD. Mr. Greene, are you aware that this whole matter of cents-off, is an extremely controversial one?

Mr. GREENE. I am now, sir.

Mr. CLIFFORD. You are now.

Now, would you be inclined to look upon your descriptions, your identification of cents-off as a proposed prohibition that the manufacturer could not lower his price and mark the saving on the package accordingly, would you regard that now as an oversimplification?

Mr. GREENE. No, sir; not for the survey purpose. I would write it exactly as indicated.

Mr. CLIFFORD. What was the survey purpose?

Mr. GREENE. To find out women's opinions about a law to make cents-off sales illegal.

Mr. CLIFFORD. But actually, when you ask a question like this, do you not come up with a public opinion poll on a distorted representation of what cents-off means?

Mr. GREENE. How is it distorted, sir?

Mr. CLIFFORD. Sir, I ask you if you would not accept it as an oversimplification, that you bar from it all elements of controversy, and you give to it, every favorable element. You say that Congress would forbid the manufacturer from lowering his price, and mark the saving on the package.

Do you think that this proposal before the committee forbids the manufacturer from lowering his price?

Mr. CHUMBRIS. And marking it off?

Mr. GREENE. Excuse me, sir, I have not read the bill under consideration by this committee and I cannot speak on that subject.

M. CLIFFORD. Sir, I now suggest to you if you knew that an objection here was that there was an enormous possibility for error—putting it most kindly, error—such as the Senator from Connecticut, Mr. Ribicoff, had of finding in a store the night before he came in to testify before this committee two packages of coffee made by the same manufacturer, one proclaiming it as 10 cents off, and I think the other at 15 cents off, and both emerging at the same price. It is that kind of a thing, sir, that is at least slightly controversial, and which I again submit to you is oversimplified when a proposed prohibition of it is described as “the manufacturer could not lower his price and mark the saving on the package accordingly.”

Mr. GREENE. Our purpose was to merely identify these offers in order that the responses the women gave would reflect their prior experiences with them. It would seem to me quite apparent from the results of the survey that very few women have had any bad experiences with cents-off sale or they could not have answered as I summarized previously.

Thus the experiences you indicate, which I am not familiar with about the Senator from Connecticut, but I can only say on the subject I am familiar with—the opinions of women shoppers on the sub-

ject—obviously they have not had very bad experiences in cents-off sales.

Mr. CLIFFORD. On the other hand, sir, it is remarkable to me that given a question like this you got such a large number of people to say that they didn't like it and that they approved such a proposed law.

Mr. Chairman, I have nothing further.

Senator HRUSKA. Mr. Chairman, I would like to ask Mr. Clifford, there was put into the record of these hearings at an earlier time the survey of the Du Pont Co.

Did counsel make as searching and critical and even pressing an examination of those who compiled that survey and reached conclusions which went much further than those which were related this morning.

Mr. CLIFFORD. Senator, the answer is I did not make such an examination and my reason is that no findings were presented, and no method was given to the committee for its guidance.

Senator HRUSKA. So you were not concerned with method since they didn't describe method and you didn't think it was necessary to inquire?

Mr. CLIFFORD. No, Senator, I think that conclusion is not accurate. I am concerned with methods, but I cannot move in the dark. I was able to examine this because the figures were before me.

Senator HRUSKA. Well, but questions on your part would bring light, would they not, as to the method. But here is a survey that ostensibly at least favors the position of the proponents of this bill. It is placed in the hearings, no question is asked about it, not even as to method, not even as to method. Here comes a man who relates the method and answers forthrightly his procedures, and his techniques, and so on.

But here is a survey put into the record, and I think the record in this hearing should show that here is a Du Pont survey that doesn't even relate to the matter and it is put into the record without any comment, without any question, without any searching as to how it was arrived at and the only question I raised is all that silence in that regard because the survey ostensibly favored the position of the proponents of this bill.

Mr. COHEN. I might just say in answer to your question, Senator, if there is a fault here, the fault was mine.

At the time that the Du Pont survey came into this record, Mr. Clifford had not been assigned nor was he part of this particular investigation. On the basis of what Mr. Clifford has brought out here today, I think possibly we should have spent a little more time going into the background of the Du Pont survey.

Mr. GREENE. Mr. Chairman, may I be allowed to make one amplifying comment which is very brief in answer to the question Mr. Clifford raised a moment ago?

Senator HART. Surely.

Mr. GREENE. You asked about the relative merits, correct me if I am wrong, in your question of the callback versus this weighting method for handling not-at-homes.

I would just like to add this: that for this survey, at any survey budget, whether \$5 or a million dollars or a billion dollars, the method used provides more accuracy than the alternative method of callbacks.

I am not asserting that that is true in all surveys. Our company uses the callback method or this, depending on the merits of the particular problem.

Mr. CLIFFORD. Mr. Greene, I was seeking information from you, and your answers were most helpful.

Mr. GREENE. Thank you.

Mr. COHEN. I was just curious, Mr. Greene—

Mr. GREENE. Excuse me?

Mr. COHEN. I was just curious in listening to the colloquy here: wouldn't a fairer question really have been, in describing the bill, that Congress would only let the retailer put the lowered price on the package? Do you think if you would have asked the question that way, you would have had the same results?

Mr. GREENE. I am not sure we would have had the same answer but could I respectfully suggest that is a different problem and it requires perhaps a different survey. I would urge this committee to, and I think I agree with you here now, to consider the question that was asked and the results that were obtained in response to it.

The results deal with that subject as that question was put, and not with another subject which you have raised.

Mr. COHEN. May I respectfully say that is the precise subject that we are dealing with, and this is what the bill does, and this is just another way of putting the same problem—which I am sure you would agree with—to elicit a different answer. I am sure you would also agree that the answers you get to a lot of these questions depend a great deal on the way you frame the questions that you ask.

Mr. GREENE. I certainly do agree.

Senator HRUSKA. If counsel would yield, it was not my impression that this survey made by Mr. Greene had to do with this bill. The question asked by counsel a little while ago was whether if the question were put in a different way it would not bear more accurately on the bill.

The testimony is that this inquiry by Mr. Greene was not on this bill nor any specific provision thereof. He was making an inquiry, as indicated in his question.

I just wanted the record to show that, that we wouldn't think that, so the record wouldn't indicate, that he was trying to circumvent or misrepresent or distort provisions of the bill.

Am I correct, Mr. Witness?

Mr. GREENE. Yes, I agree completely. That is why we have practiced such full disclosure here in this survey report, so that the committee can see exactly what we did, what we asked in every respect and can assess the evidence accordingly.

Senator HART. Mr. Greene, on page 2 of this study you say:

There was an article in the paper the other day that said Congress is considering a bill which would make it illegal.

What bill were you talking about?

Mr. GREENE. We had observed that this had happened in many recent days in the newspaper and—of, sure.

Senator HART. Was it any bill other than the bill this committee was considering?

Mr. GREENE. No, S. 387 was the bill we had in mind in that particular instance in getting the women to talk.

Mr. COHEN. I would only ask the purpose of the survey. I think you knew when you made it, the purpose was to present it to the subcommittee on behalf of your clients, was it not?

Mr. GREENE. Yes, we knew at the time we were commissioned to do it—at the time or a week afterward—that it would be presented to the Senate.

Mr. COHEN. So at least the report would be read in relationship to the bill on which the company was testifying?

Mr. GREENE. Yes.

Senator HRUSKA. And in regard to the general subject under consideration Congress and committees have been known to change bills before they reach final passage, isn't that true?

Mr. GREENE. Yes, sir.

Senator HRUSKA. And if you made the inquiry with specific reference to the exact language in the bill as of now, it would be rendered completely valueless if the language were changed, isn't that true?

Mr. GREENE. That is correct.

Senator HRUSKA. So it was not—was your testimony to be on this specific bill or on this subject?

Mr. GREENE. We wanted to make, I agree, we wanted to make our reference just as broad and general as it could be, and simple.

Senator HART. This may point up why surveys are received with a measure of salt anyway, including the Du Pont survey.

Senator HRUSKA. Including surveys made by congressional committees, which we are engaged in right now.

Senator HART. You know, none of us should pretend that we are surprised that questions are phrased in certain ways or in a certain fashion. None of us should take very many minutes on a record to develop the fact that if you ask it one way you get one answer; you know it in advance because most of us send out questionnaires to our constituents. I should add, parenthetically, that I do not.

Senator HRUSKA. I add the Senator from Nebraska does not either.

Senator HART. I think we would agree the reason we don't is that you know exactly what you will get back depending on what you ask.

Mr. GREENE. We weren't at all sure, Mr. Chairman. That is why we did the survey to find out.

Senator HART. Maybe the problems that confront the Congress are susceptible to easier prearranged answers.

Mr. GREENE. No. Perhaps we should have known but we didn't.

Dr. BROWNE. Mr. Greene, you said, I believe, in your opening statement that your company had done work for the Bureau of the Census.

Mr. GREENE. Yes, sir.

Dr. BROWNE. I discussed with the Bureau of the Census, with one of the Assistant Directors, your record of field calls. No one home, 848. Principal shopper, woman shopper not home, 223. So you have well over a thousand or roughly a third of your intended sampling where you got no indications whatever. Over a thousand where there was no answer as against 1,402 where there was an answer. While it may be cheaper and while your statement at the moment was, I believe, that for any given amount of money this is the cheapest way to get—

Mr. GREENE. No, it is a tautology to say for any given amount of money this is cheaper. What I said was that for any given amount of money this is more accurate.

Dr. BROWNE. I see.

The census pattern, I understand, would not accept for accuracy such a high proportion of not-at-home. They would call back.

Mr. GREENE. Are you asking me a question on that?

Dr. BROWNE. I am stating this as a fact, sir.

I can assure you that when taking a census one calls back. I did it myself.

Another point: your questions on the questionnaire request the respondent, your 1,402 respondents, to state which kind of offer she liked best, second best, third best and which least, correct?

Mr. GREENE. Yes, sir.

Dr. BROWNE. Did you at any time ask whether respondents positively liked any of these choices?

Mr. GREENE. We asked no question except as indicated in the form which you have in this report.

Dr. BROWNE. The answer then, is no.

Mr. GREENE. No.

Dr. BROWNE. There is no indication that the respondent really preferred any of these possibilities?

Mr. GREENE. I think there is a definite evidence as to preference; that is exactly what our survey concerned.

Dr. BROWNE. Preference as among the four offered by you, not whether the customer would prefer not to have any of these?

Mr. GREENE. I think we have evidence on that, too, although I have to agree with you there was no direct question asked as to what I might call the absolute liking. Have you studied, sir, the reasons which are reported here, that women shoppers gave?

Dr. BROWNE. Yes, I wish to get to that in a moment.

Mr. GREENE. Could I just add one comment, please?

Dr. BROWNE. Yes.

Mr. GREENE. I think you will observe that from the reasons women shoppers do prefer cents-off sales, the reasons they give as to why they prefer them, I think it is quite obvious from looking at the reasons here there is an absolute liking for them and there would be great concern to them about removing them.

Secondly, the second question, major question, in the survey as to whether Congress should pass a law or not, I suggest that it must be more than just relative preference but an absolute liking for cents-off sales, that only that could account for the majority of women not wishing to have cents-off sales banned.

Dr. BROWNE. You have a good point there, sir; but let me proceed for a moment.

I recently received a preference record survey in the mail which I had not replied to, I may say. One of the instructions is as follows:

In some cases you may find that you like all three activities in the group. In other cases you are almost sure to find all three activities very unpleasant. Please show what your first and last choices would be in each case however, if you had to choose.

So apparently—

Senator HRUSKA. Will you yield? What kind of questionnaire is that?

Mr. GREENE. I don't go along with that method of questioning, by the way.

Dr. BROWNE. This was sent to me by Duke University, the Educational and Psychological Measurement Office of Duke University.

Senator HRUSKA. Mr. Chairman, I think fun is fun, and I think time is time. I am sure that if Mr. Browne wants to be a scheduled witness here we would be glad to put him in a chair and have him testify.

We have several other very important witnesses, and if this hearing is going to close tomorrow, it will mean that many important witnesses who are scheduled to appear before this committee because of very extended questions of a highly offensive nature here are being prolonged and prolonged and prolonged.

I would suggest we sort of reassess this situation and not believe as some people apparently want us to believe that the testimony of Greene is so damaging to the advocate of this bill that he has to just be picked from every bone that he has, and let's get on with the business.

I know that counsel here is very, very much in good faith in there, and earnest and very studious and highly competent but we do have a job to do.

Senator HART. Mr. Greene, Senator Hruska has mentioned an element that is crowding me, time. I have to go to a highly partisan luncheon this noon and introduce the guest speaker.

Dr. BROWNE. May I have a couple of moments to close up, sir?

Senator HART. Surely.

Dr. BROWNE. Apparently it is at least possible to require the respondent to stretch the preferences whether or not such a preference exists?

Mr. GREENE. I could only vaguely grasp the survey you started describing a moment ago, but from what I understand of it it was possible and done in that survey, but I deplore it. It was not done in this survey.

Dr. BROWNE. All right.

Now one other thing: There is clear evidence in the hectographed pages at the back of your filing that the respondents knew the troubles with the coupons, the premiums, and the other contests. There is only slight indication that they knew or were aware that one might not always save money on cents off.

As in the first hectographed blue page headed "Code 11-4" in the middle, even among those who were apparently favoring, there is this line under the heading:

You save money, General—
in the next to the last line—
might be saving something, not sure.

This strikes me as a fairly thin argument for it.

The disadvantages—

Mr. GREENE. Excuse me, sir; can I say something here?

Dr. BROWNE. Let me finish this sentence, please, sir. Two or three pages over:

Why like cents off least, Code 14-4. Don't believe it is true, general; Don't believe you get that much off; Just don't like, prefer some other—

and so on.

Do you believe that if more people had discovered what Senator Hart found the other day that there are different cents off that get you the same price in the store, they might give you a different pattern of answers to the questions you asked?

Mr. GREENE. I can't answer—

Mr. CHUMBRIS. Mr. Chairman, on that point, that might be just one isolated case that was brought to our attention. There may be millions of cents-off packages that you won't find that you are on the same shelf so, therefore, it isn't a good basis, a good premise for a question.

Senator HART. Does the witness want to answer?

Mr. GREENE. Yes, I can't answer that question yes or no, but I think I would get at the substance of it this way: Insofar as women over years and years of shopping, and we interviewed principal women shoppers as you know, have encountered the pros and cons of cents-off sales, this survey reflects the result of the experiences they have had.

So that the survey would reflect the degree to which the kind of thing you have mentioned, 10 and 15 cents off at the same time, has been encountered by women shoppers over the years preceding the survey, plus the degree to which they have encountered no cases of confusion or difficulty whatsoever and have gotten the saving and have been glad of it.

These in combination produced the pattern of results which I have presented.

Dr. BROWNE. There is no indication on your questionnaire, sir, as to how old the woman shopper is, how long she has been shopping. She may have had experience but your questionnaire does not provide a basis for saying she had very much.

Mr. GREENE. We know that.

Senator HART. Thank you very much, Mr. Greene.

I don't want to indicate criticism of you or the organization you represent by the kind of questions you have been asked as to the validity of the method, but I want to commend you for coming and telling us the facts about the sample, and giving us the actual questions that were used in the interview. We have had many references to surveys here in these hearings; but this is the first time we have had one laid out for us, and I think it is helpful for all of us. It may be a source of some comfort to you that Mr. Nielsen faced the same sort of situation a few days ago on the other side of the Hill.

Mr. GREENE. I was there.

Senator HART. I am surprised that you turned up here then. [Laughter.]

Mr. GREENE. We, or course, were investigated by the House committee staff, and they found no evidence of irregularity, shall I say, in our work, and we were not required to appear on that account.

In addition one of the things they particularly admired of our company was our practice of full disclosure to which you referred. So I am delighted that you appreciate our full disclosure which we have made in this report.

Senator HART. I do, and I think each of us here at the committee table does.

Thank you very much.

Mr. GREENE. Thank you.

Senator HART. We would like to say to Mr. Weil, please, you go ahead.

STATEMENT OF GILBERT H. WEIL, GENERAL COUNSEL, ASSOCIATION OF NATIONAL ADVERTISERS, NEW YORK, N.Y.

Mr. WEIL. Thank you, Mr. Chairman.

May I ask that my statement be placed in the record in its entirety and in the interests of time I shall not read portions of it.

Senator HART. It will be printed in full, and thank you for your consideration.

Mr. WEIL. Thank you, sir.

Mr. Chairman, my name is Gilbert H. Weil; my address is 60 East 42d Street, New York 17, N.Y., and I am general counsel to the Association of National Advertisers, a trade association founded in 1910. As its name implies, its members are companies which use national and regional advertising importantly to promote the sale of their products and services. At present it consists of approximately 700 members.

The association considers packaging and labeling a necessary medium of communication by manufacturers to the purchasing public and hence an important form of advertising. It is directly interested in any proposed legislation which would unduly restrict the proper and economically efficient use of that medium as a tool of healthy competition.

We particularly appreciate, therefore, the opportunity to appear today and present our suggestions.

I want to express, also, our respect for the dignity with which your subcommittee has conducted these hearings and the courtesousness it has extended to all witnesses. By seeking enlightenment rather than headlines, you have added to what is good in the traditions of the legislative process.

Regrettably, though, the tone of your proceedings cannot be written into a statute to become an operable limitation upon its administration. If passed, it will be administered, for decades to come, by persons you do not yet know, and whose personal predilections in sociology and economics will color the use to which they put it.

As a practicing attorney, my orientation toward statutes is practical and functional. I must predict, as precisely as possible, their deterrent or permissive impact upon specific activities in real-life situations.

When various clients, including the Association of National Advertisers, sought my opinion as to the effects S. 387 might have upon familiar packaging and marketing practices, I reached certain tentative conclusions from its express provisions.

Several witnesses in these hearings—including highly esteemed and competent lawyers—have similarly construed the bill and have consequently opposed it. To my surprise, but also to my pleasure, they have often been reassured that the bill is not intended to have such effects.

Undoubtedly, a great deal of disagreement over S. 387 is more apparent than real; and less due to the substantive law the drafters intend to promulgate than to the language they have used.

During a discussion with Mr. Dierson over the manner in which an administrator of S. 387 might interpret one of its facets, Mr. Cohen observed:

Well, there is again this question of how you read it and how we read it. * * * All I can say is that I think the sponsors of this bill have tried to draft a measure that would meet precisely the fears that you express and make those fears groundless. At this point, if a difference of philosophy occurs, it makes it useless for us to have any further exchange. There are two honest differences of opinion.

I don't believe this actually was a real difference of philosophy or opinion between these two very able attorneys. Mr. Dierson had expressed a certain fear, and Mr. Cohen, in effect, stated that the bill would not be administered in the manner which disturbed Mr. Dierson. But if two such skilled attorneys could read the same language in the bill so differently it must be ambiguous. Who can assure us that the administrators or courts will not ultimately construe it as Mr. Dierson does?

We can all agree with Commissioner Ballentine of North Carolina, when he stated:

I am confident this is not the intent of the section I have cited, and, if it is not, then the section should be rewritten for purposes of clarification.

Regardless of the intent of legal provisions, their application is subject to interpretations in the courts. Also we believe that legal measures can and should be so written that their full intent is understandable to the average layman. The technological era has necessitated a vast multiplicity of legal controls. Every business, from the smallest to the largest, is held liable for conformity with numerous laws and regulations. The more clearly these provisions are written the easier is the task of enforcement officials and the more effective are the controls.

We can illustrate Commissioner Ballentine's point more specifically.

The Food and Drug Commissioner told you that he would use section (e) (6) of S. 387 to compel disclosure of cosmetic ingredients which the Food, Drug, and Cosmetic Act does not presently require. However, this section expressly limits FDA's authority to requirements which are—

consistent with requirements imposed by or pursuant to the Federal Food, Drug, and Cosmetic Act as amended.

It would seem, therefore, that a requirement such as the Commissioner reads into section (e) (6) is unauthorized as inconsistent with the Food, Drug, and Cosmetic Act, which withholds such a requirement for cosmetics although imposing it for foods and drugs.

Mere problems of expression do not, however, account for all the concern over S. 387. There are some areas—very important ones—where persons of intelligent judgment, good intent, and long years of experience in the marketplace are firmly convinced that the bill would take away more benefits from consumers than it would bring them.

Is it not appropriate, then, to ask just how much reliable and objective evidence the subcommittee has seen—as distinct from subjective opining—that the evils it seeks to correct are extensive; that they are substantial in their effects; that the bill will indeed effectively reduce them; and that it will not, in the process, lose more for the consumer in existing benefits than it realistically stands to gain?

There is a risk in experimenting with the marketing conditions which now serve both the consuming and the industrial public of America so well that they pace the rest of the world. Professionals in the marketplace know that armchair generalship is perilous. These experts will rarely commit their companies to a change of merchandising policy, however minor or unquestionably attractive it may appear in theory, without first testing it. The greater their experience, the less they are willing to trust personal speculation, for they have learned that unforeseen ill effects in the operation of a plan which seems flawless on paper may be irreversible.

Congress risks much greater stakes than do private companies when it wagers public good on the soundness of its opinions.

Certainly no sponsor of S. 387 wishes to go down in history as having increased the cost of consumer products, or stifled the exciting developments which are taking place today in useful and esthetically satisfying products and packages. But aside from hope and a personal conviction that the bill will not prove penny wise and pound foolish, what competent study, research or other investigation has been presented to assure you that these results—which outstanding persons of long and intimate experience in the marketplace have warned you against—will not actually take place? What have been the results of such studies?

If you have not required such preliminary precautions, what justifies taking so great a chance with the public's welfare? The 20 percent of the population which Mr. Wilbur Cohen estimated have income below minimum standards of health and decency can ill-afford the extra costs that S. 387 may burden them with, if it turns out that hope alone was not enough.

This is so crucial to responsible deliberation upon the bill that I must take an additional moment to illustrate the pitfalls of personal impressions by one specific example. You have heard what must seem to you an overwhelming expression of consumer antipathy toward "cents-off" promotions; so much, in fact, that you may believe that consumers generally dislike them. But that's because relatively few of the people who are satisfied with something as it stands become vocal on the subject. It is normal that you, as legislators, should hear from people who want things changed more than from those who are content to leave them as they are.

With that in mind, consider the report by Alfred Politz Research, Inc., which Mr. Greene has just presented to you. That survey made among principal women shoppers showed that of such women 61.7 percent like cents-off promotions best, and only 2.8 percent liked them the least. One-half of this 2.8 percent felt that way because they didn't believe the representation was true in whole or in part. You will see the point I am coming to.

Given the fact that there are roughly 52 million principal women shoppers in the country, your subcommittee could have heard complaints that "cents-off" labels are phony from as many as 720,000 women and still been within that small minority of 1.4 percent of the total population of principal women shoppers. I don't have any idea as to how many such complaints you may actually have, but I would be surprised if they came anywhere near 7,000, much less 700,000.

Now, of course, even 720,000 women should not be left unhappy, if it is not necessary to do so. But it does not seem sound legislative policy to bow to their dissatisfactions at the expense of the 31,876,000 women shoppers (61.3 percent) who like "cents-off" promotions best of the special promotions promotions (and who presumably do not find them phony); or to go counter to the views of the 33,176,000 women shoppers (63.8 percent) who believe that Congress should not pass a law prohibiting the "cents-off" promotion.

You may recall the episode in the novel, "Mr. Blandings Builds His Dream House," in which the wife decides that rather than waste some stone that has been left over from the terrace she will use it to floor a small room for plants and flowers. The original floor level had to be lowered an inch or so to make room for the layer of stone, and she ordered the contractor to do it. But unbeknownst to her, or her husband until they received the bill, was the fact that this required lowering the structural beams below the floor, the water and heating pipes, and ultimately the furnace as well. A seemingly logical and useful economy, with horrendous chain of consequences.

We fear, Mr. Chairman, the analogy may be all to close.

The Association of National Advertisers is seriously disturbed that, despite its good intentions, as S. 387 presently stands, whether through inadvertent draftsmanship or by deliberate purpose:

1. It would substantially increase the prices consumers must pay, (a) by adding to manufacturers' packaging costs in order to conform to Government regulations for container sizes; (b) by taking away special bargains the consumer now enjoys which are promoted by manufacturers for merchandising purposes.

2. It would empower, if not command, administrative agencies to bar from the public products such as aerosols, convenience packaged goods, self-applicator items, jugs, and bottles that are specifically configured for easier handling; indeed, any commodity in a container with dimensions that are keyed to a useful function or to esthetic satisfaction, rather than to bare enclosure of a particular quantity of contents.

3. It would empower, if not command, administrative agencies to regulate consumer products to a sort of G.I. packaging, severely inhibiting product and package individuality and innovation.

4. It would empower a few individuals, not chosen by or responsible to the electorate, and not subject to judicial review, to legislate in wide areas as to what may, must, or may not be said upon packages and labels; and as to the sizes and shapes the packages must have; and as to what the amount of their contents may be. It would, in short, establish a veritable commissariat of packaging.

5. It would drastically deny to an accused his day in court.

6. It would impose treble damages, and criminal penalties for purely regulatory matters which do not involve misdeeds of so evil or injurious a character.

7. It would arbitrarily require information as to net contents to appear upon the front panel of every kind and style of consumer goods package.

8. It would arbitrarily bar useful and harmless descriptives such as "full quart."

9. It would require advance approval of packaging and labeling by administrative agencies.

It is apparent from several of the exchanges which have taken place in these hearings that you do not believe these consequences are inherent in the bill.

We do, however; and shall attempt, as briefly as possible, to show you why.

One of our most fundamental objections to the bill is the broad sweep of administrative command it places into the hands of the Federal Trade Commission and the Food and Drug Administration. Indeed, I would say it falls little short of complete fiat power. In spots it borders dangerously upon unlawful delegation of legislative power, if it does not actually transcend such limits.

Two interrelated principles must be kept in mind. First, it is the duty of an agency to carry out to the fullest extent the mandate which it finds within the four corners of a governing statute.

Second, the only yardstick the agency can use in its enforcement activities is that which is set forth in the statute. Extraneous considerations remain extraneous no matter how reasonable they might seem. Subsection(e) of S. 387, for example, designates only two specifications to guide the promulgation of regulations: deception and rational comparison.

Factors such as increased cost to consumers, or stifling of innovation and progress, would simply be irrelevant. The agencies could not take them into account in fashioning regulations without going outside the confines of the bill.

An agency cannot take it upon itself to cut back on what is written in the law itself, or to temper its enforcement with criteria that are not set forth within the statute.

Those of us who practice before the agencies, or litigate with them, know that, to the contrary, their thrust is to construe statutes to extend their own powers to the farthest reach. At times the thirst for power seems unquenchable. It would be a rare day when an agency would decide that despite language in a law that seemed to authorize it to exercise certain controls, it did not believe Congress had truly intended to do so.

The Food and Drug Commissioner has told you that Food and Drug would use S. 387 to force listing of cosmetic ingredients, due to their allergenic potentialities. Congress has consistently withheld this power from Food and Drug over all the years; whether wisely or unwisely is beside the point. If allergy is the item of interest, then the inactive as well as the active ingredients of drugs would become similarly involved, as would the ingredients of waxes, detergents, paper and fabrics, and, in fact, vapors, liquids, and solids of any kind in every product with which mankind may come into contact. Also, of course, this is a matter of health rather than economic concern.

Nothing in the various statements of purpose made by the proponents of S. 387 has indicated that it is oriented to other than economic and antitrust objectives, or that it is to force listing every ingredient of every consumer product. We have here, then, the example of an administrative agency eagerly poised to use the bill, as soon as it becomes law, as a means of exercising a power which has long been

denied it; and which the sponsors of this very bill probably did not knowingly intend to yield upon.

Again, one of the Federal Trade Commissioners has recently forecast a stepped-up campaign to compel increased affirmative disclosure in advertising. As the law now stands the Commission can issue such orders only when the advertiser's claims for a product, express or implied, are not the whole truth, so that further information must be revealed to obviate deception.

Such orders are, of course, subject to judicial review to assure their propriety. This is as it should be, for governmental dictation of what one must say is instinctively as repugnant as censorship itself, and it should be condoned only in exceptional circumstances. But the Commission chafes under such restraint, for it often feels, as those in power are prone to do, that it knows what is best for the public to hear (even apart from questions of deceptiveness), and that it should dictate the telling.

What a field day the Commission would have with an absolute power to compel whatever affirmative disclosures please it; free of effective judicial review, and provided only that they have some arguable relationship to the ingredients or composition of the product.

It's hard to think of any affirmative disclosure concerning a product that would not relate to the ingredients which make it, or which could not be made to seem germane to rational comparison with respect to price and other qualities.

We have the dramatic disclosures through several congressional investigations of the past few years, some of them pending at this very time, of the diametrically opposed views that can riddle an administrative agency over how its statutory powers may and should be exercised. The fate of business may be one thing or the other, depending upon which faction is victor in these intramural quarrels. Often the balance shifts back and forth from one to another.

The distressing inadequacy of what the sponsors of S. 387 refer to as its "safeguards" to protect business—and the public—against imposition by the agency of virtually any view it happens to entertain at a given time as to what a package and label should be, is inherent in the cosmetic ingredient example.

Let us assume, for purposes of illustration, that it is not the actual intent of the sponsors of S. 387 to require the listing of cosmetic ingredients. Nevertheless, Food and Drug is of a mind so to apply it.

Consultations may be had with industry, but an agency is usually wedded to its own preconceptions, and enacts regulations to effectuate them despite industry opposition. Food and Drug witnesses have confirmed to you a distaste even for hearings. Court review will mean nothing.

As FDA's counsel stated, a court would upset the agency's regulation only if it is arbitrary, capricious and unreasonable. I doubt that any court would hold it arbitrary, or capricious or unreasonable for

Food and Drug to conclude that listing the ingredients has some relationship to rational comparison. To rule otherwise, the court would have to declare that there is such an absence of relationship that no reasonable man could think it might exist.

By the same token, and with no practical effect from the so-called safeguards, the agencies could require statement not only of the

quantity of each ingredient, but also of its grade, and of its potency and purity. For some ingredients the season of year or geographic area in which they are grown, or where they are manufactured, may also play a part in rational comparison.

For that matter, what could be of greater interest to a consumer choosing from competing products than to know how much their manufacturers paid for each ingredient, and what it cost them to produce the finished article?

I do not say that the agencies necessarily would require such information to be given. My point is that the bill is so broadly written that if they should desire to do so, it would be difficult to convince a court that there is no reasonable relationship between such matters (and many more) and so-called rational comparison. And there may be plenty of pressure upon the agencies from the grade-labeling advocates and others to use the subsection as broadly as possible.

You will remember Dr. Barnes saying:

With respect to subparagraph (6), I should hope that the standard "sufficient information" would be interpreted to include the fullest practicable information with respect to ingredients, composition, quality and other characteristics of the product.

The power to dictate what must be set forth upon a label to satisfy one's own discretion as to what is helpful to a rational comparison of the qualities of products arising out of their ingredients and composition is a delegation without a terminus.

If it is the intent of the sponsors that S. 387 may be administered as a grade labeling and specification buying law, then let us have it frankly stated so that the bill can be so evaluated and debated by the Congress.

If it is not so intended, then it should not be passed in a form that would permit such a result.

It is not a satisfactory answer that the administrators are, and always will be, men of good intention. That would be to put reliance upon a government of men and not of laws. With that as the premise, legislative delimitation and judicial review of administrative agency actions would never be necessary.

Moreover, even men of reason and good will would, under S. 387 be constrained to put aside as immaterial to either deception or rational comparison, which are the only applicable criteria in subsection (e), considerations such as burdens upon manufacturers, or inconvenience or expense to the public.

You have, for example, heard impressive evidence as to how standardization of package sizes and shapes would increase costs to consumers, and deprive them of desirable innovations and range of choice. The proponents have taken solace in an assumption that the agencies would not impose such standardization except in rare instances and not under circumstances which would be unduly burdensome.

We have already discussed the latter misconception: S. 387 simply does not permit the agencies to take such matters into consideration.

But the first belief is also a false refuge. Standardization under subsection (e) (2) must inescapably be on a broad scope, unless the agencies neglect their duties. Just visualize what must happen.

Under (e) (1) the agencies are called upon to establish reasonable weights or quantities if this seems necessary to establish or preserve

fair competition by enabling consumers to make rational comparisons with respect to price.

It has been made abundantly clear that minimally the proponents deem fractional ounces a threat to fair competition. At least, standardization of contents will be called for in every product line where any package entails fractional ounces.

Given standardized contents of a product line, it is then apparent that any container with dimensions beyond those necessary merely to accommodate the volume of such contents "may" be deceptive, at least to some consumers.

Remember that Federal Trade considers it actionable deception if as little as 10 percent of the population is misled, and even though they have to be of the least sophisticated and most careless kind in order to go astray.

Thus, combining two of the practices which S. 387 is mainly dedicated to curtail—fractional ounces and incompletely filled containers—regulations extensively requiring a different sized container for each variation in product density seem inescapable; and substantially increased prices to consumers must follow in their wake.

Industrywide regulations to prohibit containers of more than a given size for given contents, or having the visual appearances of being larger, could only be couched in terms of maximum cylindrical or rectangular dimensions. It would take dedicated, inspired, and ingenious administrators to avoid widespread regimentation of container sizes and shapes under S. 387, if they even wished to do so. How they could justify it within the terms of the bill I do not know.

Remember, again, that factors such as functional or esthetic advantages which lighten the workload or brighten the day (aerosols, for instance, or salad oil in a decorative cruet) or decreased cost to the consumer (as when the manufacturer utilizes a single packaging line for different products) do not prevent deception or facilitate rational comparison, and hence are irrelevant under the bill to mitigate standardization.

If, despite their advantages, they lead to containers that are or look larger than is needed to enclose the actual contents they are per se vulnerable to agency proscription by the simple standard that they "may" deceive.

Once regulations limit the permissible shapes and sizes of containers, manufacturers may not be inclined to invest substantial money in an attempt to develop a distinctive container, or product form, with no assurances that, if successful, they will be allowed to market it. In fact, they could not even test-market experimental designs without first obtaining a modification of the existing regulation. And, of course, before a regulation could be amended the proposed change would have to be publicized, and the applicant's competitors tipped off to his innovation. Can one really believe that all of this will not be a dead hand upon initiative, creativity, and progress?

Progress is born of a quest for individuality, and standardization is the very antithesis of individuality. In regimentation there can be only stagnation.

Mr. Dunning has pointed this out most clearly, and I doubt that anyone here can deny, or many match, his expertise on the matter.

And what is to be gained at the price of all this? Is rational comparison advanced that much? Is it so much easier to compare the per unit cost of 5 ounces at 39 cents against 9 ounces at 59 cents than $5\frac{1}{2}$ and $9\frac{1}{4}$ ounces respectively?

Wouldn't it be necessary to regulate the prices as well? Interestingly enough, liquor packaging, which has been held up as a shining example, uses fractional ounces. A fifth is $2\frac{3}{5}$ ounces. And have you ever tried to compare rationally the prices of a fifth versus a quart?

Surely there is reason to fear a bill with language so broad that its application is almost purely a matter of discretion, and whose supposed meaning is controverted by the very examples its sponsors use to illustrate it.

As a further instance of this, we note your chairman's reassurance to candy manufacturers—

* * * that I do not conceive the day will come when proof of necessity in this product's line for uniformity of size will ever occur. This certainty is not what we have in mind.

But the witness to whom he spoke had just shown that the industry had to vary amounts of contents rather than alter prices to reflect changes in raw material costs. This, of course, leads to fractional ounces, and also enters an area which has been loudly criticized by the bill's proponents as deceptive.

There is nothing in the bill which gives the administrative agencies a line of distinction between the confectionery industry's problems and those of any other products. If confectioners won't be affected by S. 387 in these respects, why will other manufacturers? It is difficult to see how the criteria of deceptiveness or rational comparison differ from the confectionery to other industries. In any event, no guidance for such differentiation is laid down in the bill, and that's the crucial consideration.

Not only that. The outstanding example that has been brought up time and time again in these hearings to dramatize a supposed necessity for standardizing sizes is drawn from the very industry to which the chairman gave the reassurance we have quoted above.

Similarly, in connection with subsection (c) (6), the witness from a fine and respected fish packing company was assured that his picture of a cooked and breaded fish fillet would not be prohibited, although the fish in the package is raw. Why not?

This subsection is broadly written to cover any depiction which, according to the administrative agencies, may deceive some consumers. Proof that there actually is such deception is not needed. The sponsors, in trying to delineate the subsection, have said it is intended only to prevent pictures which misrepresent the contents or character of the product.

Even so, is not that piece of fish depicted as having breeding upon it when in fact it does not; and as being cooked, when in fact it is not? As a practicing lawyer I am totally unable to understand or agree with such assurance, as S. 387 is now written. I find nothing in its terms that would restrain the agencies from applying it to just such a picture. Indeed, what is there in it that would justify them in not doing so?

In a like vein, one of majority counsel expressed, during a colloquy with Mr. Dunning, an understanding that there can be more than one front panel within the meaning of subsection (c)(1). But the language there is "the" front panel. What is the intent of the sponsors? One front panel, or multiple front panels? And further, what characteristics do they even have in mind as constituting the front panel or panels? Does the manner of retail display control over size? Or is it size over display? Or are still other factors to be controlling? Such determinations of basic policy are inalterably legislative in their nature. They should not and probably cannot be delegated to others to decide.

In its famous *Schechter* decision, the Supreme Court, amongst other rulings, defined the congressional responsibility as that of—

laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits.

It described the test for improper delegation of authority to be—whether Congress * * * has itself established the standards of legal obligation, thus performing its essential legislative function, or, by the failure to enact such standards, has attempted to transfer that function to others.

Amorphousness permeates S. 387. Perhaps its sponsors know the limits to which they wish to confine its impact upon consumers and business. If so, they have not incorporated them into the bill itself, and efforts to describe them orally during these hearings have been reassuring as to good intent, but have only added confusion as to definition.

The result is a bill which would give little less than *carte blanche* to a few bureau heads to dictate what package sizes and shapes must be and what their labels must have upon them, limited only by their personal, subjective concepts of what may be helpful to promote "rational comparison" or to defeat deception.

This can hardly be described as a legislative establishment of standards and prescribing of limits. Borrowing again from *Schechter*:

Instead of prescribing rules of conduct, it (the statute) authorizes the making of codes to prescribe them. For that legislative undertaking, section 3 sets up no standards, aside from the statement of the general aims of rehabilitation, correction, and expansion described in section 1. In view of the scope of that broad declaration, and of the nature of the few restrictions that are imposed, the discretion of the President in approving or prescribing codes, and thus enacting laws for the government of trade and industry throughout the country, is virtually unfettered. We think that the codemaking authority thus conferred is an unconstitutional delegation of legislative power.

An adequate day in court is not provided for testing the validity of the administrators' ordinances. Even if it were, the bill would vest them with such broad and loosely defined authority that a court could hardly find a legal yardstick in it of sufficient concreteness to measure their actions.

Establishing law is too grave a power to rest in the hands of a few persons. We have traditionally surrounded it with rigorous checks and balances. National representation and the safety of numbers are provided by a bicameral structure and by popular election.

None of these vital safeguards surrounds the acts of administrators. Power should, therefore, be given to them only as sparingly as possible; and then it should be carefully defined, and made subject to effective

judicial review, so that legislatively established boundaries may not be exceeded.

We fear that S. 387 does not stay within these salutary and traditional prescriptions.

Nevertheless, two major lines of argument have been advanced to justify it:

1. The benefits of the certainty of so-called legislative regulations; and
2. The necessity of removing administrative frustrations over judicial protection of individual rights.

We submit that whatever advantages, if any, there are to be gained in these respects are not worth the cost of such serious, and possibly precedential, forsaking of customary prudence against commissariat forms in government.

If a choice were necessary, we would much prefer uncertainty, coupled with a chance to fight in court for the rights one believes a law entitles him to, than the certainty that comes from having no such recourse and being relegated simply to doing as one is told by a commission or bureau.

Anyone who wants certainty under today's law can have it. All he need do is confer with Food and Drug or Federal Trade officials and then do as they say. Even without solicitation, these agencies make their views amply known through advisory regulations, opinions, guides, speeches, press conferences, and other public releases. What uncertainty there may be arises only when one disagrees with their version of the law, decides not to yield to it, and then must await the outcome of a judicial test.

It will be a sad day when that choice is taken away from him.

The more compelling attraction S. 387 holds for the administrators is its license to take the law into their own hands without concern that a court may set them straight.

You have heard their dismay, for example, over such cases as the chocolate mints case, and the one involving conspicuousness of the required label statements when printed in silver on aluminum foil. Is the agency's protest justified? Should the law be changed? Let us see.

In each of these cases Food and Drug had a law which it could enforce if there was deception, or if the required statements were inconspicuous to normal human beings. In each case the agency had full opportunity to prove its contentions.

In the mints case, for example, consumer witnesses testified; the results of a survey were presented; and there was available, of course, industry experience and practices, and the accused packaging itself. But the evidence showed that, considering the circular shape of the candy, 83 percent of the practical volume of the package was occupied by it; the Government admitted it had no record of any member of the public being deceived by the container, and that it had received no complaints in that respect except from one competitor. The package design and construction was derived primarily to protect the fragile, thin-covered chocolate mints against breakage.

Is there a compelling reason why a package which is constructed to bring a legitimate article of commerce to the consumer in un-

damaged form, and which has not been proven to deceive, should be made contraband?

A witness of undoubtedly good intent and sincerity has cited these mints to you as his outstanding example of flagrant deception. Even though he was a witness in the case itself, it is evident from the court's findings that he was not aware of some extremely crucial facts. This serves, therefore, as a cogent example of how the appearances of deception can themselves be deceptive.

What he evidently did not know was that the package which offended him with its double-walled dividers, recessed ends, and slack fill was the result of approximately a 25-year evolution during which the manufacturer sought to overcome the problem of breakage. During that time single-walled dividers were used, and more mints were packed into the container.

Finally, unable to solve the breakage problem of which consumers were complaining—you will recall that no consumers complained of being deceived—the manufacturer, according to the court—

submitted its packaging problem to Paramount Carton Corp., experts in the designing and manufacture of boxes, who then designed the accused package. The objective which Paramount sought to attain was to produce a box of strong construction which could be manufactured economically and conveniently.

The court also reported that all of the consumer witnesses in the case testified that they—

would have been displeased on opening the package to have found the mints broken or crushed.

In the case involving conspicuousness, the court, after considering all the proper evidence the Government wished to offer to establish inconspicuousness, declared:

The net weight and ingredient statements are printed on the label in a distinctive color that is not employed for any other statements appearing on said package. Both statements are printed in the same size type which the evidence establishes as being easily readable at a distance of approximately 29 inches by the average person. It would seem that the requirements of said section 343(f) are met in a particular case if such statements are prominent enough to be seen and understood by the ordinary individual who is interested in discovering and learning the information disclosed thereby, and who makes a minimum examination of the package to determine its net weight and the ingredients of the candy contained in said package.

Is that an undesirable state of the law? If an impartial court is convinced that a package meets such a test, should a manufacturer be barred from using it?

Of course, anyone who loses a case is inclined to feel the court was wrong. If the Government had been able to show that deception or inconspicuousness existed, the results in these cases would have been otherwise. Nothing, then, was wrong with the law. The explanation was in the agency's inability to demonstrate to an impartial arbiter that its view of the facts was correct.

And there's the nub of the matter. The agencies seek the power to enforce their views, be they correct or mistaken.

To our mind, this bespeaks more the need for preserving than for eroding a person's right to his day in court, due process and a fair trial. We object to positioning the administrative agencies so that they can enforce their will upon the public and industry under the guise of preventing deception in cases where there is no deception to prevent in the

first place. Amending the bill to provide for hearings such as those described in section 701 of the Food, Drug, and Cosmetic Act would not cure this.

I am afraid that I have imposed far too much upon your time, at this point. I shall wind up quickly with only a passing reference to three additional basic objections.

We are strongly opposed to subsection (c) (4). It would seriously deprive consumers of much needed price savings. You have expressed a commendable concern for the pocketbooks of all consumers, and especially those of the 20 percent whose income is supposedly below minimum standards of health and decency. How can one justify bartering away savings they actually get when price savings subsidized by manufacturers are passed on to them, in exchange for the satisfaction of laying to rest the abstract concept that a manufacturer cannot, as a legal proposition, guarantee that the price reduction will actually be transmitted? Realistically, the benefit is passed on in the vast majority of cases. Dr. Barnes and other witnesses have told you that, and the Politz survey shows how much consumers like these promotions.

We should like to call attention to a further consideration that seems to have been overlooked thus far. Subsection (c) (4) would also curtail promotions in which combinations of products are sold for less than the sum of their parts. These are sometimes called "two-fers," and they also present an important opportunity for consumers to pare their spending, as do all sales which a manufacturer would inspire and subsidize if he can use them fruitfully by announcing their availability upon the package itself, and which will be brought to a grinding halt by Congress if it outlaws his right to do so.

There has been much criticism of phrases such as "full quart" and "giant gallon," and from the viewpoint of a purist, one might agree that these are tautological. But how are they deceptive or harmful?

They are normal forms of speech. Mrs. Newman, who appeared before you as the general secretary of the National Consumers League, used the terms "whole quart" (p. 375) and "full pint" (p. 376) to distinguish packages containing such quantities from those with slightly less. Mrs. Brady, assistant director of Consumers Union and editorial director of Consumer Reports, found qualifying words to be a useful device for communication when she referred (at p. 134 and elsewhere in her statement) to a "hungry pint." These two ladies, offering themselves as spokesmen for consumers generally, had no trouble understanding, and an evident need to use such terminology.

Far from being deceptive, such words serve a good purpose. You have been disturbed that some products being sold in 15- or 30-ounce sizes are deceptive to those consumers who believe they are purchasing a full pint or quart. An effective preventive for that is to leave the competitor who is offering 16- or 32-ounce sizes free to call attention to the difference by loudly proclaiming that his product is indeed a "full quart." That's why he wants to use the modifier in the first place.

Now, finally, as to our point regarding prior censorship of packages and labels. We believe you do not intend this by the bill, but it can certainly, and may easily flow from it.

Subsection (e) (2) authorizes regulations to "prevent the distribution" of packages which "may" deceive. To "prevent" means to keep from happening. Hence, this literally means "to keep the distribution from taking place."

There has been so much discussion of the supposed inadequacies of present law due to the fact that the agencies cannot act until after an offensive package is on the market, that a regulation requiring prior clearance might well be found to lie within the power granted to "prevent the distribution." Such an interpretation would, of course, draw added support from subsection (g).

To sum up without further ado, we believe that:

1. Insofar as deception is concerned, the present law gives all the power that is necessary to accomplish the desired result, assuming that the right to a day in court is to be preserved. We submit that it should be.

2. Insofar as rational comparison is concerned, the great bulk of what the proponents seek will be achieved by requiring all consumer products to conspicuously display the net contents upon a main panel.

If this is done, conspicuousness could and certainly should be legislatively defined. There is no need to straitjacket packaging by requiring the information upon the front panel. Senator Ribicoff recognized the inappropriateness of that.

Once consumers know the law requires the declaration to appear conspicuously upon one of the panels, they will also know that they can easily find it by merely turning from one panel to another. If the package does not meet that requirement, it will violate the law, and be susceptible to legal process in accordance with our traditional concepts of justice.

We support this, and believe that it is a better way of getting rid of mice than to burn down the house. In the final analysis, it is better even to be left with a few mice, if need be, than with no house.

I thank you very much, Mr. Chairman.

Senator HART. Mr. Weil, thank you. Your statement which I think each of us will reread more than just a second time, is a helpful one. I must apologize now, I am sure that there may be questions. As I indicated, we must have a recess for luncheon. I suggest we resume in this room at 2:15.

Did you and Mr. Greene plan to be here this afternoon?

Mr. WEIL. We should feel privileged to do so, sir.

Senator HART. In the event there are questions, please be here. We will resume at that time then.

(Whereupon, at 12:25 p.m., the committee recessed, to reconvene at 2:15 p.m., the same day.)

AFTERNOON SESSION

Senator HART. The committee will be in order.

Will Mr. Weil return with Mr. Greene?

We had concluded the testimony of Mr. Greene and Mr. Weil, but it occurred to me that there might be questions by some of the counsel.

For that reason, we asked you to stay over through lunch and we appreciate your doing so.

Mr. Cohen?

Mr. COHEN. I wanted first of all to compliment you on your statement.

I thought it was a substantial contribution to the record, even though I might not agree with many of the conclusions you set forth there.

I got the feeling, however, that as a practicing attorney, there was a great deal of skepticism on your part about the value of administrative agencies in general, probably based on some of your own experiences with them. Of course, on this whole subject of how we handle these technological types of problems that we are faced with when we have to legislate, you can argue pro and con in the legal profession whether administrative agencies are the right vehicle, or whether there should be another process.

Regardless, I think at least in this time and place, we are stuck with the administrative agency concept as the best thing we have been able to come up with. And it seems to me that this particular bill gives about as much specific direction in specific areas to the administrative agencies involved that we can give without getting into the technological aspects ourselves when the Senators sit down to write these bills.

I just offer this as a comment, because I think probably this is where we part, on whether this bill does that kind of job or whether it doesn't.

Mr. WEIL. May I comment upon your comment?

Mr. COHEN. Certainly. I made the comment, hoping you would comment on it.

Mr. WEIL. It was a leading comment.

Mr. Cohen, I would not say I have a skepticism. I would say I have some years of experience in observing how administrative agencies actually do utilize empowering statutes and operate under them.

I am familiar with a tendency, which is only a normal human tendency, to do all at times that they find within their power to do, to accomplish an objective that they think is a good objective to be accomplished. There is no question of integrity involved in this, or motivation.

It is entirely a question of power.

Now, I will agree with you that in the complexities that exist today, the governmental process would break down without administrative agency process. But at the same time that that is recognized and provided for, I think it is essential that we do not lose more and more the type of governmental control which is implicit in our basic governmental structure, which I referred to this morning, where the ultimate control and the real control, the prescribing of the standards, the deciding of what standards shall be, and then the turning over of them to be administered to subordinates, is made in the first instance and with good definiteness by those people in our Government who are reachable by and responsible to the electorate, and who reach their decisions as a result of congressional debate and the tempering of large numbers of people in the deciding organization, coming from all parts of the country.

This is lost when too much policymaking rather than sheer execution and operational tasks are turned over to an administrative agency.

Where I think I would disagree with you is not on our basic approach, but in your feeling that you would, in S. 387, clearly set up by legislative process the governing standards and policies and leave it only to the agency to carry them out.

I think that what you have done, what S. 387 would do, is more in the nature of saying to the agencies, "Here is our problem; here is what we would like to see licked."

"Now you take it from there and figure out what is the best way of licking it."

Now, don't forget, too, Mr. Cohen, that up until now, in the administrative agency concept and operation, a good deal of safeguard that the agency actually administers within the legislative standard and prescription is assured or at least provided through fairly adequate judicial review.

So that at the same time that in S. 387 there is a lack of clarity of legislative standard, there is also a removal of the usual safeguard of judicial review. And these two things, I believe, are cumulative.

Mr. COHEN. Without arguing the point with you, I think you hit the essential point right there, that at least in my opinion, and I can only speak for myself, this bill sets forth far more definitive criteria for the agency to work with than your interpretation of it.

I suspect we could argue this all day and not come to any successful conclusion. For instance, telling the agency to ban cents-off deals, I think, is a direction to the agency that is very explicit.

Well, anyhow, I think this is really the basis of our problem, whether the explicitness is there or whether it isn't there.

This would be something the Senators in their wisdom will have to decide.

Mr. WEIL. Yes; and that is more in connection with subsection (e), as you pointed out, than it is with the others.

Mr. COHEN. One other comment. On page 16, you made the statement that the agencies could require a statement not only of the quantity of each ingredient but also of its potency and its purity. As you also acknowledge, this certainly is not the intention of the framers of the bill as expressed by Senator Hart on previous occasions.

And certainly your fear of it will require us to take another look at this particular section and see if it would actually allow such things. Certainly, if it is felt that it does, language refinements could be made, put into this area.

Mr. WEIL. May I then, Mr. Cohen, just suggest that in your deliberations on that point, you turn your attention to what I feel is this open-ended phrase of "other qualities"?

"Other qualities" is all embracing.

Mr. COHEN. Yes. This has been brought to our attention, by the way, and is one of the things you may be sure the Senate will consider as it looks at the bill.

Senator HART. Mr. Chumbris?

Mr. CHUMBRIS. Thank you, Mr. Chairman.

I just want to add to what Mr. Cohen said about the thoroughness of Mr. Weil's paper. He has some very excellent examples. I thought,

to correct some of the misconceptions by even some of the officials of the agencies who came before us, believing that in the legislation-making power, it did include section 8, that they did believe they had that authority or could exercise that authority under the existing law. I thought it was a well thought-out document.

Mr. WEIL. I certainly appreciate that from both you and Mr. Cohen, sir.

Senator HART. Mr. Raitt?

Mr. RAITT. No questions.

Senator HART. Again, thank you for waiting.

Mr. WEIL. Thank you, Senator.

Mr. COHEN. I would like to say to Mr. Greene that we regret any embarrassment he may have suffered this morning. I think the comprehensive questioning was due to the fact that this was the first chance most of us had to see how an actual survey took place and see the criteria used.

Mr. GREENE. Thank you.

Senator HART. We will recess for a few minutes while I attend to another chore.

(Brief recess taken.)

Senator HART. The committee will be in order.

I think that will be our last interruption.

Our next witnesses will speak for the Toilet Goods Association, counsel with that association, Fuller Holloway, and Gilbert Miles.

Mr. HOLLOWAY. Mr. Chairman, my name is Fuller Holloway.

I am a practicing lawyer in Washington, D.C., with the firm of Hamel, Morgan & Saunders.

We have been Toilet Goods Association counsel for a number of years. I have with me Mr. Miles, who is an expert in packaging and also a scientist of some note. Feeling that he is much better qualified to tell you of the packaging practices in the toilet goods industry, I am going to ask Mr. Miles to make a statement for us.

Senator HART. Very well.

You may proceed, Mr. Miles.

STATEMENT OF GILBERT MILES, ON BEHALF OF THE TOILET GOODS ASSOCIATION, INC., WASHINGTON, D.C.

Mr. MILES. Thank you.

My name is Gilbert Miles and I am employed by the Colgate-Palmolive Co.

I appear here today on behalf of the Toilet Goods Association, Inc. The Toilet Goods Association is a trade association, the members of which manufacture in excess of 90 percent of all toilet preparations sold in America. The membership of the association is comprised of the smallest through the largest manufacturers of cosmetics and toiletries.

Speaking both for myself as an individual and, through the Toilet Goods Association for the cosmetic industry, we join with the distinguished chairman of this subcommittee and heartily endorse the principle of truth in packaging. There are provisions of S. 387, however, which, we respectfully submit, would not promote such objective

and would be detrimental to the interest of both consumers and manufacturers if applied to cosmetics.

It is to the substantive provisions of the bill relating to packaging and labeling practices to which my remarks are addressed, leaving for others more expert in such matters the provisions relating to the choice of administrative agencies and enforcement sanctions.

As an individual who has spent the better part of a lifetime in various phases of the cosmetic, perfume, and soap business and having, together with the Toilet Goods Association, carefully studied the provisions of the bill as applied to cosmetics, we hope to be helpful to the committee in shedding light on the considerations that go into cosmetic packaging and labeling practices and the motives which guide the packaging of these products.

This bill includes within its scope a very broad spectrum of products, some of which, like sugar and salt, are so uniform in quality that the consumer's choice may be wholly price-directed.

At the opposite end of the spectrum lie the perfumes where price considerations have little or nothing to do with the factors which determine the consumer's choice. In this case the subjective appeal of the fragrance is often so high that the purchaser enters the market with only one idea in mind; namely, to purchase as much of a particular fragrance as she can with a given number of dollars.

In this typical situation no price comparison or shopping is involved because the competitive articles are not in any sense comparable in subjective satisfaction. The motives of the manufacturer are directed at satisfying the esthetic and olfactory senses. There is no utility involved, no value offered which can be reduced to a dollars basis for comparison any more than you can compare a canvas by Rockwell Kent with another by Grant Wood—they are different esthetic creations and as such the purchaser alone can determine the worth of the object.

No calculation or representation regarding the value of a painting per square inch or per pound of paint used is a guide to its value to the purchaser. Between the salt and perfume lie products with an infinite blend of these attributes of pure utility and pure subjective value.

In years past when I went camping, the selection of the most convenient way of carrying, dispensing, and protecting salt was a problem. Today, salt can be bought in small convenient dispensing packages.

The consumer, of which I am one, is aware of the obvious fact that on a per-pound basis salt is more expensive when bought in these useful small packages but the additional expense is accepted because of the additional service which the package provides. The packaging practice is regulated by consumer demand and the imagination of the manufacturers to satisfy such consumer preference.

Everywhere we turn today we see the intelligent use of esthetics—in the architecture of our homes, offices, schools, factories, our motor-cars, airplanes, and trains.

In all of these areas the emphasis is on beauty for all and its rewards in terms of a better life. The additional cost is accepted and I see no reason why toiletries should be excluded from this phase of our cultural development. If a bottle is designed so that it is tall and slender, who is to say that it was so designed because it appears larger

than its squat cylindrical counterpart or that it was made slender and delicate like a bud vase because of esthetic considerations.

I submit that the only valid determination is that made by the buying public as an expression of their desires. In my opinion one of the worst things we could do for the consumer is to protect him from esthetic growth and appreciation—and I do not pretend that packages constitute the major influence in this regard but that it is a force, there can be no doubt.

So much for esthetics except for one last consideration—never lose sight of the fact that the constant change in graphics and form employment for many thousands who design and make new molds, new plates, new dies, new mechanical layouts, new inks, new models, new art work, and so forth. Thousands would lose their jobs if size and shape are arbitrarily controlled.

Changing the bottle and cap design of a major toiletry product can provide up to 1,000 man-hours of employment. To curtail this activity could drastically reduce employment in the industries which serve our business.

Next, I would like to consider the matter of contents labeling, particularly the suggestion that marked weight or volume is really a useful guide to the consumer who purchases a toiletry.

Some of those who have appeared before your committee would lead you to protect the consumer against imagined depredation by standardizing sizes and other devices under the erroneous assumption that a fluid ounce of any of several shampoos or face creams is equivalent. Nothing could be further from the truth. For example, most shampoos are aqueous solutions of selected synthetic surfactants.

Unless you are prepared to control the type of ingredients and their concentration which constitute a shampoo—in other words, unless you are prepared to dictate cosmetic formulation—the control of net contents is no more meaningful in protecting the consumer against unscrupulous trade practice than it would be to dictate the size of a book or the length of a play or motion picture.

You cannot be sure the public will get its money's worth out of a movie by weighing the film nor can you predict the worth of a cosmetic by identifying the net weight in letters a mile high.

The real purpose which marked weight or content serves in most instances in the cosmetic and perfume field is to guide the consumer in selecting the package size of any brand to be bought, i.e., to compare values within a given brand line.

In addition to the generalizations which have been covered in these opening remarks, the following comments have been prepared pertaining to specific provisions of the bill and their effect on the toilet goods industry.

First, however, it would seem appropriate to regard existing law with respect to cosmetic packaging and labeling in order to determine whether changes are required. The Food, Drug, and Cosmetic Act now provides with respect to cosmetics:

MISBRANDED COSMETICS

SEC. 602. A cosmetic shall be deemed to be misbranded—

- (a) If its labeling is false or misleading in any particular.
- (b) If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an

accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: *Provided*, That under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Secretary.

(c) If any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(d) If its container is so made, formed, or filled as to be misleading.

Also attached hereto, for convenience, is a reproduction, in part, of the regulations of the Food and Drug Administration promulgated under section 602 of the act.

Looking now to the specific provisions of S. 387, the Clayton Act is proposed to be amended by a new section 3A, with respect to which the following comments are made:

Section 3A (c) (1) (p. 2, line 20, et seq.):

This provision would require that the net content be stated upon the front panel. Such requirement is simply not appropriate or feasible with respect to many cosmetics, which are sold in relatively small packages of multitudinous shapes—round, tall, heart shaped, pyramidal, pinch waisted, tapered, and others defying verbal description—but seldom in a shape which would make front panel net weight statement of significant meaning to any purchaser. Cosmetics are displayed differently from store to store and the designation of the front panel itself is really the manner in which the package is displayed.

Nor is the escape hatch, provided by paragraph (c) (5) of section 3A, feasible with respect to cosmetics. The cosmetic manufacturer or perfumer would be in an impossible position if item by item he had to petition the promulgating authority to determine that by the nature, form, or quantity his commodity should be excepted. If the exception is to be made generally, it is suggested that the proposed legislation exempt cosmetic packages.

The general regulations promulgated under the above-quoted section of the Food, Drug and Cosmetic Act, which are attached hereto, are surely adequate and well designed for feasible cosmetic labeling and for ascertaining that a would-be purchaser of a cosmetic may, if she desires, readily determine net contents of the container (compare sec. 1.203 of the regulations attached).

Section 3A (c) (2) (p. 3, line 3, et seq.):

The above-referred to regulations under the Food, Drug and Cosmetic Act are adequate, effective, and feasible in the requirements of prominence not only of net contents but also of other required label statements. An attempt to arbitrarily set a minimum for type size and face must inevitably result in distortion and/or illegibility of the required statement as related to cosmetic packages.

Is net weight to be preferred in prominence to the display on the label of an antiperspirant of the active ingredient contained therein? Vanity and lipstick cases (where is the front panel?), toilet water bottles, dusting powder boxes, perfume bottles, and many other cosmetic containers have been developed to accord with consumer esthetic tastes and to require an arbitrary type size at a specific location would not remove consumer deception, but merely deny the consumer the

esthetic satisfaction of artistically designed, tasteful appearance which she highly prizes. Surely the presently promulgated regulatory requirements of the Food and Drug Administration (sec. 1.203 (a) (6)) is much to be preferred—prominence and conspicuousness in fact being the requisite.

Section 3A(c)(3) (p. 3, line 10, et seq.) :

If the intent is the prohibition of the addition to the statement of quantity such terms as, for example, "Net contents—'Big' 6 ounce," then the prohibition is well taken.

If the prohibition reaches so far as to prevent the distinction on package between the sizes in a line by meaningful designation such as "small," "medium," and "large," or packages designated by such descriptive phrases as "decanter," "gift size," "dispenser package," then the elimination of such useful and harmless practices would be undesirable.

Section 3A(c)(4) (p. 3, line 12, et seq.) :

This paragraph prevents the manufacturer from using an effective means for passing on savings to the consumer from time to time. Reducing the price to the wholesaler or retailer may or may not be passed on to the customer unless the goods to be sold is printed to indicate the savings. The "cents-off" or "half-price" deal is particularly anticipated by many women who are accustomed to, would sorely miss, and be bewildered by, curtailing such advantage to them. The manufacturer, of course, stimulates sales thereby and acquires new customers.

In this section of the bill you would also prevent the manufacturer from emphasizing in package copy the savings which the consumer might enjoy by reason of the size of the package purchased.

In many companies in our industry it is the custom to price various sizes in the line so that each larger size will be sold at a decreasing cost per ounce compared to the smaller sizes. It is also customary to offer refill packages at a substantial saving to the consumer. By preventing the manufacturer from emphasizing these savings, many customers would miss the opportunity of benefiting by these economies. Such a regulation could easily lead the manufacturer to despair of getting enough consumers to purchase the larger sizes and business judgment might lead him instead to reduce the content of the larger packages so that no savings were effected.

Section 3A(c)(5) (p. 4, line 4, et seq.) :

This paragraph provides for exceptions to be granted to the previous regulations. We feel that if the bill were passed as written our industry would require more exceptions than the regulations would cover. We would urge that the bill itself should be corrected at this time rather than to follow a course of correction after the law is passed. Large companies may have the legal staff, time, and money to obtain some exceptions but the small businessman may be driven from the marketplace by the expensive and time-consuming process of seeking help in the bewildering atmosphere of a technical bureau.

Turning to section 3A(e), which grants power to the regulatory agency to make regulations where it determines the necessity, we have the following comments:

Section 3A(e)(1) (p. 5, line 15, et seq.) :

This provision permits the standardization of package size by commodity class. We are opposed to this because it assumes that if all

shampoo or face creams or hand lotions were sold in the same size packages the consumer could make more rational purchases.

Nothing could be further from the truth. Only when both package sizes and product composition are controlled would this be possible. Furthermore, by controlling package sizes within a commodity class you will inevitably produce several results which will be worse than any ills you might cure.

Section 3A(e)(2) (p. 5, line 18, et seq.):

This section aims at controlling shapes and sizes which might deceive the consumer as to net content. Having cosmetic containers in mind, the basic issue here is why make various shapes? Are all these vase shapes, pinched waist, urnlike packages intended to deceive the consumer? Don't they serve useful purposes?

Are not waist-shaped packages easier to hold? Isn't an urnlike package an attractive package on the dressing table? Of course it is. The fact is that various package shapes are functional, decorative, and an aid to selling because they are attractive and functional. To eliminate this search for a combination of beauty and function will not only create unemployment among those who implement these changes but it will also deny the important relationship of function and form. They are in shapes which the consumer demands by choice.

We brought along a few samples here to leave so as to afford you gentlemen an opportunity to look at some of these things which represent excellent examples of packaging in our industry and I think exemplify the point made here.

MR. HOLLOWAY. Mr. Chairman, if we may just leave these for the scrutiny of your committee?

Senator HART. We will receive them for the file. In fact, I want to look at them right now.

(The articles referred to will be found in the files of the committee.)

MR. MILES. To continue:

Section 3A(e)(3) (p. 5, line 23, et seq.):

An attempt to apply this paragraph, establishing standards of designations of size, not only appears unfeasible with respect to cosmetics but seems somewhat incompatible with paragraph 3A(c)(3).

Section 3A(e)(4) and 3A(e)(5) (p. 6, line 3, et seq.):

These two paragraphs probably cannot affect cosmetics.

Section 3A(e)(6) (p. 6, line 15, et seq.):

In this section it is proposed to require the declaration of ingredients and composition information on the package. At the present time and under existing laws if the product is claimed to possess physiological action, those ingredients which contribute such action must be indicated on the package.

In addition, the ingredients used for which such action is not claimed must be safe for use as directed. Thus the active ingredient in an antiperspirant must be shown on the label.

Beyond these safeguards no further protection is required. Our industry and the suppliers of our industry are as careful as they can be in determining the safety of their products. Nevertheless, there will always be rare instances of consumer sensitivity to some trace material present in the product.

It is our belief that the individual who is unfortunate enough to suffer some allergy will not be able, any more than the dermatologist

is, to predict these unusual effects from a mere listing of the ingredients. Most of the products used in cosmetics and perfumes are so complex that the information which could be provided on a label would be only fragmentary.

The best safeguard is the care and knowledge which the manufacturer puts into his product and the extensive physiological testing which precedes the launching of products in our field. We must rely, we feel, on the basic principle that self-interest prevents all responsible manufacturers from deliberate carelessness. We all use the services of dermatologists and other experts to supplement the specialized knowledge of our own chemists to protect the consumer.

Furthermore, with all due respect to this committee, the matter suggested really has little to do with "truth in packaging," but encompasses complex considerations relating to other provisions of the cosmetic sections of the Food, Drug, and Cosmetic Act.

The cosmetic chapter of the Food, Drug, and Cosmetic Act was the subject of incomplete hearings in the last Congress and it is understood that the appropriate committees will resume the consideration during this Congress.

The Toilet Goods Association stands at the side of the distinguished Senators in the earnest desire to ascertain that consumers be protected. We believe that these hearings are being effective in bringing to the attention of industry members that they should be ever on guard to see that packages are correctly and distinctly labeled. The Toilet Goods Association has itself consistently worked to this end through reminders to its members.

We believe that existing law is adequate for the regulatory agency to successfully police labeling and packaging practices in the cosmetic industry.

Thank you for your kind consideration of our comments.

Senator HART. Thank you very much, Mr. Miles. The statement was addressed to the bill and was with respect to the bill, and this is always helpful.

There is at least one point here we noticed. I think we can give you some assurance on that. With this assurance, I take it you support at least this one section that has to do with (c) (3). You say that if the intent is the prohibition of the addition to the statement of quantity such terms as net contents, "big" 6 ounces, "then the prohibition is well taken."

If it goes to the point of preventing the distinction on the package between the sizes in a line by a meaningful designation, then you would suggest that it does more harm than good.

It is precisely our intention to reach the "big" 6 ounces and not to prohibit the addition of meaningful designation of small, medium, and large in section (c) (3).

I should, before concluding, express the hope that in the passage of time, the very attractive exhibits which you have furnished will not disappear from the committee's files. I have directed that they go to the files and stay there.

Mr. MILES. If they disappear from the files, it will only be in support of the argument I presented.

Senator HART. I am sure if they disappear, it will not be after an evaluation of the volume content. The packages are attractive and

clearly in this area; the problem is much less acute than in the corn flakes department.

Mr. Cohen?

Mr. MILES. Thank you.

Mr. COHEN. I have no questions. I think, Senator, this might be a good time, now that we are in the area of cosmetics, to put into the record two statements the committee had received previously. We received a very comprehensive statement on Thursday, from Gibson Associates, which created the plastic, double-wall container that ran into so much trouble in California. Accompanying the statement is also an engineer's blueprint, indicating that the appearance, the size, the height, the width, of this plastic, double-walled container, is exactly the same as that of the glass container which has no double walls and contains the same amount. Now, of course, under the California law, a double-walled container is prohibited by the law. We feel, of course, one of the advantages of this bill is that such a container would not be prohibited per se under our bill.

The technological considerations which Mr. Gibson points out in his letter would be one of the things the agency would have to take into consideration before it could formulate any regulations in this area.

I would ask at this time that this statement be included in the record.

Senator HART. Without objection, it will be received and made a part of the record.

(The document referred to may be found on p. 821.)

Mr. COHEN. We also have a statement regarding hollow-wall packaging of cosmetics which gives somewhat the other side of the story. It might be a good idea to put it in at this time. It will supplement the testimony which has been so ably given here.

Senator HART. That will be received also.

(The document referred to may be found on p. 823.)

Senator HART. Mr. Raitt?

Mr. RAITT. Mr. Chairman, I have no questions, but I would like to thank the witness on his section-by-section analysis and the examples he gave us.

It will be helpful when we retire and look over the record and make our analysis.

Thank you.

Mr. MILES. Thank you.

Senator HART. Gentlemen, thank you.

I should indicate that in the record, immediately preceding the testimony of Mr. Miles, we will insert in full his biography.

(The biography referred to may be found on p. 837.)

Senator HART. Next, the committee will hear from Miss Neva Bradley, of Hartford, Conn.

If Miss Bradley's statement was not included, I should indicate for the record that she appears as the representative of the Cosmetics Career Women, Inc.

Miss Bradley, we welcome you.

STATEMENT OF NEVA BRADLEY, COSMETIC CAREER WOMEN, INC.,
HARTFORD, CONN.

Miss BRADLEY. Thank you.

My name is Neva Bradley and I am a resident of Hartford, Conn. I appear before this committee today as a representative of Cosmetic Career Women, Inc., an organization of executive women actively engaged in the cosmetic and toilet preparations industry.

Our organization has a membership of some 200 women who are now serving and have served the toilet goods industry in responsible executive capacities for a number of years.

My own background is typical of the membership in this organization. For some 30 years my experience in the cosmetic industry has covered practically every phase except that of production and I am personally familiar with the business as it is conducted in department stores, drug stores, salons, and in direct selling.

In the early 1930's, I managed for the Standard Oil Co. (N.J.) a variety of operations at Daggett & Ramsdell, one of the earliest commercially successful cosmetic enterprises in this country.

Among my responsibilities from then until now has been to train and develop sales personnel and demonstrators for retail outlets throughout the Nation, to develop products and their packages, to understand what the requirements of the merchandisers and their customers were and are. At the present time I am consultant stylist for the Fuller Brush Co., a manufacturer and marketer of cosmetics throughout this country and Canada.

I have seen this industry grow from very modest early days to its present \$2 billion stature. I feel that I know the cosmetic business, its people, its problems, and its responsibilities intimately and well.

We have requested an appearance before this committee at this time because we sincerely believe that, as presently written, Senate bill 387 would unduly restrict and hamper the operation of the cosmetic and toilet preparation industry without adding to existing consumer protection against possible abuses in packaging and labeling.

The products of this industry are covered by the Federal Food, Drug, and Cosmetic Act. This act and the regulations of the Food and Drug Administration based upon it give this most effective agency all the means necessary to police the cosmetic industry. And indeed, through the years they have effectively policed this industry, bringing to justice the relatively few miscreants whose irresponsible acts have brought some measure of discredit upon the very many responsible and dedicated people of the industry who have done so well to build this important and uniquely necessary part of the American economy.

While we can and do criticize this bill for several specific provisions, our principal objection to Senate bill 387 is best explained by the fact that its provisions fail to recognize that cosmetics and toiletries are a unique classification of goods. Like women's hats, like fashions and style, like jewelry and art even like wallpaper their very essence of value and appeal lies in the very uniqueness of their presentation to the consumer.

Cosmetics and toiletries are not household commodities. They are not standardized, utilitarian items subject to gages of specifications on some common denominator of performance with other work-a-day products for the home. Makeup by definition is an artistic device. Fragrance by its very nature defies specification and standardization.

Cosmetics are of glamorous stuff. To specify a standard container, to stultify the label with unnecessary conformance to utilitarian uniformity would destroy the glamour, precipitate the whim and dissipate the dream.

As a practical matter you cannot equate cosmetic products by weight, container size, or "servings." In one branded product "a little dab will do you"; in another you would want to use it lavishly, splash it or spill it on.

By its unique nature one fragrance should be used rarely and in the utmost of discreet amounts; another might by its own unique nature be used frequently and with great abandon. Before you could effectively standardize cosmetics you would have to standardize women, their patterns of preference and their individual beauty problems.

Cosmetics are personal products. Their use is dictated by the inner woman who thus far in evolution has defied standardization by mere **men**.

Cosmetics are not household commodities that tuck away in cabinets and closets. They are glamorous products that are artfully displayed in the guest bathroom, on the boudoir dressing table, and strategically removed from evening purses to brace milady for an important social confrontation.

If this committee feels that existing regulations for cosmetics and toiletries are not enough to control the industry and to protect the consumer, let the Food and Drug Administration under their existing authority promulgate further regulations. Under the current Food, Drug, and Cosmetic Act this agency has already spelled out and is already enforcing the requirements of Senate bill 387 which could reasonably apply to the cosmetics and toiletries industry. Without further legislation, the authority already exists by which this able and experienced agency can develop further regulations that might be necessary or desirable.

It is my understanding that a new cosmetic bill which will treat this \$2 billion business as an entity is soon to be considered by Congress. I suggest that if changes and treatment along the line suggested by Senate bill 387 are deemed necessary, that such provisions be included in such a separate bill where the cosmetic industry can be more fairly and more accurately regulated in terms that more realistically provide for the peculiarities of the industry.

May I suggest, therefore, that cosmetics and toiletries along with certain meats, alcoholic beverages, household appliances, maintenance and repair articles be excepted from Senate bill 387 in the interests not only of the cosmetics and toiletries industry, but more important in the interests of American women.

You can as easily standardize the color, the shape or the size of a lady's hat as you can successfully standardize the package in which she will buy her favorite fragrances and makeup.

Please, gentlemen, allow us ladies our fanciful whim. It is good for us and it is good for you, too.

Thank you for your kind consideration of our plea.

Senator HART. Thank you for a delightful statement, Miss Bradley. The point is, we are not requiring the standardization of even puffed rice boxes. We are, indeed, setting some ground rules, which is reflected by your statement. I would be the first to agree, as I did when we received these several exhibits a few minutes ago, that there are and should be exceptions to every rule.

But one of the—not difficulties, I guess, in the nature of legislative development, you have to make up your mind whether you set a general rule and explicitly within that carve out exceptions or authorize an agency to make exceptions, or whether you just move piece by piece, bit by bit.

I am tempted to ask whether a lawyer wrote this paper.

Miss BRADLEY. No; a lawyer did not.

Senator HART. I suspected that.

Just let me assure you that lest you are concerned, as reflected on page 4, "that cosmetics are personal products, their use is dictated by the inner woman, who thus far in evolution has defied standardization by mere men," we have not the desire, and we recognize we haven't the capacity, to interfere with the evolution of the inner woman. We are just trying to do something about an outer label.

I am sure your testimony will be helpful.

Miss BRADLEY. Thank you.

Senator HART. Mr. Cohen?

Mr. COHEN. I am almost afraid to ask questions. I would like to add the reassurance that I don't think the bill is designed, nor could it be interpreted, to interfere with "fanciful whims."

As far as "bracing milady for an important social confrontation," we certainly don't want to get involved with this.

But we do believe possible that when you hear "a little dab will do you," you may want to know just how many little dabs are in the bottle.

This is basically the problem, as I see it.

Senator HART. Mr. Chumbris?

Mr. CHUMBRIS. I didn't hear all of it, but I thought Mr. Cohen was sort of sweet-talking the witness.

Senator HART. Miss Bradley, lest our response would indicate a lack of concern, this is not so. It reflects the fact that you have injected serious notes in a fashion that heretofore the committee has not heard. That is the reason for our reaction. We do appreciate your expression of interest.

This is wholly unrelated to the bill before us, but I was reminded of it by some of your preliminary statement: You say that for many years women have been active in all levels of the cosmetic industry. You indicated in your own case that this is true, except for the production side. In the cosmetic business, have women now become principal factors in the production side, too?

Mr. BRADLEY. When you say "production," I will say yes, when it means the planning of cosmetics, the working out of the complete details. Women have, are now taking a tremendous part in that and the women in Cosmetic Career Women are exceedingly active and

have great responsibility. In my own case, and I am typical, we start out, what products do we want to develop? From there on, we go into the testing, the naming, the packaging, and the packaging is a tremendous thing to us. And it is a very serious thing.

Some of this may have sounded as though I might have been a little flippant, but that is far from the case. This is an exceedingly important thing to me. I have earned my living through package development for many, many years and I feel very strongly about all the things that I have said here.

And that is true of all the people I know in the cosmetic industry who have anything to do with developing a product and getting it on the market. It is really a tremendous operation and until one has some association with it, I don't think that—it is difficult to know what goes into it.

Senator HART. Yes. I was struck that while these hearings have not been able to encompass all of American industry, we have heard from many sectors of it. But you remind us once more of how enormously complex it is.

You do remind us that yours is a \$2 billion industry and there is every reason that we, along with you, should view the effect of this legislation with great seriousness on all segments, but certainly one so large as that.

Miss BRADLEY. And may I say that in the early days, packaging was a very small part of the industry. In my estimation, this \$2 billion mark has been reached largely through the tremendous amount of time, thought, and effort that has gone into the development of packages.

I feel that without that great competition, the industry could not have grown to the state that it has. I feel that very strongly.

Mr. CHUMBRIS. Mr. Chairman?

Senator HART. Mr. Chumbris?

Mr. CHUMBRIS. I wanted to reassure the witness. When I came in, I heard Mr. Cohen commenting and he had such a pleasant manner, I thought he was sweettalking you. That is why I was facetious in making that statement. I wanted you to know that Senator Dirksen and Senator Hruska—Senator Hruska was here today. If he were here, you would have been reassured as to his position in this matter. They feel that the existing law will take care of the problems, the many problems that some of the witnesses have brought forth during the course of these hearings and they feel that there is nothing that has been shown that would indicate to them that there is any need to have any additional laws other than strict enforcement of the laws that we now have on the books.

I wanted you to leave, if you got any other impression, that you would have at least that statement of the position of Senator Dirksen and Senator Hruska on this particular bill.

Miss BRADLEY. I would also like to say that those of us working directly with packaging spend a tremendous amount of time seeing that it is as it should be. The industry, in my estimation, is really very responsible in that direction.

Senator HART. I wish very much that Senator Dirksen had been here to respond to your statement.

Miss BRADLEY. Thank you.

(At the direction of the chairman, the following letter was inserted in the record:)

PALO ALTO, CALIF., April 26, 1963.

Senator ESTES KEFAUVER,
Chairman, Senate Antitrust Subcommittee,
Washington, D.C.

DEAR SENATOR KEFAUVER: I read today in the San Francisco Chronicle of statements made to your committee by Miss Neva Bradley of the Fuller Brush Co. regarding packing of cosmetics.

As a husband and a father of daughters I am sure you were not taken in by the nonsense of packaging and labeling regulations "precipitating the glamour and dissipating the dream" of cosmetics.

I enjoy pretty pink bottles as much as any young wife and mother, but buying a tube of lipstick for \$2 in which the lipstick takes up only one-third of the tube does not make me feel particularly feminine.

Surely perfumes and cosmetics can be attractively packaged in containers the size of their contents and a discreet labeling of ingredients shouldn't really "stultify * * * with utilitarian conformity."

I heartily commend your committee for working in the interest of the consumer to tighten regulations in the packaging and labeling of all foods and household goods, as most of these things are bought by housewives like me. I often inconvenience my husband by taking him grocery shopping with me, as he can figure out much more quickly and accurately than I which of the numerous odd-size packages of the same commodity is really the best bargain. We were happy to learn the administration is backing this bill.

Sincerely yours,

(Mrs.) JEAN LIBBY.

Senator HART. Next we will hear from the president of Creative Food Service, Inc., Sylvia Schur.

STATEMENT OF MRS. SYLVIA SCHUR, PRESIDENT, CREATIVE FOOD SERVICE, INC., NEW YORK, N.Y.

Senator HART. We welcome you.

Mrs. SCHUR. Mr. Chairman, my name is Sylvia Schur. I have been a food writer for the past 21 years, and have followed food developments professionally with a careful eye to consumer interests and advantages.

I was food editor of Woman's Home Companion, of Look, of Seventeen, the first female markets reporter for the New York State Department of Agriculture; active in consumer civilian defense organization during World War II.

I am now head of a food communications business, Creative Food Service, Inc., which is an extension of my work as a food writer.

I write and produce food articles, cookbooks, and recipe booklets, newspaper articles, help develop new food products and marketing approaches, lecture often before women's groups, direct program planning for the World of Food, New York World's Fair, 1964-65.

I receive a stream of consumer reactions and know how varied they can be to taste, to packages, and procedures.

I often use these reactions as a working guide, and also watch my own procedures with a professional view. As a wife and mother of three children, I run an active household. Food buying is an important skill, for food testing and development, as well as for my own family of three adults, three children—and an assortment of pets for whom a great variety of foods now also often come packaged.

I grew up in the food business. My father was an oldtime grocer, and an early operator of a "superette"—the beginnings of today's supermarket.

I know both consumer problems and the food business very well, and know how closely the two must interlock. That is why I am glad to have the opportunity to talk with you.

I believe implicitly in the importance you have stated of "enabling consumers to make rational comparison with respect to price and other qualities," and have spent considerable effort in helping all types of consumers learn how to do this very effectively, and with full knowledge of all the factors of size, shape, quantity, quality, multiple uses, time, and convenience which are important for women today. They also need to know how best to evaluate the relative importance of each of these factors, particularly in view of the variety of situations in which these products are used.

Many people have reviewed this increase in food variety for you. This range of products, when shown in less industrialized areas of the world, has been viewed with wonder and fascination. It would seem incredible to our own grandmothers—indeed, it sometimes seems incredible to us.

I might digress for a moment to note that, despite my work, and participation in the most modern food developments, I am personally a somewhat old-fashioned cook. I begin my own soups with an old-fashioned stock pot, which also provides bones for the dog; generally peel my own potatoes—and save the peels for the compost heap—bake once a week for my own family needs, from scratch.

To me, it seems irrational to package a mix for popovers for example, which consists largely of stabilized premeasured flour and salt. Yet, for many women, this is a real convenience. They do not want to measure flour; they don't know how simple this preparation is; they prefer to buy it with the builtin convenience it offers—and they do. That is why it is on the grocer's shelf today.

Once, there were potatoes in the stores—new potatoes in the spring, old potatoes in the winter. Then there were boiling potatoes and baking potatoes. Now here are some 63 different ways to buy potatoes in a large supermarket.

There are new, white or pink, old, baking, peeled whole, and sliced fresh potatoes; canned whole potatoes, fried potato sticks, dehydrated mashed, sliced, and hashed potatoes; frozen boiled, fried, puffed, potato pancakes, baked potatoes in shells, potato chips—the list grows every day. Just last week, reviewing this situation, I suggested two new forms of potatoes to a leading frozen foods maker. This suggestion was not designed to increase confusion, or to create irrationality, but simply to fill a need—a new taste for a flavored potato.

The 6,000 to 8,000 products in a large supermarket today must each meet a rational dollar-and-cents judgment every day. Either they fill a consumer need and are bought, or they lose their position on the store shelf. Some of the largest of our food companies have spent vast sums of money testing and developing remarkable technological achievements in food products—which have not lasted because they have not met real consumer needs.

I can recall, for example, a meringue mix which was a great product—convenient, economical, far more practical than separating eggs at home.

What's more, it made better meringue than most women can achieve with fresh eggs. Yet it didn't last because American homes today simply do not make meringue often enough to support the kind of volume of sales needed for a food product in this country. This is an indication of the "other qualities" in rational food choices which I do not believe can be effectively legislated, or limited by legislation.

I have read with increasing consternation the "cops-and-robbers" nature of some of the testimony which has come before you. Now, I'm all in favor of cops, when there are robbers in sight. No reliable food packer can afford deliberately misleading packaging—or think he can get away with it for long.

I work often with members of the food industry to illuminate the real or developing needs of consumers, to test and retest, to find new and better uses and more practical packages for products.

Millions of American consumers exercise and register their rational choices every day, in selecting the products which offer them the greatest service, economy, and convenience in the supermarket.

The results of their choice keep products in the market or throw them out—and this is an election by pocketbook ballot made every day, with which no food manufacturer can tamper. As Sylvia Porter, financial columnist and former member of the President's Consumer Advisory Council, said recently:

We [the consumers] are now determined that the products and services we buy live up to our expectations for them—and we will doom to bankruptcy the businessman who ignores this vital point to us.

Our expectations for products are now more complex than they were a generation ago. My grandmother had to pound sugar and sift it with cornstarch to make a fine blend for cake frostings. I was content, until a few years ago, to buy confectioners' sugar and sift it. Now it is so finely milled, it hardly needs sifting.

It also, incidentally, packs down in the box during shipping, so that the package may seem less than full when opened. However, frosting is easier than ever to make. It is easier still premixed, precolored, and packed in an aerosol container with a decorator head to trim a cake with ease.

On cost per ounce comparison, this costs much more than frosting mixed at home. Yet many ounces aren't needed, there's no unnecessary leftover frosting with this, no splattered kitchen floor, no cake decorating tools to wash.

Best of all, a woman can trim a cake for a child, turn in a "masterpiece" for a PTA meeting, or just for fun, at the press of a nozzle. Is this irrational extravagance? Not in our economy. Those who buy it obviously can afford it and are willing to pay for the extra built-in service for this added, completely unnecessary, but very enjoyable touch.

Let's look at packages for a moment, because at this point, packages are important considerations for utility, for price, for special performance, and often for secondary uses. Packages now do more than preserve food and make it available to us in forms and at times when we otherwise could not have it at all.

Once this was miracle enough—just as once it was achievement to have a horseless carriage that went. A black body on wheels was remarkable enough, thank you. Now we have red cars, gold cars, cars of every color, and with matching upholstery; closed cars, convertibles—and the station wagon has become part of the transformation of our shopping habits.

In my youth, to own a lipstick was considered modern. My conservative 15-year-old daughter owns half a dozen, and I have learned from her to carry different colors for easy color matching.

In food packages, too, women now want increased variety in sizes, more sense of style, and often a secondary use of the package itself. Let's take these points one at a time.

Increase variety of package sizes: There has been increased variety in can sizes and other package sizes in recent years; many products now appear in three or four or more different package sizes.

I have had many consumer comments on this—and use many different sizes myself, for economy and convenience—but I rarely hear a consumer complain that there are too many package sizes.

Lest you think this is too limited a reference, although it covers 21 years of work in the field, here is a marketing research report, No. 270, called "Consumers Appraise Canned and Frozen Foods, Their Packages and Labels, in Atlanta, Kansas City, and San Francisco." This was conducted by the Agricultural Marketing Service, Marketing Research Division, of the U.S. Department of Agriculture.

In the overall attitudes and opinions regarding cans, the following points were made:

A large majority—about two-thirds of the homemakers—indicated they were satisfied with the existing container; about one-third would like to see changes made. Improvements suggested include "more variety in can sizes," "an easier or better method of opening cans" (including more key-type openers with the key attached to the can), and "treating the can or placing a lining in the can to protect the food."

In the discussion on frozen-food packages, "a limited selection of sizes" was the feature most disliked.

Better style in packages has increasing importance in a market where people want to enjoy the products they use, and the very process of food preparation. Many manufacturers used to pack salad oil in dark bottles, for instance; very practical, and helpful in stabilizing the product. Now the trend is toward clear decanter-type bottles, which can go right to the table, where men often like to toss the salad.

Spices used to come in cardboard and then in tin packets—perhaps I have not gone back far enough. First, they came in a tin or wooden box at the grocer's, from which a few cents' worth were weighed in a small paper bag, or even a twist of paper.

I can remember doing this. Now, women want their spices in attractive jars, and even the most price-conscious chainstores are coming to pack them that way.

These cost more than the spices in the small paper bag; more than the spices in the tin box—but less than if a woman went out to buy apothecary jars, as we used to, and transfer the contents. We could rationalize that this transfer was for longer keeping qualities; actually, and for the most part, it was to look better on the kitchen shelf.

Don't underestimate the importance of esthetic satisfaction to women today. There is art in today's kitchen—it is a compound of flavor, appearance, and visual as well as organoleptic good taste. This rational choice is as important to women as cost per ounce, and they prove it every day.

Packages also often have value in secondary uses—they become products in themselves. Those who want to avoid extra packaging can do so readily.

Every few months, for example, I buy a 25-pound container of detergent packaged in a pail. This costs about 60 cents more than the same detergent packaged in a cardboard carton—or \$5.29 as compared with \$4.69. At about 19 cents a pound, this still means I am paying about 60 cents for a good metal pail, which is less than it costs in the hardware store, and I feel the detergent was a good buy—for me, by my rationale. If I had a small family, and no use for 25 pounds of detergent, I could choose a smaller cardboard package—or an old-fashioned bar of yellow laundry soap.

It has been stated over and over in this hearing that the consumer needs protection because consumers have no lobby, no voice. Consumers—men, women, and children who shop for food have the most effective lobby in the world. They carry it in their wallets, and use it persuasively every day in the marketplace.

Their purchases speak loudly and clearly. It is our most important task, as “cops” if you will, to train people to wise buying, rather than to arrest their choices in a limited number of predetermined sizes and shapes of products.

I don't know by what criteria you would attempt to define these sizes—or by whose rationale the decision would be made. Look, for example, at a fairly simple product—gelatin. Any woman can buy it unflavored, at under 5 cents a packet, to set a pint of liquid—fruit juice, broth, even coffee. She can buy a package already flavored and sweetened—a great convenience and economy, at about 9 cents for four portions of dessert—or she can buy the dessert already set in a mold with fruit added, at 31 cents for 14 ounces; this is 2 ounces less than the 16 ounces which can be made with either of the other packages.

I bought this last Saturday because my son asked for it as a treat when we were shopping in the supermarket.

By the new regulations this could be a nonconforming package. The net weight is stated on what might be called the back; the standard would likely be 16 ounces.

I knew the price differential very well as compared with more economical and very simple methods of preparation. I was pleased to buy this package for a lunch dessert. Here my rational choice was governed by a maternal desire. It made my son happy. Food purchases are often made to express emotional objectives, and I think that's fine. For many women who buy the product more often than I, this product has been a rationally sound choice. That's why it is in the store refrigerator today, along with peeled and sectioned oranges, biscuits in a can, and flavored cheeses which come in odd-shaped but most attractive containers for table service.

You might say, this is fine for those who can afford the choice, but what about protection for those who can't?

The greatest protection of rational choice is in the huge range of products available in our supermarkets today. More women than ever before are now employed—22 million in the working force, more than half the mothers of the country. They are employed partly because they enjoy the increased standard of living this gives them. They want to buy more attractive lives for themselves and their families. Yet, with all the increased convenience and variety built into food-stuffs, food expenditures today have increased only 5 percent compared with an overall increase of 12 percent in all consumer prices since 1953.

You can buy—and I do—a package of dried beans for a high protein dinner that costs pennies; a chuck roast instead of a round roast, day-old bread at a reduction in price; marrow bones for soup. From the point of view of economy, this is often fallacious. The soup you make from those marrow bones, and the beans you make at home, often cost more today than the package or can ready made. It is difficult for women to achieve the same efficiencies in production with fresh products brought from distant places which manufacturers can arrive at.

I read with considerable interest the report of the testimony of Mrs. Peterson, Assistant Secretary of Labor, who apparently also takes her son to the market. Mrs. Peterson said, very accurately:

The consumer's best buy is the lowest price per unit of quantity of a given product which meets the family's needs.

This is true also for food manufacturers. It is important for manufacturers to be able to pack goods economically if they are to pass along thrifty buys for consumers, even more important, because of the magnitude of the quantities with which they deal, and the magnitude of the service they perform for consumers of every income, ethnic taste, family size, and cooking approach. While it is well for consumers to know how to shop wisely for their needs, the basic food production has moved outside the home, and the more important economies are achieved wherever foods are cleaned, processed, and if necessary, prepared in bulk.

To protect the basic economics of production, manufacturers need freedom and a degree of flexibility in choosing packages and sizes. There has been considerable talk at these hearings of decreased can sizes, and of fractional can and package sizes, as misleading and depriving consumers of rational choice.

Tuna has been cited as an example. To force tuna packers to put flaked tuna in 7-ounce cans would be to increase price and deprive housewives of a favorite economy. Let me explain this point:

Tuna is packed in familiar flat can, generally 6½ to 7 ounces, although now a larger family size is available, as a result of consumer demand.

The one-half ounce differential is not to confuse the consumer, but because flaked tuna has less density than solid pack and therefore weighs the half ounce less. It makes the same number of servings in home use. Generally, we recommend to consumers that the solid pack be used where the tuna is served in a unit, as when the can is turned out whole on a salad plate, and that the chunks or flake style be used, for economy, in mixed salads and casseroles.

If this weight differential were standardized, and manufacturers had to pack flake tuna in a 7-ounce can, the economy would be gone, and this would be a deprivation to consumers.

Marketing research, including the study No. 270, to which I referred before, indicates that to most women the brand identification is the most important thing on the label; they are less concerned with minor variations in size. Not too many years back there was a widespread shift from the No. 2 size can to No. 303, which holds net weight of about 16 ounces, instead of about 1 pound 4 ounces. Most women preferred the new size, which is more convenient measure, and prefer the saving in price which it brings along.

Mrs. Peterson talked of having her son bring his slide rule to the market. Many slide rules go into establishing the lowest possible market price for a product, because in today's competitive market it will have a larger volume that way. What's more, every food producer, distributor, and store operator knows the prices at which products will move best—the magic appeal of an item at 10 cents, for example, or at 2 for 29, cents, or 59 cents.

Many products present special, and highly involved, demands packaging. Standardization would deprive us of variety of packages, deprive the producer of choice at which to make the most economical packages, and could cost the consumer more.

It could also deprive us of new developments in products we don't know, some of which might be very desirable.

For example, I did much work during and after the war to educate consumers to the advantages of nonfat milk solids, for economy, nutritional advantages, and calorie control.

I suggested in articles a drink called supermilk, combining nonfat milk solids and fluid milk in a double nutritious drink for children. After a slow start, this product had considerable consumer acceptance.

While it has particular value for low-income families, it was actually first accepted by many better educated and higher income families.

If packages of nonfat dry milk had been standardized by size at that time, a later development, where this product was made "instant"—and bulkier—would have been difficult to achieve.

No company would want to tip off competition by announcing the need for larger package proportions for the same weight. A development good for consumers, economical and beneficial, would have been stifled.

Or suppose ketchup was a new product. A manufacturer would be hard put to explain that this tall bottle was not designed to mislead the public, but to create flow of the proper rate for a mixture of peculiar, but very appealing, viscosity.

Some years ago a major manufacturer thought he would try to alter this, and go to a flatter bottle. It just didn't work as well and was not accepted by the public.

Many of the products we know today, including aerosol containers, scouring powder boxes which are also decorative storage units, napkin boxes that convert to dispensers, applicator containers for shoe wax, would not be with us if standardized packages had hamstrung production to the point where new developments became impeded or costly.

We live in an unusual economy. Our Puritan forebears—and sometimes our own puritanical feelings—may resist the acceptance of the abundance of choice and convenience now available to us.

This is the achievement of our age. It is our task—and in this all those involved in food production, communication, and regulation must join—to learn to use wisely and with grace the abundance we have.

I work, and so do thousands of writers, home economists, teachers, and Government agents, to inform women—and children—how to make the most of the plentiful choice available to us. Teenagers are interested in knowing, for example, when a small size can of tomatoes is thriftier than a large, when to buy solid pack, and when crushed or pureed or stewed tomatoes.

Manufacturers take many points into consideration in determining package sizes and prices. In all these considerations, their primary concern is to see how much they can offer, for how little money—not necessarily because they want to, but because competition forces them to it.

The comment was made at this hearing that the cardboard box should be measured, rather than the cereal, because the package seems larger than the contents, since cereal packs down in shipping.

Do you know the cost of cardboard? And the cost of the ink to print on it? And the cost of shipping excess weight? No manufacturer can add all these onto the cost of a product which he is in the business of marketing. The quality most people like in prepared cereal is its crunch, and for that, it needs space in the packing. In this, as in every other area, each decision about a package is a complex interrelationship of the needs of the commodity, the wants of people, the flavor and visual appeal of the product. This is so involved a problem that it is dangerous to attempt to limit it in any area arbitrarily. This could complicate the remaining problems in what could be a costly way.

Food manufacturers work now within a set of regulations designed to protect purity, quality, and provide informative labeling for consumers.

Within this framework it is important to do everything possible to encourage more variety, not limit production. It is our larger responsibility to consumers—of whom we now have more very young and very old, and a changing group of needs—to teach them how to utilize our range of production to the greatest advantage, and most economically. This is the most sound way to enable consumers to make rational comparison with respect to price and other qualities.

Food specialists, and sociologists, will tell you that food habits are the hardest to change, the most persistent in people.

Food manufacturers have managed, with great ingenuity, skill, and patience to find a way to package foods to satisfy the broadest range of palates in the world. You can't standardize these tastes.

And when you attempt to standardize packages, you must limit the creativity which will turn out the still unpredictable foods of the future.

More than that, an atmosphere of public suspicion and distrust of the people who have made our food supply what it is today, could inhibit the maximum utilization, to best advantage, of foods which

must be considered in relation to more than price per ounce alone.

I would urge that ways be investigated to educate and to inform the public for the most rational of food choices in the plenty available to them, not to attempt to legislate in ways which could limit food productivity. In this, I believe you would be joined by every interested person who has participated in these hearings. With such a goal you would help achieve a better informed, better nourished, happier people.

Thank you for your interest.

Senator HART. Thank you very much, Mrs. Schur.

You close on a note that reminds me that very early in the hearing when some of these arithmetic problems, which you relate that you yourself do and do so well, were under discussion, I made the point that it might be very helpful if very specific emphasis was put on the kind of shopping calculations, the factors that enter into a rational shopping decision, if these subjects were studied by both young men and young women as a part of the regular curriculum in our schools.

I made that comment, realizing at the time that I had had a rather tentative attitude toward this kind of subject matter, since schools have to allocate limited time to prepare a child for a vastly complicated world.

Until I listened to some of the problems that will confront them if they want to eat, to obtain the commodities that go into their stomach, it occurred to me that perhaps we were spending a little too much time in that area.

If they were all equipped to compute as you can as you go through the marketplace, that would be good. I share with you the hope that education should include a more thorough grounding in this kind of arithmetic and these other factors which you have described for us.

I remember when the Assistant Secretary of Labor, Mrs. Esther Peterson, seated right in that chair, made the comment that you emphasized there on page 11;

The consumer's best buy is the lowest price per unit of quantity of a given product which meets the family's needs.

Those words impressed me then and your recital of them impresses me now. What we hope this bill does is to give the consumer some of the information she needs for what Mrs. Peterson says is her best buy so she may compute what is the lowest price per unit of quantity meets her family's needs. That is what we are aiming at in the bill.

Thank you very much.

Mrs. SCHUR. Thank you.

Senator HART. Mr. Cohen?

Mr. COHEN. I was very much interested in your statement on page 16, where you state what most people like in prepared cereal is its crunch, and for that, it needs space in the packing.

Of course, you also emphasize the cost of manufacture of cardboard and ink and the addition of excess shipping weight in shipping packages that are bigger than necessary. I do recall testimony here last year from an economist well versed in this area, in which it was pointed out that the most efficient package in terms of the amount of material used would be a square package, basically, and as the package gets taller and thinner and moves away from the square, you are going to

use more and more packaging material. In view of that, why do you suppose the manufacturers of packaged cereals today use tall, thin boxes rather than the more efficient, square boxes which give more space to the crunchy cereal to which you refer?

Mrs. SCHUR. I didn't hear the testimony you have reference to, but I don't know that you can say for all products, any one shape is the most efficient.

Mr. COHEN. I was talking of cereal packages.

Mrs. SCHUR. Which cereal?

Mr. COHEN. Dry cereal.

Mrs. SCHUR. But there are dozens. Some go into a package which is quite bulky, some are quite small.

Mr. COHEN. Here efficiency was a mathematical one, that the more square the box, the less material is needed by the manufacturer.

Mrs. SCHUR. I have not heard that and I am not equipped to argue with her. I know that for certain products it would not be so.

Mr. COHEN. I just assumed that if this is mathematically correct, it would apply to all products.

Mrs. SCHUR. It would apply to all products of a certain dimension, possibly, but I don't think you could make a blanket statement that it would apply to all products.

Mr. COHEN. The statement had been made in the hearings. I was just interested in your reaction to it.

I have no further questions.

Senator HART. Mr. Chumbris?

Mr. CHUMBRIS. In this last paragraph of your statement on page 17, about the education and informing of the public, I think I also got from that that you are interested in the actual shopper who goes through the market who would fully understand all of the, not only the price, but the quality, the density, the convenience, and all of those values that go into those products, and the more she is educated and informed on that, then she can make a rational opinion as to what she wants.

Mrs. SCHUR. Correct.

Mr. CHUMBRIS. You so well stated in your paper here how many different choices she has.

I also noted, so many times we talk about the consumer and I noticed that Senator Hruska this morning was in a colloquy with Senator Neuberger on the very point of consumer. Both of them agreed that they were for the consumer and Senator Hruska in his point stresses over and over again that you do the consumer harm if you are passing a law that will stifle creativeness, ingenuity, new products coming on the market, and the type of things that you set forth in your paper.

Now, I noticed, for example, you say there are 63 different ways to buy potatoes in the supermarket.

Mrs. SCHUR. Yes.

Mr. CHUMBRIS. A person who is looking for something real economical can go ahead and buy 2 pounds of potatoes, go home and cut them up and make their own french-fried potatoes. Or he may go to the frozen food compartment and buy frozen potatoes, which are much more costly—I mean in comparison. But his work is cut out for him.

In other words, you can buy frozen french-fried potatoes in a box

for about 29 cents that might serve three people. You can put them in the oven and within a few minutes you have a fast dinner, if that is what you wanted.

You pointed out in your statement that the housewife is also working, as well as being a housewife, and she wants convenience.

Mrs. SCHUR. If I may comment on that, curiously enough, sometimes the prepared item does cost less than the one you thriftily prepared yourself.

Mr. CHUMBRIS. I noticed you said in your statement here sometimes when you think you are paying more, you are paying less, when you have to prepare each item itself.

I want to point out that this item about the consumer is in the minds of the Senators on the minority side as well as the Senators on the majority side.

Mrs. SCHUR. If I may comment on that, I would hope that the Senators on both sides would take cognizance of the fact that the consumer is plural. There is no one consumer; there is no one set of consumer needs. There are many different needs on the part of many different consumers and you can best serve them by providing the kind of variety we do have available.

Mr. CHUMBRIS. And I guess the best test or the best evidence of what the consumer feels about the packaged goods in the marketplace is not a representative of a consumer organization that comes in and gives us a 15-minute dissertation, but the way she accepts the packages that are in the supermarket, whether she likes them or doesn't like them.

Mrs. SCHUR. Exactly; whether she buys them or doesn't buy them.

Mr. CHUMBRIS. I have nothing further.

Senator HART. You put such emphasis on standardization, your concern that this bill would cause a limitation of creativity and limitation of productivity. Underlying throughout your paper was the theme, I think, that it was this great variety which contributed so much to our standard of living.

Mrs. SCHUR. Yes.

Senator HART. Let me read you the section of the bill under which standardization, as we use that term, would occur:

The commission or the agency would issue a regulation—

to prevent the distribution of that commodity for retail sale of packages of sizes, shapes, or dimensional proportions which may deceive retail purchasers as to the net quantity of the contents thereof.

Mrs. SCHUR. I don't know what you are talking about.

Senator HART. Let's assume that there is a legal definition. Why do you then talk to the point of this section of the bill if you don't know what it is?

Mrs. SCHUR. I know what I think you might mean by it. For example, there has been frequent reference to cereal boxes. Apparently—well, let me give you a newer example. Here is an aerosol container. Or let me give you an example that has been cited here, the famous tuna. Have you seen the actual cans?

Senator HART. Yes, we have.

Mrs. SCHUR. They are the same size. It has been said that they are deceptive; one is 6½ ounces and one is 7. I have explained why this

occurs, and why it occurs naturally in packaging. You say, nevertheless, it is deceptive. It confuses people; they think they are getting a half ounce less. I didn't look until this morning. These were both bought in the supermarket yesterday before leaving the city, at the prices stamped on the top. I did not buy them. I had someone pick them up for me. One costs 41 cents and the other costs 33 cents. This is a saving of 8 cents for a half ounce, or about double the cost of ounce per serving of this particular commodity.

Is this deception or is this the most practical way to package this product?

Senator HART. I know you haven't had a chance to read the record, but it just happens that when consumers came in with those cans, we defended the tuna industry.

Mrs. SCHUR. Let's move to a different one. Here is an aerosol container. It holds a very small proportion; by ounce, 4.5 fluid ounces. It is very clearly stated right here. The capacity of this container in water, I would judge—I don't know. I haven't measured it—would be, I think—wait—did I read the fluid ounces? Yes.

It decorates two cakes. Would be more than that. This is not a deceptive package.

You need this amount of packaging for this amount of headspace to have this product work. So that if you were to say that the packages must have a certain physical conformation in relation to total weight, there are times when you would be hitting into technical problems of production which would limit the production of those products.

Senator HART. You see, that is exactly why we turn it over to an agency and not attempt to do it in the bill. We recognize that there are these problems. There is an expertise that is required. That is what the agency is for.

But I return to this question: Are we in agreement that if a package may deceive, it ought not to be on the shelf?

Mrs. SCHUR. I do not think that any package that may deceive is allowed on the shelf now. It is against the law.

Senator HART. This is the debate we get into with respect to the effectiveness of enforcement.

Mrs. SCHUR. Are you saying there is no effective enforcement of our laws now?

Senator HART. We have had the agencies themselves describe the difficulties that confront them. We have had one agency that says practices included in six of the nine sections which are proposed in this bill are beyond the reach of the present law.

What would your reaction be to the proposition that a package of paper napkins need not identify the number contained in the package?

Mrs. SCHUR. But it does not need to identify them.

Senator HART. No; it does not.

Mrs. SCHUR. It is stated on the packages as they exist.

Senator HART. There is no requirement that they shall be so identified and some are not.

Mrs. SCHUR. Possibly there is an omission or a loophole in relation to napkins. In most products, there is a law which says they must be stated.

Senator HART. In relation to all nonfood products, perhaps we will agree there is an omission. Because there is no law for that.

Mrs. SCHUR. In order to resolve that one problem in relation to a limited number of products, are you contemplating setting up another whole set of regulations so limiting that it becomes difficult to achieve progress within them?

Senator HART. The answer is no; we are not beating anybody to death and I do not dismiss as lightly as you the fact that there is a small omission when in point of fact nonfood products can be marketed without this identification. I think we should attempt to do this, and we do make this as a requirement, that there shall be contained on the face that number count, just as there is required to be the fluid ounce. We leave to the agency the problem of whether there are circumstances which produce a series of package variations that may deceive.

It is up to them, then, to make the determination as to what you say is standardization, whether it shall or shall not apply.

Mrs. SCHUR. Senator Hart, may I make one comment about the napkins? We go through an awful lot of them and I buy the packages constantly, compare the prices often. In my own experience, which I grant you is limited and no fair judgment, I have not found a package which doesn't say the number on them.

Senator HART. If you will go to the committee office, we will show you the ones we have. And I would suggest that you are overly modest. I think you speak from a background and knowledge that extends far beyond the reach of the average American woman.

Mrs. SCHUR. This is true, and this is why I took the liberty of coming.

Senator HART. Have you any feeling about soap, whether you would like to know how much the soap weighs when you buy it?

Mrs. SCHUR. What kind of soap?

Senator HART. Soap—hand soap.

Mrs. SCHUR. Bar soap?

Senator HART. Bar soap—Ivory soap.

Mrs. SCHUR. I tell you, it would do me very little good, I believe, to know its weight in some instances. It depends on the quality of the soap and the purpose to which it is to be put, whether it is a hand soap and includes a certain proportion of cream in it, or whether it is a laundry bar of soap or a strong soap for scrubbing.

Senator HART. Suppose there are five sizes of Ivory soap, would it be helpful to you in making a rational judgment to know how much it weighs?

Mrs. SCHUR. I can see that pretty well.

Senator HART. I am amazed at your answer. Really, I am. You, who would teach home economics, to have doubt about the usefulness of knowing how much each of five similar products, identical products, weighed in order to make a price comparison. I am amazed at that.

Mrs. SCHUR. But Senator, if they are the same product and they are next to each other in the supermarket, it is almost faster and easier to look at them and to see. Certainly, if the weight was stated and I wanted to take the time to compare them on my product, that is fine.

Senator HART. I thank you for that answer. We just disagree on that one, completely, because my eyes don't measure weight.

Are there any other questions?

(No response.)

Senator HART. Thank you very much.

Mrs. SCHUR. Thank you. Shall I leave these?

Senator HART. No; we do have those.

Now, in a slight schedule revision, we will hear John D. Conner, who will give us the testimony that was scheduled to be received tomorrow, from the president of the National Plant Food Institute, Mr. Paul Truitt.

Mr. Conner, I know you have been here all day.

STATEMENT OF JOHN D. CONNER, CUMMINGS & SELLERS, WASHINGTON, D.C., AND GENERAL COUNSEL, NATIONAL PLANT FOOD INSTITUTE

Mr. CONNER. Thank you, Mr. Chairman. My name is John D. Conner. I am a member of the firm of Cummings & Sellers, 1625 K Street, NW. I appear as general counsel for the National Plant Food Institute, primarily to present the statement which has been prepared for presentation by Mr. Paul Truitt, who is president of the National Plant Food Institute, and ask that that and the attachments which have been presented with that statement be made a part of the record and then, just to supplement very briefly, the statement of Mr. Truitt.

I apologize to the committee for diverting its attention from matters as esthetic as cosmetics and as appetizing as food and as attractive as the two preceding, nonstandardized witnesses, to something as mundane as fertilizers.

However, it is a case of necessity.

The statement of Mr. Truitt and my supplementary remarks request primarily that there be exempted by specific amendment from this bill, S. 387, fertilizer and fertilizer materials, or that there be included within the legislative history of the bill language that will make it clear that it is not the intention that fertilizer or fertilizer materials be included within the scope of the bill.

The National Plant Food Institute is a voluntary, nonprofit association consisting of approximately 175 companies producing fertilizers and fertilizer materials.

We question whether it is the intent of the sponsors of this legislation that fertilizers or fertilizer materials be included in the bill, and it is questionable whether the definition of the term "consumer commodity" as it defined in paragraph K-1 of section 3(a) would be construed to include such materials.

However, it is possible that it might be so construed.

As we read that paragraph or that definition, there are four qualifications of a consumer commodity:

First, that it is any article or commodity of any kind or class.

Secondly, which is customarily produced or distributed for sale through retail sales agencies.

Third, for consumption or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household.

And fourth, which usually is consumed or expended in the course of such consumption.

All of those, I think, would apply to fertilizer; that is, a class of fertilizers, with the possible exception of the third; that is, whether or not it is for consumption or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household.

Under somewhat allied laws, there have been decisions that we believe would bring specialty fertilizers or household fertilizers or garden-type fertilizers within this definition.

For example, under a somewhat allied law, there was recently an administrative decision that a fertilizer product was what was classified in that law as a household product, I believe, by virtue of the fact that it was normally stored in the garage or a barn attached to the house. Also adding some element of doubt to whether such product would be included in the bill is the fact that under the specific exemptions appearing under that same section, there are exempted those commodities that are covered or that are subject to labeling requirements imposed by the Secretary of Agriculture pursuant to the Federal insecticide, fungicide and rodenticide section of the act, which includes products that are normally used for agricultural purposes.

So that specific exemption, I think, might raise by implication some question that this class of fertilizers might not be included.

Accordingly, we hesitate to rely upon our interpretation of this and to subject the marketers of such products to the hazard of varying administrative interpretations and particularly of decisions of juries in cases under section 16 of the Clayton Act, which would be one of the enforcement procedures of this act.

Accordingly, we respectfully request, then, that this committee either exclude by specific amendment along the lines of that which is appended as appendix A to Mr. Truitt's statement or by inclusion of legislative history in the report of the bill, language to make it clear that it is not the intention to include fertilizers and fertilizer materials.

We feel justified in making this request, not only because we believe it is not the intention of the sponsors that such products be included, but also because these products at the present time are very strictly and precisely labeled by existing State laws.

To a large extent the State laws which have been adopted in 48 States—Hawaii and Alaska do not yet have them—but all the other States do follow the provisions of the uniform State fertilizer bill which has been drafted and sponsored by the Association of American Fertilizer Control Officials. With respect to the labeling of fertilizers, this model bill provides that the labeling of the product must set forth the net weight, the brand and grade, the name and address of the registrant or the manufacturer, and the guaranteed analysis. And by way of definition, the term or definition of guaranteed analysis of the ingredients requires over one printed page of the uniform bill which has been submitted as an appendix to Mr. Truitt's statement.

There is a very close regulation of all other phases of marketing, packaging, and shipping fertilizers. The enforcement provisions are very precise, including such enforcement procedures as criminal proceedings, seizure provisions, stop-sale orders, and penalties provisions in case of shortage of the ingredients.

If there are any fertilizer products that are included in the bill, it would undoubtedly be the so-called specialty fertilizers, or those that are marketed primarily for home or home garden use.

The Association of American Fertilizer Control Officials, in order to assure the uniformity of and effective labeling and marketing of this type of products, has recently worked out and promulgated a uniform format for labeling specialty fertilizers, very elaborate and precise in relation to the problems of those products.

A copy of that format, occupying some 2 pages, has been attached as an appendix to Mr. Truitt's statement.

All of this is done under the regular State fertilizer law. The Federal Government has never had a fertilizer law because of the fact that the States adequately regulate these products at the present time.

Accordingly, inclusion under this bill, we believe, would be both an unnecessary duplication of regulation that is already being done quite adequately by the 48 States.

There is also attached to Mr. Truitt's statement a statement by the Secretary of the National Association of Fertilizer Control Officials, outlining the work of that organization and of each of the State departments of agriculture and regulating this type of product.

Accordingly, we respectfully request the action which I have outlined.

Senator HART. Mr. Conner, we appreciate very much the testimony you have given us. Incidentally, the item you referred to as appendix A on the statement prepared by Mr. Truitt will be made a part of the record and the additional attachments, appendix B and C, will become a part of the record.

And assuredly, the concern that you express will be considered fully by the committee and we hope we will respond wisely.

Mr. CONNER. Thank you, Mr. Chairman; I believe there was also an appendix D. I assume that will be included. I borrowed the only copy of that from Mr. Cohen and I return it. This is by the secretary of the Association of American Fertilizer Control officials.

Senator HART. And appendix D also, along with Mr. Truitt's statement.

(The full text of Mr. Truitt's statement follows:)

STATEMENT OF PAUL T. TRUITT, PRESIDENT, NATIONAL PLANT FOOD INSTITUTE

Mr. Chairman, my name is Paul T. Truitt, I am president of the National Plant Food Institute, located at 1700 K Street, NW., Washington 6, D.C.

The National Plant Food Institute is a voluntary, nonprofit trade association having as members about 175 companies, varying from small to very large, who manufacture and sell fertilizers and fertilizer materials to farmers in the United States. The institute represents, volumewise, approximately three-fourths of the fertilizer industry in this country.

I appear here today on behalf of the members of the National Plant Food Institute to request that fertilizers and fertilizer materials be specifically exempted from the provisions of S. 387, by amending the bill in line with the amendment suggested in appendix A, or, as an alternative by including in the committee report language to show a specific intent that such materials not be included.

We believe that the exemption of fertilizers and fertilizer materials from S. 387 is justified because the labeling, sale and distribution of these materials are regulated strictly by the various States. Forty-eight States presently have such laws. The other two States, Alaska and Hawaii, are now considering and are expected to enact, shortly, comparable fertilizer laws for their States.

We question whether it is the intent of the sponsors that fertilizers or fertilizer materials be included in the bill, and it is questionable whether the definition of the term "consumer commodity" as defined in paragraph (k) (1) of section 3A would be construed to include such materials. However, it is possible that the term might be construed to include some specialty fertilizers which are for garden or household use. Accordingly, we respectfully request that this possible ambiguity be removed by amendment or legislative history.

To a large extent the State laws follow the provisions of the uniform State fertilizer bill drafted and sponsored by the Association of American Fertilizer Control Officials. A copy is attached as appendix B.

With respect to labeling of fertilizers, this model bill now adopted by 35 States requires that:

"Any commercial fertilizer distributed in this State in containers shall have placed on or affixed to the container a label setting forth in clearly legible and conspicuous form the information required by items (1), (2), (3), and (4) of paragraphs (a) of section 4.¹

"If distributed in bulk, a written or printed statement of the information required by items (1), (2), (3), and (4) of paragraph (a) of section 4 shall accompany delivery and be supplied to the purchaser at time of delivery.

"A commercial fertilizer formulated according to specifications which are furnished by a consumer prior to mixing shall be labeled to show the net weight, guaranteed analysis, and the name and address of the distributor."

If S. 387 were intended to apply to any fertilizers, it undoubtedly would be the so-called "specialty" fertilizers for home or garden use. The labeling, sale and use of these products are regulated under the various State laws. In order to assure a uniform, but effective labeling pattern for these products, the Association of American Fertilizer Control Officials has evolved over the past 2 years a national format for specialty fertilizers. A copy is attached hereto as appendix C. This format, now approved by 44 States, provides a detailed and comprehensive labeling pattern for specialty fertilizers.

For many years, the State fertilizer control officials have sponsored and maintained the Association of American Fertilizer Control Officials. This association has an active program devoted to the development of uniform State laws and effective regulatory and enforcement policies relating to fertilizers. A statement relating to the nature of that organization, the pattern of State laws and regulations pertaining to fertilizers and the role of the States in the regulation of fertilizers is attached as appendix D.

The above facts demonstrate that the labeling, sale, and distribution of fertilizers are now fully and effectively regulated by the various States. Any regulation pursuant to the provisions of S. 387 would only duplicate this present regulation. Any additional regulation is unnecessary. Accordingly, we respectfully request that fertilizers be exempt from the bill by amendment or inclusion in the committee report legislative history evidencing the intent to exclude such products.

APPENDIX A. PROPOSED AMENDMENT TO S. 387

Exempt fertilizers and fertilizer materials by adding on page 10, line 8, after "poultry product," the words "fertilizers and fertilizer materials."

¹ The information required by items 1-4, par. (a) of sec. 4 is: (1) The net weight; (2) the brand and grade; (3) the guaranteed analysis; (4) the name and address of the registrant.

APPENDIX B

REPRINT
OF
PROPOSED MODEL UNIFORM STATE FERTILIZER BILL
SIXTEENTH DRAFT
FROM
NUMBER 16 OFFICIAL PUBLICATION
ASSOCIATION OF
AMERICAN FERTILIZER CONTROL OFFICIALS

OCTOBER, 1962

PROPOSED UNIFORM STATE FERTILIZER BILL
Sixteenth Draft

October, 1961

SECTIONS 8, 9, 10, 11, 13 (OPTION A OR B) are optional sections for inclusion in laws. The individual state should examine them carefully to consider whether or not these should be deleted before the bill is introduced in the legislature.

AN ACT to regulate the sale and distribution of commercial fertilizers in the State of_____. BE IT ENACTED BY the Legislature of the State of_____

Section 1. Title

This Act shall be known as the “_____ Fertilizer Law of 19_____.”

Section 2. Enforcing Official.

This Act shall be administered by the_____ of the State of_____, hereinafter referred to as the_____.”

Section 3. Definitions of Words and Terms.

When used in this Act:

- (a) The term “commercial fertilizer” means any substance containing one or more recognized plant nutrient (s) which is used for its

plant nutrient content and which is designed for use or claimed to have value in promoting plant growth (except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes and gypsum).

- (b) The term "fertilizer material" means a commercial fertilizer containing one or more of the recognized plant nutrients, which is used primarily for its plant nutrient content and which either:
 - (1) Contains important quantities of no more than one of the primary plant nutrients (nitrogen, phosphoric acid and potash), or
 - (2) Has approximately 85% of its plant nutrient content present in the form of a single chemical compound, or
 - (3) Is derived from a plant or animal residue or by-product or a natural material deposit which has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification and concentration.
- (c) The term "mixed fertilizers" is a commercial fertilizer containing any combination or mixtures of fertilizer materials designed for use or claimed to have value in promoting plant growth.
- (d) A specialty fertilizer is a commercial fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses and nurseries, and may include commercial fertilizers used for research or experimental purposes.
- (e) The term "bulk fertilizers" means commercial fertilizer distributed in a non-packaged form.
- (f) The term "brand" means a term, design, or trade mark used in connection with one or several grades of commercial fertilizer.
- (g) Guaranteed Analysis:
 - (1) Until July 1, 196____, and thereafter until the _____ prescribes the alternative form of "guaranteed analysis" in accordance with the provisions of subparagraph (2) hereof, the term "guaranteed analysis" shall mean the minimum percentage of plant nutrients claimed in the following order and form:
 - A. Total Nitrogen (N) _____ per cent
 - Available Phosphoric Acid (P_2O_5) _____ per cent
 - Soluble Potash (K_2O) _____ per cent
 - B. For unacidulated mineral phosphatic materials and basic slag, both total and available phosphoric acid and the degree of fineness. For bone, tankage, and other organic phosphatic materials, total phosphoric acid.

• Optional

C. Guarantees for plant nutrients other than nitrogen, phosphorus and potassium may be permitted or required by regulation of the _____. The guarantees for such other nutrients shall be expressed in the form of the element. The sources of such other nutrients (oxides, salt, chelates, etc.) may be required to be stated on the application for registration and may be included as a parenthetical statement on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the _____ and with the advice of the Director of the Agricultural Experiment Station. When any plant nutrients or other substances or compounds are guaranteed they shall be subject to inspection and analysis in accord with the methods and regulations prescribed by _____.

D. Potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of one hundred pounds per ton, when required by regulation.

- (2) At any time after July 1, 196____, that the _____ finds, after public hearing following due notice, that the requirement for expressing the guaranteed analysis of phosphorus and potassium in elemental form would not impose an economic hardship on distributors and users of fertilizer by reason of conflicting labeling requirements among the states, he may require by regulation thereafter the "guaranteed analysis" shall be in the following form:

Total Nitrogen (N)	_____	per cent
Available Phosphorus (P)	_____	per cent
Soluble Potassium (K)	_____	per cent

provided, however, that the effective date of said regulation shall be not less than six months following the issuance thereof, and provided, further, that for a period of two years following the effective date of said regulation, the equivalent of phosphorus and potassium may also be shown in the form of phosphoric acid and potash; provided, however, that after the effective date of a regulation issued under the provisions of this section, requiring that phosphorus and potassium be shown in the elemental form, the guaranteed analysis for nitrogen, phosphorus, and potassium shall constitute the grade.

- (h) The term "grade" means the percentages of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or soluble potash stated in whole numbers in the same terms, order and percentages as in the "guaranteed analysis".
- (i) The term "official sample" means any sample of commercial fertilizer taken by the _____ or his agent and designated as "official" by the _____.

- (j) The term "ton" means a net weight of two thousand pounds avoirdupois.
- (k) The term "per cent" or "percentage" means the percentage by weight.
- (l) The term "person" includes individual, partnership, association, firm, and corporation.
- (m) The term "distributor" means any person who imports, consigns, manufactures, produces, compounds, mixes, or blends commercial fertilizer, or who offers for sale, sells, barter, or otherwise supplies commercial fertilizer in this state.
- (n) Words importing the singular number may extend and be applied to several persons or things and words importing the plural number may include the singular.
- (o) The term "registrant" means the person who registers commercial fertilizer under the provisions of this Act.

Section 4. Registration.

- (a) Each brand and grade of commercial fertilizer shall be registered before being distributed in this State. The application for registration shall be submitted to the _____ on form furnished by the _____, and shall be accompanied by a fee of \$_____ per brand, except that those brands sold in packages of 25 pounds or less shall be registered at a fee of twenty-five dollars each. Upon approval by the _____ a copy of the registration shall be furnished to the applicant. All registrations expire on June 30 of each year. The application shall include the following information:
 - (1) The net weight
 - (2) The brand and grade
 - (3) The guaranteed analysis
 - (4) The name and address of the registrant
 - (5) The sources from which the nitrogen, phosphorus, and potassium are derived.
- (b) A distributor shall not be required to register any brand of commercial fertilizer which is already registered under this Act by another person.
- (c) A distributor shall not be required to register a commercial fertilizer formulated according to specifications which are furnished by a consumer prior to mixing; but shall be required to label such fertilizer as provided in Section 5 (c).

Section 5. Labeling

- (a) Any commercial fertilizer distributed in this State in containers shall have placed on or affixed to the container a label setting

- forth in clearly legible and conspicuous form the information required by Items (1), (2), (3), and (4) of paragraphs (a) of Section 4.
- (b) If distributed in bulk, a written or printed statement of the information required by items (1), (2), (3), and (4), of paragraph (a) of Section (4) shall accompany delivery and be supplied to the purchaser at time of delivery.
 - (c) A commercial fertilizer formulated according to specifications which are furnished by a consumer prior to mixing shall be labeled to show the net weight, guaranteed analysis, and the name and address of the distributor.

Section 6. Inspection Fees.

- (a) There shall be paid to the _____ for all commercial fertilizers distributed in this State an inspection fee at the rate of _____ cents per ton: Provided, that sales to manufacturers or exchanges between them are hereby exempted. Fees so collected shall be used for the payment of the costs of inspection, sampling, and analysis, and other expenses necessary for the administration of this Act.

On individual packages of commercial fertilizer containing 25 pounds or less, there shall be paid in lieu of the annual registration fee of _____ per brand and the _____ cents per ton inspection fee, an annual registration fee and inspection fee of twenty-five dollars for each brand and grade sold or distributed. Where a person sells commercial fertilizer in packages of 25 pounds or less and in packages over 25 pounds, this annual registration and inspection fee of twenty-five dollars shall apply only to that portion sold in packages of 25 pounds or less, and that portion sold in packages over 25 pounds shall be subject to the same inspection fee of _____ cents per ton as provided in this Act.

- (b) Every person who distributes a commercial fertilizer in this State shall:

File with the _____ and on forms furnished by _____ a quarterly statement for the periods ending September 30, December 31, March 31 and June 30, setting forth the number of net tons of each commercial fertilizer distributed in this state during such quarter. The report shall be due on or before the fifteenth day of the month following the close of each quarter and upon such statement shall pay the inspection fee at the rate stated in paragraph (a) of this section. If the tonnage report is not filed and the payment of inspection fee is not made within 30 days after the end of the quarter, a collection fee amounting to 10 percent (minimum \$10.00) of the amount shall be assessed against the registrant, and the amount of fees due shall constitute a debt and become the basis of a judgment against the registrant.

- (c) When more than one person is involved in the distribution of a commercial fertilizer, the last person who has the fertilizer registered and who distributes to a non-registrant (dealer or consumer) is responsible for reporting the tonnage and paying the inspection fee, unless the report and payment has been previously made by a prior distributor of a fertilizer.

Section 7. Inspection, Sampling, Analysis.

- (a) It shall be the duty of the _____, who may act through his authorized agent, to sample, inspect, make analyses of, and test commercial fertilizers distributed within this State at time and place and to such an extent as he may deem necessary to determine whether such commercial fertilizers are in compliance with the provisions of this Act. The _____, individually or through his agent, is authorized to enter upon any public or private premises or carriers during regular business hours in order to have access to commercial fertilizers subject to the provisions of this Act and the rules and regulations pertaining thereto.
- (b) The methods of analysis and sampling shall be those adopted by the official from sources such as those of the Association of Official Agricultural Chemists.
- (c) The _____, in determining for administrative purposes whether any commercial fertilizer is deficient in plant food, shall be guided solely by the official sample as defined in paragraph (i) of Section 3, and obtained and analyzed as provided for in paragraph (b) of Section 7.
- (d) The results of official analysis of any commercial fertilizer which has been found to be subject to penalty or other legal action shall be forwarded by the _____ to the registrant at least ten days before the report is submitted to the purchaser. If during that period no adequate evidence to the contrary is made available to the _____, the report shall become official. Upon request the _____ shall furnish to the registrant a portion of any sample found subject to penalty or other legal action.

Section 8. Plant Food Deficiency.

- (a) If the analysis shall show that any commercial fertilizer falls short of the guaranteed analysis in any one ingredient, penalty shall be assessed in accordance with the following provisions:
- (1) Total Nitrogen: A penalty of three times the value of the deficiency, if such deficiency is in excess of 0.20 of one per cent on goods that are guaranteed 2 per cent; 0.25 of one per cent on goods that are guaranteed 3 per cent; 0.35 of one per cent on goods that are guaranteed 4 per cent; 0.40 of one per cent on goods that are guaranteed 5 per cent up to and including 8 per cent; 0.50 of one per cent on goods guaranteed above 8 per cent up to and including 30 per cent; and 0.75 of one per cent on goods guaranteed over 30 per cent.

- (2) Available Phosphoric Acid or Available Phosphorus: A penalty of three times the value of the deficiency, if such deficiency exceeds 0.40 of one per cent of available phosphoric acid (P_2O_5) on goods that are guaranteed up to and including 10 per cent; 0.50 of one per cent of available phosphoric acid (P_2O_5) on goods that are guaranteed above 10 per cent up to and including 25 per cent; and 0.75 of one per cent of available phosphoric acid (P_2O_5) on goods guaranteed over 25 per cent. If guarantees are for available phosphorus, as provided in Section 3 (g) (2), the deficiencies shall be calculated for the appropriate percentage of elemental phosphorus.
- (3) Soluble Potash or Soluble Potassium: A penalty of three times the value of the deficiency, if such deficiency is in excess of 0.20 of one per cent of soluble potash (K_2O) on goods that are guaranteed 2 per cent; 0.30 of one per cent of soluble potash (K_2O) on goods that are guaranteed 3 per cent; 0.40 of one per cent of soluble potash (K_2O) on goods guaranteed 4 per cent; 0.50 of one per cent of soluble potash (K_2O) on goods guaranteed above 4 per cent up to and including 8 per cent; 0.60 of one per cent of soluble potash (K_2O) on goods guaranteed above 8 per cent up to and including 20 per cent; and 1.00 of one per cent of soluble potash (K_2O) on goods guaranteed over 20 per cent. If guarantees are for soluble potassium as provided in section 3 (g) (2) the deficiencies shall be calculated for the appropriate percentage of elemental potassium.
- (4) Deficiencies in any other constituent or constituents covered under Section 3 paragraph (g), items B, C, & D of this Act which the registrant is required to or may guarantee shall be evaluated by the _____ and penalties therefore shall be prescribed by the _____.
- (b) Nothing contained in this section shall prevent any person from appealing to a court of competent jurisdiction praying for judgment as to the justification of such penalties.
- (c) All penalties assessed under this section shall be paid to the consumer of the lot of commercial fertilizer represented by the sample analyzed within three months after the date of notice from the _____ to the registrant, receipts taken therefor and promptly forwarded to the _____. If said consumers cannot be found, the amount of the penalty shall be paid to the _____ who shall deposit the same (or shall pay said penalty to some local charitable or educational institution.

Section 9. Commercial Value.

For the purpose of determining the commercial values to be applied under the provisions of Section 8, the _____ shall determine and publish annually the values per pound of nitrogen, available phosphoric acid, and soluble potash in com-

mercial fertilizers in this state. If guarantees are as provided in Section 3 (g) (2) the values shall be per pound of nitrogen, phosphorus, and potassium. The values so determined and published shall be used in determining and assessing penalties.

Section 10. Minimum Plant Food Content.

No superphosphate containing less than _____ available phosphoric acid nor any mixed fertilizer in which the sum of the guarantees for the nitrogen, available phosphoric acid, and soluble potash totals less than _____ per cent shall be distributed in this State except for mixed fertilizers containing twenty-five per cent or more of their nitrogen in water-insoluble form of plant or animal origin, in which case the total nitrogen, available phosphoric acid, and soluble potash shall not total less than _____ per cent. If guarantees are as provided in Section 3 (g) (2) the appropriate conversions shall be made to available phosphorus and soluble potassium.

Section 11. Grade and Ratio List.

The _____, after a public hearing open to all interested parties, and upon approval by the Director of the Agricultural Experiment Station, shall prior to June 30 of each year or as early as practicable thereafter, promulgate a list of ratios and minimum analysis grades and/or grades of mixed fertilizers adequate to meet the agricultural needs of the state. When a minimum ratio list is established higher analysis than the minimum shall be permitted if the same ratio is maintained. The _____ may revise this list by conforming to the procedure described in this section. After this annual list of ratios and minimum analysis grade and/or grades have been established, no others shall be eligible for registration; provided, however, that any registrant may be permitted to sell _____ but not exceeding _____ brands and grades of specialty fertilizer not on the current approved list. The _____ may, in his discretion, require a sample label to be submitted before registering such fertilizer.

Section 12. False or Misleading Statements.

A commercial fertilizer is misbranded if it carries any false or misleading statement upon or attached to the container, or if false or misleading statements concerning its agricultural value are made on the container or in any advertising matter accompanying or associated with the commercial fertilizer. It shall be unlawful to distribute a misbranded commercial fertilizer.

Section 13. Tonnage Reports. (SELECT OPTION A OR B)

- (1) OPTION A: Each person registering commercial fertilizers under this act shall furnish the _____ with a

confidential written statement of the tonnage of each grade of commercial fertilizer sold by him in this state for the quarterly period ending September 30, December 31, March 31 and June 30. The tonnage of each grade sold during said periods in packages weighing 25 pounds or less will also be shown as a sub-total and included in the total tonnage; however, no inspection fee will be charged on said packages weighing 25 pounds or less. No information furnished under this section shall be disclosed in such a way as to divulge the operation of any person.

- (2) **OPTION B:** The person transacting, distributing or selling commercial fertilizer to a non-registrant will mail the _____ within 48 hours (less legal holidays and Sunday) after a shipment is made a report showing the following information: Name and county of the consignee and amount (tons) by grades and analysis of commercial fertilizer. This report may be made on a special summary form provided by the _____ or by submitting a copy of the invoice. Commercial fertilizer sold in packages weighing less than 25 pounds will be reported but no inspection fee will be charged. No information furnished under this section shall be disclosed in such a way as to divulge the operation of any person.
- (3) When more than one person is involved in the distribution of a commercial fertilizer, the last person who has the fertilizer registered and who distributes to a non-registrant (dealer or consumer) is responsible for reporting the tonnage and paying the inspection fee, unless the reporting and paying of fees have been made by a prior distributor of the fertilizer.

Section 14. Publications.

The _____ shall publish at least annually and in such forms as he may deem proper: (a) Information concerning the distribution of commercial fertilizers, (b) Results of analyses based on official samples of commercial fertilizers distributed within the state as compared with the analyses guaranteed under Section 4 and Section 5.

Section 15. Rules and Regulations.

For the enforcement of this Act, the _____ is authorized to prescribe and, after public hearing following due public notice, to enforce such rules and regulations relating to the distribution of commercial fertilizers as he may find necessary to carry into effect the full intent and meaning of this Act.

Section 16. Short Weight.

If any commercial fertilizer in the possession of the consumer is found by the _____ to be short in weight, the registrant of said commercial fertilizer shall within thirty days after official notice from the _____ pay to the con-

sumer a penalty equal to four times the value of the actual shortage.

Section 17. Cancellation of Registrations.

The _____ is authorized and empowered to cancel the registration of any brand of commercial fertilizer or to refuse to register any brand of commercial fertilizer as herein provided, upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasions or attempted evasions of the provisions of this Act or any rules and regulations promulgated thereunder: Provided, that no registration shall be revoked or refused until the registrant shall have been given the opportunity to appear for a hearing by the _____.

Section 18. "Stop Sale" Orders.

The _____ may issue and enforce a written or printed "stop sale, use, or removal" order to the owner or custodian of any lot of commercial fertilizer and to hold at a designated place when the _____ finds said commercial fertilizer is being offered or exposed for sale in violation of any of the provisions of this Act until the law has been complied with and said commercial fertilizer is released in writing by the _____ or said violation has been otherwise legally disposed of by written authority. The _____ shall release the commercial fertilizer so withdrawn when the requirements of the provisions of this Act have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid.

Section 19. Seizure, Condemnation, and Sale.

Any lot of commercial fertilizer not in compliance with the provisions of this Act shall be subject to seizure on complaint of the _____ to a court of competent jurisdiction in the area in which said commercial fertilizer is located. In the event the court finds the said commercial fertilizer to be in violation of this Act and orders the condemnation of said commercial fertilizer, it shall be disposed of in any manner consistent with the quality of the commercial fertilizer and the laws of the State:

Provided, that in no instance shall the disposition of said commercial fertilizer be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial fertilizer or for permission to process or re-label said commercial fertilizer to bring it into compliance with this Act.

Section 20. Violations.

- (a) If it shall appear from the examination of any commercial fertilizer that any of the provisions of this Act or the rules and

regulations issued thereunder have been violated, the _____ shall cause notice of the violations to be given to the registrant, distributor, or possessor from whom said sample was taken; any person so notified shall be given opportunity to be heard under such rules and regulations as may be prescribed by the _____. If it appears after such hearing, either in the presence or absence of the person so notified, that any of the provisions of this Act or rules and regulations issued thereunder have been violated, the _____ may certify the facts to the proper prosecuting attorney.

- (b) Any person convicted of violating any provision of this Act or the rules and regulations issued thereunder shall be punished in the discretion of the court.
- (c) Nothing in this Act shall be construed as requiring the _____ or his representative to report for prosecution or for the institution of seizure proceedings as a result of minor violations of the Act when he believes that the public interests will be best served by a suitable notice of warning in writing.
- (d) It shall be the duty of each _____ attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.
- (e) The _____ is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this Act or any rule or regulation promulgated under the Act notwithstanding the existence of other remedies at law. Said injunction to be issued without bond.

Section 21. Exchanges between Manufacturers.

Nothing in this Act shall be construed to restrict or avoid sales or exchanges of commercial fertilizers to each other by importers, manufacturers, or manipulators who mix fertilizer materials for sale or as preventing the free and unrestricted shipments of commercial fertilizer to manufacturers or manipulators who have registered their brands as required by the provisions of this Act.

Section 22. Constitutionality.

If any clause, sentence, paragraph, or part of this Act shall for any reason be judged invalid by any court of competent jurisdiction, such judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgement shall have been rendered.

Section 23. Repeal.

All laws and parts of laws in conflict with or inconsistent with the provisions of this Act are hereby repealed.

Section 24. Effective Date.

This Act shall take effect and be in force from and after the first day of _____.

PROPOSED REGULATION**For Adoption under State Fertilizer Laws**

Additional Plant Nutrients, besides nitrogen, phosphorus and potassium, when mentioned or claimed on the label or container shall be registered and shall be guaranteed. Guarantees shall be made on the elemental basis. Sources of the elements guaranteed shall be shown on the application for registration. When claims for such nutrients are made on the label, container, or application for registration, the minimum percentages which will be accepted for registration are as follows:

Element	%
Calcium (Ca)	1.00
Magnesium (Mg)	0.50
Sulfur (S)	1.00
Boron (B)	0.02
Chlorine (Cl)	0.10
Cobalt (Co)	0.0005
Copper (Cu)	0.05
Iron (Fe)	0.10
Manganese (Mn)	0.05
Molybdenum (Mo)	0.0005
Sodium (Na)	0.10
Zinc (Zn)	0.05

Guarantees or claims for the above-listed additional plant nutrients are the only ones which will be accepted. Proposed labels and directions for use of the fertilizer shall be furnished with the application for registration upon request. Warning or caution statements are required on the label for any product which contains 0.03% or more of boron in a water-soluble form or 0.001% or more of molybdenum. Any of the above-listed elements which are guaranteed shall appear in the order listed, immediately following guarantees for the primary nutrients, nitrogen, phosphorus and potassium.

APPENDIX C

ASSOCIATION OF
AMERICAN FERTILIZER CONTROL OFFICIALS

OFFICE OF SECRETARY-TREASURER

DRAWER 312, CLEMON, S. C.

March 5, 1963

MEMORANDUM TO: All Fertilizer Control Officials and Mr. Paul T. Truitt, President,
National Plant Food Institute

FROM:

B. D. Cloaninger, Secretary-Treasurer

B. D. Cloaninger

PROGRESS REPORT and ACTION BY AAFCO

For

SPECIALTY FERTILIZER LABELS

The following information, if not appearing on the face or display side in a readable and conspicuous form, shall occupy at least the upper-third of a side of the container.

Line No.

- | | | |
|--------|--|---|
| 1. | Net Weight | |
| 2. (a) | Brand Name | |
| 2. (b) | Grade | |
| 3. | Guaranteed Analysis: | |
| 4. | Total Nitrogen (N)----- | % |
| 5. | %Ammoniacal Nitrogen** | |
| 6. | %Nitrate Nitrogen** | |
| 7. | %Water Insoluble Nitrogen* | |
| 8. | Available Phosphoric Acid (P ₂ O ₅)----- | % |
| XXXX | | |
| 10. | Soluble Potash (K ₂ O)----- | % |
| 11. | Additional Plant Nutrients, if claimed, and in order and with minimum percentage as in proposed regulation by the AAFCO Publication #15 dated October 1961, Page 93. (See Publication No. 16, Page 72) | |
| 12. | **Potential Acidity or Basicity_____ % or _____ lbs. | |
| | Calcium Carbonate Equivalent per ton. | |
| 13. | Name and address of registrant | |

Notes:

* If claimed or the statement "organic" or "slow acting nitrogen" is used on the label

** If claimed or required

Following is a list of the 44 states which have approved the label as set forth:
Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas*, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming, also Colorado* and North Carolina *

* See Note

Alabama: In addition to the requirements set forth in lines 1 to 13, inclusive, Alabama would require the following: (a) The sources and amounts within 10% of each material furnishing nitrogen (organic and inorganic), available phosphoric acid, and soluble potash; (b) The sources and within 10% of the amount of the filler if the filler is not a material of known or recognized plant food value; (c) The total pounds of available plant food.

Editor's Note: Alabama is most cooperative and hopes to amend their fertilizer law during the legislative session of 1963, whereby their specialty labeling will be in conformity to other states. Essentially the main differences are that the sources are required. Another line would be required to show the water soluble nitrogen.

Florida: "Line 2. Grade not required with brand name. Line 7. Also require Water Soluble Nitrogen Guarantee. Line 9. Do not require Total Phosphoric Acid Guarantee but do require Insol. Guar. Line 12. Do not require. Line 11. Cannot use AAFCO regulation in regards to additional Plant Foods. We do not have a designation of 'Specialty Fertilizer' in our law."

Georgia: "Lines 4, 8, 10 - The Georgia law requires that sources be shown. No. 7 - The Georgia Law requires, if the fertilizer is labeled organic, 25% of the Nitrogen must be from organic sources. No. 12 - Not desired, but would be acceptable with this showing." Amendment now being made to law to alleviate source for spec. (Jan. '63)

*North Carolina: "Line 2 (a) Name of crop for which sold should be specified; however, brand names such as "Doe's Rose Food" are acceptable. Line 2 (a) and 2 (b), Sizes of Numerals Specified: Not less than 2 inches in height for containers of 100 pounds or more; not less than 1 inch for containers of 50 to 99 pounds; and not less than 1/2 inch for packages of less than 50 pounds. Line 7, Water insoluble from animal or vegetable sources. If from (urea-formaldehyde) that should be stated parenthetically, adjacent to the declaration. Line 12, either percentage or pounds acceptable. One is required. Line 11 Ca or CaO, Mg or MgO, S, B as $\text{Na}_2\text{B}_4\text{O}_7 \cdot 10\text{H}_2\text{O}$, Cl., Cu, Fe, Mn, Na, Zn, Mo permitted but no limits at present!"

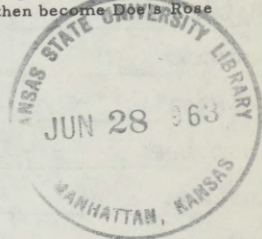
Oregon: "Line 4, 8, 10, Sources of NPK required."

Michigan: Requires "Minimum" before "Guaranteed Analysis."

* Texas: "If product is identified as organic or organic base the % of nitrogen supplied by the natural organic material must be 10% of the total nitrogen. The natural organic material must be identified.

"In lieu of the above (without an insoluble nitrogen guarantee) the name and % by weight of the natural organic material must be stated on label, if organic or organic base is used as part of the label (organic, organic base, and/or natural organic material does not include urea or cyanamids)."

*Colorado: "For Specialty Fertilizers, the use for which intended must be shown. A brand name, however, such as Doe's Rose Food, Doe's Bulb Food, or Doe's Fish Pond Fertilizer is acceptable. If micro nutrients are guaranteed, the product would also have to be registered as a soil amendment. The brand name would then become Doe's Rose Food and Soil Amendment."



March 6, 1963---- States who have approved Specialty Label

ALABAMA	(See Note)	NEBRASKA	X
ALASKA	X	NEVADA	X
ARIZONA	X	NEW HAMPSHIRE	X
ARKANSAS	X	NEW JERSEY	X
CALIFORNIA	X	NEW MEXICO	X
COLORADO	X See Note	NEW YORK	X
CONNECTICUT	X	NORTH CAROLINA	X (See Note)
DELAWARE	X	NORTH DAKOTA	X
FLORIDA	See Note	OHIO	X
GEORGIA	See Note	OKLAHOMA	X
IDAHO	X	OREGON	See Note
ILLINOIS	X	PENNSYLVANIA	X
INDIANA	X	RHODE ISLAND	X
IOWA	X	SOUTH CAROLINA	X
KANSAS	X	SOUTH DAKOTA	X
KENTUCKY	X	TENNESSEE	X
LOUISIANA	X	TEXAS	X (See Note)
MAINE	X	UTAH	X
MARYLAND	X	VERMONT	X
MASSACHUSETTS	X	VIRGINIA	X
MICHIGAN	See Note	WASHINGTON	X
MINNESOTA	X	WEST VIRGINIA	X
MISSISSIPPI	X	WISCONSIN	X
MISSOURI	X	WYOMING	X
MONTANA	X	CANADA	
		PUERTO RICO	

APPENDIX D

ASSOCIATION OF
AMERICAN FERTILIZER CONTROL OFFICIALS

OFFICE OF SECRETARY-TREASURER

DRAWER 392, CLEMSON, S. C.

APR 3 1963

TO WHOM IT MAY CONCERN:

The following data is being submitted as information and/or for the record:

I am, Bruce D. Cloaninger, Post Office Drawer 392, Clemson, South Carolina, Secretary-Treasurer of the Association of American Fertilizer Control Officials, having served in that capacity since 1948. I have been Director of the Department of Fertilizer Inspection and Analysis of the Clemson Agricultural College since November 1, 1937. Prior to that time, I was serving as an Assistant County Agricultural Agent. I am a graduate of Clemson College, Class of '32, with both a B. S. and an M. S. Degree in agronomy.

"The object of the Association shall be to promote uniform and effective legislation, definitions, rulings and enforcement of laws relating to the control of sale and distribution of mixed fertilizers and fertilizer materials in the Continent of North America. The membership of the Association shall consist of:

- (1) The officers charged by law with the active execution of the laws regulating the sale of commercial fertilizer and fertilizer materials.
- (2) Such deputies as shall be duly designated by the officials named and under (1) of this Section.
- (3) Research workers employed by State, Dominion, or Federal agencies who are engaged in the investigation of fertilizers."

Realizing the necessity of uniform legislation relative to the manufacture, sale and distribution of commercial fertilizers throughout the United States, the Association of American Fertilizer Control Officials promulgated in 1946 a draft of a Model Bill which was to be used as a guide by states changing their fertilizer laws. To date, 32 states have modeled their fertilizer laws after the AAFCO Model Bill. Each year, the Bill is reviewed carefully and up-dated in every respect. This is necessary, due to the number of new products entering the market. It is noted from the Model Bill attached hereto that a definite format is prescribed for labeling, registrations, inspection, maintaining of records and publishing usage data, analytical tolerances and penalties for deficiencies in analysis and short weights.

Realizing that the labeling of Specialty Fertilizers - those used on non-commercial crops - was apparently a problem for some manufacturers, the Association appointed an appropriate committee, and as a result of two years of strenuous work, 44 states have approved a National Format for Specialty Fertilizers. The other 6 states have minor objections, which we believe will be removed within the very near future, either by regulation or state legislation. Approximately 10% of the 23 million tons of fertilizer used in the United States is sold as specialty fertilizer.

All fertilizer Control Officials are abreast of marketing through national accounts and are equally aware of their responsibilities to the legitimate manufacturers and the ultimate consumers.

The Association is composed of well-trained, dedicated public officials, who are most desirous of supporting an excellent fertility program, with minimum handicaps or interferences from outsiders. There is no doubt in the mind of the undersigned that in the very near future the Uniform Label Format will be approved by all 50 states in the Union.

Bruce D. Cloaninger
Secretary-Treasurer
Association of American Fertilizer
Control Officials

State of South Carolina
County of Oconee

On this 7th Day of April, 1963, personally appeared before me, the said
named Bruce D. Cloaninger, who made oath that the foregoing statements are
true.

Bess Hance Rogers
Notary Public for South Carolina

My commission expires at the pleasure of the Governor

Mr. COHEN. It may also be of interest to Mr. Conner that in the last few days we have received a rash of letters from the various State officials stating the same thing.

Mr. CONNER. I understand that the National Association of Fertilizer Control Officials did write to the various regulatory officials advising them that fertilizer might be construed to come within this bill and I imagine that letter is in response to letters from these officials.

Mr. COHEN. You may tell them their efforts have not been in vain.

Mr. CONNER. Fine.

Senator HART. Mr. Chumbris?

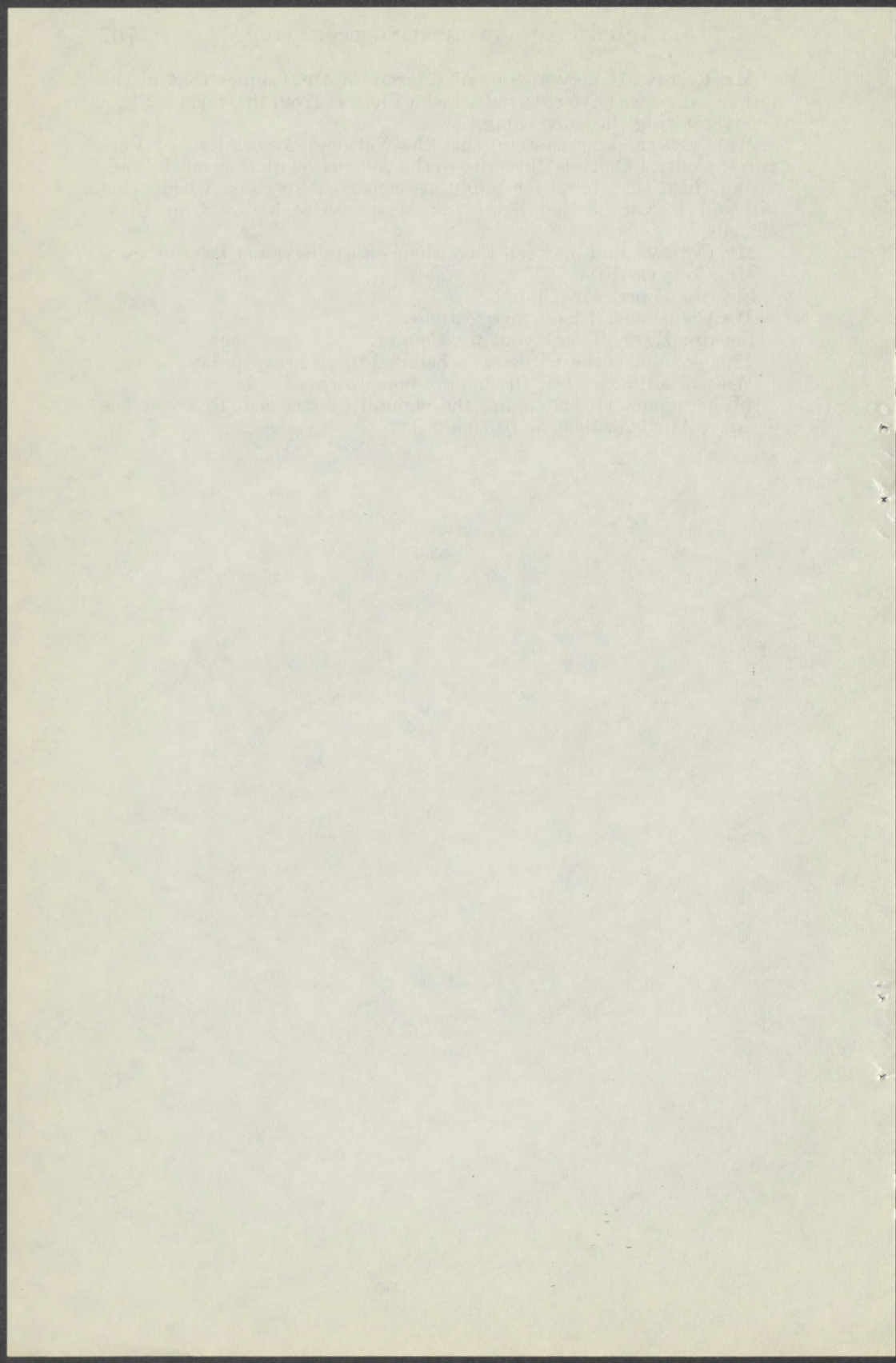
Mr. CHUMBRIS. I have no questions.

Senator HART. Thank you, Mr. Conner.

This concludes the witnesses scheduled to be heard today.

We will adjourn until 10:30 a.m. tomorrow.

(Whereupon, at 4:25 p.m., the committee recessed, to reconvene Friday, April 26, 1963, at 10:30 a.m.)



PACKAGING AND LABELING LEGISLATION

FRIDAY, APRIL 26, 1963

U.S. SENATE,
SUBCOMMITTEE ON ANTITRUST AND MONOPOLY
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:30 a.m. in room 2226, New Senate Office Building, Senator Philip A. Hart presiding.

Present: Senators Hart and Keating.

Also present: Senator Curtis of Nebraska.

Also present: S. Jerry Cohen, assistant counsel; George E. Clifford, assistant counsel; Peter N. Chumbris, counsel for the minority; Ronald D. Raitt, counsel for the minority; Paul S. Green, editorial director; and Gladys E. Montier, clerk.

Senator HART. The committee will be in order.

Our first witness today, speaking for the U.S. Chamber of Commerce, will be Mr. Frederick M. Rowe. I would like the record to indicate Senator Dirksen's regret, and the additional comment that Mr. Chumbris, minority counsel, may offer at this point.

Mr. CHUMBRIS. Thank you, Mr. Chairman.

On behalf of Senator Dirksen, Mr. Chairman, who is at a conference this morning, and could not be here, he would like to have been here to introduce Mr. Frederick M. Rowe, whom he knows very well. Mr. Rowe is one of the most knowledgeable and articulate attorneys who have graced the witness chair in hearings before the Senate Antitrust and Monopoly Subcommittee for the last 8 or 9 years, that I have had the pleasure of hearing on many proposed legislative matters and investigative matters.

Mr. Rowe is a partner in Kirkland, Ellis, Hodson, Chaffetz & Masters, of Washington, D.C., and Chicago, Ill.

He was formerly a law clerk with Supreme Court Justice Thomas C. Clark, 1952 to 1953; conferee on antitrust policy in distribution, Attorney General's National Committee To Study the Antitrust Laws, 1953-55; chairman, Committee on the Clayton Act of the Antitrust Section of the American Bar Association; author of numerous articles on antitrust and pricing problems in legal journals and symposia; and he is the author of a book "Price Discrimination Under the Robinson-Patman Act," published by Little, Brown, 1962.

It is a pleasure, Mr. Rowe, to have you appear this morning.

Mr. ROWE. Thank you very much, Mr. Chairman.

I appreciate your gracious observation, Mr. Chumbris on behalf of Senator Dirksen.

Senator HART. I don't know how my comment sounded when I turned this over to Mr. Chumbris. No one has told me that it sounded strange. I said Senator Dirksen regrets but I didn't say exactly what he regretted, aside from the introduction of this bill. I wanted to say that it would have been his hope, as Mr. Chumbris indicated, that he couldn't himself be here to present Mr. Rowe.

Mr. ROWE. Thank you, Senator.

I would like at the same time to introduce, if I may, Mr. Hamilton Davis, who is accompanying me; Mr. Davis is manager of the Manufacturer and Distribution Committee of the U.S. Chamber of Commerce.

STATEMENT OF FREDERICK M. ROWE, ATTORNEY FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES, WASHINGTON, D.C.; ACCOMPANIED BY HILTON DAVIS, MANAGER, MANUFACTURER AND DISTRIBUTION COMMITTEE

Mr. ROWE. Mr. Chairman, I am privileged, as per your introduction, to appear here today on behalf of the U.S. Chamber of Commerce, the world's largest business federation.

I am a member of the chamber's manufacture-distribution committee, and my law firm is a member of the chamber of commerce.

I appreciate this opportunity to appear on behalf of the national chamber and to present its views on S. 387, the so-called truth-in-packaging bill.

I may say I am slightly apologetic about the packaging of the chamber's statement because of the small print which I trust does not complicate your following the statement. I have no doubts as to its truthfulness; I know the vignettes on the cover are accurate and I hope there is no "slack fill" in the statement which I am about to present.

Truthfulness, whether in the marketplace or any other realm of human affairs, is certainly among the worthiest of goals. The stand which the chamber is taking against this bill, therefore, should not be understood in any sense as reflecting opposition to truth in packaging or in any other phase of the marketing process. We would be the first to agree that truth should be vigorously encouraged in the distribution and sale of all goods, including those covered by this bill and those which are not.

However, the chamber emphatically believes that S. 387 is neither necessary nor desirable to accomplish the objective of truthfulness in packaging and labeling practices, and we therefore recommend strongly against its enactment.

In sum, we believe, first, that existing law is adequate to cope with and deceptive and dishonest practices in packaging and labeling, and, second, that the cure proposed by this bill could be worse than the disease.

Under the first of these two major points, I would like to explain how present statutory powers of the Federal Trade Commission (FTC) and the Food and Drug Administration (FDA), if effectively enforced, can curb the deceptive practices in packaging and labeling said to necessitate this bill.

Hence, if deceptive practices are in fact going unchecked, the proper remedy is better enforcement of existing laws, not new and complicated legislation.

The second main point—that the bill could do more harm than good—will be developed, if I may, by showing that—

(1) The bill, if enacted, could impugn existing agency powers to combat deceptive practices in areas not encompassed by the bill;

(2) Formulation of the detailed regulations contemplated by the bill is no panacea, but would give rise to an expensive and time-consuming process, spawning years of litigation;

(3) Regulations established under the bill would inevitably encounter numerous conflicts or alleged conflicts with State laws and regulations, requiring litigation to resolve, possibly displacing State laws, and discouraging the States from acting in the area of packaging and labeling; and

(4) The detailed regimentation and standardization of packaging and labeling which the bill encourages is foreign to our dynamic economic system, and would frustrate rather than foster the effective competition envisaged by the antitrust laws.

One additional point, which I believe deserves emphasis at the outset, is that this bill appears distinctly out of place in the Clayton Antitrust Act. As one of our two basic antitrust statutes, the Clayton Act is an integral part of a common legislative framework designed to preserve and promote competition.

This bill, which would authorize elaborate governmental dictation and standardization of packaging and labeling, is the direct antithesis of the antitrust laws' aim to foster dynamic diversity.

Since the bill is "anti-antitrust" or at least "non-antitrust" legislation, its alien presence in the Clayton Act can only foment confusion confounding the interpretation and enforcement of the bill's provisions in its statutory context.¹

I may say at this point that certainly the Food and Drug enforcement of the antitrust laws as contemplated by this bill is a bizarre innovation—which is emphasized by Chairman Dixon's position as articulated before this subcommittee that the Federal Trade Commission rather than the Food and Drug Administration should be charged with the enforcement of the prohibitions which the bill would enact.

As a matter of fact, Chairman Dixon characterized the division of responsibility between Food and Drug and of the Federal Trade Commission enacted by the bill as "anomalous" which could "result in confusion" and hence argued strongly for the Federal Trade Commission's jurisdiction to enforce the bill rather than the Food and Drug Administration.

This leads directly to our first main point, that present provisions of the Food and Drug laws and the Federal Trade Commission Act are adequate, and hence that the proposed bill is unnecessary.

The stated purpose of S. 387 is to prohibit—

the use of unfair and deceptive methods of packaging or labeling certain consumer commodities * * *

¹ Actually, FDA Commissioner Larrick, whose agency would be vested with wider enforcement powers by this "antitrust" bill, has frankly conceded before this committee that "On the antitrust law I am completely uninformed." (1963 hearings, p. 882.)

To this declared end, the bill would require the Food and Drug Administration and Federal Trade Commission to promulgate certain packaging and labeling regulations which the bill considers to be essential, and it would authorize those agencies to promulgate certain other regulations on a discretionary basis.

However, an examination of existing statutory provisions reveals that the FDA and FTC already have ample power to control or eliminate the deceptive practices with which the bill is concerned.

The Food, Drug, and Cosmetic Act of 1938 prohibits labeling that is "false or misleading in any particular"; prohibits the use of any container that "is so made, formed, or filled as to be misleading"; requires labeling to show "an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count"; and provides that all information required by law to appear on the label must be "prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use."

Section 5 of the FTC Act, as amended in 1938, prohibits "unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce." This broad provision covers all unfair or deceptive advertising, packaging and labeling practices relating to all products in commerce.²

The broadness and flexibility of these statutory provisions should be a source of strength, not weakness, in their enforcement by the FTC and the Food and Drug Administration. As the Supreme Court has pointed out, in interpreting the Federal Trade Commission Act, "there is no limit to human inventiveness in this field,"³ and it would be an "endless task" for Congress to frame precise definitions of unfair or deceptive acts and practices which "would not fit tomorrow's new inventions in the field."⁴

The adequacy of existing enforcement powers to curb deceptive packaging and labeling is highlighted by recent FDA and FTC actions concerning the practice of "slack filling" which has received extensive mention in testimony before this subcommittee.

In the *Delson Mint* case,⁵ which has been discussed by a number of witnesses, the Third Circuit Court of Appeals established the principle that when the FDA shows a manufacturer has deceptively used a nontransparent package or container which is not full, the burden is upon the manufacturer to justify the slack filling by proving that it was required by considerations of product protection and that no less deceptive alternative was available.

This holding was praised in the hearings before this committee last year, by FDA Commissioner Larrick as "a most reasonable rule."⁶

² However, under a voluntary working agreement made in 1954 between the Department of Health, Education, and Welfare and the FTC, primary responsibility with respect to packaging and labeling of foods, drugs, devices, and cosmetics is exercised by the FDA, as a matter of comity, leaving primary responsibility for preventing unfair or deceptive packaging and labeling of all other commodities in commerce with the FTC.

³ *FTC v. R. F. Keppel & Bro., Inc.*, 291 U.S. 304, 312 (1934).

⁴ *FTC v. Cement Institute*, 333 U.S. 683, 698 (1948).

⁵ *United States v. 174 Cases of Delson Thin Mints*, 287 F. 2d 246 (3d Cir. 1961). Subsequent phases of the case, in which Delson ultimately won on the facts, are reported at 195 F. Supp. 326 (D.N.J. 1961), aff'd., 302 F. 2d 725 (3d Cir. 1962).

⁶ 1962 hearings, p. 801.

And Mr. Goodrich, counsel of the FDA, on the same occasion, stated that:

I do not think we can improve on that rule announced by the Court of Appeals that the burden is on the person who is using the deceptive container to justify it in terms of reasonable need. (1962 hearings, p. 805.)

In a recent editorial note the editors of the Yale Law Journal also agreed that the *Delson* rule—

appears to offer adequate scope for a balanced treatment of conflicting consumer interests and to provide an effective means for regulating the use of slack-filled packages.⁷

I would like to interpolate that in connection with the *Delson Mint* case, there have been quite a few observations on the record of this subcommittee's hearings to the effect that this case is an impediment to the effective enforcement of the Food and Drug Act and that the *Delson Mint* case shows the need for further legislation.

If the committee please, I believe the decision of the court of appeals in context, plus the comments of the officials by the Food and Drug Administration made before the subcommittee in their testimony, indicate not that the *Delson Mint* case creates a need for legislation but demonstratess precisely the contrary, since Mr. Goodrich commented that the rule of the *Delson* case could not be improved upon, and so even if the bill were enacted, the rule promulgated by the Food and Drug Administration presumably would not improve on the *Delson Mint* case and the same result that was reached in the case under existing law would presumably be reached if the law were amended as proposed by S. 387.

The second ruling is the very recent FTC initial decision in the *Papercraft* case on April 17, 1963. The *Papercraft* decision applied section 5 of the FTC Act against a manufacturer of gift wrapping paper in cardboard display boxes which contained about 2 inches of concealed empty space at each end.

In accord with prior FTC rulings, the examiner condemned the boxes as—

false, misleading, and deceptive to prospective purchasers with relation to the visually apparent width and thereby the quantity content of the gift wrapping papers enclosed in such boxes.⁸

Particularly significant, in my opinion, as to the broad enforcement powers of the FTC is the order in the *Papercraft* case. The order prohibits the respondent firm, with respect to "gift wrapping or other products in commerce," from—

representing, directly or indirectly, by the device of slack-filling or by any means or other manner of packaging which gives the appearance, states, or implies that the products therein are larger in size, such as width, length, area, weight, thickness, or quantity than is the actual fact.

Thus, the *Delson* and *Papercraft* rulings illustrate the wide range of remedies available to the enforcement agencies under existing law. It is also significant with respect to the Federal Trade Commission's order in the *Papercraft* case that it not only aims at the particular

⁷ Note, "Federal Regulation of Deceptive Packaging: The Relevance of Technological Justifications," 72 Yale L. J. 788, 797 (1963).

⁸ Actually, papercraft had voluntarily abandoned the challenged practices when questioned by the FTC, and was vindicated by the Examiner on another phase of its challenged packaging techniques.

product involved such as in a Food and Drug in rem proceeding, but enjoins the respondent from any other comparable violations with respect to any other product and hence goes beyond the remedial powers which the Food and Drug Administration would and could employ in a comparable context.

Another deceptive practice that has received considerable attention and criticism in these hearings is the printing on the label of an untrue statement to the effect that the product is offered for sale at a certain number of cents off the regular retail price.

Again, present statutory powers are fully adequate to control this practice. The FTC's so-called "preticketing" cases have repeatedly barred false representations on labels that the product is offered for sale at a price lower than the regular and usual retail sale price.⁹

Also, the FTC's Guides Against Deceptive Pricing provide expressly that "No article should be preticketed with any price figure, either alone or with descriptive terminology, which exceeds the price at which the article is usually and customarily sold in the trade area, or areas, where the preticketed article is offered for sale."¹⁰ orders which expressly require specific affirmative disclosure of the approved by the courts—

Senator KEATING. Can I interrupt there, Mr. Chairman?

Mr. ROWE. Yes, Senator Keating.

Senator KEATING. You see preticketed items all the time in the stores. Printed right on the box is the legend, "10 cents off" or "8 cents off."

Now, your point is that if that is untrue then there is a remedy under existing law; is that right?

Mr. ROWE. That is correct, Senator Keating, both under—

Senator KEATING. But there are circumstances, aren't there, where it would not be true even if the items come right out of the factory with that mark on them that way?

Mr. ROWE. It would not be—

Senator KEATING. What is the established price?

Mr. ROWE. It would be accurate, Senator Keating, as, for example, with the Time magazine which comes off the printing presses with a cover showing 25 cents, I believe it is, and if the news dealer sells Time magazine for 25 cents that prepricing, that prelabeling of Time magazine is accurate in the same fashion as if a toothpaste manufacturer had on his box of toothpaste crossed out 40 cents and printed thereon 25 cents, if the toothpaste were previously sold at 40 cents, and was in fact reduced to 25 cents. That would be an accurate representation.

⁹ In one type of preticketing case, the manufacturer may place on the label or package a fictitiously high price, such as \$5, well knowing that the actual retail price of the product in the market is only \$2. The retailer then may place an X over the \$5 and write in \$2 beneath it, thus leading the purchaser to believe that he is realizing a saving of \$3.

¹⁰ The guides also state that "(a) Those who disseminate preticketed price figures for use in connection with the offering for sale of articles at retail by others (even though they themselves are not engaged in retail sales) are chargeable if the price figures do not meet the standard set forth in this guide. (As such, they are chargeable with knowing the 'facts of life' concerning what happens to articles for which they furnished preticketed prices. One who puts into the hands of others a means or instrumentality by which they may mislead the public, is himself guilty of deception." These FTC guides are now being revised by the FTC to provide more detailed controls. See FTC news release, Apr. 23, 1963, announcing public hearings for this purpose to be held on June 10, 1963.

Senator KEATING. In other words, if it had ever been sold at the higher figure it would be true and accurate to cross that out and have printed right on the package or label that this is so many cents off; is that correct?

Mr. ROWE. I would not go so far as to say, Senator, at any time. I would say at any time in the reasonable past, because if it were years ago that the other price prevailed the crossing out of that price and the substitution of another price might still possibly be deceptive. But it is correct, Senator, that if there is no preexisting recent price, then the labeling of such a price would be deceptive, and could be outlawed by the Federal Trade Commission and by the Food and Drug Administration under their existing statutes.

The problem, Senator, is that the proposal, S. 387, however, would outlaw such price "cents off" labeling regardless of the accuracy, and so it would outlaw even an actual true representation of a bargain price which was made available by the manufacturer to the consuming public.

Since the FTC's actions against false price representation have been approved by the courts,¹¹ no reason appears why these powers cannot prohibit deceptive or fictitious "cents off" claims on labels for all products—either under section 5 of the FTC Act or under the provision of the Food, Drug, and Cosmetic Act which prohibits any labeling that is "false or misleading in any particular." (See 403(a).)

In short, the existing statutes as construed by the courts are sufficiently broad and flexible to prevent deception in pricing statements placed on labels by manufacturers, but at the same time to permit price statements which are accurate and fair.

This flexible approach, which permits truthful claims, is surely preferable to the provision of S. 387 which would compel an absolute prohibition on "cents off" labeling regardless of its accuracy,¹² (Sec. 3A(c)(4).)

Likewise, existing powers of the FTC and FDA appear fully adequate to deal with any other deceptive practice in packaging and labeling—if matched by alert and energetic enforcement. FTC Chairman Paul Rand Dixon has declared, with respect to section 5 of the FTC Act, that

I believe that this weapon is all that is necessary to protect competition and the consumer if the Commission and the courts are as ingenious as offenders.¹³

The sweeping prohibitions of the cease and desist order in the *Papercraft* case, barring any method of deceptive slack-filling with respect to any product is indicative of the severe restrictions which may be imposed by the FTC. And while the FTC has not yet issued

¹¹ See, for example, *Baltimore Luggage Co. v. FTC*, 296 F. 2d 608 (4th cir. 1961); *Clinton Watch Co. v. FTC*, 291 F. 2d 838 (7th cir. 1961).

¹² The argument that an absolute ban on "cents off" and other like markings is essential to prevent deception, inasmuch as manufacturers assertedly cannot control the retail price at which their products are actually sold, overlooks the fair trade laws now in force in many States which authorize manufacturers to establish and enforce the retail prices at which their goods may be resold.

¹³ Speech on "FTC Policies and Actions," at the association forum during the national chamber's 49th annual meeting, Apr. 30–May 3, 1961.

orders which expressly require specific affirmative disclosure of the contents of packages, Chairman Dixon has in that connection stated:

There can be no doubt that the Commission's general powers under existing law would authorize it to issue such (cease and desist) orders when false or misleading packaging or labeling result in consumer deception.¹⁴

FTC Commissioner MacIntyre has also confirmed:

* * * Full implementation of this authority of the Commission to prevent deception by requiring affirmative disclosures may obviate the need for a multiplicity of labeling or packaging laws or laws seeking to provide further protection to the public in the sale of particular commodities. The argument might be made that if the practice is deceptive, let the Commission correct it under present law. If no deception is involved, then it may be the practice is not of sufficient importance from the public interest standpoint to warrant its being given further attention.¹⁵

Similarly, Commissioner Larrick of the FDA pointed out in the 1962 hearings before this subcommittee that the present Food, Drug, and Cosmetic Act already calls for truth in packaging, and that it—

has provisions designed to inform the consumer about the food in the package and thus permit her to make intelligent selections at the marketplace.¹⁶

Commissioner Larrick also added that the FDA has used its appropriations in the past for public health and sanitation matters, and had little time or resources left to devote to packaging and labeling problems for a number of years.¹⁷

He stated that more money would "let us do a real job" on these problems.¹⁸

FTC Chairman Dixon's frank concession before this subcommittee on March 20 exposed the heart of the matter. He said, and I quote:

I think that both Food and Drug and the Federal Trade Commission had responsibility in this area, and I don't think the record is very good by either agency on what we have done in this area.¹⁹

You will note, sir, that Mr. Dixon is not complaining about the existing law or the adequacy of the existing law, but is conceding that the enforcement of the existing statutes has left something to be desired.

The point is that more vigorous and imaginative enforcement of present laws, rather than enactment of complex new legislation, is the remedy for any deceptive practices which prevail. New legislation is neither a panacea nor substitute for inert and unimaginative enforcement of existing law.

Moreover, if, as S. 387 seems to presuppose, there is a critical need for more specific rules and regulations in order to spell out and clarify the prohibited unfair or deceptive packaging and labeling practices which are said to be going unchecked under present law, there is no reason why more specific rules or guides, insofar as necessary, cannot

¹⁴ 1962 hearings, p. 825.

¹⁵ Speech on "Fair Advertising Landmarks," at a meeting of the food, drug, and cosmetic law section of New York State Bar Association, Jan. 22, 1963.

¹⁶ 1962 hearings, p. 797.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ 1963 hearings, p. 682.

be formulated under existing agency powers. An FTC statement in 1952 said of the trade practice conference procedure that this—

procedure is the simplest and most economical method yet devised for the elimination and prevention, on an industrywide basis and in the public interest, of certain trade evils which concern the Commission.²⁰

Today, FTC trade practice conference rules are in effect for 168 industries,²¹ and FTC Commissioner Everette MacIntyre has stated that—

the trade practice conference procedure has been used increasingly in industry after industry to afford guidance to members in new industries or where practices deemed violative of acts administered by the Commission were in the initial stages.²²

Apart from our first position, therefore, that the bill is not necessary to cure evils which can be reached under the existing statutory powers of FTC and Food and Drug, if properly enforced, our second major objection is that this bill, if enacted, would create a host of new problems and inequities not now present.

Our first point in this connection is that enactment of the bill could impugn and curtail existing agency powers to combat deceptive practices.

As I have previously detailed, present statutory authority of these agencies is quite broad in scope. It extends not only to the consumer commodities covered by S. 387, but also to all of those products which are excluded from the coverage of the bill. This is particularly true with the present reach of section 5 of the FTC Act over all products involved in—

unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce.

This bill, however, would enact particular remedial authorizations in a much narrower field by excluding a wide range of products expressly or by implication.²³

In view of the extensive and detailed hearings by this committee over a 3-year period, to consider abuses affecting the merchandising of products, and in view of the basic premise of the bill and repeated assertions that no remedial powers presently exist, the legislative grant of the limited powers in S. 387 could well impugn existing remedial powers.

One of the cardinal rules of statutory construction is "*expressio unius est exclusio alterius*," or, that things not specifically included in a statute are presumed to have been excluded by the legislature. The

²⁰ FTC statement, "Cosmetic and Toilet Preparations Industry Rule," Feb. 1, 1952.

²¹ A sample provision from the trade practice rules for the tomato paste manufacturing industry states: "The practice of selling, packaging, advertising, or representing tomato paste or related products * * * in a manner which is calculated to mislead or deceive or has the tendency and capacity or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public with respect to the character, nature, content, grade, quality, quantity, origin, substance, material, preparation, or manufacture of such products, or in any other material respect, is an unfair trade practice."

²² Address before winter conference of the American Marketing Association, New York City, Dec. 27, 1961, p. 16.

On the part of the FDA, secs. 401 and 701 of the Food, Drug, and Cosmetic Act also confer broad rulemaking powers, which would be more widely employed in appropriate cases. See testimony of William W. Goodrich, FDA Counsel, 1962 hearings, pp. 806-807; and cf. *Security Administrator v. Quaker Oats Co.*, 318 U.S. 218, 227-228 (1943).

²³ For example, sec. 3A(k)(1)(C) exempts from the coverage of the bill "any household appliance, equipment, furniture, furnishing, or other durable article or commodity." Also, numerous packaged or labeled goods retailed today might fall outside the general definition of "consumer commodity" in sec. 3A(k)(1).

upshot would be that existing remedial powers covering all excluded products could be curtailed by implication.

Let me give some examples, if I may.

If there is no power at the present time to prevent a deceptive or fictitious "cents-off" representation on the label of a box of detergent, as S. 387 presupposes and as has been asserted in these hearings, it follows that such power also does not exist under present law with regard to "durable articles" such as wristwatches and wedding rings. The examples could be multiplied. Thus, it can be seen how present agency powers to prevent unfairness and deception in the sale of numerous commodities not covered by this bill could be impaired by S. 387 in light of the representations and premises said to necessitate its enactment.

Senator KEATING. Of course, I might interpolate here that the argument you are making could be used to justify extending the bill as well as narrowing it. The argument cuts both ways; perhaps the bill should be extended to wristwatches and other durables of the sort you just mentioned.

Mr. ROWE. Our position is, Senator, that would not be an extension because the existing law as interpreted by the Federal Trade Commission already covers wristwatches and wedding rings insofar as there is misleading price advertising.

Senator KEATING. Your point is, if you pass further legislation with regard to a packaged product like corn flakes or toothpaste that might raise a negative implication that the Congress did not intend to have the present law apply to wristwatches and items of that kind?

Mr. ROWE. That is correct, sir, and it might apply to any other items, automobiles, wristwatches, wedding bands, any other commodity by that same principle and I think Chairman Dixon himself at page 681 of the record of this subcommittee's hearings this year has indicated that some powers of the FTC would be narrowed by the bill. He referred to the case where the Commission proceeded against slack filling of packaged candy and indicated on page 681 of the hearings that these powers might be impugned by this legislation, and I may say Chairman Dixon's enthusiasm for this legislation has been smashingly restrained, as reflected in his testimony before this subcommittee.

Actually, it has been pointed out very specifically on the record of these hearings that there is now no remedy against false cents-off advertising and that is contrary, Senator Keating, to what I understand the Federal Trade Commission's precedents to hold.

Another example of this is that it has been asserted with great vigor in these hearings that the FTC—

Senator HART. You are raising a very sobering note and I think the record now ought to make very clear that there certainly is a remedy available, if you find a 6 cents-off package and detective work develops the case that it was in fact a fraudulent claim.

There is no doubt about that, is there?

Mr. ROWE. No doubt whatsoever.

Senator HART. Let's make it clear.

Mr. ROWE. Yes, and I would say the same detective work would be necessary even with the legislation because merely the passage of the act would not magically reform the cheat who wanted to engage

in a deceptive practice. He would still have to be proceeded against.

Senator HART. But it would magically shorten the process, wouldn't it?

Mr. ROWE. I doubt that very much, Senator, because the process would not be shortened by the mere statement that it is illegal. We already have that statement from the Federal Trade Commission.

A second objectionable feature of the bill is that formulation by the agencies of the detailed regulations required or authorized for a myriad of consumer commodities would not only be an expensive and time-consuming process, but could frustrate the aims sought to be achieved.

Much of the support for S. 387 appears to be based on the assumption that more detailed and specific regulations will automatically cure a host of deceptive practices, as such rules would quickly force everyone to fall into line. A related assumption is that the present lack of pertinent regulations has relegated the agencies to the slow and sometimes ineffectual "case-by-case" method of enforcement, which could be abandoned once the bill became law.

With all due respect, Senator, I believe such expectations are hardly realistic and are bound to become illusory in practice. If anything is obvious from the record of these hearings, it is the multitude and variety of consumer commodities included in the bill, and the wide panorama of packages, containers, and labels created by ingenious merchandisers.

Inevitably, much time and money would go into administrative selection, planning, and evaluation of industry viewpoints prior to the initial drafting of the multiplicitous regulations.

Once the regulations were framed, consideration would have to be accorded to the "exceptions" or "modifications" contemplated by sections 3A(c)(5) and (6), and (f)(3). Thereafter, the regulations might well be challenged before the courts at the instance of an aggrieved business firm.

Finally, after the rule received final judicial approval, a separate enforcement proceeding by the agency would be necessary to bring an individual violator to book, who might still further appeal to the courts from any judgment of individual liability.

Above all, the hearings confirm that the overwhelming majority of business firms are honest and law abiding, and that it is only a small fringe that is primarily responsible for any dishonest and deceptive practices in packaging and labeling.

The unscrupulous fringe operator, as I have said, will not be magically reformed by the promulgation of a rule. For him, a cumbersome rulemaking routine, necessarily followed by individual case proceedings, may only open up new avenues for litigation.

In short, under our legal system there is no escape from the "case-by-case" method, and to assume the contrary is a delusion. I might interpolate at this point that in the tax field we, of course, have rules and regulations galore and by the dozens and that certainly hasn't made tax prosecutions extinct and it certainly hasn't ensured everyone's compliance with the tax statutes.

I think it is also of interest to note at this point that both Chairman Dixon and Mr. Goodrich, counsel for the Food and Drug Adminis-

tration, have conceded on the record of these subcommittee hearings that notwithstanding the enactment of this bill, the case-by-case method of enforcement would still have to be followed.

In the same connection, I would like to mention that Senator Ribicoff, when he testified here stated that the passage of the bill would reduce bureaucracy, and would require fewer people in the enforcement agencies. In that connection, Mr. Dixon has stated that he would need additional personnel, and Commissioner Larrick has stated for the record that the bill would require the Food and Drug Administration to request additional appropriations of \$2½ million a year. And so my point in that connection, Senator, is that the bill would not automatically create reforms but, as confirmed by the officials of the enforcement agencies, would still require case-by-case enforcement and would require additional expenditures and appropriations in that connection.

Another undesirable aspect of S. 387 is that the regulations which it requires or authorizes would inevitably run into conflict with State laws and regulations concerning packaging and labeling.²⁴

Although the bill recites that it shall not be constructed to supersede any provisions of State law unless there is a "direct and positive conflict" (sec. 2A(d)), this provision will not prevent actual conflicts from arising. Rather, conflicts must inevitably arise from the detailed and specific regulations contemplated by the bill.

The resulting problems would not only foment lawsuits to resolve the conflicts, or even alleged conflicts, but would lead to decisions establishing the supremacy of the Federal regulations. This displacement or supercession of State laws and regulations found to be in conflict with Federal regulations would naturally discourage the States from acting further in the area of packaging and labeling.

It has, I believe, been recognized by Senator Hart on the transcript of the hearings in connection with the same problem raised by Mr. Ballantine of North Carolina that there is no intention to supersede State laws as they affect intrastate commerce.

However, the bill, as it presently reads would supersede and nullify such State laws.

Our final—

Senator HART. Where there is a direct conflict, you would want to add.

Mr. ROWE. Yes, sir, even where the State law is only governing local production for local distribution, which actually would not be reached by the bill if it were enacted in its present form.

Our final and most fundamental objection—

Senator KEATING. Is that true now? I have not had an ample opportunity to study this bill in great detail. I am a new member—a very new member—of this subcommittee. Does this bill cover goods sold exclusively in intrastate commerce, if you can conceive of any such items?

²⁴ California, for example, has enacted a very comprehensive code in this area, and elaborate regulations have been established thereunder. As noted in the testimony before this subcommittee in 1962 by Mr. William S. Bussey, Assistant Director of the Commerce Department's National Bureau of Standards, many of the States have enacted laws based on the model State law composed by the National Conference on Weights and Measures (1962 hearings, p. 841). These laws may prohibit deceptive or slack-filled packages, or may stipulate standard package sizes for such staple food items as bread, butter, oleo-margarine, milk, cream, flour, and cornmeal.

Senator HART. No.

Senator KEATING. I believe there are some. It is hard to think of any in wide distribution, but I understand from this witness that the bill is designed to cover goods in commerce within a single State.

Senator HART. Perhaps at this point counsel can read the section.

Mr. COHEN. This bill specifically states, Senator, that it shall not repeal, invalidate, supersede, or otherwise adversely affect any provision of State law which would be valid in the absence of such amendment unless there is a direct and positive conflict between such amendment and such provision of State law, and this act applies only to interstate commerce as that term is used in the Clayton Act. It does not apply in any way to intrastate.

Senator KEATING. Intrastate.

Mr. COHEN. Intrastate.

Senator KEATING. In other words, if a State saw fit to permit a manufacturer to mark his package "5 cents off," provided that the product had in the past been sold at so much more and then it was sold only within the State, this bill would not reach the "cents-off" deal.

Mr. COHEN. It would not reach it at all and is I think probably why State officials support the bill. The National Conference of Weights and Measures which includes all the States' weights and measures officials in this country and the Association of State Agricultural Officials which includes all of the State agricultural officials in this country, have both come down to these hearings and supported this legislation as legislation which would be helpful to them in State enforcement.

Mr. CHUMBRIS. Except they did raise a question of preemption, though. Mr. Ballentine specifically said he was in doubt about the question of preemption.

Mr. COHEN. I don't don't want to argue this. The record speaks for itself. All Mr. Ballentine said was that to insert "interstate commerce" in section (d) would make this clear, and I think the Senator at that time said he had no objections to doing this.

Mr. ROWE. Senator Keating, in the same connection with your question, sir, I would like to point out that Mr. Bussey of the Bureau of Standards said that existing laws in his discussions with the State weights and measures officials had been found to be sufficient with a very few exceptions. In addition, Senator, perhaps to cite the example of bread, there are many local bakeries who do not ship outside the State in which they produce. If a particular State had a law that bread could not be sold in loaves larger than 2 pounds, for example, and if the Food and Drug Administration promulgated a contrary regulation, that particular State law would be nullified and the Federal law would not reach it and that was the point of Senator Hart's statement on the record that the bill was deficient and required a change in that respect since a gentleman from North Carolina, Mr. Ballentine, made that same observation.

Senator HART. Mr. Bussey, Senator, supports this bill with even more vigor than the Senator from Michigan.

Senator KEATING. I hoped I had served to clarify it. I am afraid I have served to confuse the issue.

Mr. ROWE. I may say in that connection, Senator, that there is a basic distinction in the testimony of the witnesses in last year's hearings and this year's hearings insofar as in last year's hearing there was much testimony that the existing laws were adequate, and in this year's hearings some of these same witnesses have come back with support for the bill which is, of course, supported by the Administration. But that cannot change the fact which they have not refuted, that there has been no inadequacy shown with respect to the existing legislation.

The fact of their enthusiastic support, or nonenthusiastic support in some cases, is a matter of record but that doesn't change the fact that the existing laws are adequate because they have not demonstrated to the contrary.

Senator HART. In the judgment of the witness.

Mr. ROWE. Of course, Senator.

Senator HART. The record should show also—since Senator Keating was not a member of the committee—that there was no bill last year before the committee when they were first here. When they returned they spoke to this bill.

Mr. ROWE. Yes, Senator.

Our final and most fundamental objection to the bill is its philosophy of regimentation and standardization, which is incompatible with the dynamics of a competitive economy, and could only frustrate rather than foster the efficient and progressive operation of our competitive system.

Under the broad and flexible provisions of present laws, the outer limits of lawful conduct in the area of packaging and labeling are marked out. Within these bounds, manufacturers are free to engage in creative innovation and experimentation responsive to consumer demand for packaging variety in an economy of abundance.

The philosophy of S. 387 would curtail this freedom for creative innovation with detailed and rigid rules and specifications. This bleak premise is most apparent in the provision for regulations to standardize the weights or quantities in which commodities may be distributed for retail sale. Such strict standardization would place manufacturers in a straitjacket, stifling ingenuity and incentive to experiment with new designs and concepts in packaging for the benefit of consumers.

I believe this is not merely a matter of assertion on our part. The record of these hearings is replete with testimony by gentlemen who are perturbed by the fact that there are 71 sizes and varieties of potato chips and they would prefer we have only 9 sizes. Miss Morris, an economist from Connecticut, appeared in these hearings, and she was perturbed by the varieties of packages which she said created a lot of garbage disposal problems, and she came up with a proposal that packages should be only of a certain size because that would benefit, as she called it, the poor, ignorant, defenseless consumer. I believe that expresses a philosophy of paternalism which is entirely alien to our concepts of economic enterprise and our form of present society. I think we should be proud rather than concerned about the fact that we have 71 varieties of potato chips.

When Mr. Khrushchev went back home and suggested that they make potato chips, I doubt whether he was troubled by the fact that we had 71. I think he envied us for being creative and for living in

an economy of abundance where there were 71 varieties rather than only 9 varieties of potato chips.

Senator HART. In defense of the witness whom you are quoting, I heard her, and none of us, I think, will forget her; she was a very dramatic witness. I do not recall her describing the persons as "poor and ignorant."

Mr. ROWE. I will give you—

Senator HART. Is that a paraphrase or a quote?

Mr. ROWE. I will give you the exact page reference, Senator, if you will give me a moment, because I was rather shocked, if I may say so, by that description. It is on page 736 of the 1962 hearings and Miss Morris refers to the "poor, defenseless, ignorant consumer" and then on page 737 she adds, and she refers to the consumer as, "not very sage or sapient."

Senator HART. That is right. I can interpret that as the way all of us feel after exposure sometimes to a tough package. You just feel ignorant.

Mr. ROWE. I think this is an attitude of treating the American public as poor slobs, in effect—I am paraphrasing Miss Morris' statement—and I think it bespeaks an attitude of paternalism which may be flourishing in some countries which we don't estimate very highly but which is foreign to our concepts of the American citizen as an intelligent individual with some sapience to make choices in a free market.

Competition is always complicated, and if there were three sizes of cans I am sure it would be simpler. It would be very simple if there were only one size of cans like in the G.U.M. store or the Gastronom. But that isn't the type of economic system that we have prided ourselves on and that I think we encourage in our political and economic philosophy. That is the source of my observation that the hearing record which preceded the bill that was proposed is replete and permeated with an attitude of, in effect, contempt for the American citizen as a poor, ignorant, defenseless slob, and we respectfully disagree with that type of attitude.

Senator HART. So do I.

Mr. ROWE. Thank you, Senator.

Senator HART. You see, I am married to a really smart woman. As I have told this record before, she can take an airplane and on instruments get from place A to B, and I wouldn't dream of it.

I know I couldn't. She is smart. But she described the way she feels after she has wrestled with the ounces, and when I put a bill in to respond to that sort of expression, I don't characterize Mrs. Hart as dumb at all. I have to put this on the record to get home tonight.

Mr. ROWE. I appreciate that.

Senator KEATING. I understand this is pressure legislation.

[Laughter.]

Senator HART. This is highly pressured.

[Laughter.]

Mr. ROWE. I would like to state in that connection, Senator, I am very much confused by the multiplicity of automobile models. There are eight cylinders, six cylinders with medium, short, and long fins. I am sure that according to Miss Morris we would all be better off if

there were only small-, medium-, and large-sized cars, maybe not too large because that would be too affluent and luxuriant for the tastes of some people. I also am not an enthusiast for tail fins, but if it became a matter of legislating for abolishing tail fins or to standardize the size or cylinder number of cars, I assure you, Senator, I would be here expressing the same opposition I have for this bill which deals with corn flakes rather than Cadillacs.

Senator HART. You would agree, if you couldn't tell until you got the package in the kitchen that you would want legislation.

Mr. ROWE. I think you can see on the shelf that it has fins or not.

Senator HART. That is the point, you can see it on the car. But you have to get the package open before you find there is or isn't. You would agree the analogy is a little strained.

Mr. ROWE. I would not, Senator, for this reason. I agree with your observation to the record that obviously someone spends a longer time before buying a car than before buying a box of peanuts and so to that extent, I guess, you don't have the same opportunity to ponder and deliberate about what is in the peanut can than what is in the Cadillac.

But, on the other hand, you pay \$5,000 for the Cadillac and you may pay 25 cents for the peanuts and if you don't like the peanuts which you bought today for 25 cents you are going to buy somebody else's peanuts tomorrow morning. But once you have a Cadillac home and you are not satisfied with the performance it will be quite a while before you come back and buy a new car. So to that extent I should think consumer information with respect to a Cadillac, as I see it, would be more desirable yet as a matter of principle than with a can of peanuts because of the expense that is involved.

Senator HART. You know those peanuts add up to \$70 or \$80 billion a year.

Mr. ROWE. I have no doubt about that, and the same, of course, with the automobile industry.

In any event, we feel that such governmental standardization and uniformity is particularly incongruous in a bill packaged as an anti-trust amendment. Industry programs of product standardization have evoked antitrust attack as vehicles for illicit price standardization as well.²⁵

The antitrust laws hostility toward artificial uniformity recognizes that product diversity, not product uniformity, should be the norm for consumer products in a dynamic economy, and that industrywide restrictions on product diversity can degenerate into total restraints of trade.

In that connection, I would like to refer the committee to a very thoughtful article by Mr. Ephraim Jacobs, who at that time was the Antitrust Division's Chief of the Legislation and Clearance Section in the Department of Justice, and Mr. Jacobs has said:

While I have indicated in general a belief that standardization is not necessarily illegal, I think there are certain standardization programs which should be subjected to antitrust scrutiny. These are programs which might have considerable competitive significance while at the same time there is no apparent necessity for their adoption.

²⁵ See, for example, *Sugar Institute, Inc. v. United States*, 297 U.S. 553, 600 to 602 (1936); *Milk & Ice Cream Can Institute v. FTC*, 152 F. 2d 478, 482 (7th Cir. 1946).

Then Mr. Jacobs also said:

The uniformity that results from standardization makes it easier to accomplish price uniformity. Courts are inclined to cite standardization as one link in a chain of evidence pointing toward illegality.

Beyond its other deficiencies, therefore, S. 387 is oriented toward a policy of artificial product uniformity and standardization which is not only out of step with our economic policies, but is incompatible with the antitrust principles which the bill purports to supplement.

Finally, the attitudes of American business and consumers concerning packaging and labeling practices confirm that no real need exists now for this complex new legislation.

On both fronts, I think it is obvious from the hearings that the few attention-getting abuses in this area are exceptional rather than typical, and that the integrity of the American business community has been vindicated.

On the business front, these hearings have confirmed that the overwhelming majority of American producers sincerely strive for honesty and fair dealing in the packaging of their products, and have gladly cooperated not only with the Government agencies but among themselves to achieve this goal. According to the striking data presented by FDA Commissioner Larrick, the FDA in 1961 examined 8,500 different samples of packaging and labeling, and found only 28 cases of inconspicuous labeling.

In early 1962, some 15,000 samples were examined, and only 23 cases of inconspicuous labeling were noted.²⁶

Also, Commissioner Larrick has attested to the effectiveness of industry consultation procedures which have been used to arrive voluntarily at standards of packaging to comply with the law, as, characterized by Mr. Larrick—

just another example of how industries, working together with Government, can solve problems.²⁷

Nor has the American consumer in our affluent society registered any deep dissatisfactions with the honesty and performance of American business. To be sure, a few instances of deception and unfair practices will inevitably crop up in the mass of everyday business transactions. As to those, complaints to the enforcement agencies should bring relief.

More important, the wide range of choice open to the American shopper under our competitive system permits the ultimate redress against products which fall short of the mark: to shift to a more satisfactory product by a producer who is eager to compete for the sale.

Obviously, therefore, American producers as a class are earnestly endeavoring to comply with the law.

There is no epidemic of consumer deception in the land warranting emergency cures by new and complex legislation.

For these reasons, the national chamber respectfully recommends that this committee disapprove S. 387.

Thank you.

Senator HART. Thank you, Mr. Rowe.

Senator Keating?

Senator KEATING. I have no questions, Mr. Chairman. I think the

²⁶ 1962 hearings, p. 816.

²⁷ 1962 hearings, p. 801.

witness has been an excellent witness and made a very fine presentation of the viewpoint represented, as a member of such a distinguished law firm would be expected to do.

Senator HART. Mr. Cohen?

Mr. COHEN. No questions. I just wanted to make one observation. We have seen over and over again in statements by the National Association of Manufacturers, and again here in the statement by the chamber, this reference to product standardization, to product regimentation.

I would only emphasize for the record that this bill has absolutely nothing to do with the product itself. We are dealing here with the package in which it is enclosed and the label that goes with that package. I think the use of the word "product" give a false impression of what this bill is all about.

Mr. ROWE. May I have a brief observation on that, Mr. Counsel?

Senator HART. Yes.

Mr. ROWE. I believe with our economy in relation to consumer products, it is highly synthetic, if I may say so, to distinguish the product from the package which is an integral part of the merchandising.

As I see it, you cannot divorce the packaging from the product. You cannot sell cereal in the nude, so to speak, and to say that the bill has nothing to do with the product, but only with the package, Mr. Counsel, with all due respect, I believe oversimplifies the situation very much.

Senator HART. Let me, too, thank you, Mr. Rowe, for a thoughtful and a scholarly statement.

You, I think, do sum up the opposition which has been expressed toward the bill by manufacturers. You say the present law is adequate. I think the condition in the marketplace suggests that this may not be true. We have heard it said that heads of agencies consider present law adequate. You have commented on that, as you read them; I read them in a slightly different way, including the attitude of Secretary Ribicoff, and you say that the conference technique, the industry trade conference, whatever the technical expression is, can develop the formula, the guides.

Of course, those industry conferences and trade guides do not have the sanction of law that this bill would. As to the question of whether existing agency powers would be diluted, the one thing that industry spokesmen have heretofore agreed on is that agencies don't voluntarily agree to curb their powers, and the agencies support the bill.

You do outline the slow, cumbersome process that the bill provides in seeking to establish the regulations before they are issued. I am sure we are not being urged, if the bill becomes law, to remove those safeguards.

The haste, if that is the offensive word, wouldn't come in the promulgation of the regulation, it would come once they were established.

Mr. Cohen has commented on another point you made that the bill would discourage the States from further action in the area of packaging and labeling and yet the bill has the very strong support of State officials through their several State conferences and organizations.

You raise a question as to the philosophy behind the bill as to regimentation and standardization. Here again we disagree. This bill

would reflect a belief that Government does have a responsibility to insure that competition produces a socially desirable result and to the extent that it doesn't to ride herd on the abuses and the excesses, and that it has a responsibility to insure that this consumer—however we define him, wise or unwise, and we are talking about each of us ourselves—should be given the necessary information for a rational decision.

We would just disagree on the concluding point that you make that there is no need for legislation. But I repeat, the committee appreciates what is an excellent presentation from that point of view.

Mr. ROWE. I very much appreciate the committee's courteous reception of my presentation. I would only like to add that in all of the testimony which the agencies have put forth I have not found any statement that the existing law is deficient but only support for the principle of the bill as such, and I believe there is a difference between those two, if I may say so.

Thank you very much.

Senator HART. Thank you very much, Mr. Rowe and Mr. Davis.

Our next witness is the vice president and special assistant to the president of Purex Corp. of California, Mr. William R. Tincher.

Mr. Tincher, your statement will be printed in full, but I would like to state some of the highlights of your background which are included in the biographical sketch.

Mr. Tincher has had a number of years of experience with the Federal Trade Commission and his service there was distinguished, recognized by awards, so he will, I am sure, contribute to the hearing record.

**STATEMENT OF WILLIAM R. TINCHER, VICE PRESIDENT AND
SPECIAL ASSISTANT TO THE PRESIDENT, PUREX CORP., LTD.,
LAKEWOOD, CALIF.**

Mr. TINCHER. Thank you very much, Mr. Chairman and members of the committee and guests.

My name is William Tincher, I am senior vice president of Purex Corp., Ltd., Lakewood, Calif.

Please permit me to thank you for the opportunity to appear before you. I am a representative of one of the Nation's most respected and dynamic household products companies. Although its growth has been spectacular in the best tradition of our unique free enterprise system, Purex today is relatively small compared to its principal competitors.

In addition to representing a relatively small business, I have experienced a life-long interest in, and keen belief in, both the presence of and the necessity for antitrust laws.¹

It was my profound pleasure to be a part of and to have an active voice in, the FTC during the most dynamic and active era in its history—an experience which fortifies my many public statements as to the need for antitrust and its effective and vigorous enforcement.

With this dual background as a small businessman, and an antitrust

¹ Mr. Tincher's biography may be found on p. 839.

advocate, opposing S. 387 might appear to be similar to opposing motherhood and the flag. This is because S. 387 is labeled as an "antitrust" bill amending the Clayton Act and as a "Truth in Packaging" bill. The simple answer, however, is that both designations are incorrect. This proposed legislation is not an antitrust bill; it does not belong as an appendage to the Clayton Act, and it is not "Truth in Packaging" nearly as much as it is regulation, regimentation, and ruination of packaging.

It is difficult to think of a piece of legislation which could be more contrary to the true concept of antitrust. The basic purpose of antitrust, as expressed by its legislative history and by reams of case law, is the preservation of many small units of competition, both for the preservation, per se, of small units and for the encouragement of new competitive units, and for the retention of a sufficient number of competitive units to retard monopolistic tendencies or actualities.

This proposed bill would do just the opposite. Disallowing "price off" labels or other price promotions, standardizing packages and packaging language, standardizing what constitutes a serving or use of a product, and standardizing other quantitative standards for products, would help the existing competitive entities and serve as a real deterrent to new entries into the competitive arena and to small concerns already struggling to achieve a foothold.

These new firms and the small firms must, if they are to survive, innovate, offer improvements in package and/or product, and they must extensively promote their wares. This proposed legislation would practically emasculate such efforts as it would require the new and the small producer to standardize as the existing producers are already doing, and this, in most instances, is the exact opposite of innovation and giving the customers something new, different, and exciting. Thus, the incentive for new and small concerns would be drastically reduced and they would be put into a straitjacket as they could not take advantage of new products and new improvements as they now do.

Historically and currently, the FTC has divided its work into two basic fields—deceptive practices and antimonopoly, i.e. antitrust. The Congress has passed other labeling laws—fur, wool, textile products, flammable fabrics, oleomargarine acts. None of these were amendments to the Clayton Act. None of these were or are being treated by the FTC as antitrust measures.

They are deceptive practice measures, just as this bill is enforced by the FTC's Bureau of Deceptive Practices as contrasted to its Bureau of Restraints of Trade, which latter bureau enforces the Clayton Act and proceeds against other genuine restraints of trade.

Since the Wheeler-Lea amendment to the FTC Act in 1938, unfair or deceptive acts or practices have been illegal without contention or proof of competitive injury, the latter being an element of antitrust cases even in the per se sections of the antitrust laws where competitive injury can be assumed.

As another distinction between antitrust and deceptive practices, only last November the Commission established a consumer relations representative who will perform his duties "from his present position" as an official of the FTC's Bureau of Deceptive Practices.

Another awesome inconsistency appears in S. 387. From what I read, supporters of this bill believe that any competition other than straight price competition is bad and wasteful and that all possible price advantages must be given to the consumer.

Yet this bill would outlaw packaging being used to reflect cents-off sales and other price-reduction techniques widely used by manufacturers today. Gentlemen, these techniques are price competition. These methods of the producer reaching the consumer directly with price reductions are to the consumer's benefit. If they are outlawed, the consumer is hurt. It is as simple as that.

And, if they are outlawed, the small and the potential new competitive entity will be hurt far worse than the larger producers—a result diametrically opposed to our antitrust philosophy, history, and practice. Existing laws prohibit, and correctly so, any other avenue a producer might utilize to guarantee the passing on of price reductions through the retailer to the consumer.

Another serious drawback to this proposal is that one Government body would be authorized to standardize weights, quantities, contents, and sizes of containers in which products should be packed.

In order for this procedure to be feasible or workable, there would have to be a prior assumption that for each class of product there is one correct weight, quantity, size and serving. This simply is not the case. Even the witnesses appearing who favored this bill would not be able to agree on what the right package would be. Indeed, this is one of the real challenges of the present free enterprise system—to design and package a product which will meet with the approval of a large segment of the purchasing public.

Thus, another incentive to innovate, to improve, and to advance the usage of a good product and/or package would disappear, especially for small concerns.

Another basic problem with this proposed legislation is that it seems to operate on the assumption that there is one standard answer for all America on weight, quantity, size, serving, or use directions for every product sold in grocery stores. This simply is not the case as any market research department of a grocery store product supplier knows and can prove. There are infinite tastes, references, prejudices, and other choice factors present in the marketplace, and consequently the formulations of the products and the construction of their containers are different.

We know of no magic by which the FTC, or any other Government agency, can come up with a composite which will please everyone. The fact is that if the legislation is passed, the FTC cannot please even a majority. It will have to establish arbitrary standards, and the American public's preferences and desires will be ignored unless they happen to accidentally coincide with the standards established. The chances for such a happy accident are remote.

Another problem in establishing such standards is that we are not dealing with static and never changing products, but with very dynamic and rapidly evolving and changing products and consumer preferences. Any grocery product producer knows the tight time schedule required to introduce a new product or package. This real marketing problem would be compounded beyond estimation if the marketer, as

he would under this bill, had to first obtain FTC approval of his proposed change.

Proof of these statements can be demonstrated and the demonstration will show, incidentally, that packaging competition benefits the consumer and small producers. Our company's famous Old Dutch Cleanser was packaged for years in this container.

Purex changed the ends to plastic, in this new container. This eliminated rust rings on the consumer's kitchen and bathroom fixtures, a significant consumer benefit. Purex, a small company, was the first producer to so change. Now, we are first in introducing this all-plastic Dutch Cleanser container which eliminates water sogging of, and leaks in, the container, as well as rustproofing the entire package. This benefits the consumer. This the consumer asked for.

Now, this type of liquid bleach glass bottle had been used for decades by Purex and other producers. Purex was the first to eliminate the one-finger ring handle and give the housewife this new bottle. You can imagine a housewife lifting a gallon of this with one finger. Purex was first with the coffeepot handle, a real benefit, especially for a housewife.

Then Purex and other producers introduced a new all-plastic container such as this. This container is considerably lighter for the housewife to handle. It eliminates the glass breakage and personal cutting injury problem. It is a distinct and valuable consumer advantage. If it drops on the floor you don't have bleach and glass all over your house or your rugs or your carpets.

Senator HART. Very desirable.

Mr. TINCHER. Likewise, in the liquid detergent field, Purex was the first producer to sell nationally a plastic container to replace metal and glass containers. This was, again, a distinct consumer advantage.

Now, gentlemen, these three examples of packaging improvements by a relatively small producer are examples of the importance of nonprice competition and of the necessity for packaging freedom in our free enterprise system. If S. 387 had been on the books, we could not have made these improvements—which were in response to housewives' demands, incidentally—and there would have been little or no incentive to do so.

I respectfully submit that the standardization of packaging permeating this proposed legislation is not progress; it will hurt the small producer and the potential new producer and will hurt the housewife and her pocketbook.

It is recognized that testimony has been received favoring this bill. The status quo in any area is always subjected to criticism, of course.

Parenthetically, I think even a high school debater learns the unfairness of defending the status quo as compared to the utopia promised by a new proposal. That is always the first thing he learns.

More importantly, however, I cannot help but wonder what a genuine market research of consumers would reveal if they were presented with the complete story, if they knew that this legislation would cost scores of millions of dollars to enforce equitably, that it would cost producers hundreds of millions of dollars, that it would raise retail shelf prices, that it would sharply curtail innovations and im-

provements in product and packages, that it would eliminate sizes and containers consumers desire and have asked for, that it would deter and hinder small and potential new competitive entries and thus add to concentration and limit the consumers number of choices.

I respectfully submit that such a real market research would reveal overwhelming consumer opposition to this bill.

Next, is there a need for this bill? Is existing law inadequate? As indicated earlier, this bill is not an antitrust bill, it is a deceptive practice measure. Since the 1938 Wheeler-Lea amendment to the FTC Act, the Commission has had authority over unfair or deceptive acts or practices without even the necessity of alleging or showing competitive injury.

As you know, the courts have consistently held that the Commission does not even need to take consumer testimony in these deceptive practice cases and can rely exclusively on its own expertise, and that the credulous and unsuspecting are to be protected and not just the sophisticated.

As the FTC's new Consumer Relations Representative, an official of the Bureau of Deceptive Practices, correctly recognized in a speech last month, the Commission since 1941 has prosecuted not only positive misrepresentations, but also failures to reveal information when such omission might deceive customers. He went on to correctly state:

This authority to require affirmative disclosures in advertising or labeling when necessary to prevent deception has now been exercised in a large number of cases, and affirmed repeatedly by the courts.

and—

The Commission's authority to prevent deception in interstate commerce extends to all types of practices and all types of goods and services, excepting those which by specific legislation are the responsibility of some other agency.

Only last year the FTC prosecuted a Christmas wrapping paper seller for packaging deceptively. Only 10 days ago the examiner found respondent guilty on one count and innocent on the other count.² Incidentally, and parenthetically, if this bill would have been passed this man would have been automatically guilty on both counts. He would never have had his day in court and up to this point declared innocent on one count.

Two months ago in an opinion the Commission noted, by citing a 1962 court of appeals decision in an FTC appellate case, that:

Congress "gave the Commission a broad mandate to prevent public deception in the give and take of the marketplace," and the "courts have consistently upheld the Commission's efforts to compel manufacturers and retailers to adhere to a high level of honesty in connection with their labeling and advertising habits."

This, of course, is correct. Furthermore, no court has told the FTC it cannot proceed against unfair or deceptive packaging. The Federal Trade Commission Act does not do so. The legislative history of the Federal Trade Commission Act shows that section 5, the real meat of the act, was deliberately left general and undefined by the Congress so that the FTC itself could define improper conduct

² The examiner found a violation of the Federal Trade Commission Act (Apr. 17, 1963. Doc. 8489).

and not be limited to those practices existing then or at any time in the future.

I can think of nothing to prevent or prohibit the FTC from proceeding against unfair or deceptive packaging or labeling. It has done so and it is doing so today.

In view of these facts, there is simply no need for this proposed legislation.

One final deficiency should be noted. This legislation would result in standardization of product and package even to the serving and use directions, and the number of servings or uses of the contents. This is now impossible because the formulas of competing products are not identical and require different use or serving directions, as a result.

This change to make all products exactly equal will deprive the consumer of free choice and, we must remember, present products are formulated and sized in the first place to meet an infinite number of consumer desires. The latter is the benchmark of a free economy. The complete standardization of product and package by the government is a burden of an enslaved people whose government has decided that people are stupid, that it knows better than they what they shall need and shall have.

The next and inevitable step in this process, of course, is government-fixed, uniform prices—the very antithesis of antitrust—for these products because, after all, they are then identical as to content, size, and use. And if you think this is wild, gentlemen, you go back and read the theories which came out of the thirties which support this legislation and get their whole view on competition and what they think about prices.

This also is not groundless fear. This is how 'free enterprise has been taken from various peoples.

The President of the United States has been recently quoted as follows:

The free market is a decentralized regulator of our economic system. The free market is not only a more efficient decisionmaker than even the wisest central planning body, but even more important, the free market keeps economic power widely dispersed.

This language is accurate and is directly contrary to the results this bill would render. In our free market the consumer is sovereign, as is proper. We should retain this feature and not strike at the heart—as S. 387 does—of the most productive, imaginative, and beneficial system of economic production, packaging, and distribution the world has yet experienced.

Thank you for your attention and interest and this opportunity to present these views.

Mr. Chairman, in response to the request of the committee, this statement was submitted 48 hours ago. In the intervening 48 hours I have been here listening to testimony and comments and I have several things which I think are most apropos and pertinent and I would like to get into them if I might. I don't think they would take more than 5—4 or 5 minutes.

Senator HART. Yes.

Mr. TINCER. Yesterday the chairman told the representative of the Toilet Goods Manufacturers Association that the Administrators involved under these bills would take cognizance of technological problems and needs.

Yesterday, also, the chairman assured one of the very charming female witnesses that the esthetics of cosmetics products would not be sacrificed in these bills. The facts are, gentlemen, that there is nothing, absolutely nothing, in this proposed bill which would allow for these considerations.

The fact is an agency will only follow the bill as given to it and commonsense and experience tells us that agencies attempt to tighten the bill and not to read into it exemptions which are not there.

Unfortunately, the courts say that they are interested only in what the legislature did and not in what the legislators said they did, and in many cases the legislative history will not even be considered by a court unless there is a clear ambiguity in the enabling act itself, and I have looked this act over very carefully and there is no ambiguity.

Therefore, in view of these statements by the chairman, and also various other places in the record I have read, I wish to submit some language to this subcommittee. I realize I am in no position to be submitting language for amendment.

Senator HART. No, indeed; we would welcome it. We have asked others.

Mr. TINCER. Indeed, thank you, sir.

In view of these statements, then, in this situation I would propose that there be an addition to this bill in the unhappy event that it should ever pass, which language would read as follows:

No regulation promulgated pursuant to this Act shall be effective to prohibit any weight or quantity of contents or fraction or multiple thereof, or any package size, shape, or dimensional proportion, of any consumer commodity, which is primarily due to or reasonably intended for good manufacturing practice; or a physical or chemical characteristic or property of the product or of its package; or a functional or convenience purpose of the commodity or its package; or product protection or preservation; or economy in a manufacturing or packaging process; or distinguishing a product within the meaning of the term "trademark" as defined in the Act of July 5, 1946, entitled the Trademark Act of 1946, and as used in section 2 or in section 23 (15 U.S.C.—

That is not University of Southern California—

1052 and 1091, respectively) thereof; and no such regulation shall be effective to prohibit any size, shape, or dimensional proportion of a package, the overt purpose of which is to achieve an artistic or esthetic effect.

I think, gentlemen, that this proposed amendment would carry out the necessary protection for technological, esthetic, functional, and other needs of containers.

One other point I wish to make: The chairman yesterday was very unhappy, I believe—I believe I summarize the feeling right—with the answer a woman gave, one of the women witnesses to Ivory soap.

Now, I, starting with my Government career and through the present, have resolved never to be in position of defending Procter & Gamble and I will not do so at this time with reference to Ivory soap but I do think a complete picture would be necessary for this record and the committee might desire to get a statement from Procter & Gamble as to why they have several sizes of Ivory soap. I would like to submit, though—

Senator HART. If I might just comment.

Mr. TINCHER. Certainly, sir.

Senator HART. I was surprised at your view that my amazement was directed at Procter & Gamble's having a number of sizes of Ivory soap. I was amazed that a woman would say that she was not interested in having the weight of five different sizes of Ivory soap presented to her in order that she could make a judgment.

Mr. TINCHER. This is my understanding, sir.

Senator HART. That was the cause of my amazement.

Mr. TINCHER. Yes; my only comment about Procter & Gamble is if they have five sizes I think they might have some reasons why they have it.

Senator HART. We have heard from Procter & Gamble and they have many sizes. I was expressing surprise that was very genuine—

Mr. TINCHER. All right.

Senator HART. That this lady could measure by her eye.

Mr. TINCHER. I would like to talk to that point then with reference to bar soaps, not Ivory in particular.

I think such a contention assumes that price is the only consideration. In bar soaps which Ivory is 9 or 10 cents, this simply is not true. Some customers want a bathroom size, some do not. Some want a sink or a small size, some do not. Furthermore, an ounce is meaningless because the shape will determine the use of the bar and the length of time it will last. A long and thin shape on a bar of soap weighing the same as a cube bar of soap would not last as long. Therefore an ounce comparison is rather meaningless.

Also on an ounce comparison, the way the soap is milled, the type of soap it is, as to hardness will determine the number of uses you can get out of it. This is what women want, the number of uses, not necessarily the number of ounces.

Fragrance is a factor. Some women want fragrant soap and some do not. They are so concerned with the ounces. This also assumes, I think, that people buy only one size of soap. This is not true. Many many people buy two or more sizes of the same brand of soap, one bath size by the bathtub, a small size by the kitchen, a small size by the lavatory. It depends in so many cases on the size, the personnel, the makeup of the family.

Finally, it depends on the type of soap, whether it is perfumed for the bath, a deodorant-type soap, a complexion care, a cold cream soap. All of these factors we have found in our experience are far more important than the number of ounces in the bar to the consumer.

My final point I would like to raise with you, I think, is very fundamental. Basically it is a legal matter and this is that this proposed legislation is a far reaching, an unprecedented change in the traditional concept of American jurisprudence. It provides for no judicial review. I know the statement has been made that this bill does provide for judicial review. It does in a sense. As the Chairman of the FTC recognized, however, in his testimony at pages 684 and 685 and again at 709 of this record, the only thing the judicial review will amount to will be to see if there has been a fair trial. The merits can never be reached. This is because of the way the act is set up, the incorporation of the Administrative Procedure Act and what is intended here. The only way this can be overthrown by a court is for the court to show

it is arbitrary or capricious and, of course, if the Commission establishes rules the way it wants them and then it conducts the hearing, it will not be arbitrary or capricious.

Now, we recognize, I think any lawyer will recognize that this is quick and it is deadly, just as police justice in a police state is quick and deadly. We don't have to mess around with appeals. You don't have to take time. You don't have to worry about people's rights. You don't have to have a long trial.

I might add, and not completely facetiously, if some freshman Senator were elected and for the purposes of our example, of course, we will have to assume he was very naive, but if he were to introduce a truth in politics bill, and he would suggest that no candidate for public office should be allowed to make a statement unless it is cleared by some committee or unless he is attached to a lie detector, that this would be truth in politics and I think it would be very beneficial to the American scene in general, and perhaps more beneficial than any damage businessmen could do in 100 years.

But you could imagine how far such a proposal would get. Or if a bill were introduced to eliminate criminal trials and rights of appeal, because it takes too much time, it is so time consuming, and it all boils down to this: As many witnesses have testified there is not one iota of need for this bill, present law can handle it. The only thing that the administrators of present law are unhappy with is because it takes time, and I submit to you most humbly and more respectfully that if we are to maintain the types of system of Government that we have and the rights of men (and the history of governments throughout the world is that you don't take away economic rights and political rights remain, they go together), if we are to maintain our concepts of justice, you don't do it this way and take away the right of review which, as the Chairman of the FTC has recognized, you do under this bill. The only thing left to appeal is to see whether the Commission was arbitrary or capricious and the court can never reach the merits of whether the man violated a law or not.

Finally, a new concept of law which ties into this right of review and makes it almost impossible, the word "rational." "Rational" as used in the law is a designation of studying an individual and seeing whether at a given time under a given set of circumstances he himself acted by his standards in a rational manner.

This word is used and it is very governing in section (c) (5) and in section (e). I think some place this subcommittee or the Congress, or the FTC certainly if this thing becomes law, is going to have to tell us, they have to because they have the duty of establishing that these are rational decisions which can be made, what is rational?

Is it rational for you, is it for me, is it for an average individual? If so, who is average? Is it for majority or 40 or 50 percent or one-tenth of 1 percent of the population, is it for the experienced housewife? Is it possible that an experienced housewife is far more rational than a Government official or a businessman in this particular field?

Is it for a man, is it for a child?

Finally, who determines what is rational? I think these are very provocative questions, and certainly they will have to be answered under this bill and certainly no answer has been forthcoming to date.

Thank you very much, gentlemen. I realize that my statement is harsh and perhaps makes people angry. I can only assure you when I was on the Government side, and still believing now in antitrust, I am just as harsh and make people just as angry when I insist that antitrust legislation which is sound should be vigorously enforced.

Senator HART. Mr. Tincher, deep convictions ought never to be regarded as harsh when expressed.

Are there any questions?

Thank you very much.

Mr. CHUMBRIS. I think it was a very fine statement.

Senator HART. I apologize to Senator Curtis. We overran a little here. Our next witness will be presented under auspices which very seldom are enjoyed by witnesses. We welcome Senator Curtis.

Senator CURTIS. Mr. Chairman, my appearance here is in behalf of my distinguished senior colleague, Senator Hruska, as well as myself. It is my happy privilege to present a distinguished Nebraskan, a resident of Omaha, a graduate of Creighton University there, one of our State's leading businessmen. He is a civic leader. At the present time he is president of the National Small Business Association, Mr. Lloyd Skinner, and Mr. Skinner is your scheduled witness and he is here on my right.

Senator HART. We appreciate very much the time that a very busy Senator took. We would be privileged if you would join us here, if you are free to do it, while Mr. Skinner testifies.

Senator CURTIS. I must ask to be excused.

Senator HART. Thank you very much.

Mr. Skinner, we bid you welcome.

(Mr. Skinner's biography may be found on p. 838.)

STATEMENT OF LLOYD E. SKINNER, PRESIDENT, NATIONAL SMALL BUSINESS ASSOCIATION, AND PRESIDENT, SKINNER MACARONI CO., OMAHA, NEBR.

Mr. SKINNER. Thank you, Senator.

I am president of the Skinner Macaroni Co., and also a past president of the National Macaroni Manufacturers Association. I mention this because I want to use some of our business practices as examples and explain some of them because I think there has been a great deal of misunderstanding.

First, I would like to tell you that I am anxious to testify, of the concern I have in regard to some of these proposals, of S. 387. Certainly, I should mention that I am for the broad objectives of plainly marking the weights and ingredients on the front of the package. This is just good sense and it is certainly unfortunate that some few of our manufacturers have violated this concept.

Of course, there is an exception even to this, as pointed out by the last gentleman who spoke, about soap.

I do feel that our present regulatory agencies have the power in the present laws to move against these types of violations. They may need more money, they may need more staff but that is something else.

There are two areas that S. 387 proposes to change which I would like to discuss.

First, the standardization of packages size by volume of package weight rather than by carton dimensions.

And secondly, the placing of an illustration or pictorial matter on the package.

The question of standardization is naturally one which most generally is not only desirable but often can be practical. Sometimes, however, standardization which statistically seems feasible, does not work out economically advantageous either for the manufacturer or for the consumer.

If I may, in this brief presentation be permitted to use my own industry experience, that is, the macaroni industry, I can give a few specific examples of why package sizes are not all of one weight or multiples of that weight, such as one-half pound, one pound, and so forth.

There is the relationship of quality to price which must be considered. Excellent macaroni products are made generally from 100 percent semolina, which is the first quality granulation of Hard Amber Durum wheat. Some lesser quality macaroni products are made from less expensive wheats, or a blend of the two.

We recognize that many consumers have three concerns. First, as to package price, second, as to the quality of the product, and third, the quality relationship between the price and quality—and I might add it is usually in that order of importance. To meet these conditions and because we believe that high quality products are the best for the consumer, we have been forced by consumer price resistance, to reduce the quantity an ounce or two in a package in order to have a shelf price as near to competitive lower quality products as possible. Our research has indicated that an ounce or so less of spaghetti in a package, or on the plate, makes so little difference as to the total cost, but gives a better product and thereby improves the quality of the cooking and taste of the particular recipes served, and this builds consumption.

In order to keep reasonable price differences between high quality and lower quality products, it is sometimes necessary to reduce the size of the package—for example from 8 ounces to 7 ounces.

I mentioned this because depending on the price of, our particular case, 50 percent of our cost is our durum wheat. If it is particularly high due to a drought or shortage of crop, the difference between these prices can amount to as much as 4 or 5 cents a package but if we put an ounce less makes it 2 cents a package and with your new consumers coming each year this is very important, not so much with the older ones but with the new girls that come and buy in the grocery store each for the first time. This gives us a chance to sell quality to her.

By following such a policy, we have built a successful business in our territories, in many of which we are No. 1 seller of macaroni products with excellent consumer acceptance. I do not believe we are confusing the consumer when we plainly mark our packages 7 ounces. Certainly, with an educational system that is the envy of the world, we have a right to expect that a consumer knows that 8 ounces is a half pound and that 16 ounces is a pound.

I realize that some of them don't know this, but we certainly should have the right to expect this.

Now, as to the industry as a whole, it is my best considered judgment that if we attempted to standardize all packaging to one size and multiples thereof, there would be many expensive problems. Because of different volume densities of the many varied shapes and cuts of products, packages of the same weight factor would bring about a multitude of box or package sizes. This would require destandardizing of equipment and packaging materials.

With the present-day high-speed and expensive equipment, it would require more investment of machines that would result in a low occupational usage of these machines because of the volume of sales. For instance, we have one machine that would cost today \$45,000 to \$60,000, on which we run five different product sizes. If we were to standardize weight by volume on these five-size items, rather than by carton dimensions, we probably would have to invest in two or three more machines on which the product output would be less than 50 percent of their capacity. You can realize from this single, but specific, example that our manufacturing cost would be much higher due to higher depreciation costs and lower efficiency.

On a broader basis, it is my considered opinion that our industry would, in the event of restricted package weights and measures, be faced with as much as 25 percent increased costs. I dare say that in the end this would be passed on to the consumer in one way or another. A small manufacturer will find this additional machinery investment particularly burdensome, as he generally has a much rougher time obtaining the necessary financing.

Before closing on this point, it would be well to state that standardization by carton dimensions is opening a whole new area for keeping costs down. I do not know whether you gentlemen are familiar with palletized loading or unit-load shipping.

This is just starting in the grocery industry, and it offers real potential savings in warehousing and shipping for both the distributor and the manufacturer, and these will be used to keep costs down to the consumer. It is most important that you get as many similar size cartons under such a program as this to move these things in, let's say, by 60 cases at a time instead of by the single case. It is necessary that they be standard or you can't find the fork trucks or lift trucks to pick them up.

I mentioned earlier that I would like to say something about the placement on the package of pictorial matter. Again, going back to my own experience, we have placed on each of our cartons a colored picture of a recipe showing the end use of this product. Naturally, we are doing this for good reasons.

First, to create appetite appeal for our product and secondly, to allow us to present the end use of the product so as to be competitive with new prepared dinner packages. I admit that in many cases these new prepared dinner packages are time saving and somewhat easier to prepare but they are certainly more expensive to the consumer. While we do show an end use illustration, for instance we would show with spaghetti, spaghetti with chicken with the gravy on it on the package and we would put the recipe for that on the back of that particular dish. We are very emphatic that we don't deceive our consumer, in that we have in great big letters "long spaghetti," so

that the consumer will know what the product contains on the inside; if there is a grave abuse along this line, our present regulatory commissions can do something about it.

I certainly have not seen many violations of this type.

To conclude, as a producer of a staple such as macaroni products, we are fearful that under the proposed regulations, the legitimate use of appetite appeal in selling of a staple might be unduly limited or even stopped. This would put our packages at a disadvantage as to competitive appeal in comparison with prepackaged dinners at the grocer's shelf level.

Lastly, if there is a need for such regulations, I certainly feel that the proposed criminal penalties for first violations are much too severe. I believe that a "cease-and-desist" order by the regulatory agency in charge would be sufficient.

As an afterthought I added this, perhaps I should add that even though originally I was not going to say anything about the cents-off merchandising on packages, I believe on its face it is not a deceptive merchandising device. There are probably a few who keep a continuous cents-off package and a complaint by the distributor, I am talking about the chain or the independent retailer, to regulatory agencies concerned could certainly bring an end to this abuse by investigation and showing they never have established a previous price.

Now, there was a reason for these cents-off packages coming into being, and I might just as well mention it.

At times the manufacturer feels that if he can reduce the price, he can get Mrs. Consumer to try his quality and his product and see the way it is made.

Now, naturally they gave a deal to the wholesalers and the jobbers. Generally, the chains cooperated but with some of the wholesalers and the jobbers—and I don't mean this against them—they didn't always pass this down to the independent retailer, and so the manufacturer went to the other device of preprinting it on the package, and then giving them the deal and, of course, this forced it all the way down to your retailer, you see.

Senator HART. I am glad that you decided to say something about this because this is the first explanation of its kind we have had.

Mr. SKINNER. Nobody wants to say anything about anybody else in their business and certainly not all the jobbers did this but when there are hundreds and thousands of items they look for an opportunity to make money and they may feel that maybe this time they don't have to pass this down, you see, and this is how cents-off promoting got started as a merchandising device.

Actually, I don't think there is anything wrong with it if it is not abused except as you have pointed out, I believe, in continuous use. If the distributor wants to report that to the regulatory authorities—he is the one who would know whether it was really a cents-off or not, because he has been selling it at a certain price. Some distributors probably don't always play fair, either.

Senator HART. There is always this problem of what would my relations be tomorrow if I talk today.

Mr. SKINNER. That is right. This is right.

Senator HART. Sir, thank you very much.

Mr. SKINNER. I wanted to show you the problem in packing "jumbo" and "large elbow" and I have brought these packages as examples. I also should like to explain the background of why you get into a name like "jumbo elbow."

We have 7 ounces in the large elbow package and we have 6 ounces in this jumbo elbow package. We pack them on the same machine. One is cut a little longer than the other. There are about 125 macaroni companies of some size—let's say, not just a hole-in-the-wall, macaroni producers—in the United States. Let's say I am selling in the Oklahoma market and so is a St. Louis manufacturer. He comes out with a little longer cut and it proves successful in the market. I have been doing fairly well with a larger hole, but a little shorter cut. Suddenly, I discover he is in the market, he puts it on the shelf and it moves. If I want to keep my share of the business in that market, I am forced to come out with jumbo elbow.

Now, I wanted to show you that if you will look, I put cellophane on the end: one is about, I would say, 85 percent full, and the other one almost full—of course, to be fair to these packages, when they are going through the machine itself, they would be a little fuller, as you can see when you squeeze the package back in shape. These cartons are light cardboard and when we are filling them on a machine, they are in a slot that holds them this way. As you can see, this one is practically full. If I had to buy a different machine for each type of product, I would really have a problem. We have, in the macaroni business, as inherited from Italy, some 60 different sizes. We make about 21 of them. We try to keep down the number of sizes that we get into because of the investment and the cost of putting out so many packages of different shapes. I think this explains somewhat our problem when we have 7 ounces, 8 ounces, and sometimes 10 ounces. Unfortunately, this variety of fills is necessary in trying to get a standardization of carton, and we want standardization of carton, with the end purpose of unit loads, that is, moving 60 and 70 cases at the same time. When we have all different size cases, this would be an impossibility.

Now, the beer industry, for example, with all the same size bottles can get into unit load much faster than many other grocery products, but the ones that have so many problems with dimensions in their product, naturally are going to find it harder to make the change, however, I think eventually they will get into it. Even in the freight car, you will be able to load it with less damage, and you would be surprised at the amount of damage and cost to the consumer, which we must naturally pass on.

That is the one reason we are very fearful when you talk about changing to fill by volume, like 8 ounces or 16 ounces.

Thank you.

Senator HART. Mr. Skinner, your testimony has been very effective.

Mr. SKINNER. Thank you.

Senator HART. I should add that Nebraska is well represented in the Senate and it happens today it is extremely well represented in the hearing room; not only did you come in with Senator Curtis but Senator Hruska is a member of the subcommittee, as you know, and unless there is compelling pressure of business elsewhere he is always in

attendance; he was yesterday. He is represented here by Mr. Raitt and I would ask if you had any questions, Mr. Raitt.

Mr. RAITT. Mr. Chairman, thank you.

Senator HART. And well represented.

Mr. RAITT. Thank you very much, sir.

I have no questions, but as a fellow Nebraskan, I certainly want to welcome Mr. Skinner and thank him for what I think was a very lucid statement giving us some of the practical problems that businessmen face. I certainly appreciate it. I know Senator Hruska would have liked to have been here today but by previous engagements—

Mr. SKINNER. I understand the pressure. We are all under pressure. I have to get a plane and go.

Mr. RAITT. Thank you very much, sir.

Mr. SKINNER. I should have added that I endorse the statements of Paul Willis and Frank Dierson, of the Grocery Manufacturers Association. I have read these two statements and I endorse, more or less, their concept of the things and I didn't want to burden you with going over the same matter.

Thank you.

Senator HART. Very thoughtful.

Mr. CHUMBRIS. I was going to make just one comment, Mr. Chairman.

I believe that the company that you are president of makes use of a lot of wheat that comes out of North Dakota which is one of the principal wheat-growing States for your particular product.

Mr. SKINNER. That is right.

Mr. CHUMBRIS. I know they appreciate it.

Mr. SKINNER. We use a hundred percent Durum product.

Senator HART. I wish you could find a way to introduce the use of Soft White along with that Durum mix.

Mr. SKINNER. Well, I have some low calorie recipes that I am not misrepresenting on. It depends on what you add in the recipe that brings the weight up. It is true that we like it with lots of cheese, not a little cheese.

Senator HART. Thank you very much.

Mr. SKINNER. I don't mean that the wrong way against the cheese industry either.

Thank you.

Senator HART. Our concluding witness, Mr. Robert H. North, speaks for the International Association of Ice Cream Manufacturers. He is its executive vice president.

You may introduce your associate.

(Mr. North's biography may be found on p. 837.)

**STATEMENT OF ROBERT H. NORTH, EXECUTIVE VICE PRESIDENT,
INTERNATIONAL ASSOCIATION OF ICE CREAM MANUFACTURERS,
WASHINGTON, D.C.; ACCOMPANIED BY BENJAMIN G. HABBERTON,
COUNSEL**

Mr. NORTH. Mr. Chairman and gentlemen, I am accompanied today by our counsel, Mr. Benjamin G. Habberton, of Washington, D.C.

My name is Robert H. North and I am executive vice president of

the International Association of Ice Cream Manufacturers. Our offices are here in Washington, D.C.

The more than 1,400 members of the association manufacture approximately 85 percent of all the ice cream and related frozen dairy products shipped in interstate commerce throughout the United States.

We are opposed to S. 387 and we are opposed to it on many grounds. But some of our objections are shared with manufacturers of "consumer commodities" in general and have already been presented to you, fully and forcefully, by representatives of other industries. I shall not burden the record by extensive articulation of these arguments but shall only mention them briefly, as a matter of recording our position.

First, I have in mind the conspicuous lack of procedural safeguards that would characterize the rulemaking with which S. 387 is principally concerned. We hope your subcommittee will give careful consideration to this section which so importantly affects both the "consumer commodity" industries and the consumer himself.

In the second place, I have in mind the imposition of criminal penalties for infractions of even the smallest of these regulatory rules. This would be objectionable to industry without being helpful to the regulatory agencies.

And in the third place, I have in mind the provision of the bill which would inhibit the application of its provisions as against those of State laws unless there is a "direct and positive conflict" between them. This we believe to be a step toward confusion and hence a step in the wrong direction.

With these general positions registered I wish now, as the real burden of my testimony, to invite your attention to certain provisions of the bill in their relation to food industries and, more particularly, to the ice cream industry as a representative food industry. The term "consumer commodities" is obviously a most comprehensive one. It may well include classes of products that have not yet even occurred to us, in addition to those which come readily to mind. It would be presumptuous, therefore, to attempt to delineate the effects of S. 387 upon a broader segment of industry than that of which we are a part and with which we have some familiarity.

To bring the bill into this more limited focus I will reiterate that ice cream is the principal "consumer commodity" manufactured by our members. It is packaged at the factory in containers that may range in size from a 3-ounce cup to the gallon carton, with the half-gallon predominating and I might point out at this juncture in my testimony I am referring to the consumer type packages which you generally see in the grocery store and other outlets.

By all odds, the majority of the cartons are the rectangular half-gallon containers. For dispensing at the soda fountains and other stops which we characterize in the industry as wet stops we use the larger containers, 2½-gallon containers, and sometimes 3 gallons.

With this brief description of the ice cream industry's "packages" I turn now to its product, and I wish first to advise the committee that it is a standardized product with which we are dealing.

In 1960, after many years of public hearings, study, and deliberation, the Secretary of Health, Education, and Welfare promulgated

definitions and standards of identify for ice cream (and, as well, for ice milk, sherbet, and water ice—other products manufactured by our members).

These definitions and standards of identify prescribe what ingredients the products must contain, what ingredients they may contain, as optional ingredients, and what declarations must be made with reference to ingredients in the label. These definitions and standards, and the findings of fact upon which they are based, are comprehensive, detailed, and explicit in the extreme. Standards and findings together comprise 16 small-print pages in the July 27, 1960, issue of the Federal Register in which they were published.

Can it be possible that now, only 3 years later, it is necessary for the Secretary to promulgate additional elaborate and far-reaching regulations in order to keep the packaging and labeling of ice cream within proper bounds? In short, is there any actual need for S. 387 insofar as the ice cream industry is concerned?

To answer these questions, let us consider the surprisingly broad authority to regulate in these areas which the Secretary, and we are referring to the Secretary of HEW, already has under existing statutory law—the Federal Food, Drug, and Cosmetic Act. And let us consider also how the Secretary has already exercised this authority.

It is said that the principal function to be performed by S. 387 is the prevention of consumer deception and confusion by false and misleading labeling and packaging. Now is it necessary to authorize the Secretary to issue regulations prohibiting deception and confusion?

No, it is not necessary, and the reason it is not necessary is that the Federal Food, Drug, and Cosmetic Act itself already does this and does it very effectively.

Section 301 of the act prohibits, and makes an offense, the shipment in interstate commerce of any food that is "misbranded." The term "misbranded" is fairly explicit and comprehensible but Congress elected to spell it out in its full implications in order that there might be no misunderstanding. It did so in section 403 of the act. There, Congress said, in subsection (a) that a food is misbranded "if its labeling is false or misleading in any particular."

And in subsection (d), Congress said that a food is misbranded "if its container is so made, formed, or filled as to be misleading."

Here, then, are carte blanche statutory condemnations of misleading labeling and misleading packaging. What more than this would subsections (a), (b), and (c) of S. 387 do?

As we read them, this is precisely what they are about. And how could the professed purpose of preventing deception in labeling and packaging be better effectuated than by condemning and prohibiting labeling that is "false or misleading in any particular" and condemning and prohibiting containers that are "so made, formed, or filled as to be misleading"?

But section 403 of the present act continues: Subsection (e) says that a food is misbranded, if in package form, unless it bears a label containing, among other information, "an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count." And subsection (f) condemns and prohibits as misbranded any food

if any word, statement, or other information required to appear on its label—

is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

Here again we have a positive congressional declaration, in statutory form, of what subsections (a), (b), and (c) of S. 387 would authorize the Secretary to say again by regulation.

As applied to the actualities of ice cream merchandising, what of real significance would S. 387 contribute? The ice cream manufacturer, in compliance with existing law, plainly labels his carton "one-half gallon" or whatever the quantity of contents may be. The measurements of this carton and of all other sizes of cartons that he uses have been meticulously arrived at to insure accurate measure. In fact, the ice cream industry, in concert with the carton manufacturing industry, has availed itself of the services of the U.S. Bureau of Standards in this connection, and simplified practice rules were adopted which, for example, measure the size of the sides of the half-gallon carton to one-sixty-fourth of an inch. In other words, it is a measured container and the standardized cartons are accepted by weights and measures officials everywhere. I venture to assert that slack-filled ice cream cartons are simply nonexistent.

Furthermore, I feel it will be of interest to you to know that, under the standard of identity for ice cream referred to above, the Secretary has prescribed that a gallon of ice cream shall weight not less than 4.5 pounds, that is the finished product, and shall contain not less than 1.6 pounds of food solids. This assures the consumer of the proper amount of product insofar as volume is concerned and requires a minimum food value.

Aside from the Federal regulations most States have adopted this double weight standard largely through the persuasion of this association.

The ice cream carton has six "panels," and the declaration "one-half gallon" is apt to appear on not just one but several of them. S. 387 would require only that this declaration appear on the "front" panel. But suppose the numerous cartons of ice cream are so arranged in the retailer's cabinet that the "front" panel is not readily visible, or is not visible at all?

Frankly, we believe the existing law that requires the declaration to be made "prominently" and with such "conspicuousness" as to render it "likely to be read and understood by the ordinary individual under customary conditions of purchase and use" is more in the consumer's interest.

To implement its work the Food and Drug Administration has had, for a considerable period of time, the Division of Advisory Opinions, a part of the Bureau of Enforcement, which issues advisory opinions on labeling, among other things.

This industry has submitted all of the styles and sizes of cartons to the Food and Drug Administration, that are in use. We have from the Division of Advisory Opinions a statement taking into consideration the method of merchandising ice cream that indicates which panel or panels of each and every one of these cartons is a principal one and

must bear the mandatory labeling statements. We submit that the Food and Drug Administration has properly utilized the authority it now has, which is needless to put in this bill, and that all industries of whatsoever nature producing the products under the jurisdiction of the Food and Drug Administration may utilize this same advisory service.

The same reasoning applies to the provision of the bill which would authorize the promulgation of "minimum standards" with respect to the type size and face in which the required words are printed. We believe that the present requirement of sufficient "prominence" and "conspicuousness" to render the reading and understanding of the words affords adequate consumer protection.

Furthermore, it is of interest to observe that the Secretary evidently considers existing law to confer at least some authority upon him to establish "minimum standards as to the type size and face" in which required statements shall be made, for he has in fact in a few instances done this very thing.

Thus, for example, in promulgating a definition and standard of identity for canned prunes (2 CFR, pt. 27, sec. 27.15), the Secretary has prescribed that—

The type used for the words "prepared from dried prunes" shall be of the same style and not less than one-half of the point size of the type used for the word "prunes."

And in the standard of identity for canned prune juice (21 CFR, pt. 27, sec. 27.60) the Secretary has prescribed that—

The type used for the words "a water extract of dried prunes" shall be of the same style and not less than half the point size of the type used for the words "prune juice."

The Food and Drug Administration has issued regulations with relation to the statements of net quantity of contents and has delineated very sharply the kind of labeling which does not have the necessary prominence and has cited companies for it. When we are talking about prominence we are fully aware of all of the elements involved. We know that it does not just mean type, sizes, and styles. We know, for example, that bold type could be employed which might be printed against such a color background that in effect it would not have the necessary prominence. To our own knowledge the Food and Drug Administration in its advisory opinions and in its field of enforcement has shown that it has the necessary authority to halt practices that do not give adequate prominence to the content declarations.

As to the provision of S. 387 which would authorize the Secretary to promulgate regulations prohibiting the use in the label of any package of "any illustration or pictorial matter which may deceive retail purchasers in any respect as to the contents of that package," this is a patent duplication of existing law. It is prohibited by existing law upon the ground that its label is "false or misleading in any particular" and upon other grounds spelled out in section 403 of the act.

We have thus far been discussing provisions of subsections (a), (b), and (c) of S. 387. Proceeding now to subsection (e) dealing with "additional regulations" that may be found necessary by the Secretary to "establish or preserve fair competition" or to enable consumers "to make rational comparison" or "to prevent deception of consum-

ers," we again find some provisions that are largely duplicative of existing law.

I have in mind, for example, the provision of paragraph (6) of subsection (e) which authorizes a regulation requiring "sufficient information with respect to the ingredients and composition" to be stated in the label.

Certainly, insofar as food products are concerned, the authority conferred upon the Secretary by the present law has been regarded as adequate and effective for this purpose.

In the first place, section 401 of the act authorizes, and in fact directs, the Secretary to promulgate definitions and standards of identity for foods when, in his judgment, "such action will promote honesty and fair dealing in the interest of consumers."

Scores of such standards, including the standards for ice cream and related products previously referred to, have already been promulgated in pursuance of this authority and many others are in process of formulation or amendment.

Furthermore, as to nonstandardized foods, it is already required by section 403(i) of the act that, with minor exceptions, all ingredients used must be named in the label.

However, in some respects the provisions of subsection (e) of the bill go beyond—far beyond—the reaches of our present law. Here I have in mind provisions of paragraphs (1), (2), (3), (4), and (5) which, with reference to any consumer commodity—and there must be thousands of them—would authorize the Secretary—or the Federal Trade Commission—to—

(1) and (2) "Establish reasonable weights or quantities, or fractions or multiples thereof," in which a commodity shall be distributed, and perhaps to prevent the distribution of any commodity in any other weight or quantity.

(3) "Establish and define standards of designations of size (other than statements of net quantity of contents) which may be used to characterize quantitatively the contents" of any package containing a consumer commodity.

(4) "Establish and define the net quantity of any commodity * * * which shall constitute a serving."

Based on our own experience we must submit that the above provisions are impractical. What is meant by an average serving of a food—especially one like ice cream?

It certainly cannot be average for everyone for the growing youth will have an average serving that is larger than that for those approaching the autumn of their existence. A person engaged in difficult physical work will have a different average serving than the person pursuing a sedentary occupation if medical opinion in this area means anything. This was tried in the ice cream industry when the first regulations were issued with respect to labeling packages of products, and these were dietetic frozen desserts, parenthetically, that contained sorbitol or mannitol. We had several lengthy sessions with staff people of the Food and Drug Administration. They did not know what an average serving of ice cream or ice milk or the frozen dietetic would constitute, and I must confess that in 18 years of experience in the ice cream industry I could not help them. When regula-

tions were finally issued an average serving was not specified because of the natural variation in appetite for such products.

As a matter of fact, the language of the order recited "The average serving shall be expressed in terms of a convenient unit of measure that can be readily understood and utilized by purchasers of such food." Therefore the knotty, if not insoluble, problem was left to the judgment of the ice cream manufacturer and not the regulatory people.

To quote further from the same section of the bill—

(5) "Establish new systems of quantitative designation of contents when designations in terms of weight, measure, or count are not 'meaningful'."

I must confess before this committee that after hours of thought I cannot come up with a quantitative designation which would not relate to either one of the three measurement areas mentioned in paragraph (5); that is, weight, measure, or count. What would be the new system of quantitative designation?

We are, by regulation of the Food and Drug Administration, required to declare our contents in liquid measure. We cannot, after long reflection, find a more meaningful way to make this declaration.

I would again say to this committee that what is being proposed is a duplication, with respect to the food industry, of what is already in the basic Food, Drug, and Cosmetic Act. This leads us to the only logical, reasonable, and practical recommendation we can make to this committee.

As indicated at the beginning of my testimony, I do not profess to have knowledge of consumer commodity industries other than food industries and, accordingly, I venture no opinion as to the extent to which any of the provisions of S. 387 apply to such other industries.

Likewise, I do not have information as to the need for further or different controls over the packaging and labeling of the products manufactured by such other industries. But I strongly believe that the food industries can be quite adequately regulated without S. 387, and if S. 387 is favorably acted upon in any form, I respectfully suggest that the food industries be exempt therefrom.

Mr. Chairman, I appreciate an opportunity to appear before this committee.

Senator HART. Mr. North, the committee appreciates your coming and expressing your views.

Mr. Chumbris?

Mr. CHUMBRIS. Mr. Chairman, I would just say on one point, on this question of regulation by the States, what is the history in your view as far as good and effective regulation by the States over your particular industry other than what you have already pointed out in your statement?

Mr. NORTH. Well, I would like to respond by saying that according to my best recollection, and we constantly make digests of all of the State laws in all of the 50 States and the District of Columbia, insofar as our industry is concerned and most of the dairy industry, we have had State laws for consumer protection, some of which go back a half century. I usually carry this digest with me because I like to refer to it when I am going into the various States.

This is a highlight of all of the laws that are on the State books, whether they are statutes or regulations with respect to just the ice

cream industry alone. They go far beyond what the food and drug regulations do. They establish definitions and standards of identity, they provide labeling requirements, they have sanitation regulations, they establish the limits for bacterial count, they set up the optional ingredients, and so forth. Many of the States have a terrific lever because they license the plants, and the man who continually violates these standards is going to get himself in real trouble.

I might add, Mr. Chairman, if I may, that one of the things that seriously concerns me is, and as a former State regulatory official, I look at this area a little more sharply than probably some of the other industry representatives do—there seems to exist, particularly in the metropolitan area of Washington, and on the Hill and I was on the Hill at one time as an administrative assistant to a Congressman, the feeling that consumer safeguards must all come from the Federal level.

I submit to you that for many, many years the States have been doing and are now doing an exceedingly fine job of protecting the consumers, both from the standpoint of standards and labeling regulations.

The control officials are aggressive in their enforcement. Counsel made reference a while ago to the weights and measures officials. I have been privileged to attend their meetings for 18 years and work with many of their subcommittees, they have task forces on various areas, and particularly the committee on the procedure in the sale of commodities. When those gentlemen come up with a resolution it just isn't put on the book as words, they go back to their States and put them into effect where they can. They are alert, aggressive, and keen.

I say to you that I think that the consumers are protected not only by the Food and Drug Administration but most adequately by the States. I can't close without mentioning one other thing that gives us some pause for concern. I think maybe the Senator is probably aware of this: I believe that there are hundreds of different jurisdictions that may control the dairy industry in all of its operations and I submit that we are probably one of the most controlled industries in America.

I do also want to say that the fact that I alluded to a point that standards had been promulgated on the State level from 50 to 35 years or more doesn't mean that they are not constantly updated. In the chairman's own State, in the State of Michigan, Mr. Skiver and the regulatory people there are constantly working with industry to update and make more effective their standard, both of identity and label.

Mr. CHUMBRIS. Thank you very much.

Mr. RAITT. No questions, Mr. Chairman.

Senator HART. Mr. Habberton, did you have anything to add?

Mr. HABBERTON. Nothing, thank you, Senator.

Senator HART. Thank you very much.

Mr. HABBERTON. I appreciate the opportunity of being here with our client.

Senator HART. Counsel has several statements to offer for the record, all of which will be received unless there is objection.

Mr. COHEN. Mr. Chairman, we have a statement from the president of the Premium Advertising Association of America, William P. Dunham, opposing the bill.

A statement by the department of weights and measures, city of Chicago, listing deceptive practices in the marketplace.

A statement of Dr. Irene Oppenheim, assistant professor of home economics, Montclair State College, supporting the bill.

A letter from Maurice O. Nordstrom, Jr., supporting the bill.

A statement of the president, Lee W. Minton, international president of the Glass Bottle Blowers Association, opposing the bill.

A statement of the assistant vice president of the KVP Sutherland Paper Co., C. W. Walton, opposing the bill.

A resolution of the Cereal Institute opposing the bill.

Pages 9 and 10 of a statement by Gov. Edmund G. Brown, of California contained in a pamphlet entitled "A Consumer Policy for California," this being the section on packaging and labeling.

A letter from the New Jersey Weights and Measures Association supporting the bill.

A letter from the president of the Goodwin Laboratories, Inc., John T. Goodwin, Jr., supporting the bill.

A newsletter of the Western Weights and Measures Association in support of the bill.

A letter from the Department of Agriculture, State of Washington, supporting the bill.

A statement from the Waxed Paper Institute of Chicago opposing the bill.

A letter from the Pet Food Institute opposing the bill.

A resolution by the Indiana Association of Inspectors of Weights and Measures supporting the bill.

An article and survey from the Good Housekeeping magazine entitled, "The Better Way."

(The material referred to may be found beginning on p. 755.)

Mr. COHEN. And finally, in keeping with the tradition we have set during the course of these hearings, we have received additional computers, which should be listed for the record.

First the E-Z Bargain Finder produced by the E-Z Grader Co., 28999 Gates Mills Boulevard, Cleveland 4, Ohio.

The Housewife's Friend, sold by Donald Davison, 5121 Mead Street, Dearborn, Mich.

The Thrifty Shopper, whose address is Box 3173, Midland, Tex.

And finally, the CTC Shopping Computer, manufactured by James Boswell, distributed by James Boswell, 9610 Deering Avenue, Livonia, Mich.

Mr. CHUMBRIS. Mr. Chairman, I discussed with Mr. Cohen earlier that perhaps we would have just about a week for additional statements and I wanted to clear with you.

Senator HART. Yes, as I bring the record to a close I will indicate that the record will remain open until the 3d of May to receive additional statements.

In addition to the material which has been received as offered by Mr. Cohen, I would like to add several letters.

We have heard again today the expression that the smaller producer will be disadvantaged by the passage of this bill. These letters suggest

that some of the smaller producers do not necessarily subscribe to this expression of view as presented to us by their trade associations. For example, the Tea Association has taken a position in opposition to the bill, yet I have here a letter of April 22 of this year from a small tea manufacturer, which I will insert in full in the record. Note that he writes that:

DEAR SENATOR: Although the Tea Association, which represents the tea industry as a whole, has put itself on record as being opposed to the proposed legislation to be known as the truth-in-packaging bill, we are also a member of the Tea Association, would like to go on record as being in favor of this new legislation.

It winds up by saying:

As an independent small packer, we would vigorously support your efforts to bring order out of the chaos that now exists in the food industry, not only for tea bags but for so many other products.

This is from Bert Hauser of Servit Foods Corp., of New York City, N.Y.

And as we know, the National Canners Association has taken a stand against the bill; yet I would insert in the record the letter of March 14, 1963, from the Independent Can Co., of Baltimore, Md. In this letter Robert U. Link, its sales manager, describes a situation which confronts this smaller canner, a situation they have discussed with the Food and Drug Administration.

They said:

We received a very sympathetic hearing, and were told that it would be taken up with your committee. It was pointed out that, under the present laws, the Food and Drug Administration could not force corrective measures as long as the contents shown is correct.

He is describing a situation where for many years fresh oysters had been packed in 8-ounce, 12-ounce, and 16-ounce cans. Recently a company began to manufacture 7 $\frac{3}{4}$ -, 11 $\frac{5}{8}$ -, and 15 $\frac{1}{2}$ -fluid-ounce cans which went on display on the shelf and appeared to be similar in size to a full measure of contents but the quantity was shown on the label. The Food and Drug Administration correctly advised the Independent Can Co. there is nothing that can be done under present law.

He winds up by saying: "We hope, sir, that there is some help you can render."

As I see it enactment of this bill would provide that help.

Then we have a letter of March 12 of this year from the Idle Wild Farm of Pomfret Center, Conn. It is signed by its president and he says:

DEAR SENATOR HART: We have read about the revised truth-in-packaging bill which was introduced by you and Representative Celler, in the February issue of Packaging Magazine * * * and we are urged, with other packers, to lobby against the bill. We are told that this bill can only contribute to suffocation in a nation where the businessman is distrusted because the liberals continually hammer away at the premise that the interests of business are diametrically opposed to the interests of the rest of us. We are further told that legislators are so cocksure of assumed paternalism that they introduced a bill to protect the housewife against the artificial nonprice competition of deceptive packaging.

I want you to know that the magazine does not speak for all of us in the food packing and other consumer packing trade, and it certainly does not speak for Idle Wild Farm—

And for a great many others, I suspect.

(The letters referred to may be found on p. 773.)

Senator HART. This concludes 11 days of extensive hearings on S. 387, the truth-in-packaging bill.

I now will request Senator Kefauver as the chairman of this subcommittee to bring the bill before the subcommittee for its early consideration.

The hearings on the bill have reinforced my impressions received from three volumes of testimony this subcommittee heard during the investigative stage of its inquiry into the packaging and labeling of market-basket items.

These volumes contain detailed documentation and irrefutable testimony that the packaging and labeling revolution of the past decade has resulted in competitive practices that are bad for the economy, bad for the businessman, and bad for the consumer.

These practices have evolved as the package has taken over the job of salesman for the product. They grow out of the failure of this package salesman to provide adequately, meaningfully, and clearly the basic information necessary for a quantity-cost comparison between competing products.

The problem is how to insure to the buyer the essential, clearly stated information from the package or label which will permit and encourage intelligent comparisons in the marketplace.

The failure of the package and label to fulfill this essential function is resulting in distortion in the marketplace; an undue burden on the small manufacturer; an unfair competitive advantage for the few unscrupulous businessmen over the ethical many; and substantial loss in buying power for the American consumer.

S. 387 will fill a void in present law that allows this situation to exist. It provides a means for establishing minimal ground rules in the specific areas where the practices causing these socially undesirable results are found.

Proponents of the bill urge that its passage will provide a framework for the more rational operation of the economy which would permit honest competition and intelligent consumer choice.

Opponents have centered their opposition on adequacy of present law; self-regulation as preferable to Government regulation; and that any law in this area would constitute "undue Government interference with industry."

Many of us feel there is ample proof that present law is not adequate because of the condition of the marketplace, where the practices complained of prevail. Furthermore, the administrators of the agencies involved have cited chapter and verse on why present law is not adequate to the conditions in the modern marketplace.

Self-regulation simply has not worked. Finally, the establishment of ground rules by regulations is far from undue Government interference. If it were "interference" it would not be "undue," but "overdue."

I am impressed by the testimony of the officials representing the State weights and measures and State agriculture departments of this country, who tell us that this legislation would be of great value to the individual States in their daily battle to hold in check packaging and labeling practices.

Certainly some modifications in the bill may be desirable. I am inclined to agree that criminal sanctions as they may apply because of violation of regulations promulgated by the FDA should be eliminated. It may also be desirable to provide formal hearing procedures when establishing regulations pertaining to package changes as differentiated from label information.

Other modifications in language to set forth our intent more clearly may also be necessary.

But such changes are only refinements. I am convinced after listening to and studying carefully the many opinions and suggestions presented to this subcommittee that the substance of this bill should remain unchanged.

In the words of Secretary of Commerce Luther Hodges, "This bill would not only serve to protect the interests of consumers throughout the our country but would also serve to protect and advance the interest of manufacturers, packagers, and all other business elements participating in the distribution of consumer products."

The hearings on S. 387 are concluded. But as I earlier indicated, the record will remain open until May 3 to receive any further statements that any party may wish to submit.

Mr. Chumbris?

Mr. CHUMBRIS. Mr. Chairman, I have a closing statement by Senator Dirksen on behalf of himself and Senator Hruska, and if it would be considered as read, I would submit it to the reporter.

Senator HART. It will appear in the record as though read.

Mr. CHUMBRIS (reading):

Mr. Chairman, the Republicans are just as concerned about consumer problems as anyone else in the Congress. From Abraham Lincoln to Dwight David Eisenhower, the precepts of the party have been, as President Eisenhower stated in 1956:

"I am a Republican, because I share our party's deep-lying trust in what free-men can do—a fundamental trust in the nature and capability of individual human beings."

During the 1960 election there were 34,108,546 Americans who voted Republican and each one is a consumer.

We of the minority, are concerned about the bad effects S. 387 will have on the consumers of America, all 188 million consumers in America—Republicans, Democrats and nonpartisans. Let there be no mistake about this.

These bad effects to the consumer are in the form of increased prices, resulting from increased costs brought on by S. 387; and the expected reduction of the number, variety, quality, and convenience of the packaged goods the consumer buys, brought on by the standardization and regimentation provisions of the bill. Senate bill S. 387 would also prevent the consumer from gaining the price advantage of "cents off" if the manufacturer is not permitted to place that notation on the products he sends to the retailer. It has been noted that the consumer products have increased from 5,400 to 8,000 with the expectancy they will go to 20,000 to meet consumer's needs of our Nation. But if this bill becomes law, it will handcuff initiative, ingenuity, and individualism in the packaging and labeling industry and will have a most disturbing and depressing effect on the ability of small and large businessmen to innovate new products, thusly, reducing the number of packaged products not only to the detriment of the needs, conveniences, and adaptable uses of the consumer but to the detriment of the employees and businessmen. These are but a few of the bad effects of the bill as reflected in the record.

We know that there have been statements made that these are just the fears of industry, but a careful and unbiased analysis of the testimony presented during the course of the hearings on S. 387 would make the above enumerated conclusions inescapable.

Mr. Chairman, when we consider legislation affecting agriculture, we place great weight on the testimony of the individual farmer or farm groups who would be affected by such legislation; when we consider legislation dealing with labor or labor unions, we place great weight on testimony of the individual worker or labor leaders who would be affected by such legislation; and on the same basis, when we discuss legislation affecting the manufacturer or producer, we must place great weight on the views of the manufacturer and producer who would be affected by said legislation. The industry representatives dealing with packaging and labeling are almost unanimous in vigorous opposition to S. 387. Even the representatives of the FTC and FDA, after testifying to the successful cases in which they could proceed under existing law, added that they would like to have S. 387 enacted because it would give them the same legislative rulemaking power that was given to them in the Textile Labeling Act of 1958. The major difference, however, is that in the Textile Labeling Act, Chairman Magnuson stated: "I believe everyone agreed to the fundamental objectives of the bill," whereas, in S. 387 there has been vigorous opposition to the objectives.

We further believe that the record is replete with testimony from competent and experienced witnesses, not from biased witnesses, that—

(a) S. 387 is not needed, because existing law, if vigorously enforced, would protect the consumer;

(b) no effective showing has been made that the alleged cures of the bill would aid the consumer, but on the contrary, the proposed cures would be worse than the alleged disease;

(c) that the bill is attempting to legislate against confusion and inconvenience;

(d) that it is attempting to make the FDA an antitrust agency by bringing it within the Clayton Act (this was opposed by Chairman Paul Rand Dixon, the Chairman of the Federal Trade Commission);

(e) that both the mandatory and permissive provisions of S. 387 would cause so many hardships to manufacturers and consumers that it would be the small manufacturer and the consumer who would have the most to pay in the long run, just to satisfy the complaints of a few that may be confused or inconvenienced when they purchase packaged foods;

(f) that the costs of retooling, and the manufacturing of new packages and labels would run into many millions of dollars. One manufacturer alone stated that it would cost \$8 million for just four products at a continuing annual cost of \$2 million.

Congress is asked in this bill to give almost a blank check to the Food and Drug Administration and the Federal Trade Commission to legislate its rules and regulations, that would have the full force and effect of law in the packaging and labeling industry, which would be detrimental to the manufacturers and to the consumers and would not be in the best interest of the public.

Members of Congress on both sides of the aisle are becoming more and more concerned and are voting against specific measures because of this creeping system by which Congress delegates to a Federal agency, Congress' constitutional power to legislate.

At the first day of hearings both Senator Hruska and I made it clear by our statements that the existing FDA and FTC laws if vigorously enforced by the agencies, are competent to meet complaints that have been registered during the course of these hearings. There is no new evidence adduced at these hearings that would alter these views. The fact that an agency wants additional authority—which is understandable of a Federal agency—does not mean that Congress should give them that blanket authority.

If we are going to maintain our constitutional separation of the legislative, executive, and judicial, we have to begin now, before we have gone too far down the road toward abdicating our legislative power both in legislation and in the appropriation of funds.

This, of course, is not intended as a minority report on S. 387, but are impressions from the record that have been created thus far—this being the last day of the hearings. A more detailed and documented position by the minority members will be made at the time the majority has prepared its report on S. 387.

Senator HART. The hearing is adjourned.
(Whereupon, at 1:10 p.m., the subcommittee adjourned.)

STATEMENTS

STATEMENT TO THE SENATE ANTITRUST AND MONOPOLY SUBCOMMITTEE ON BEHALF OF THE AMERICAN BAKERS ASSOCIATION AND THE BISCUIT AND CRACKER MANUFACTURERS' ASSOCIATION ON S. 387

The American Bakers Association and the Biscuit and Cracker Manufacturers' Association are opposed to the passage of S. 387, a bill "to amend the Clayton Act to prohibit restraints of trade carried into effect through the use of unfair and deceptive methods of packaging or labeling certain consumer commodities distributed in commerce, and for other purposes."

These associations are national trade associations representing the baking industry. The American Bakers Association is the trade association of the perishable product segment of the industry; the Biscuit and Cracker Manufacturers' Association is the association of the manufacturers of semiperishable bakery products. Total sales of all bakery products exceed some \$5 billion annually.

It is our view that passage of S. 387 would have an adverse economic effect on all sellers of bakery products. Nor do we see compensating benefits accruing to consumers if the bill becomes law. Our industry operates in a complex and constantly changing consumer-products market. The basic and underlying objection to this legislation is its substitution of the judgment of Government bureaus for that of the consumer, the marketplace and the manufacturer.

The premise of the bill as indicated by its preamble is a prevalence of unfair and deceptive methods of packaging or labeling of consumer commodities of sufficient magnitude to call for congressional action. We do not believe the evidence has established, either in the instant hearings or the proceedings before the subcommittee a year ago, a need for legislation such as encompassed by S. 387.

The bill would make it mandatory under section 3(A) (c) for the Secretary of Health, Education, and Welfare to issue and enforce regulations with respect to food that would:

- (1) Prescribe size and style of type for net weight, measure or count information.
- (2) Specify where this information will be placed on the package.
- (3) Prohibit qualifying words or phrases to net weight statements.
- (4) Forbid statement that particular products offered for sale at a price lower than ordinary and customary retail price.
- (5) Prohibit any pictorial matter which may be deceptive.

Additionally, the Secretary would be empowered to issue regulations which would be even more restrictive; namely, to establish weights or quantities in which commodities may be sold; determine the size, shape, and dimensions of packages; determine the descriptive terminology of package sizes, and the quantity of a "serving." The bill through this grant of authority transfers to the Secretary of Health, Education, and Welfare and the Federal Trade Commission the legislative prerogatives of Congress.

Referring to just one of the powers which this bill would vest in the Secretary—that of package standardization, the testimony of Mr. Lee S. Bickmore, president of National Biscuit Co., a year ago before this same committee which was then investigating the need for this proposed legislation is significant. Mr. Bickmore stated:

"This demonstrates one important aspect of standardization: you can have standard weights or standard size packages, but you can't have both unless you have a standard or uniform product. It is because these particular products are packed in a 'standard' package that we cannot standardize their weights—unless, of course, we were deliberately to slack fill, in this case, 11 out of 13 products.

"Now, let's take a look at what happens if we try to standardize weights. Suppose we were required to pack each of these four varieties to a standard weight of 8 ounces. We would then need three additional sizes of packages.

Each different size would require a separate line of packaging equipment to handle it. Each additional line would require an additional 4,800 square feet of plant area to house it. If we had the land available on which to construct that plant, it would cost us over \$1 million to equip just one oven with the packaging equipment needed to put out these four varieties—packed as full as practicable—to a standard of 8 ounces.

"If we were to make that investment, what would happen to our costs? They would go way up. If we had four packaging lines per oven, only 25 percent of our investment in packaging equipment—and the plant required to house it—would be productive at any one time. Because of the time involved in shifting from one line to another, our efficiency would be further decreased by additional startup and shutdown expense. Our overhead would increase because we would have to pay additional real and personal property taxes, insurance and maintenance costs and the other expenses that would flow from this additional investment.

"All of these added costs would have to be reflected in higher prices. If consumers refused to pay these higher prices, we could not make these products. The variety of products available to consumers would thus be reduced. Freedom of choice and production would both have been curtailed."

This is the cost estimate of one company. There are thousands of baking firms in the United States, most of them small businesses. What effect would package standardization have on their costs or competitive position? We venture to say that many would find it disastrous.

Such standardization, and any of the other restrictions of section 3(A)(c) could be promulgated by the Secretary without any right to a hearing. A unilateral decision could be made by him without further recourse by the affected person. This disregard of basic safeguards, particularly in a statute which would impose criminal sanctions for even unintended violations, is repugnant to our traditional concepts of justice.

The Federal food, drug, and cosmetic law in its various provisions spells out with definiteness the requirements of proper labeling which the Food and Drug Administration has always considered sufficient to protect the consumer and to give him the information he required to make intelligent food purchases. At the same time, because it has a degree of flexibility, food manufacturers are able to take more than one approach or adopt different techniques as required by sound marketing practices to properly inform the consumer, without waiting for the ponderous wheels of bureaucracy to grind out a decision as changes are required. These provisions have found general acceptance in the food industry and protection from deception has been afforded the consumer.

Our industry has been able to function within the framework of the present food and drug law because it has this flexibility to meet varying market conditions without impairing its protective features for the consumer one iota.

The member companies of these two associations have had a long history of serving and supplying the American public with bakery products of all descriptions. Their names include some of the most respected and best known in the food field. Their durability and success in one of the most competitive areas in American enterprise has resulted from a clear realization that it is the consumer who determines ultimately what products should be sold, how they will be sold, and the manner in which they will be sold. Those companies which have failed to recognize these truths have perished by the wayside. Those which recognized and observed them have survived. It is worthy of note, it seems to us, that most of the witnesses who appeared before the subcommittee in opposition to the bill were from companies and industries which by no stretch of the imagination could be considered fly-by-night. On the contrary they were witnesses from companies whose names are household words across the Nation.

It is an amazing indictment which this bill would make of the American food industry. It is a particularly cruel indictment, because the food products industry has historically been one of relatively low-profit margins due primarily to the strong competition within it. Yet in what other country in the world today will an hour's work purchase as much nutritive food, including bakery products, as in the United States.

The record is replete with technical analyses of the bill and a comparison of the provisions of the Federal Food, Drug, and Cosmetic Act and the Federal Trade Commission Act, to demonstrate their adequacy to protect the consumer insofar as food products are concerned. There is no need now to recite again such comparisons.

It was particularly interesting to observe that the Commissioner of the Food and Drug Administration and the Chairman of the Federal Trade Commission testified before the subcommittee on succeeding days with opposite views as to where jurisdiction for enforcement should lie under the proposed legislation. Each claimed that only his agency could properly administer the law. If coming events cast their shadow before, this contest for authority could be a forerunner of the disputes which would ensue as the tremendous might of the Federal Government was brought to bear to resolve the great minutiae of its regulations. Theologians of an earlier day were wont to argue interminably over how many angels could stand on the head of a pin. Similiar learned discussions in a more secular field can be easily envisioned should this bill become law—for example, the size of type and face to appear on a box of crackers, or which panel is the front panel. One can visualize the great expertise of these two agencies wrestling with such problems, with conclusions of little satisfaction to themselves, or the consumer, or the manufacturers who would have the burden of compliance.

One of the serious concerns which we would have should this bill become law was aptly demonstrated in a recent press release from this subcommittee, attributing certain statements to Senator Hart in which he criticized the few cherries he found in a frozen cherry pie; therefore, according to the release, he was going to ask the Food and Drug Administration to set a standard for cherry pie because Michigan is the Nation's largest grower of cherries.

Recognizing the Senator's rightful interest in the products of his fine State, this is precisely what is to be feared—that this type of pressure would be put on an administrative agency to establish various standards because of the economics of a particular State or condition, and not because consumers are being deceived or need assistance in their purchases of the particular product. This bill would empower the Secretary to promulgate a regulation on such a basis.

It overlooks entirely the judgment of the marketplace which will not tolerate for long a product which does not meet the housewife's exacting requirements.

We consider the deficiencies of this bill, as set forth in our statement, to be many and serious. As a food industry which is necessarily close to the consumer and his wants, we are perfectly willing to submit to his judgment. At times it may be surprising and occasionally capricious; it is never static, usually quite sound and always controlling. We are convinced the consumer's judgment with respect to the foods he desires and buys is far superior to any which can be rendered by any Government agency with all its expertise.

In summary, we object to S. 387 because—

- (1) Existing laws are adequate to protect the consumer.
- (2) It increases further the role of bureaucracy in business.
- (3) It treats violators of the food provisions as criminals whether the violation is intentional or not.
- (4) It is confusing, indefinite, and impracticable.
- (5) It presupposes that so many food manufacturers are dishonest that restrictive legislation must be enacted.
- (6) It will be costly to administer and require increased expenditures of Government funds without commensurate benefit to the consumer and taxpayer.
- (7) It assumes the American housewife to be a hapless creature with a low level of intelligence who would be constantly duped and deceived unless a Government agency guides her every step.
- (8) It will impose a costly burden on industry.
- (9) It assumes the American economy has lost its dynamism and can expand no further except under the dictates of the Government controls contemplated by this bill.

We respectfully submit that S. 387 would impair the value of our industry to the consumer and consequently do injury to the consumer himself. We urge that it be rejected in its entirety.

The governing boards of the two organizations on whose behalf these objections are submitted were sufficiently concerned over the extreme powers granted by S. 387 that they recently adopted the following resolution with respect to it:

"The board of governors of the American Bakers Association (the board of directors of the Biscuit & Cracker Manufacturers' Association) strongly reaffirms its position that packages containing food products offered for sale to the consumer should be truthful as to their contents in every respect, including

description of the product, listing of ingredients, weight of contents, and design of package.

"With full awareness of the obligation of its members to the consuming public, the board believes that proposed legislation such as S. 387 and H.R. 2382, or any other similar legislation predicated on the assumption that most manufacturers are dishonest, is unsound in principle and detrimental to the consumer as well as the manufacturer of food products.

"These bills would impose unjustified and costly burdens on all food manufacturers without commensurate benefit to the consumer. Ample authority presently is available to the Food and Drug Administration to control any abuse or derelictions which need attention.

"Therefore, be it resolved by the board of governors of the American Bakers Association (the board of directors of the Biscuit & Cracker Manufacturers' Association) that the association oppose S. 387 and H.R. 2382."

We believe the resolution speaks for itself without further elaboration.

Respectfully submitted.

JOSEPH M. CREED, *General Counsel.*

GOV. EDMUND G. BROWN

(Extract from "A Consumer Policy for California")

PACKAGING AND LABELING, WEIGHTS AND MEASURES

One out of every four of the consumer's dollars is spent in the supermarket—that magnificent jungle of modern selling techniques, where billions of dollars of television and newspaper advertising receive their ultimate test; where the shopper is wooed by the most dazzling display of goods in the world.

For the modern supermarket is a symbol of the conflicts in our economy. It is efficient, its products are cheaper than in almost every country of the world and it offers a range of choice unequaled anywhere. Yet, the fact is that the multibillion dollar prize at the cash register has produced a confusion of packages in odd sizes with more conflicting claims and less information.

The shopper threads her way through the aisles trying to make price and quality comparisons that literally would be impossible without a calculating machine.

Our own consumer counsel made a study of 14 common household items in a typical local supermarket and found the 14 items offered in 246 different packages. And most of them were odd sizes. Of 20 choices of peanut butter, only 4 were in pound packages; of the 6 choices of salt, none was a pound package; of 26 hot cereals, only 4 were in pound packages. Under those conditions what shopper can make price comparisons? The answer must be "none," unless they are mathematical geniuses or carry a slide rule.

An effort is being made at the Federal level to bring some order out of this chaos but there is no reason why the State should not take action. As a beginning, I am submitting legislation to:

1. Require that the quantity of a package be displayed on the principal display panel of a container. Many California food processors already follow that practice for shipments to Canada where the law requires it. Californians are entitled to no less.

2. Require advertisements of packaged products to include statements of quantity next to the prices, a practice most ethical retailers already follow and one adopted by several other States.

3. Restore our prewar bread sizes of 1 pound and 1½ pounds and add a third size, the half pound loaf. The present standard loaf sizes of from 15 to 17 ounces and from 1 lb. 6½ ounces to 1 lb. 9½ ounces are an absurdity. I further propose that we outlaw "ballooning" of small loaves into a package that appears equal to a large loaf.

4. To eliminate refreezing of thawed foods, require that food be labeled if it has at one time been frozen.

5. Require processors of carbonated beverages to meet the requirement placed upon all other food processors to state ingredients on the label of the product.

6. Where ingredients of a food product must be listed, require that water also be listed if it has been added.

Finally, I recommend that you undertake an interim study of all of our weights and measures and packaging laws. A review of these laws is long overdue.

STATEMENT FOR THE RECORD FROM GEORGE M. PARKER, INTERNATIONAL PRESIDENT,
AMERICAN FLINT GLASS WORKERS' UNION, TOLEDO, OHIO

It is without question that S. 387, known as the truth in packaging bill, has a worthy and necessary purpose. As spokesman for the 30,000 members of the American Flint Glass Workers' Union, AFL-CIO, who are both consumers and employees in the glass packaging industry, I can heartily endorse the intent of such legislation.

I believe it pertinent, in the light of the purpose of this legislation, to call to the committee's attention certain historical facts which have a bearing on the accomplishment of that purpose.

Members of the American Flint Glass Workers' Union are, in the main, highly skilled participants in America's first industry—the glassmaking industry, founded in Jamestown in 1608. They possess a pride in both their skills and the multitude of end uses to which their products are put. They also possess pride in the integrity of their industry, and have joined with others in efforts to accomplish exactly the purpose of S. 387—protection of the consumer from false representations as to quantity contained in glass packaging. May I cite one example?

In 1954 the American Flint Glass Workers' Union published a brochure prepared by its revered former President Harry H. Cook, titled "A Story of Glass" and dedicated as follows:

"This brochure is dedicated to the American glassware industry, to bring about increased interest in forming glass and a deeper understanding of the rare dexterity and skill required in forming articles of glass.

"It is also intended to encourage business leaders, together with representatives of labor and Government to preserve and expand this industry, which has contributed so much to civilization."

Mr. Cook records the history of glassmaking and its modern forms but also records an example of self-policing unique in industry and of significance to the committee's considerations. The American Flint Glass Workers' Union, with the National Better Business Bureau and the American Glassware Association, evolved and subscribed to certain "glassware definitions."

"Intended as a guide to accurate and informative advertising of glassware, they were developed to promote better mutual understanding of glassware terms by advertisers and consumers."

The various definitions spell out the descriptive terms which are considered truthful, complete and understandable to the consumer. Not only was this positive step taken but, in addition, a warning was sounded, a warning against the very practices which S. 387 is planned to eliminate.

May I quote this section in full?

STATE ACTUAL CAPACITY OF TUMBLERS

"Beer, highball, old fashion, ice tea, and other similar beverage tumblers with thick bottoms are sometimes produced in the same mold that is used for thin-bottomed or shell tumblers. The actual capacities of these thick-bottomed tumblers are, however, less than that of the corresponding shell tumblers. Care should be taken never to advertise the capacity of the heavier bottom of the sham glasses as the actual capacity of the shell glasses. It misleads the purchaser and local bureaus of weights and measures frown on such practices. Some have already taken legal action in the matter. Reasonable plus or minus manufacturing tolerances in overflow capacities are recognized and are allowable."

This warning was sounding many years ago and its philosophy has been perpetuated by the actions of the entire glassware industry ever since. Some 4,000 glass mold makers, who are members of the American Flint Glass Workers' Union and whose skills produce approximately 98 percent of the molds from which glass containers are made, can testify that they are called upon to make possible thinner, rather than thicker bottoms on glass containers of all descriptions. Their only limitations are the tensile strength of the design.

Design research is another factor that distinguishes the glass container industry from other branches of the packaging industry. A veritable revolution is taking place in the applications of this well-known and commonly accepted material. The fruits of design and materials changes are already passed on to the consumer and to the American defense effort as well. Discoveries in ceramics and glass in combination have made both missile nose cones and lighter but

stronger bottles. There is a most palpable difference between the weight of a gallon bottle today and that of only a decade ago. In addition, it is possible to pass on to the consumer the saving in packaging costs which result from increase in the quantity contained by a single package rather than multiple packages. A most notable example relates to milk bottle designs of today.

Glass packaging designs of today are as revolutionary and as worthy as the outstanding example in glassmaking history—the oil lamp chimney. It was discovered that crimping the top of the chimney increased the total strength of the chimney and allowed lighter glass weights to be utilized, with an ultimate saving to the consumer.

It is an easily discernible fact that the uses of glass as containers are currently in a ferment of discovery and, for that reason among others, grave consideration should be given any legislation which would tend to standardize and thus stifle the ingenuity and skill of an entire industry.

I join enthusiastically with the sponsors of S. 387 in demanding that packaging of any commodity contain assurances as to weight, measure or count of the contents but respectfully submit that section 3(e) (1) and (2) of the proposed legislation are extraneous to its purpose and constitute an economic threat to thousands engaged in the glass container industry.

Perhaps it is a misnomer to call S. 387 a "truth in packaging" proposal. Rightfully, its purpose is "truth in labeling" and pertains to packaging only insofar as the design of the materials for packaging are intended to deceive the consumer. Obviously, this is difficult to accomplish in clear glass packaging or in any but totally opaque glass containers. But it can be done through varied shapings of the container, if the intent to deceive is present.

Is this problem not one of enforcement of existing legislation and regulation very similar to the manufacture and distribution of clothing following the discovery and utilization of synthetic fibers. It was sufficient to label the wool, cotton, or synthetic content of the clothing rather than standardize the designs of men's suits or women's dresses.

An equally abhorrent result would follow from regulation of "packages of sizes, shapes or dimension proportions which may deceive retail purchasers as to the net quantity of the contents thereof * * *." Lost would be the creative genius now being displayed in glass packaging without intent to deceive but willful intent to beautify and to utilize a versatile material to its best advantage. Many homes in this country are lit by table lamps whose base has been adapted from a beautifully designed glass container. Shelves of objects d'art contain empty vials and decanters having the appearance of fine cutglass.

More important, the varied composition of foods now being concentrated in powders, liquids, shreds and cubes dictate the shapes and sizes of their glass containers in order to achieve free flow, prevent wastage and provide easy access to the commodity. Safe and utilitarian packaging of these nutritional developments are the concern of glass container designer and their economy in filling of concern to the packer and the consumer.

Surely a stultification of industrial ingenuity and marketing diversification is not a purpose of S. 387. Yet the above-mentioned sections of the legislation would hamper if not eliminate the efforts now in progress toward full utilization of the desirable characteristics of glass as a packaging material. Standardization would reduce employment among members of our union employed as glass mold makers and their craft, often passed from generation to generation, could be lost.

It is also my belief that the American glass industry would suffer greater unemployment as a result of encouragement of enterprise and technological advances abroad in the art of glassmaking and increase even further the imports which have been harmful to employment in the American glass industry. The handmade art and tableware industry has lost 50 percent of its employment opportunities since the end of World War II.

To summarize, the fundamental error in these sections of S. 387 cited above is that they would establish unnecessary controls and regulations without implementing the necessary consumer protection contained in other sections of the bill. Establishment of reasonable weights or quantities and restriction of sizes, shapes, or dimensional proportions of containers would neither reduce nor eliminate the policing problem caused by dishonest packaging. The fault lies, not in the packaging, but rather in the claims made on the label regarding the contents.

There presently exists sufficient regulatory authority to enforce observance of honesty in claims for contents of commodities packaged in glass. The technological nature of the moldmaking, molten-glass pouring and automatic finishing render it economically useless to attempt to gain an illicit profit from glass containers designed to deceive the consumer. The expense of such designs, their manufacture, packing, and special closures would prohibit any additional profit in lessening the contents below the amounts claimed on the labels.

For these reasons I respectfully submit that section 3(e) (1) and (2) are superfluous to the objective of the bill in relations to glass containers and that the conditions imposed by these sections would hamper the remarkable advances of the glass container industry and result in increased unemployment in the American portion of that worldwide industry.

RESOLUTION ADOPTED BY THE EXECUTIVE COMMITTEE OF THE CEREAL
INSTITUTE, INC., APRIL 1, 1963

The Cereal Institute, Inc., opposes the enactment of the Hart-Celler bills (S. 387 and H.R. 2382) as they relate to cereals and other packaged foods.

These bills would require the Food and Drug Administration to issue regulations which would unnecessarily duplicate provisions of existing law under which the Food and Drug Administration has adequate authority to protect the consumer from deceptive and misleading packaging and labeling. The Food, Drug, and Cosmetic Act requires prominent and conspicuous declarations of net contents and ingredients, prohibits the use of labeling that is false or misleading in any particular, and prohibits the use of containers that are so made, formed, or filled as to be misleading.

These bills would also authorize the Food and Drug Administration to standardize the quantities in which foods could be sold and the sizes and shapes of food packages, without requiring that hearings be held or that such regulations be based upon findings of fact or substantial evidence. In effect, they would give the Food and Drug Administration unlimited authority to regulate and control food packaging, authority for which no legitimate need has been shown.

Such unlimited regulatory authority would be contrary to the best interests of consumers since it would deprive them of some of the benefits of mass-production economies they now enjoy, result in monotonous standardization of food packages and labels, reduce the variety of sizes available from which consumers are now free to choose, and suppress and inhibit packaging and also product improvements and innovations. Further, it would permit unwarranted interference in the business of food manufacturers and processors and constitute an undesirable delegation of legislative power without adequate guidelines for its exercise.

These bills substitute Government regulation for the natural law of the marketplace, the keystone of our free enterprise system, under which consumers determine by their selective purchases which competitive products succeed and fail as well as the sizes in which they want them available, and the cost of compliance with the burdensome regulations they would require or authorize would ultimately be borne by the consuming public.

The institute recommends continued and increasing cooperation between the appropriate Government agencies and industry groups, such as the Cereal Institute, Inc., within the framework of existing laws.

CHAMBER OF COMMERCE OF FORT WAYNE,
Fort Wayne, Ind., April 16, 1963.

To Members of the Senate Judiciary Committee:

It is very disturbing to those of us who believe in the private enterprise system to see in certain governmental thinking a desire to discredit that system, and to establish a complex system of restrictive Federal regulations and controls against particular segments of our economy. Generally, such proposals are advanced to "Protect the public" against alleged abuses by a very small number of individuals, and the future freedom of an entire industry is endangered. The immediate case at point is S. 387.

It seems almost incredible that the National Congress should propose to control and standardize all packaging and labeling and extend the hand of the Federal Government into every grocery and drugstore shelf in the country. Particularly when existing laws already give both the Food and Drug Administration and the Federal Trade Commission adequate powers to protect consumers from any deceptive practices.

Section 403 of the Food, Drug, and Cosmetic Act of 1938 declares a food "shall be deemed to be misbranded if the label is false or misleading in any particular; or if the container is so made, formed, or filled as to be misleading." The FDA Administrator testified they had in the past not been able to enforce this authority adequately because of lack of personnel, but that this situation was being remedied. In 15,000 test samples examined in the first 3 months of last year, only 23 cases of inconspicuous labeling were found: Hardly enough to demand rigid controls over an entire industry.

Section 5(a) (1) of the Federal Trade Commission Act is very broad: "Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful." FTC Chairman Rand Dixon testified "There can be no doubt that the Commission's general powers under existing law would authorize it to issue cease-and-desist orders when false or misleading packaging or labeling result in consumer deception."

From this it seems evident that proper enforcement of the existing law, rather than the enactment of new laws, is the proper answer to any deceptive practices which may exist in the packaging or labeling of consumer products.

In your consideration of this proposal, we feel there are three basic points which must not be overlooked:

(1) Human nature is imperfect. You will find in all areas of both economic and political activity those few individuals who may misrepresent things, who are willing to profit at others' expense, and whose only motivating force is a selfish one. Laws should be designed to protect the public from such individuals, not to restrict and coerce all innocent ones. S. 387 would apply rigid restrictions to all, in order to correct real or alleged infractions of a few, and therefore is contrary to an important concept of our way of life.

(2) In our American economy, the consumer is "king." Freedom of choice also carries with it the freedom to make a mistake in choice. But, consumer pleasure or displeasure with any product is quickly reflected in the marketplace, by acceptance of or refusal to purchase the product. Fortunately, there are literally hundreds of alternate choices. This consumer-choice power is best illustrated by the fact that of 7,000 new products introduced in 1960 in the food and drug field, only 1,000 survived the acid test of consumer acceptance.

(3) Major producers of all goods (and this includes packaged goods) are in business for the long range. They realize they can stay in business only if the consumer is satisfied with his purchase and repurchases. Many millions of dollars are spent on product research and market surveys in an effort to please the consumer, not to deceive him. It would be the height of folly for these companies to try to play any tricks on the consumer—and the people who run these companies are not foolish.

Certainly a consumer has the right to know what is in a package, the contents of it, and the weight. The Government does and should require manufacturers and food processors to indicate this information on the package or label. But, do you really believe the Federal Government should:

- Mandate where the weight is printed on every package.
- Set standards for the size and kind of type to be used in showing contents.
- Prohibit any "qualifying words" considered a part of special advertising and promotion campaigns.
- Dictate how sales promotions should be worded on packages.
- Control approval of any illustrations used in label design.
- Standardize the size and shape of all containers.
- Regulate what is considered "small," "medium," "large," and "giant."
- Rule on how many servings are in each package.
- Require a special ruling for any product to qualify as an exception to Government-imposed specifications.

Additional long-range problems are created by this bill:

- (1) By introducing this new set of requirements under the Clayton Act, the entire scope of antitrust regulations will be affected, and enforcement further clouded and complicated both in this and other areas.

(2) Should these restrictive conditions ever be imposed on the packaging and labeling industry, the next logical step would be to extend comparable regulations to cover all advertising and selling practices for unpackaged consumer items.

Let's strengthen the enforcement of our existing laws. Let's require the industry to submit an acceptable code of ethics, if that is felt necessary. But for goodness' sake, let's not in any overzealous desire to correct a minor situation set up a book of rules to harass and confuse an entire industry, hamper legitimate competitive innovation, and stifle the initiative and research that has produced the amazing revolution in packaging and made our supermarkets a showcase for the ingenuity of our economic system. We plead with you not to put a hangman's noose around the neck of our marketing system.

Sincerely yours,

DALE HOUTS,

Chairman, Intervention in Local Affairs, Subcommittee, National Policies Committee.

RONALD STAGG,
JOHN HOFFMAN, JR.,
R. NELSON SNIDER,
PAUL ROEMBKE,
DR. EUGENE SENSENY,
PAUL PHILIPS,

Approved by total committee April 15, 1963.

CITY OF CHICAGO,
DEPARTMENT OF WEIGHTS AND MEASURES
Chicago, Ill., June 21, 1961.

Mr. JERRY S. COHEN,

Assistant Counsel, Committee on the Judiciary, Subcommittee on Antitrust and Monopoly, Senate Office Building, Washington, D.C.

DEAR MR. COHEN: I shall endeavor to give you some examples of what we interpret as deceptive marketing practices. You are no doubt familiar with many of them, but repeating some, I am sure, will only reflect a consensus of opinion as to their purpose.

PACKAGE SIZES

Two cans, with the same capacity of chow mein noodles were marked 3 ounces and 4 ounces respectively. There was 33½ percent more noodles in the 4-ounce can than the 3-ounce can. Two packages of powdered potatoes had the same declared weight. One container, however, was twice the size of the other, giving an impression of greater quantity. Two cans, of the same capacity, of coffee were marked 14 ounces and 1 pound respectively. The 14-ounce-can size was used apparently to confuse the customer into believing that it contained 1 pound of coffee.

LABELS

Many weight markings on pliofilm bags are hard to see because they lack contrast background. In many cases all of the data on the bag has contrast background except the weight marking. Many weight markings are run in with other data, placed in the crease of the bags and on the bottom of the container. Some weight markings are so small, such as those on the container of a popular seasoning salt, that it required a magnifying glass to determine the exact amount. This practice could be stopped by requiring that the weight marking be placed immediately above or below the brand name of the product and in large type which could be easily read.

Many processors have their general offices in one location, such as Chicago, Ill., but their plants are scattered all over the country. The only address information on the container is the location of the general offices. This presents a great problem for the local sealer, who will assume that the product was processed in the jurisdiction where the general offices are located. He will direct an inquiry there to the proper authorities, but the sealer in whose jurisdiction the item was actually processed may never know there was a controversy concerning a plant in his jurisdiction. Consequently, an immediate and proper investiga-

tion cannot be made. In order to trace the package back to the proper processing plant, it is necessary to contact the company involved who have a code mark on the container and are the only ones who know from whence it came. This naturally gives the company involved plenty of time to make any adjustment which might be deemed necessary long before any inspector arrives.

DECEPTIVE FILL, ETC.

A canned chicken which was marked "contents 3 pounds, 4 ounces," contained only 1 pound, 7 ounces, of chicken. The size of the raw chickens used in this operation range from 28 to 35 ounces. The difference between the actual weight and declared weight was made up by adding water. The fluid naturally became broth when the chicken was cooked.

A 1-pound can of green beans had a net weight of $9\frac{1}{4}$ ounces, the balance of weight was fluid.

A $1\frac{1}{2}$ -ounce can of green beans had a net weight of $7\frac{3}{4}$ ounces, the balance of weight was fluid.

A 1-pound can of peas had a net weight of $9\frac{1}{4}$ ounces, the balance of weight was fluid.

A 1-pound can of peas had a net weight of $10\frac{1}{4}$ ounces, the balance was fluid.

"ODD BALL WEIGHTS"—"GIANT," ETC., "ECONOMICAL SIZES"

The greatest confusion encountered perhaps is when the customers try to do comparative shopping and attempts to make a weight and price comparison between different brands of a product. This is practically an impossibility for the average retail shopper because of the apparently confusing weight units used by the packers.

This idea has been exploited to such an extent that the average shopper is convinced, without resorting to figures, that the larger size is more economical than the regular size. While the superlative terms "large," etc., are still retained, the qualifying term "economical" seems to have disappeared from the face of the package. The reason being it would seem, is the fact that frequently the price per pound on the regular size is less than that of the giant and king sizes.

Consequently, the use of "economical" would constitute a fraudulent statement. However, the sad fact still remains that the "economical" thought still pervades the mind of the average shopper, who associates king and giant sizes with "economical" and is, therefore, misled into believing that the larger size is more economical than the regular size. Most of the "Odd Ball" weight units are in 3 figures, such as 4 pounds $3\frac{3}{4}$ ounces, etc. Incidentally, one manufacturer markets a 16 pound 1 ounce package of detergent.

The following are a few examples in which the regular size is less per pound than the large size.

One regular size package of detergent weighing 1 pound 4 ounces, was marked 31 cents. This computed $24\frac{80}{100}$ cents per pound.

The giant size package of the same detergent, weighing 3 pounds $1\frac{1}{4}$ ounces, was marked 79 cents. This computed $25\frac{60}{100}$ cents per pound.

Here the shopper paid 3 cents more for the privilege of lugging home the larger size package.

A regular size can of scouring powder with a declared weight of 14 ounces, was marked $2/29$ cents, or a price of $16\frac{56}{100}$ cents per pound.

The giant size of the same item had a declared weight of 1 pound 5 ounces, and was marked $2/49$ cents, or a price of $18\frac{56}{100}$ cents per pound.

We then have the example of packaged tooth paste, and the following illustration will point out how sensitive the manufacturer is to weight markings and the extent he will go to confuse the weight issue. A certain company markets two brands of tooth paste in the same weight units, and presumably the same machinery is used for packaging both. One brand has the weight in fractions as follows: $1\frac{3}{4}$ ounces, $3\frac{3}{4}$ ounces, 5 ounces, and $6\frac{3}{4}$ ounces. The other brand has the weight marked in decimals as follows: 1.75, 3.25, 5, 6.75. It is difficult to believe that this company could have some other reason for marking these items in this manner, except to eliminate a weight comparison of their own products.

GIMMICKS

Perhaps one of the worst gimmicks being used now and one which points up to the need of immediate legislation is the "10 cents off the regular price," etc. This statement is printed on the package by the processor who has no way of knowing or controlling the actual retail price. Also, there is no such thing as a regular price in food and allied commodities.

Recently, I had occasion to visit a store where I came across some packages of detergents which were marked "10 cents off the regular price." The sale price in this group was 69 cents per package. Another group of packages of the same item and same weight did not have a "10 cents off" patch on them. They were all 79 cents each.

I called the manager over and inquired as to the difference in price. He explained that only those packages with the "10 cents off" patch on the panel could be purchased for 69 cents. I immediately informed him that he was not selling this product by weight, inasmuch as he had two prices for the same weight package.

SELLING BY WEIGHT

The foregoing illustration raises the question of what is meant by selling by weight. In this situation the item was actually being sold by the package—the weight mark being immaterial. Here is a second illustration of selling by weight. A carton of 1-pound units of butter could be placed in a self-service case, with a different price marked on each unit. Although there is a weight mark on each unit, can this be considered selling by weight? I have before me an advertisement from the Wall Street Journal which reads as follows: "Nine to eleven pounds, easy to carve hams (canned) \$16.50 each."

Despite the fact that each ham has a weight mark on it, they are obviously not being sold by weight. I would like to point out at this time, that weight has absolutely no meaning except in its relationship to money, so unless we can obtain a specific amount of a commodity for a fixed price, then the weight markings on the packages may as well be dispensed with.

Many packaged items are processed in units less than 1 pound, and naturally we cannot expect a one-fourth-pound packaged item to sell as reasonable as a 1-pound package. Therefore, it would not be practical to predicate the price of the package on the pound basis. Regulations could, however, require that all packages of the same weight, of the same brand of a given commodity, be priced the same.

COMPARATIVE SHOPPING

In order for the ordinary consumer to be able to shop comparatively, only a few remedial measures are needed. The most important I feel is a uniform weight law which would require the sale of food by the pound or multiples thereof, i.e., 1 ounce, 2 ounces, 4 ounces, 8 ounces, 12 ounces, 1 pound. Liquid measure could be restricted to 1 fluid ounce, 2 fluid ounces, $\frac{1}{2}$ pint, pint, quart, and multiples of a gallon. This would enable the most elementary shopper to compare pricewise and weightwise with various brands of the same product. Another measure which has already been mentioned is readable quantity markings.

In closing, I would like to state that House bill H.R. 6784 was introduced almost 20 years ago to cope with the very problem at hand, but failed to pass.

With the "explosion" of the package industry, there is a critical need for legislation to eliminate the deceptive marketing practices which are now in vogue.

I trust that the foregoing information will in a small measure help in the battle for consumer protection.

Very truly yours,

E. E. CALLAHAN,
*Supervising Deputy Inspector,
Weights and Measures.*

CURTISS CANDY Co.,
Chicago, Ill., April 1, 1963.

Senator EDWARD M. DIRKSEN,
Senate Office Building,
Washington, D.C.

DEAR SENATOR DIRKSEN: We are writing you relative to S. 387 by Senator Philip Hart and others, which in our opinion would unnecessarily expand the powers of the Food and Drug Administration over labeling and packaging.

The National Confectionery Association presented its views by means of a statement of Mr. L. R. Hopkins before the Senate Judiciary Antitrust Subcommittee on March 7, 1963.

As national sales manager of the Curtiss Candy Co., one of this country's largest producers of confection products, we wish to bring your attention to several features of this S. 387 proposal which we consider worthy of your evaluation and interest.

Section 3A(c)(1) requires that the net quantity of contents "be stated upon the front panel of packages * * *." We are sure you will realize that there are instances where this is not feasible or desirable—it is customary for confection manufacturers to state the net weight on front panels where this is possible and does not disturb the layout of the panel. Certainly, Valentines Day heart-shaped boxes, covered with satin or flowers or other designs would not respond to this ruling nor would other confection items where clear cellophane is used over the front, to increase the impulse sales nature appearance of the product.

Section 3A(c)(2) establishes standards with respect to location, prominence of statements of net contents, and minimum type size, etc. Manufacturers willingly accept the responsibility of stating the specified information, so that consumers can read and understand it under customary conditions of purchase and use, as is required under the current law. However, as we interpret this section, the Government would be able to dictate location of required statements, type size and other makeup—which would certainly seem to be a new high for Government intervention of private enterprise.

Section 3A(c)(3) would prohibit the addition to required statements of net quantity of "any qualifying words or phrases." This would seem to be unduly limiting, almost to the point of public disservice. It would seem that this would prohibit on special packaging, like for trick or treat, needed information by the consumer as to the count of items in the package. Most housewives would certainly like to know at a glance on any confectionery product, the number of pieces or units or items contained within the package.

Section 3A(e) has various subsections that are particularly disturbing to our industry. Section 3A(e)(1) authorizes the promulgation of regulations establishing the weight or quantity in which a particular commodity may be offered for sale. As we understand it, administrative officials could use this authority in the case of confections. Perhaps Government experts might decree that candy bars might only be sold in 1-ounce, 2-ounce, or 3-ounce units. Since our industry faces constantly fluctuating raw material costs, such power could cause a chaotic condition in the industry.

Section 3A(e)(2) would permit the development of regulations covering sizes, shapes, or dimensional proportions. These are phases of packaging which are essential in order to continue the field of creative packaging.

There are many other features of the proposed bill which we believe unduly restrictive and unnecessary.

It should be pointed out that there is no reference made in the bill to imports, which are climbing considerably each year. Imported products are manufactured outside the United States and outside the jurisdiction of our Government. Therefore, no action could be taken against foreign manufacturers who would not comply with the law, but the American manufacturer would be made to do so.

We respectfully suggest, Senator Dirksen, that the bill is not necessary and that it would provide little, if any, needed additional authority either to the Food and Drug Administration or the Federal Trade Commission.

We urge that the subcommittee not report the bill to the full Judiciary Committee.

Very truly yours,

M. C. BUSH, National Sales Manager.

STATEMENT OF JOHN T. WALSH, CHAIRMAN, DAIRY INDUSTRY COMMITTEE, BEFORE THE ANTITRUST AND MONOPOLY SUBCOMMITTEE OF THE SENATE COMMITTEE ON THE JUDICIARY, IN OPPOSITION TO S. 387

The Dairy Industry Committee, composed of official representatives of the American Butter Institute, American Dry Milk Institute, Evaporated Milk Association, International Association of Ice Cream Manufacturers, Milk Industry Foundation, National Creameries Association, and National Cheese Institute, is opposed to the enactment of S. 387, the so-called truth-in-packaging bill.

Many of the grounds on which the opposition of the Dairy Industry Committee to S. 387 is based have been presented to the committee ably and extensively by witnesses representing a number of the food industries. The lack of procedural safeguards in the regulation-making process which the bill outlines in "(f) (1)," p. 6 of the bill is a glaring deficiency which has been forcefully presented to the committee. The Dairy Industry Committee strongly endorses the arguments presented to your committee on this score.

Additionally, the Dairy Industry Committee having particular knowledge concerning the packaging and labeling in the products of the dairy industry, is opposed to the bill because:

1. The present authority of the Food and Drug Administration to prevent the false and misleading labeling of foods is adequate for consumer protection.

2. The present authority of the Food and Drug Administration to establish standards of identity, a standard of quality and fill of container afford consumers effective protection not only in the matter of ingredients and composition of foods but the labeling of foods as well.

The regulation which the bill directs or authorizes to be promulgated are unnecessary as applied to the products of the dairy industry and would create confusion worse confounded. In support of this statement the following facts should be considered:

1. Congress itself has established statutory standards for butter (21 U.S.C. 321(a) and nofat dry milk (21 U.S.C. 321(c)). These statutes provide that the standards therein established shall be for the purposes of the Food and Drug Act. Thus they are brought under the full weight of the misbranding-section of the existing law.

2. Evaporated milk was one of the earliest foods for which a definition and standard of identity was established. That standard requires a label declaration when its vitamin D content is increased. A recent amendment to the standard requires a label declaration when a newly found useful ingredient is present.

In his appearance before your committee, Robert H. North, executive vice president of the International Association of Ice Cream Manufacturers, one of the constituent associations of the Dairy Industry Committee, after briefly describing the ice cream industry's packages, testified:

"In 1960, after many years of public hearings, study, and deliberation, the Secretary of Health, Education, and Welfare promulgated definitions and standards of identity for ice cream (and, as well, for ice milk, sherbet, and water ice—other products manufactured by our members).

"These definitions and standards of identity prescribe what ingredients the products must contain, what ingredients they may contain, and what declarations must be made with reference to ingredients in the label. These definitions and standards, and the findings of fact upon which they are based, are comprehensive, detailed, and explicit in the extreme. Standards and findings together comprise 16 small-print pages in the July 27, 1960, issue of the Federal Register in which they were published.

"Can it be possible that now, only 3 years later, it is necessary for the Secretary to promulgate additional elaborate and far-reaching regulations in order to keep the packaging and labeling of ice cream within proper bounds?"

With respect to the products of the cheese industry, definitions and standards of identity have been established for 66 different kinds of cheese. Many of these standards make provision for specific labeling.

As to the products of the fluid-milk industry, represented on DIC by the Milk Industry Foundation, the fresh perishable products processed and distributed by this branch of the dairy industry are presently subject to regulation not only by the Food and Drug Administration but also by municipalities and States. The U.S. Public Health Service also plays a strong part in this system of regulation. State and municipal weights and measures agencies as well as the U.S. Bureau of Standards have long been active in the packaging of these products.

In his appearance before the committee, Commissioner Larrick testified concerning the lack of success in litigation which the Food and Drug Administration has experienced in contested cases in some of the areas covered by the bill. This we submit is not a valid criterion for evaluating the adequacy of the present Food, Drug, and Cosmetic Act as an instrument of consumer protection.

Among many other misbranding provisions the act provides that "a food shall be deemed to be misbranded * * * if its labeling is false or misleading in any particular." It is submitted that if courts and juries do not find in a specific case that the Government failed to carry its burden of proving that the labeling is false or misleading in any particular, that perhaps the labeling in question was not in fact false or misleading.

Considering the massive body of statutes, ordinances, rules, and regulations regulating the labeling and packaging of dairy products, it is submitted that less rather than more regulation in the field would reduce the consumers confusion. While we have no special knowledge concerning other food industries it is believed that many of them are also fully regulated. Accordingly, we believe that S. 387 should not be enacted but if it is to be reported in some form, it is respectfully requested that the food industries be excluded from its coverage.

FROZEN POTATO PRODUCTS INSTITUTE,
Chicago, Ill., May 3, 1963.

Re S. 387.

HON. ESTES KEFAUVER,

*Chairman, Subcommittee on Antitrust and Monopoly,
Committee on the Judiciary, U.S. Senate, Washington, D.C.*

DEAR SENATOR KEFAUVER: As an association representing 12 processors of frozen potato products in the United States (see enclosed membership list) we are extremely concerned over the ultimate ramifications of Senate bill 387.

The Frozen Potato Products Institute has objectively studied the bill and our position can be summarized as follows:

The Frozen Potato Products Institute sincerely believes that private enterprise and the consumer will suffer more than benefit from the proposed legislation as now stated. In the final analysis, the consumer is the one who has gained most by modern production, advertising, distribution, and selling techniques. Manufacturers have benefited to be sure—but only because the consumer has purchased, and continued to purchase, an item which gives value for the money spent. The philosophy of successful marketers is consumer oriented—"how can we best fill a need of the consumer?" The free enterprise system grants success to those marketers who are most successful at filling consumers' wants, be they small or large companies.

We believe that this bill will stultify many of the bases of product differentiation and marketing innovation which make companies successful, and through mass distribution make consumers the final beneficiaries. Because business competition as we know it today starts and ends with the consumer and what he will buy, all production and distribution is of no value if the result is not purchased repeatedly. We believe the provisions of this bill can remove the competitive stimuli which have resulted in: food prices rising more slowly than the general price index; food prices rising more slowly than wage raises; American consumers spending a smaller portion of their total income for food than they did a decade ago; and Americans spending a smaller portion of their income for food than do the consumers living in other major nations of the world. (The above information was obtained from reports of the U.S. Departments of Agriculture, Commerce, and Labor.)

Mass production is a byword of our economy, and this fact has been true for many decades. A fundamental change which has taken place since World War II is not now adequately described by the term "mass production." In these past two decades the power of our economy to produce has surpassed our power to consume with the result that mass distribution to mass demand is a better description of the basis of our present economic structure. Our manufacturers no longer produce solely to fulfill our needs. Production and distribution now are geared to the satisfaction of our wants, and there is a great difference between needs and wants.

Part and parcel of this difference is the type of purchasing which has come to be known as "impulse buying." Items purchased by consumers without specific plan account for 50.9 percent of the total items purchased for the market basket. Of purchasing decisions, 69.5 percent are made in the store.

A study published in 1959 of research by Alderson Associates (Philadelphia) in conjunction with the Market Research Department, E. I. du Pont de Nemours & Co. under the title "Consumer Buying Habits Study of 1959" stated the following:

	<i>Percent of items purchased</i>
(1) Specifically planned purchases by commodity category and brand name-----	30.5
(2) Generally planned purchases by commodity category such as meats, vegetables, etc-----	15.9
(3) Substituted sales, where consumer changes mind and buys brand XYZ instead of ABC-----	2.7
(4) Unplanned purchases-----	50.9
(5) Total in-store decisions-----	69.5

Hawkins Stern, industrial economist of Stanford Research Center, indicates that fewer women than ever use prepared shopping lists, and that impulse buying, has become, in the majority of cases, an efficient and sensible way to buy because women take advantage of the special sales which they are being offered.¹

The success or failure of countless products has been determined at the marketplace by "successful" or "unsuccessful" packaging to attract impulse purchases. Consequently, any compulsion to make packages of competing products look similar to each other could be confusing for the shoppers who now make their choices on the basis of familiar distinctions in packaging and could be catastrophic for a company which has developed and marketed unique packages which strike a responsive chord with shoppers as they pass the crowded shelves of the supermarket.

We have the following four principal objections to the present form of the bill:

- Excessive power is delegated to enforcement agencies;
- Criminal penalties are imposed without proper safeguards;
- State and Federal controls together would burden national marketing;
- High costs of administration and voluntary compliance.

A. EXCESSIVE POWER DELEGATED TO ENFORCEMENT AGENCIES

In particular, the Frozen Potato Products Institute believes that the responsibility to establish minimum legal standards with respect to packaging, net quantity disclosure and the like cannot be delegated to an executive department without opening the door to the imposition of the subjective interpretation of individuals in the executive department upon the mass distribution industries supplying consumer goods. For example, we call attention to the following provisions of the proposed bill:

1. Section 3A(c)(2) on page 3 of the printed bill provides for regulations to be written by executive department officials to "establish minimum standards with respect to the location and prominence of statements of the net quantity of contents (including minimum standards as to the type size and face in which such statements should be made) appearing on packages containing any consumer commodity and upon labels affixed to any commodity."

Packaging distinctions may be stringently controlled if the standards with respect to "location and prominence" are to be controlled by regulation. We see no reason why this power should be delegated to the enforcement agency. If type size, face, location, and prominence are standardized, how can we be assured that packaging distinctions will not also be limited? Could not such authority result in ultimate control of color, design, and elements of taste in the form and appearance of packages?

The subjective interpretation by individuals in the enforcement agency of what they feel will sufficiently inform a consumer could result in a standardization and regimentation in marketing dramatically opposed to modern marketing

¹ "The Significance of Impulse Buying Today," Journal of Marketing, April 1962.

principles which demand heavy emphasis on packaging differences, on brand names, and on trademark logotypes as prominent tools for successful selling.

Section 3A(c)(2), as we see it, empowers Government officials to promulgate and administrate but does not tell them specifically what to promulgate and does not set limits upon their authority where such limits are needed.

2. Section 3A(c)(5) on page 4 of the bill provides that regulations which "contain such exceptions to the foregoing requirements as the promulgating authority may determine to be required by the nature, form, or quantity of particular consumer commodities, except that no exception may be made if that exception would deprive consumers of reasonable opportunity to make rational comparisons between or among competing products; and".

Could not two individuals have entirely different interpretations to the meaning of rational as used here?

Does comparison refer to kind, to price, to quality to quantity?

Section 3A(c)(5) forbids the administrative agency to provide any exception that would deprive consumers of the opportunity to make rational comparisons without the help of the regulations which are to be promulgated, an assumption which may be understood by the promulgating authority as expressing a congressional purpose to standardize competing products in appearance and to prohibit all packaging with an appeal to the impulse purchaser.

These are but two specific areas of several in which the FPPI feels the lack of definition in this bill will allow for a subjective determination foreign to the best interests of manufacturers and consumers.

3. Section 3A(e), (1)-(5), on page 5 of the bill, viewed as a whole, would place too much authority in administrative officials—beyond that amount needed to safeguard the consumer. The effects of the bill, we fear, would go beyond the area of stopping deception, and into control of virtually all areas of competition in packaging and labeling. In so doing, it would seriously injure producers of consumer products whose marketing practices are not deceptive or misleading but include appeals to the impulse purchaser, and the injury which they would suffer would result from the promulgation of sweeping regulations without an opportunity for individual companies who would be affected to have a hearing and a record of same, a right to reverse the regulations if not based upon substantial record evidence, and a right to have judicial review on the basis of administrative findings required by law.

The Frozen Potato Products Institute feels that such authority is not necessary and that to vest it in the hands of future administrators could result in arbitrary actions—again, as a result of individual interpretation. In addition, to give this authority without procedural safeguards can be a great step toward eliminating part of the free in free enterprise.

The combination of sections 3A(c) and 3A(e) seems to indicate that price and quality are the only considerations which ought to be of concern in marketing products, and that product distribution based on packaging and labeling in addition to elements of quality and price is artificial. Experienced marketing companies know this assumption is simply not true. Consumers do in fact consider other things—witness the high percentages of impulse purchasing estimated by many reliable research organizations. As a hypothetical case in controlling shapes of containers, for instance, it is our recollection that at least some catsup producers have tried in the past to change from the familiar tight-necked catsup bottles to containers with large necks with the identical product inside, but were unequivocally rebuffed by consumers in the marketplace. This decision was certainly not rational on the part of consumers, and what person in a Government agency would have the competence to judge such a situation if a question of deception were to arise in an administrator's mind involving the shape of another such product container?

We feel strongly that no person or persons could possibly have the judgment, experience, or insight to be able to make determinations having such far-reaching commercial effect, and in which the only redress is a long-drawn-out expensive battle with the regulatory agency. In spite of all the vast sums being spent on consumer research, even the so-called experts are not wholly knowledgeable about all of the considerations a consumer might go through in purchasing a product.

B. CRIMINAL PENALTIES WITHOUT SAFEGUARDS

Refer to Section 3A(g) on page 7 of the bill. The Frozen Potato Products Institute objects to criminal penalties in a bill meant to amend a civil statute,

which has no criminal penalties in it. This bill, as drafted, incorporates provisions of title III of the food and drug law, and would permit fines and jail sentences without any showing of knowledge of violation, intent to violate, or real knowledge of the facts.

Incorporation of criminal prosecution and sanction of seizure into legislation devised to control packaging and labeling seems to be overly stringent, and the Frozen Potato Products Institute emphatically questions this inclusion, particularly without procedural safeguards.

C. STATE AND FEDERAL CONTROLS TOGETHER WOULD BURDEN NATIONAL MARKETING

Section 2(d), on page 12 of the bill, requires a "direct and positive conflict" before Federal law and regulations will supercede or invalidate any State law which deals with packaging and informational labeling. The distribution of consumer products is interstate, and should not be distorted or impeded by a complex maze of State laws and Federal regulations. Under section 2(d) as now written, two or more States could impose mutually inconsistent requirements not directly and positively in conflict with Federal regulations, but in direct and positive conflict with each other. We believe that if the Federal Government is to control commerce in this field, it should preempt the field and prevent the 50 States from burdening the free flow of interstate commerce with mutually inconsistent requirements. Compliance with the Federal regulations should be enough, or there should be no Federal regulations. We think it would be a very unwise policy for Congress to attempt a broad scheme of national regulation and control without at the same time sweeping away State laws dealing with the same commerce in different and sometimes mutually inconsistent ways. The provisions of section 2(d) may in fact jeopardize the interstate distribution of food products upon which the national marketing of consumer products and all of its advantages in economy and efficiency are based. If each producer must separately package and label products to be sold in each State and at the same time conform to national regulations, we fear that the variety of foods available to all citizens would be sharply reduced or that the price of commodities distributed interstate would be substantially increased.

It was our understanding that the originally announced purpose of this legislation was to aid and improve "national" marketing but this paragraph would conceivably have the opposite effect.

D. HIGH COSTS OF ADMINISTRATION AND VOLUNTARY COMPLIANCE

The cost of administering a law based on S. 387 could be tremendous—from Government staff supported by taxes to the costs of the companies for legal counsel—and again the consumer ultimately pays. Alarming, the consumer may decide not to pay a "premium," and then certainly the small business will be hurt more dramatically than the larger companies which have the personnel and money to better preclude violations and to better withstand the effects of decisions rendered against them.

CONCLUSION

In conclusion, we agree with the premise that deception in packaging or labeling, even in a few cases, is a blight upon the American business scene. The Frozen Potato Products Institute would be the first to support action which would remove this blight without threatening to destroy the whole business atmosphere in which the blight exists as a headache but not as a fatal disease. The Frozen Potato Products Institute feels that the goal of this legislation is beneficial in its intent, but that intent itself cannot be legislated. The practical results of passing this bill would be, we honestly believe, actually detrimental to business and to the consumer.

There have been, and it is logical to assume there will continue to be, some violations of consumer trust by certain manufacturers with regard to packaging and labeling. We do not excuse these violations by saying they are in the minority, for wrong is wrong, regardless of numbers.

But, the Frozen Potato Products Institute feels this legislation is a wrong step—one toward standardization of products and distribution which will retard the motivation of the freedom of all business to sell, and the motivation of customers to buy, which is so vital to mass distribution.

As a segment of industry which could be vitally affected by this bill, we feel it should not be passed for the reasons cited throughout this letter. We submit

that a much more advisable course is amendment to the present Food and Drug Act and FTC Act to include any areas of contingencies not presently covered and to give only those added powers not presently possessed which are deemed absolutely necessary to fill in obvious voids in the authority of these acts.

The Frozen Potato Products Institute submits that this action, backed by sufficient operating funds to effectually implement the amended acts, is the proper solution to the problem.

Respectfully submitted.

FROZEN POTATO PRODUCTS INSTITUTE.
By EDWIN C. SMITH.

STATEMENT OF LEE W. MINTON, INTERNATIONAL PRESIDENT, GLASS BOTTLE BLOWERS ASSOCIATION OF THE UNITED STATES AND CANADA, AFL-CIO, RE S. 378

The Glass Bottle Blowers Association of the United States and Canada, AFL-CIO, is a trade union representing over 60,000 employees in the glass, rigid plastic container, fiberglass, and allied industries. We are very much concerned about the effect certain provisions of S. 387 will have upon production; hence, employment in the glass container industry.

There is no question that in certain marketplaces consumers have been and are being cheated out of hard earned wage dollars by deceptive merchandising practices. It follows, therefore, that this international union does support necessary legislation to protect the consumer and we are in agreement with the well-meaning objectives of the Hart bill, better known as truth-in-packaging.

However, if we are to achieve truth-in-packaging, it can and should come in only one form, and that is pure, simple, legible, and understandable labeling; not in a quagmire of Government controls.

A truth-in-packaging bill can and should require that every container should have an applied or printed label prominently located; a label which legibly and understandably would reveal the net weight or net content, or both, of the contained product. Qualifying words or phrases and deceptive pictures or illustrations should be prohibited.

With respect to "sales" or "off prices," we think consumers are entitled to legitimate discount prices due to production, marketing, or packaging economies. Federal Trade Commission rules and regulations, as well as existing laws, i.e., Robinson-Patman, should be able to take care of pricing "gimmicks."

This international union, however, is opposed to section 3(e) (1) "establish reasonable weights or quantities, or fractions or multiples thereof, in which that commodity shall be distributed for sale; and (2) prevent the distribution of that commodity for retail sale in packages of sizes, shapes, or dimensional proportions which may deceive retail purchasers as to the net quantity of the contents thereof (in terms of weight, measure, or count)." We recommend that section 3(e) (1) and (2) be eliminated or, in the alternative, amended to exclude glass containers. Glass containers are transparent and consumers see what they buy when they buy in glass. There is no possible way consumers can be deceived, quantitatively or qualitatively.

The packaging industry is a \$20 billion a year industry employing hundreds of thousands of wage earners. This industry exists not for deception but for business; and to stay in business they have to meet the needs of the consuming public. Packages, especially glass containers, are designed the way they are for hundreds of reasons, the most important of which are production and filling line efficiency; ease of shipping and handling; economy and functional end use.

Millions of dollars are spent in research each year to improve sizes and shapes of containers—not to deceive the consuming public—but to give the consuming public a better and cheaper package. To hamstring the industry by sections 3(e) (1) and (2) would produce just the opposite results—increased costs to the consumer. With over 30 percent of each wage dollar being spent for packaged foods and goods, any increased cost would be felt heavily and widely among wage earners who are the largest individual group of consumers.

Equally as important, and of practical rather than selfish concern, these two sections will do untold harm to employment in the packaging industry. Employment—from design, pattern, and moldmaking to selecting and shipping will suffer—this at a time when we are seeking ways and means to bolster employment.

In summary, the consumer can and should be protected from deceptive merchandising practices. This can be done by proper labeling laws and better enforcement of existing laws. Sections 3(e) (1) and (2) should be eliminated or, in the alternative, amended to exclude glass containers.

Respectfully submitted.

LEE W. MINTON, *International President.*

GOODWIN LABORATORIES INC.,
RESEARCH AND DEVELOPMENT,
Fairfax, Va., March 1, 1963.

Hon. PHILIP C. HART,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HART: I have been following with great interest the activities of your subcommittee dealing with "honesty in packaging." You might like to know the facts which I discovered in a trip on February 22 to the Grand Union store in Fairfax, Va. I examined three different sizes of Tide and noted the following circumstances:

Small size, 1 pound, 4 ounces-----	\$0. 28
Medium size, 3 pounds, 1¼ ounces-----	0. 73
"Family" size, 16 pounds, 1 ounce-----	3. 99

After spending quite a bit of time trying to decide which size was most economical, I arrived at the following results: The small size costs 1.400 cents per ounce; the medium size costs 1.482 cents per ounce; and the large size costs 1.552 cents per ounce. I have a Ph. D. in chemistry with a minor in mathematics from the University of Pittsburgh. In spite of this kind of training, I made one mistake before arriving at the correct figures. It appears to me that the average consumer who doesn't have this type of background might have a bit more trouble trying to decide which package offered the best value.

It is obvious that on a cents-per-ounce basis these differences don't amount to much. However, on a percentage basis it works out that you pay 5 percent more for the medium size than the small size, and 5 percent more for the large size than the medium size. You also pay about 11 percent more for the large size than for the small size.

Because of the fact that all the consumers in the country have been led to believe, through advertising practices for the last two or three generations, that it is axiomatic you get more for your money when you purchase the large package of any item, I consider such pricing to be very deceptive. The example cited is the only one which I took the trouble to analyze. This leads me to believe that the incidence of such cases must be quite large.

I assure you that you have my wholehearted support in your investigation of this problem.

Very truly yours,

JOHN T. GOODWIN, Jr.

IDLE WILD FARM,
Pomfret Center, Conn., March 12, 1963.

Hon. PHILIP A. HART,
U.S. Senate, Washington, D.C.

DEAR SENATOR HART: We have read about the revised truth-in-packaging bill which was introduced by you and Representative Celler, in the February issue of Packaging magazine, volume 31, No. 2, and we are urged, with other packers, to lobby against the bill. We are told that this bill can only contribute to suffocation in a nation where the businessman is distrusted because the "liberals" continually hammer away at the premise that the interests of business are diametrically opposed to the interests of "the rest of us." We are further told that "legislators are so cocksure of assumed paternalism that they introduced a bill to 'protect the housewife' against the 'artificial nonprice competition of deceptive packaging.'"

I want you to know that the magazine does not speak for all of us in the food packing and other consumer packing trade, and it certainly does not speak for Idle Wild Farm. To the contrary, we here consider that measures taken to protect the housewife are doing a lot of good and this is not only beneficial to

the buyer, but also to the honest trader. When I was active in the printing and packaging trade in France where, at that time, there was very little customer protection, I remember the current and generally accepted designation for deceptive packaging. The question was usually asked of the buyer, for instance, of face powder boxes: "Do you wish this box to have a *fond voleur*?" This vivid description, a "thieves' bottom" did not even pull a smile as it was used in the routine of business. My first experience, when I started the same printing and packaging business in New York in 1940, was the satisfaction of seeing that there was no such practice in the United States because of consumer protection.

We, here at Idle Wild Farm, were the very first in Connecticut, Rhode Island, and Massachusetts to apply for voluntary Government inspection of our poultry processing plant and welcomed the bill which, a few years later, made this inspection mandatory for all interstate business. For many years we have felt that if a packer does a job in fairness, he can only thank the Government inspectors whose job it is to "protect the housewife" as at the same time the inspectors are of invaluable help in keeping standards of sanitation and quality on a high level in plants under their supervision.

You can be sure that the wonderful work they are doing in this respect cannot hurt any packer who prides himself on fairness in his representations to and dealings with the customers. The above-mentioned bill also met with strong opposition before it was enacted.

Yours very sincerely,

JACQUES MAKOWSKY, *President.*

STATE OF ILLINOIS, DEPARTMENT OF AGRICULTURE,
DIVISION OF FEEDS, FERTILIZERS, AND STANDARDS,
Springfield, Ill., April 24, 1963.

Senator EVERETT DIRKSEN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: I would like to request that you oppose control of the fertilizer being included in the new packaging bill S. 387.

Many hours have been spent by individual State control officials in perfecting the labeling and packaging of fertilizers and we feel that this is much more effective than having it included in a bill meant to include many different items. We are in complete agreement with the intent of your bill and feel that where such work has not been done, they should be included in this bill.

We feel that we have made sufficient progress in the labeling and packaging of fertilizers and it should not be included in a catch-all bill.

Very truly yours,

HUBERT L. GOFORTH, *Superintendent.*

INDEPENDENT CAN Co.,
Baltimore, Md., March 14, 1963.

Hon. PHILIP A. HART,
U.S. Senate, Washington, D.C.

DEAR SIR: The hearings, which you are about to hold on deceptive packaging, are of particular interest to us.

For many, many years, fresh oysters have been packed in 8-ounce, 12-ounce, and 16-ounce cans, all using fluid or liquid measure. The consumers are accustomed to buying containers in these sizes, and the packers are accustomed to packing in these sizes. Recently, one company began to manufacture 7¾-, 11½-, and 15½-fluid ounce cans, which, when placed on display, appeared to be similar in size to the full measure containers. Even though the correct contents printing is shown, this instance of deceptive packing is clearly designed to mislead the public, and it places legitimate packers and legitimate food stores at an unfair competitive disadvantage.

We have personally visited and discussed this problem with members of the Food and Drug Administration in Washington. We received a very sympathetic hearing, and were told that it would be taken up with your committee. It was pointed out that, under the present laws, the Food and Drug Administra-

tion could not force corrective measures as long as the contents shown is correct. It would be very easy for us, as well as other can companies, to manufacture the short measure cans; and if our customers put pressure on us (which they are doing), we may be forced to comply, in order to keep them competitive. If this should happen, it is very likely that the other can company would further reduce the various can sizes, thus bringing about complete chaos as far as standard measure is concerned. This seems unfair to our customers and to the buying public.

We hope, sir, that there is some help you can render.

Yours very truly,

ROBERT U. LINK, *Sales Manager.*

INDIANA WEIGHTS AND MEASURE OFFICIALS

Whereas deceptive packaging, inconspicuous labeling, and misleading advertising of quantities of packaged commodities are clearly incompatible with efficient weights and measures administration and the equitable functioning of our Nation's economy; and

Whereas Senate bill 387, designed to prevent deceptive methods of packaging and labeling of packaged consumer commodities, has been introduced in the 88th Congress by Senator Philip A. Hart of Michigan: Therefore be it

Resolved, That the Indiana Association of Inspectors of Weights and Measures, in conference assembled, this 17th day of April 1963, hereby express its unanimous approval and support of this bill; and be it further

Resolved, That this resolution be made a part of the minutes of this conference and that the Secretary of the association be instructed to send copies of this resolution to Hon. Senator Philip A. Hart, Hon. Luther H. Hodges, Secretary of Commerce, and to the Indiana Senators and Representatives in Congress.

KVP SUTHERLAND PAPER CO.,
Kalamazoo, Mich., March 11, 1963.

Hon. PHILIP A. HART,
*U.S. Senate Office Building,
Washington, D.C.*

DEAR SENATOR HART: As one of Michigan's larger producers of food packaging material, we wish to give you our comments on the so-called truth-in-packaging bill (S. 387 and H.R. 2382) introduced by your subcommittee and by Representative Celler in the House.

As a company we have produced cartons and overwraps for most of the food-packers in this country. We have worked with them in the creation and designing of their packages. We have a graphic arts department of which we are very proud. We can in all sincerity say that we know of no case where a customer or ours sought to deceive consumers of their products through their package. The Federal Trade Commission and the Food and Drug Administration have long been invested with the power and the ability to deal with deceptive and misbranding consumer items. They have prosecuted cases of misleading claims, false labeling, fictitious pricing, and slack-filled cartons. We do not believe this additional legislation is needed.

The American housewife knows the value of purchasing name brand items. If she purchases lesser known brands and she feels that she has been cheated or misled, she will not buy that item again. The consumer is omnipotent in this regard.

As for specific provisions of S. 387, we note with alarm that it is an amendment to the Clayton Act and would be an antitrust law with criminal provisions. The bill also contains criminal penalties of its own. We further note that before promulgating any regulations under subsection (e), subsection (f) (1) (c) requires the promulgating authority to accord a reasonable opportunity for consultation. This is obviously not the same as a hearing and it appears that the opportunity for consultation does not apply to the promulgation of regulations which are mandatory in subsection (e).

This bill in its present form would invest all power to regulate packaging in agencies in Washington with the usual reluctance of courts to upset the agencies'

determinations. But there are no guarantees of fairplay in the right to be heard and no assurance that such agencies would have any amount of "expertise" in this specialized field.

The cost of revising labels and standardizing shapes and sizes of packages will in the long run be borne, not by the food industry or the retailers, but by the consumers you are seeking to protect. In our opinion this new legislation not only is unnecessary but will eventually hurt the Nation's consumers, rather than help them.

Very truly yours,

C. W. WALTON,
Assistant Vice President.

P.S.—We are enclosing a copy of our 1962 annual report to give you some further information on our company.

KANSAS HOME ECONOMICS ASSOCIATION,
DEPARTMENT OF FAMILY ECONOMICS,
KANSAS STATE UNIVERSITY,
Manhattan, Kans., May 1, 1963.

Hon. PHILIP A. HART,
U.S. Senate, Washington, D.C.

MY DEAR SENATOR HART: The Kansas Home Economics Association meeting at Fort Hays Kansas State College, April 18, 19, and 20, adopted unanimously at its annual business meeting a recommendation that a letter of commendation be sent to you for your efforts to improve the packaging situation.

The Kansas Home Economics Association is an organization of approximately 700 home economists in the State of Kansas, professionally trained for homemaking and for vocations to improve homemaking. Your efforts to bring order out of a chaotic packaging situation support our interest in more effective consumer education. Success in clarifying weight disclosure would stimulate effective consumer self-education by reducing the nuisance cost of getting facts needed for making intelligent decisions. Such self-education is a tax-free form of education and of benefit to all.

It is a privilege to convey this message to you. In accordance with instructions, copies of this letter are being sent to our congressional representatives from Kansas in the Senate and the House of Representatives.

Sincerely yours,

RICHARD L. D. MORSE, *Vice President.*

LITHOGRAPHERS & PRINTERS
NATIONAL ASSOCIATION, INC.,
Washington, D.C., May 1, 1963.

Hon. ESTES KEFAUVER,
*Chairman, Antitrust and Monopoly Subcommittee of Senate Judiciary Committee,
Old Senate Building, Washington, D.C.*

DEAR SENATOR KEFAUVER: The Lithographers & Printers National Association, Inc., is opposed to the truth-in-packaging bill, S. 387, because many of its members are manufacturers of labels in substantial volume and believe that the existing Federal Food, Drug, and Cosmetic Act, if fully enforced, is adequate to meet the charges of alleged deception and falsity in the labeling and packaging of consumer goods.

A review of the recent hearings before the House Appropriations Committee on the Food and Drug appropriations for 1964, convinces our industry that, given funds and staff, the present act can serve well to protect the American consumer. In allowing an increase of approximately \$7 million in salaries and expenses for 1964, the House Committee on Appropriations, in Report No. 246, stated as follows: "*Ever since the Food and Drug Act was passed, the law has provided for a level of protection of the American people that the Food and Drug Administration has not had the facilities to achieve. This budget provides for a big forward step in this direction.*" [Emphasis supplied.]

We believe that with this new assistance, the proposed bill, S. 387, which would leave our industry to the mercy of the administrative fiat, should not be enacted. The increase provided by the House Appropriations Committee, in its recommen-

dations, should be ample to permit the Food and Drug Administration to do a far more effective job under the existing act. This we endorse.

For years the label manufacturers division of LPNA has worked with the Food and Drug Administration of the Department of Health, Education, and Welfare to insure that label proposals conform to existing laws and regulations. Our association has worked closely with other industry groups on this problem. We know that our customers are interested in complying with existing law and should not be included with those charged with intentional deception and falsity in the marketing and sale of consumer goods.

The present proceedings on S. 387 have resulted in confusion, uncertainty and loss of business. Manufacturers are reducing or deferring label orders until such time as they are certain of clearcut directives, both with respect to law and regulations in the months to come.

We believe that the voluntary programs on the part of many of our customers have been exemplary and gratifying. Label users generally have consulted the Food and Drug Administration of HEW on frequent occasions prior to the development of a label and have found the Advisory Opinion Division of that agency to be very helpful. Greater emphasis on this kind of voluntary cooperation, reflecting a sincere effort on the part of manufacturers to comply with existing law, will provide greater benefits for the consumer.

We join with the many witnesses who have appeared before your committee in opposition to S. 387, and endorse the various cogent reasons set forth in opposition to its enactment. Our approach is a simple one: With the expansion granted by the House Appropriations Committee, we believe that existing law and regulations should be given a fair trial.

In conclusion we wish to state that your hearings have had a most beneficial effect in that they have served to highlight publicly the abuses that do exist. We endorse your position that the American consumer should be protected from such abuses and sincerely conclude that this can be readily obtained through the intensified enforcement of the existing law.

We submit the foregoing for the record and ask that it be included at the proper place.

Respectfully,

FRANCIS R. CAWLEY, *Executive Director.*

ABSTRACT FROM THE MINUTES, 28TH ANNUAL MEETING, MICHIGAN CREDIT UNION LEAGUE

Whereas the delegates at the 1963 Annual Meeting of the Michigan Credit Union League represent over 1 million consumers; and

Whereas, through the efforts of Senator Philip A. Hart, of Michigan, attention has been focused on some abuses in packaging and labeling practices by some purveyors of consumer commodities; and

Whereas with the information and knowledge gained through hearings held by the Antitrust and Monopoly Subcommittee of the Judiciary Committee, U.S. Senate, Senator Hart along with a number of other Senators sponsored S. 387: now, therefore, be it

Resolved, That the delegates to the 1963 Annual Meeting of the Michigan Credit Union League endorse S. 387 and instruct the Michigan Credit Union League to inform their members of the contents of this bill and work for its passage.

WILLIAM BROWN, *Secretary.*

NATIONAL PAINT, VARNISH & LACQUER ASSOCIATION, INC.,
Washington, D.C., March 29, 1963.

To Members of the Legislative and Labeling Committees:

Attached hereto please find copies of Senate bill 387, known as the Hart bill, aimed at unfair and deceptive methods of packaging and labeling certain consumer commodities.

Subsection (a) on page 2 of the bill aims its full force and effect at the "packaging or labeling of any consumer commodity" in a manner that does not conform to regulations provided to deter unfair and deceptive methods of packaging.

Subsection (k) defines "consumer commodity" and also provides that such term does not include "(D) any article or commodity intended for use in the

maintenance of the exterior, or for the repair of any part, of any structure, or for use in the maintenance or repair of any article or commodity described by clause (C) of this sentence."

I have attached hereto the wording of the exemption, the wording of clause (C), and the proposed wording.

Further hearings on this bill have been postponed until later in April, due to the absence of some of the committee staff members in Europe.

At your earliest opportunity (but to reach me no later than April 8) I ask for your comments on the proposed change in language that I suggest in the attachment.

With my very best wishes, I am,

Sincerely,

DANIEL S. RING, *Secretary.*

PROPOSED SUBSTITUTE FOR SECTION 3A.(k)(1)(D) OF S. 387, THE HART BILL

The present clause in S. 387 purporting to exempt the products of the paint, varnish and lacquer industry reads as follows: "Such term [consumer commodity] does not include * * * (D) any article or commodity intended for use in the maintenance of the exterior, or for the repair of any part, of any structure, or for use in the maintenance or repair of any article or commodity described by clause (C) of this sentence."

Clause (C) reads "any household appliance, equipment, furniture, furnishing or other durable article or commodity."

As worded, the exemption might not apply to paints or other coatings used for the maintenance of the interior of a structure or for renovation or replacement of any part of any structure. There is also a question as to whether products of our industry which are applied solely for adornment, decoration or beautification of any structure or any part thereof would be covered by the exemption.

Accordingly, it is proposed that the wording of the exemption be modified so as to read:

"(D) any article or commodity intended for use for the preservation, adornment, maintenance, repair, reconstruction, or replacement of the exterior or interior of any structure or any part thereof or for use in the maintenance, repair, adornment or renovation of any article or commodity described by clause (C) of this sentence."

NEW JERSEY WEIGHTS & MEASURES ASSOCIATION,
Passaic, N.J., March 27, 1963.

Hon. P. A. HART,
U.S. Senator (State of Michigan), Senate Office Building, Washington, D.C.

DEAR SENATOR HART: We of the New Jersey Weights & Measures Association comprising of weights and measures officials from municipalities, counties and on a State level, are indeed pleased to advise you that our entire membership favors and endorses your efforts in the passage of your truth-in-packaging bill.

We have urged our membership to write to the New Jersey Senators and to also do whatever possible in the line of public reaction to the necessity of the adoption of this legislation.

Trusting that the bill will meet with a favorable reaction and that it will ultimately become law, we thank you most sincerely for your efforts. We are,

Very truly yours,

PATRICK PITUCCO, *Secretary.*
JAMES POLLOCK (for the President).

HOTEL PRESIDENT.
Palo Alto, Calif., March 14, 1963.

Hon. PHILIP A. HART,
U.S. Senator, Washington, D.C.

SIR: I have been reading an account of the packaging bill hearings, and it seems to me that the issue involved here is whether consumers should be encouraged to purchase by impulse or after critical comparison. While the argument may be made that an extension of the habit of careful buying could result in less

buying and thereby less national production, the diminished buying would be of inferior products; so the net result would be a national gain because there would be less waste of ultimately limited national resources.

It is recognized that much purchasing is by impulse and that packages are designed correspondingly. Yet should not the shopper have an opportunity to make intelligent purchases? Does Mr. Hickman dispute this right?

Why could not the package have a table of possible retail prices with a cost per gram or per ounce or per pound corresponding to each price? This might be per unit weight of dry active ingredient if the product were a detergent.

As for the 8-inch cake, Mrs. Housewife is interested in more than the cost of the cake. She is also interested in having her family finish the cake with satisfaction. So the weight of the cake is important. Suppose she must choose between two competitive cake mixes. Her family has expressed approval of both of them. But the mixes sell for different prices and the weights are different. Her family is a hungry one and her budget is limited; so she wants to make the purchase that gives her the most food value for her money. To make this comparison she wants to know the cost per ounce of flour.

If "standards of weight or quantity could be a disservice to the consumer by prohibiting economical use of raw materials," this should be true whether the consumer is Mrs. Housewife and family or if it is a manufacturing plant. Standards do not prevent the economical use of raw materials in the manufacturing industry.

The argument may be made that most housewives do not have the education and interest for the kind of comparisons suggested. If this is true in spite of the efforts of home economics teachers in high schools and colleges, then here is an opportunity for the advertising profession to begin to acquire the stature it seeks. That is, advertising can just as well be based on the proposition that consumers may be educated to make intelligent purchases as to be based on the observation that purchases are impulsive.

My belief is that our noncritical impulses are important and that they should be encouraged, but when appropriate; that is, for family and friends, for country and for God. But for prepared cake mix? No!

Respectfully yours,

MAURICE O. NORDSTROM, JR.

STATEMENT REGARDING THE TRUTH-IN-PACKAGING BILL, S. 387, TO THE SUBCOMMITTEE ON ANTITRUST AND MONOPOLY OF THE U.S. SENATE COMMITTEE ON THE JUDICIARY, ON APRIL 23, 1963

My name is Dr. Irene Oppenheim, and I am assistant professor of home economics at Montclair State College. For the past 3½ years I have been particularly concerned with the education of women who are or will be teaching youngsters in junior and senior high schools as well as adults in adult education classes and through the extension service. My particular field of interest has been consumer education. In addition to college teaching responsibilities I have conducted a survey of home economics education for the Department of Education of the State of New Jersey, written articles on consumer topics, and lectured to community groups. Like many of the women who have previously testified at hearings on this bill I wear two hats, I am also a homemaker responsible for much of the purchasing of food, clothing, and household goods for my family.

I would like to commend the food producers, packagers, and processors for helping to make our Nation's food attractive, wholesome and economical. Unlike many parts of the world we have an abundance of nourishing, sanitary, and attractive food. We also have a wide variety of foods available in most communities at prices that middle-income families can afford. Clearly this is the result of a growing economy and the combined efforts of many individuals, companies, research groups, and agencies, including the food packaging and processing industry.

One of the results of our abundant productivity, technical development and the competitive marketing situation has been the rapid expansion of food items available in the supermarket. We have new food items such as "Rice-a-roni"; foods in cans that previously had to be prepared at home, such as baked apples; and new methods of processing and preserving foods such as whole frozen dinners and dried potatoes.

In addition we have luxury foods available, frozen, canned and dried, available in supermarkets across the Nation.

We also have seen a rapid expansion of the number of package sizes of the same item. Families now make choices from among more different size packages in purchasing many food and household products. Breakfast cereals come in individual size boxes, the regular size, the large size, and lastly the king size box. Laundry detergents are marketed in varied sizes, a popular range being regular, giant, king, and home laundry sizes.

The result is that the job of family marketing has become vastly more complex and much more difficult. With approximately 6,000 items in the supermarket the homemaker must select those which she thinks will please her family and which she can afford.

Not only must she do this, but she must also do it in a very limited time. Today's homemaker is becoming a very busy gal. Increasing numbers are assuming the dual role of homemaker and workingwoman. Family size has increased so that in many homes there are more young children to care for. Frequently, women who are not employed outside the home or caring for young children have assumed heavy community responsibilities. Food processors have recognized the desire for less time-consuming meal preparation and responded with a wide variety of excellent ready-to-serve and partially prepared foods.

However, there has not been an equal recognition of the need to provide the information that will make intelligent choice in the marketplace more easily possible. In our self-service, pick-it-yourself supermarket the package or container has become the salesman. It beckons in bright colors from locations designed to increase sales. But only sometimes do these products convey with clarity what the useful content of the package, jar or can really is.

I cannot depend upon a description on a can of peach halves that says "serves 3-4" to know whether it meets my family's needs. The label may assume that everyone eats two medium-sized peach halves, but my family likes three large halves. Also, I do not know whether the net contents of a particular brand that I have not tried is largely juice or fruit. Standards of servings established for all food and household supply products would be of great help in deciding which size can of which brand would be the most satisfactory purchase.

Grade labeling, which is not proposed in this bill, would also be a very fine and useful addition for intelligent choice. I have been most interested as I have traveled about the country to find that I could only guess at the quality of the contents of foods packaged under brand names that I had never bought before. Often my guess was poor. It is unfortunate that the only guide to quality is usually trial and error or hearsay.

The problem of intelligent choice is further compounded by the wide variety of practices prevalent in indicating the net contents. Often the net contents is printed in a place where it is hard to find, in very small print, or in a color which contrasts poorly with the contents (if it is in a cellophane bag) or the background of the package or label.

As a test of the hypothesis that shoppers cannot easily read or find the statement of net contents when it is in small print we asked women in a supermarket in the suburban community of Montclair, N.J., to tell us the net weight of the contents of a food package (Presto Self-rising Cake Flour, 1 $\frac{1}{4}$ -pound size) which was handed to them with the front panel facing them. In 2 hours we spoke with 68 women. Thirty-four did not look carefully on the package for the net weight, although it is printed on the front. They casually looked at the package they were holding, tried balancing it in their hand, and guessed. Four said they could not find it on the box, and three said that they could not see it. The other 26 women stated a quantity they said they had read, but 3 were incorrect.

I am not an expert on visual problems, but I could not help wondering how many women could not see the amount of the contents. Ophthalmologists tell me that one needs 20/30 vision to read the size type in which the contents of this package are stated at about 15 inches. Moreover, 75 percent of the people over age 42 need reading glasses to attain this level of near vision.

Some industries have done an outstandingly fine job of labeling the contents. The Cereal Institute adopted a new code for labeling and we now have clear and easily read statements of net contents on many of our cereal products. If a large industry such as this could overcome the problems involved in changing the size, color and location of the net contents I cannot believe that it presents insuperable obstacles to other packagers.

There is in addition the added complexity of trying to compare value when the contents of the package are stated in odd amounts. Not many people are so skillful in mental arithmetic that they can quickly compare in their head the cost per ounce of detergents when one is in a box containing 1 pound $3\frac{3}{4}$ ounces and selling for 33 cents, and the other is in a box with 3 pounds 2 ounces and selling for 76 cents. It is far simpler and much more practical to compare the cost of two 5-pound bags of granulated sugar or two 10-pound bags of all-purpose flour. Intelligent shopping would be far less difficult with standardization of sizes in which a product is offered.

Another obstacle in the path of easy understanding of package contents is the large amount of air space at the top of many boxes. A package of rice that I have just purchased (Uncle Ben's 2 pound 10 ounce size), and which happens to be a brand that I like, fills less than 75 percent of the box. Even allowing for normal settling I find it hard to believe that this is the most that automated mechanical equipment can fill the package. Wheatena, for example, really fills the box. Standards of fill would make the job of selecting food and household products more rational.

For the past $3\frac{1}{2}$ years we have sent groups of college students to supermarkets in the north Jersey area to buy food and household products. They go with prepared shopping lists and a definite amount of money to spend. These are young people with time and energy. If they need glasses they put them on to do this job. They take paper and pencil to do the arithmetic required for cost per unit comparisons. Invariably they find that shopping intelligently is time consuming and difficult.

I am eagerly looking forward to the development of new food products and household supplies. Moreover, I am also anticipating new methods of preparing, processing, and packaging of foods and supplies that will make my job as a housewife easier. I greatly appreciate the fact that many of our containers are becoming easier to hold, easier to pour from, and attractive as well as functional.

I shall also look forward to my job in the marketplace becoming easier. Prepackaging and labeling have replaced the grocer who used to weigh out each purchase. It has long been accepted that people who buy have the right to know what they are getting and to scales that are honest. Labels on packages, bottles, and cans as well as the containers themselves should insure the same rights.

PET FOOD INSTITUTE,
Chicago, Ill., April 10, 1963.

Re Senate bill 387.

ANTITRUST AND MONOPOLY SUBCOMMITTEE,
Senate Judiciary Committee,
Senate Office Building,
Washington, D.C.

GENTLEMEN: The Pet Food Institute, the members of which manufacture approximately 85 percent by volume of the pet foods in this country, object to the enactment of Senate bill 387 for the reason that it is not in the public interest, particularly as it relates to the packaging and labeling of pet foods.

Regulations prohibiting statements that a product is offered for sale at a bargain price—even though such statements may be truthful and not misleading—are clearly not in the public interest. The effect will be to discourage and perhaps to eliminate true offers of bargain prices.

Regulations establishing standard sizes and standard dimensions for pet food containers inevitably will deprive many customers of sizes that they need or desire and inevitably in many cases will increase production costs which in the long run must be borne by the public. The need for such arbitrary governmental action has not been demonstrated. Under the present Federal law a food product is misbranded if its package is so formed or filled as to be misleading.

The regulations prohibiting truthful and not misleading qualifying words for net weight statements clearly are not in public interest. The regulations of the Food and Drug Administration provide that quantity statements may be expressed as a minimum and otherwise will be deemed to be expressed as an average. There is no reason to deprive the public of such information or other truthful and not misleading information.

Other regulations authorized by S. 387 will unnecessarily duplicate the protections given the public by present law, and will do so in an unnecessarily rigid and arbitrary manner. The Federal Food, Drug, and Cosmetic Act requires a food label to bear an accurate statement of the quantity of the contents, requires that a food label bear the common or usual name of each ingredient, and requires that this information be placed thereon with such conspicuousness and such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. The law further provides that a food shall be deemed to be misbranded if its label is false or misleading in any particular.

S. 387 is objectionable because it authorizes regulations without requiring that hearings be held or that such regulations be based upon findings of fact or substantial evidence. In the case of some of the regulations authorized by this bill, no standards whatever are established for the guidance of the regulatory agencies in their formulation of the regulations, not even that the regulations be reasonable.

News laws governing the packaging and labeling of food products should be made a part of the Federal Food, Drug, and Cosmetic Act rather than the anti-trust law. In this way a coherent and understandable statutory scheme can be maintained and confusion and uncertainty arising from the enactment of new laws can be held to a minimum.

Sincerely,

HENRY A. BUCKLIN, *President.*

A STATEMENT OF POSITION BY THE PILLSBURY CO., MINNEAPOLIS, MINN., ON S. 387

As one of the major food processing firms in the United States, the Pillsbury Co. is vitally concerned with all legislation affecting its operations. Currently occupying our interest is S. 387 because of its broad implications for the entire food industry. This paper is the result of a careful study of the bill by a number of people in Pillsbury. It has been prepared primarily for members of the Senate Subcommittee on Antitrust and Monopoly in the hope that it will be of some assistance to them in arriving at legislation that will serve the consumer fairly, define precisely for enforcement agencies the limits of their responsibilities, and clarify for manufacturers their rights and obligations.

Those who are charged with framing legislation for protection of consumers have a serious responsibility. Present consumer legislation has achieved many benefits for the consumer and has assisted manufacturers in discharging their obligations.

We who are completely dependent on consumer acceptance of our products share the objectives of this legislation designed to assure consumers that products they purchase are properly labeled, fairly packaged, and safe.

In short, we believe we must always be interested in what is best for the consumer. It is with that belief, and with a desire to be of help, that we offer this statement for your consideration.

S. 387 MAKES SOME RULES MANDATORY

If this bill becomes law, Federal agencies would be required to adopt regulations governing certain labeling situations.

1. Net weights on the front panel.
2. Location and minimum type size for net weights.
3. Ban qualifying adjectives, such as "giant" and "jumbo."
4. Ban label claims for "economy size."
5. Ban pricing techniques, such as "cents off," "1¢ sale," "½ price," and "2 for 1" sales.
6. Ban illustrations which may deceive purchasers as to contents.

We agree with the objectives of points one and two; we are not much involved with practices discussed in points three and four; and we have some comments to offer on points five and six.

OUR OBJECTIONS TO SOME OF THESE PROPOSALS

One of the basic difficulties with this legislation is that it does not provide meaningful standards or guides for the administration of congressional intention. Are the regulatory agencies to accept as the will of the Congress every

objection raised against packaging and labeling by the various witnesses who appeared before the subcommittee purporting to represent the consumer? We question whether the agencies could always resist successfully the pressures exerted by groups which are not truly representative of the consumer.

We grant that there have been some packaging and labeling abuses. Some of these admittedly would be corrected by the proposed legislation. However, all can be corrected with present legislation.

Many corrections have been made voluntarily by manufacturers who have discovered abuses which had crept into packaging and labeling.

VOLUNTARY CHANGES MADE

It is our policy that net weights and yields be stated in specified type size on the front panel of our consumer packages. We have also a policy statement regarding proper fill of containers.

We know other firms have taken similar action, and we doubt that any reputable food manufacturer would resist adopting similar policies.

Further, we constantly review all packaging and labeling. Label illustrations and product names are carefully considered to avoid misleading possibilities—we now say Mashed Potato Flakes so that no one will pick up our appealingly illustrated box thinking he can pour out ready-to-serve mashed potatoes.

NET WEIGHTS

We agree that net weights should be on the front panel. They should be prominent. Minimum type-size and position requirements are probably reasonable. If this requires an FDA regulation, authority for its exists in the present law. Why isn't that enough? We hear that S. 387 simply requires disclosure of information which would permit consumers to make meaningful price comparisons. That much is desirable. Manufacturers would have little difficulty in agreeing with this objective of the legislation—but the legislation goes beyond this objective.

Is the legislation necessary? How many of the 7,500 items available in an average supermarket are deceptively labeled or packaged? Have there not been substantial improvements in the situation, thanks largely to subcommittee hearings and to FDA activity? A year ago, April 3, 1962, FDA's General Counsel referred to "significant improvement" and Commissioner Larrick said that inconspicuous labeling violations had gone down precipitously.

QUALIFYING ADJECTIVES

It has been suggested that references like "jumbo" and "giant" are deceptive. We would agree that they may irritate the consumer when applied to articles actually of medium or small size. But we question whether the irritation is sufficiently grave to justify Federal regulation.

PRICING TECHNIQUES

Would the consumer benefit enough from banning "cents off," "1¢ sale," "½ price," and "2 for 1" sales to justify their removal as marketing tools in a free economy? If the manufacturer has passed on to the retailer the price allowance involved, he has acted fairly. Only in very rare instances does the retailer, in turn, fail to reflect the allowance in his selling price. We feel that the manufacturer's printing price reductions on labels helps insure that lower prices will be passed on to the consumer.

ECONOMY SIZE

In the case of foods, the present law provides fully adequate enforcement tools against statements such as "economy size" and "family size" if they are found to be misleading.

PRODUCT ILLUSTRATIONS

The mandatory direction to write regulations banning deceptive illustrations duplicates provisions in present food laws. During the hearings on S. 387 complaints were registered that the finished food, not the contents of packages, was shown occasionally on labels. Our industry has been told that it is not the

purpose of this bill to ban illustrations of frosted cakes on mix labels, and we welcome this assurance. We do so because we believe that creativity, exercised in a responsible and ethical manner, is an essential element in marketing our products. Dependent as we are on the continuing purchases of consumers, it follows that we cannot risk misleading them with deceptive illustrations. However, we feel justified in presenting our products attractively so that consumers will be encouraged to select our products among the many available.

Witnesses from FDA stated that they were confident of their present abilities. FTC Commissioner MacIntyre told the New York antitrust bar in January 1963, that full use of FTC's powers may obviate the need for a multiplicity of labeling and packaging laws.

So far, we have discussed only those portions of the bill which deal with mandatory regulations.

S. 387 AUTHORIZES OTHER EXTENSIVE RULEMAKING

S. 387 authorizes additional regulations in the most sweeping terms. For example, the agency may require any action to aid consumers in making rational comparison with respect to price and other qualities. Would these agencies undertake to define the quality of products by establishing grades for food or household products? Brand names and quality reputations built upon years of performance could be destroyed in the name of "rational comparison."

STANDARDIZING PACKAGES

Agencies would be empowered to engage in broad standardizing activities. These would involve standard weights, package sizes, shapes, and dimensions, including also bottles.

Standardizing package sizes and shapes is a monumental task when you consider the fantastic variety of products even within a single product category, such as cereals or detergents. Would it be desirable to have just one shape of salad dressing bottle? Whose should it be? Can you imagine standardizing bottles and packaging of perfume? Yet, the bill attempts to give such authority. It would make "rational comparison" easier.

Now, we admit that standard weights and quantities have their place—for example, in our own family flour business they have been very desirable. Some products lend themselves to standard weights, others do not.

Each industry group faces unique problems. For example, mix manufacturers do not sell cake and frosting mixes primarily by weight. We sell ingredients which will produce a satisfactory end product, such as a two-layer cake. We provide ingredients in proportions that will produce the optimum end product—a cake, for instance, that can be baked in a standard-size pan available in most kitchens. The quantity of ingredients must be such as to make consumer additions in convenient units, for example, 2 eggs, not 1½ eggs.

If a standard weight for all boxes of white cake mix were established, the action might well favor a single producer since manufacturers' formulas differ. For others, the yield might be greater or less than optimum.

In our consumer division we use 53 different sizes of packages for 135 products. Why so many? You can certainly be assured that we reduce this number of package sizes to as few basic sizes as possible. Such standardization within our own lines, which is to our own advantage, eliminates size changeovers on packaging equipment and gives us purchasing and inventory economies. We would prefer to reduce the number of package sizes we must use, but we cannot.

OTHER PROVISIONS

One provision of S. 387 empowers the agencies to establish limited size descriptions—small, medium, and large. While this provision would have no appreciable effect on Pillsbury's current operations, it would seriously affect other food processors. Olive packers, for example, have used for many years the descriptive terms "large," "giant," "colossal," and "super colossal" to define the range in sizes of their products.

The agencies are also empowered to define "servings" where such representations are made on packages. We can foresee considerable difficulty arising even within a single family from the application of such definitions. Some individuals prefer large portions; others small. As an example, a spaghetti dinner that

serves four young secretaries may be deemed grossly inadequate by two hungry pasta fanciers.

Another provisions authorizes establishment of meaningful "quantitative designations" for products, such as laundry products, where the weight does not indicate the yield of the product. How many washloads does the housewife get from a particular packages of detergent? Sidney Dickens, a package designer, has suggested that this depends upon her "family dirt number."

Once her dirt number has been established, she could tell from well-labeled detergents how many washloads to expect according to the handy table provided—on the front panel of course. Thus, a mother with four sons who are mechanics would know that she could expect a different yield from the package than would a mother with four sons who are lifeguards.

The agencies may require a prominent statement of ingredients. This would principally affect nonfoods because this requirement is already contained in the Federal food law. In the case of hazardous household substances, public protection is now afforded by Federal legislation.

THE PROCEDURAL PROVISIONS

We feel that the procedural provisions of S. 387 do not afford adequate protection from possible arbitrary action by administrative agencies.

FTC and FDA are directed to consult with other agencies having special competence with respect to any subject to be regulated. They are to publish notice of intention to make regulations and provide opportunity for consultation by those who would be affected. In practice, if not in law, this procedure fails to meet due process requirements.

The bill does not require that the regulations adopted be supported by substantial evidence received at hearings. No findings of fact, upon which court review can be had, are required. Court review of administrative determinations is limited, at best, but under this bill, it is lacking in substance.

THE DEMAND FOR SAMPLES

S. 387 empowers the agencies to demand samples of consumer commodities in order to examine their packaging and labeling. However, because the bill permits this demand to be made with respect to new, proposed, or future products of the producer, the agencies would have, in effect, the power to require advance clearance of new product labels and packaging.

Next we come to one of the more disturbing aspects of the bill—the criminal penalty for failure to submit promptly any samples demanded. Supporters of the bill have indicated that this provision could be stricken. With reasonable factory inspection powers, the FDA gets all the samples it needs to enforce the law. Commissioner Larrick testified that in the first 3 months of 1962, FDA examined 15,000-plus samples for short weight and inconspicuous labeling violations. Legal action was taken against 23. FTC, too, has wide investigational powers, including questionnaires.

THE MULTIPLE PENALTIES OF NONCOMPLIANCE

S. 387 makes any consumer commodity (not just foods) marketed in violation of any agency regulation, a misbranded article. This effectively incorporates the triple penalties of the Federal food law—seizure, injunction, and criminal penalties.

In addition, any violation of an FTC regulation written under this bill would be made a violation of section 5 of the Federal Trade Commission Act. This might well result in an FTC order. The scope of these orders is frequently broad.

When, for example, a violation was charged in the advertising of a shaving cream, FTC sought an order against "any product" of the manufacturer, Colgate. This case is now in court.

Furthermore, a violation of any agency regulation written under this bill exposes the manufacturer to the ravages of treble damage actions and suits for private injunctive relief. What is intended here? Do the sponsors contemplate that housewives, consumer groups, and competitors shall bring treble damage actions and suits for injunctive relief against a manufacturer who had inadvertently miscalculated the size of his net weight statement?

CONCLUSION

A few final remarks. S. 387 has the sincere support of its sponsors. We share with them their concern for the protection of consumers against deceptive packaging and labeling practices. While we grant that some abuses have occurred occasionally in the past, we believe that present laws are adequate to deal effectively with them.

Our principal concern with S. 387 centers on the possibility of arbitrary regulation and enforcement which it might permit.

We submit that the bill goes far beyond any present need. It is not a re-statement of the present law, but a sweeping delegation of power to two regulatory agencies with mandatory direction to act.

Certainly this bill makes the work of enforcement officials easier. Violations would be simple to prove. But, we ask, are laws made for the policeman?

It is our view, which we hold with conviction, that this bill not does conform to those requirements of positive law given by Isidore of Seville in the seventh century. "The law," said St. Isidore, "must be virtuous, just, possible to nature, according to the customs of the country, suitable to time and place, necessary, useful, clearly expressed lest by its obscurity it lead to misunderstanding, framed to no private benefit but to the common good."

STATEMENT BY WILLIAM P. DUNHAM, PRESIDENT, PREMIUM ADVERTISING ASSOCIATION OF AMERICA, INC., ADDRESSED TO SENATE ANTITRUST AND MONOPOLY SUBCOMMITTEE OF THE SENATE JUDICIARY COMMITTEE

Gentlemen, I appreciate having the opportunity to present our views regarding the bill S. 387 now before you at open hearings.

For the record, let me state that my name is William P. Dunham and that I am the president of the Premium Advertising Association of America, Inc. This association was formed 50 years ago and has long supported objective laws against deceptive and misleading packaging and promotional practices. Apparently, however, this is not the principal objective of S. 387, for there are presently adequate legal means for dealing with deceptive packaging, labeling, and advertising.

There are many serious objections to this bill that must be carefully weighed, lest Congress establish new governmental regulations that will strike directly at the heart of freedom of advertising and sales promotion, that will impose roadblocks to greater economic growth and finally that will weaken the structure of our free enterprise system.

These are certainly serious charges to make against any legislative bill and they are presented before this committee only after the most exacting and careful examination of all the provisions of this bill that we believe make this extremely unwarranted legislation.

S. 387 involves a truly dangerous encroachment on the freedom of advertising and of competition. It is the conviction of this association that advertising and sales promotion should remain free of arbitrary control because such freedom best insures a competitive market and makes for a prosperous economy. Free choice affords maximum consumer benefits and it strengthens our historic philosophy of conducting business that has helped this country prosper for so many years.

The following observations are offered, therefore, to provide you with a perspective on the far-reaching and adverse effects that S. 387 will produce on the country at large and to the business community.

We will attempt to avoid repeating the many valid points of objection already registered by others, mainly that an efficient basis and framework for enforcement already exists without resorting to such serious measures as contained in this bill.

We ask this subcommittee to consider the following comments on this bill and its likely consequences.

1. The stated antitrust purpose of this bill is to restrict nonprice competition, which includes sales promotion and advertising. That purpose, as implemented by the administrative controls proposed in the bill, is based upon an economic theory of pure competition which was discussed before the subcommittee by Prof. Ruby T. Morris on February 15, 1962. As expounded by the Economist Edward Chamberlin, pure competition assumes a market of many buyers and

sellers of a homogeneous product, in which competition is entirely on the basis of price. No individual seller or buyer is large enough to affect the calculations of any other buyer or seller. In such a market advertising would be neither necessary nor possible. Needless to say, almost nowhere in modern business does such a market actually exist. Nevertheless, advocates of the theory come to the unrealistic conclusion that advertising and promotion should be eliminated as wasteful or monopolistic.

Because this theory of pure competition introduces a new kind of antitrust directive hostile to advertising our industry expresses its deep concern and urges this subcommittee not to approve a bill which would implement such an undesirable policy.

2. The Secretary of Commerce, Luther H. Hodges, recently made a very significant statement on this subject before the Advertising Federation of America. He said: "The thoughtless criticism of advertising reflects a profound ignorance of advertising's indispensable role in our economy. Without your ability (advertising) to stimulate the constantly expanding demand for goods and services our gross national product would not have more than doubled in the past 20 years. We certainly couldn't expect our GNP this year to be about \$50 billion more than last year." In our judgment S. 387 will seriously undermine basic advertising freedoms without which there can be little opportunity for the business-building initiative and creativeness so essential to an expanding economy.

3. Official preclearance of packaging, labeling, and related promotions is clearly established under section 3A(g) of the bill, which calls for advance submittal of material that is "used or to be used" for distribution in commerce. We understand that the criteria for such clearance include the new tests of nonprice competition and so-called rational comparison. These terms are undefined and ambiguous. Their administrative interpretation may expose manufacturers to such uncertainty and hazard that useful improvements and creativeness in advertising and sales promotion are likely to be discouraged.

The importance of stimulating and encouraging this vital aspect to advertising and sales promotion and not suffocating it with unreasonable restrictive legislation is brought out strongly in the following statements. In the preface to "Creative Advertising," published by Henry Holt & Co., it is stated, "All advertising is creative. Original ideas are called for in every ramification of the business. Therefore, it follows that to think originally is to think creatively. Advertising becomes most efficient when it forsakes precedent—when it pursues the new, the different, the unusual, for advertising is concerned primarily with the kind of problems that are resolved best with ingenuity." In their book entitled, "Management in Marketing" by Hector Lazo, chairman of the marketing area, professor of marketing, Graduate School of Business Administration, New York University and Arnold Corbin, professor of marketing, Graduate School of Business Administration, published in 1961, they stated, "In consumer-oriented marketing management the role of advertising is bound to increase as an integrated measurable force making a direct contribution to the total marketing effort whose objectives are the same as those of sales, product planning, marketing research, and sales promotion; namely, profitable sales resulting from the coordination of all marketing efforts within a company to satisfy known customer needs to the best of the company's ability. Advertising has been forced out of its 'traditional' role of information bearer to the consuming public and into that of a vital and dynamic force influencing the total demand sector of the economy. This transition is bound to continue and the importance of advertising is bound to increase as the total marketing function (the demand side of the economic coin) increases in importance in the decades ahead."

4. The arbitrary and rigid controls authorized by S. 387 would seriously interfere with functions of advertising and sales promotion essential for honest but aggressive promotion of their brands in order to expand markets. The importance of package point of sale premium and other types of incentive promotion in stimulating increased buying is demonstrated by the Du Pont study. It showed that nearly 50 percent of all grocery store purchases are unplanned and are the result of impulse buying after the consumer reaches the store. Advertising and promotion lay the basis for consumer expression of free choice. Aggressive competitive marketing is not only healthy for the economy but it insures the preservation of our free enterprise system and the protection of consumers.

We are proud that our premium advertising industry has provided business with important assistance in stimulating increased buying. Time and time again

we have seen that the very promotions that would be jeopardized under this bill have generated a great buying impulse on the part of the public.

5. We hope this subcommittee and the national administration will join us in seeking to stimulate greater economic growth. The bill S. 387 may have an opposite effect on the economy. With heavy penalties imposed for violation of discretionary regulations no manufacturer can safely risk introducing a promotional innovation without fear of suppression if his promotion holds promise of a competitive advantage. Initiative and creative selling will be crushed by this bill. And yet, creative incentive sales promotion programs such as our premium industry provides offer the best opportunity of triggering a new surge of consumer buying. This is why we ask this subcommittee not to take away effective merchandising tools that are so urgently needed to produce business prosperity.

We are at a point in our national economy where we need more, not less, sales promotion to fight our way out of economic doldrums. As recently as last month, Secretary of Commerce Luther Hodges said, and I quote: "The future of our country, of our free enterprise system, of our whole American way of life may well depend on our breaking out of the pattern of slow economic growth which is plaguing us."

6. President Kennedy has strongly endorsed a recommendation of his Economic Committee on Fiscal and Monetary Policies, which stated: "Economic policy should be directed at strengthening the expansionary powers of the economy. Our objectives should be twofold, in the short run we must increase total demand for both consumption and investment, in the long run we must achieve a more rapid growth of our productivity capacity." It follows, therefore, that no legitimate sales promotion techniques should be denied to those who will have to accomplish these vital administrative objectives. In the final analysis the economy can grow only as fast as increased consumption can be accomplished.

7. The spark to kindle greater economic growth must receive fuel from many different sources. The premium advertising field is certainly one of these sources, and we believe a very important one. This was emphasized last month by Dr. Arno H. Johnson, a director of the Advertising Research Foundation and vice president and senior economist of J. Walter Thompson, when he stated at an advertising conference in Chicago, "To unshackle economic growth we need both the development of desires and the incentive to change latent needs and desires into instant demand. The added and immediate stimulus to buying that can be developed in many areas by premium advertising can play an important part in expanding consumption to match productive ability. If we are to make possible the 20 million new nonagricultural jobs which will be demanded by our labor force in the next 10 years, we must increase our total sales level to consumers by some \$200 billion. The importance of selling, advertising, packaging, and merchandising as forces to bring about these necessary changes in buying habits and living standards can hardly be overemphasized." In a marketing address on April 2, Daniel L. Goldy, Administrator of the Business and Defense Services Administration and Deputy Assistant Secretary of Commerce, stated, "There is no substitute for promotion in sales and the efforts that go into it. That is why I put increase in sales and sales promotion first in my list of things to do (in stimulating greater economic growth). Secretary Hodges has been emphasizing in all public utterances and in his private conversations as well the very great importance of sales, of advertising, of promotion to the successful accomplishment of the increased economic growth which we are all seeking."

Yet we see in S. 387 the arbitrary power drestically to curb any such sales-building promotions that have been so highly important to business in the accomplishment of many different marketing objectives. This is not time to put business in a straitjacket. What it boils down to is that this bill is a strange mixture of antitrust policy, preclearance controls over labeling, packaging, and promotion of consumer-packed items and finally, an overall philosophy inconsistent with the competitive enterprise system.

8. In addition to these important considerations, this subcommittee should consider that there are literally hundreds of small companies whose business could be very adversely affected by this bill. They are the premium suppliers for many of the promotions that may drastically be curtailed. Many of these small businesses are nearly totally dependent on supplying the merchandise needs of business firms for their sales promotion campaigns. Our association represents nearly 500 such companies, spread out all over the United States. These supplier companies as well as our many member sales-promotion-using companies all adhere to our long-established practice of the highest ethical

standards. They do not practice or condone deception of any kind. They do, however, subscribe to aggressive competitive promotions in the accomplishment of their business-building objectives.

We respectfully urge this committee not to recommend the enactment of S. 387. The underlying purpose of the bill is in conflict with freedom of advertising and it would reduce the initiative for productive sales promotion and product improvement so much needed for an expanding economy, and it would obstruct the consumer's freedom of choice. In a free market open consumer choice tends to bring about product quality, variety, reduce prices and create greater sales volume.

Progress comes best from innovations, from experimentation, from creative advertising and sales promotion, from a desire to better satisfy the ever-changing wishes of the consumer. Let us not destroy these things with such a bill as S. 387. American industry must remain flexible and must be able to innovate. Rigid Federal and State laws can only serve to stifle industry. I am proud that the premium industry I represent is so fully capable of providing many of the new sales-promotion innovations that the business community requires in achieving greater economic expansion.

APRIL 1, 1963.

HON. THRUSTON B. MORTON,
*Senate Office Building,
Washington, D.C.*

HONORABLE SIR: During your tenure in the Senate, up to this time I have not had occasion to express my views to you, although over the years when impending legislation bugged me, I have contacted your contemporary, Senator Cooper, your predecessors, Senators Clement, Underwood, Barkley, Stanfill, Withers, ABC, and, of course, Congressman Spence. Right now there is a bill in the Senate on which I feel quite strongly. It is S. 387. First let me explain, I am not a package designer, nor am I involved in radio, television, or any of the advertising media, but it seems to me that S. 387 must have been conceived by someone who is so far out of touch with reality that he would be well advised to reconnoiter and reacquaint himself with life as it really exists in the 20th century.

I am positive that I know something of this field, for as a 9-year-old youngster I started working in a grocery store, and continued there for 10 years, after school, on Saturdays, and during vacations. I believe I know the American housewife and her whims and fancies as well as anyone, not only from actual exposure to her but also as a graduate student in marketing. It is inconceivable to me that anyone would view the American housewife as being so invincibly naive and utterly stupid as to permit deceptive packages or Madison Avenue blandishments to sway her decisions, either before or while she is making a purchase. If you don't agree with me, visit a supermarket sometime, observe her noting the contents of competitive products, comparing prices, and thoroughly evaluating which is the best course for her to pursue. In my opinion, the American housewife is the most astute, intelligent, and accurate appraiser of household values that there is in the entire scheme of things; yet some of the statements that are being expounded by the proponents of this type legislation are such that if you would tell them to a jackass he would kick you. There is adequate legislation in existence now to cope adequately with any false packaging situations that could be created by any manufacturer who might be impelled to take liberties in the development of packages, and I honestly feel, and I hope you do too, that what we really need is less governmental control rather than more of it. Why 30 years ago as a youngster in the grocery store, it was a practice for some of the national packers to take a can, for example, of the same external dimensions used in the independent groceries, pack an ounce or two less of product in it, and sell it in the large chain stores for a cent or two less than the same size and brand (but with more product) was available in the independents. I have had colored housewives—who 30 years ago were not the most educated element in the world—say to me, "Those people must think we are stupid—1 cent less in cost, yes, but 2 ounces less of food." Don't ever underestimate the intellectual competence of the American housewife. If she should succumb and happen to get stung once, it won't happen again, never twice, and, moreover, all of her friends and neighbors will know of it.

After some 20-odd years of corresponding with my esteemed Senators (who have been many) and Congressman Spence, I am well aware of the stock reply to communications from constituents who take the time to express their viewpoints—"I will give the bill my consideration when and if it reaches the Senate floor." In this instance, I would like for you to go a little farther, show your confidence in the inherent perspicacity of the American public, and reply that when and if the bill reaches the Senate floor you will do your best to defeat it. Competition will properly take care of all wrongdoers. Let's direct the efforts of the Senate and House of Representatives to problems of far greater significance. The housewife is fully able to look after her own best interests.

Thanks for the time taken to read this lengthy epistle, keep up the good work.

Sincerely,

P. H. RACHFORD, *Florence, Ky.*

DETROIT, MICH.

Senator PHILIP A. HART,
*The Senate Building,
Washington, D.C.*

DEAR SENATOR HART: At the regular meeting of the Rumanian American Civic Club we discussed the problem of packaging goods, based on the hearings brought out by your committee.

On the basis of the information received from your reports, the members unanimously approved a motion to support your truth-in-packaging bill, and to commend you for this work on behalf of the people.

The officers were instructed to inform the language press of this action, and ask them to publicize the suggestions made in your letter regarding ways to avoid being fleeced through deceptive packaging.

Very truly yours,

JOHN DOMNARIU,

President, Rumanian American Civic Club.

SERVIT FOODS CORP.,
New York, N.Y., April 22, 1963.

Senator PHILIP A. HART,
*Senate Office Building,
Washington, D.C.*

DEAR SENATOR: Although the Tea Association, which represents the tea industry as a whole, has put itself on record as being opposed to the proposed legislation to be known as the truth-in-packaging bill, we who are also a member of the Tea Association, would like to go on record as being in favor of this new legislation.

To illustrate one of the reasons why, the writer would like to point out that he has seen personally, packages of tea bags being sold in retail stores which contained 60 percent tea in weight as compared to comparable tea bag packages on the market. In other words, using a formula of packaging 5 pounds of tea to make 1,000 tea bags, there are packers who are using as little as 3 and 4 pounds, to make the same 1,000 tea bags. The consuming public does not realize this since the consuming public buys tea bags by the count rather than by the weight. We think that this type of abuse would be corrected under your new bill. We hope it would, as this is most unfair competition.

This is only one area of objectionable practice prevalent in the tea industry; there are others. These others take the form of 1-cent-sale packages, which is a package containing 16 extra tea bags that is supposed to be sold for 1 cent more than the regular pack of 48 tea bags; and also cents-off sales on all sizes of packs.

As an independent smaller packer, we would vigorously support your efforts to bring order out of the chaos that now exists in the food industry, not only for tea bags but for so many other products.

We remain,

Very truly yours,

BERT HAUSER.

STATEMENT FILED ON BEHALF OF THE WAXED PAPER INSTITUTE, INC., CHICAGO, ILL.

The Waxed Paper Institute files this statement of opposition to S. 387, 88th Congress, on behalf of its members. The institute is a trade association whose 17 members are corporations engaged in the manufacture and sale of waxed paper and kindred products.

The term "waxed paper" is defined by the institute as "any paper, whether single web or laminated, which has an exterior surface coating or impregnation of any combination of materials comprising at least 50 percent wax and which is used as a flexible packaging material." Waxed paper, as thus defined, is used as a wrapping for bread and other bakery products, and for crackers, cereals, confections, cough drops, chewing gum, dairy products, dehydrated foods, fresh vegetables and fruits, frozen foods, gelatin products, macaroni, meat and poultry, metal products, pharmaceuticals, soap, sugar and salt, tobaccos, and yeast.

Waxed paper differs from other flexible wrapping materials in that the label and pictorial presentation may be printed directly on the paper. This printing is done, to the customer's order, by the waxed paper manufacturer in its own plant. The base paper is first run through presses similar to those used for printing newspapers. It is then run through the wax bath for coating. Finally, rolls of the printed, coated paper are sent to the food processor or other customer for use in wrapping its products. While waxed paper manufacturers do not determine the content of the labels or the nature of the pictorial and other sales representation on its final product, these manufacturers are a vital part of and are dependent on the packaging industry.

In opposing S. 387, the Waxed Paper Institute does not endorse false or deceptive labeling or packaging. It believes in truth-in-packaging as strongly as do supporters of the present bill. Present laws are thought to be adequate to deal with deception that exists. One law particularly, mentioned by one witness, the law of survival, is the most powerful corrective in this field. A consumer may be misled once in making a purchase, but he or she will not be misled twice. Any company that attempts to rely on deception in selling its products will not long survive.

The institute wholeheartedly endorses the views of industry spokesmen who testified in opposition to S. 387 before the subcommittee at the hearings held March 6 through 22, particularly the testimony that made the following points:

The packaging industry of the United States brings the American consumer products in packages that are unexcelled for attractiveness, convenience, and sanitation.

This the industry has done through research on its own and in response to the needs and desires of the consumer. To interpose Government regulation, to the extent contemplated by S. 387, between the industry and the consumer would destroy the responsiveness of the industry to consumer needs.

Government regulation cannot be substituted for the knowledge and experience of men and women who know the problems of the industry as a whole or of a particular company.

Elimination of the so-called appetite appeal pictures on food packages would eliminate the only real salesman a food manufacturer often has. It is very doubtful that consumers are misled by such pictures, except in rare instances. The latter are adequately covered by existing law.

The American consumer, particularly the American housewife, is the best regulator of packaging. The consumers' votes are registered daily at the cash register. The packaging industry and its customers—the processors of all packaged articles—are far more responsive to the consumers' vote than any governmental agency can be.

S. 387, if enacted, would bring an unwarranted intrusion of Federal regulatory power into the private enterprise system.

One further point may be made on behalf of the institute and its members. Printing on the paper that is to be covered with wax is done from expensive plates. These plates are kept by the waxed paper manufacturer, but are purchased by the customer and remain the customer's property. Plates must be replaced when they are too worn for clear printing, when labels are changed for esthetic or sales reasons, or when they are changed in response to Government regulation. The more often plates have to be replaced, the more expensive the process is; and the burden of cost is borne by the consumer. The cost of frequent replacement in response to Government regulation is higher for small processors of foods and other products than it is for large. Large processors

wear out their plates faster than do small processors; and can change the content of the plates more frequently. If S. 387 is to be enacted into law, some provision should be made for orderly replacement of plates, without economic waste, or the regulatory agencies should be advised through the statute or, at a minimum, in the legislative history that this problem be recognized.

STATE OF WASHINGTON,
DEPARTMENT OF AGRICULTURE,
Olympia, March 6, 1963.

HON. WARREN G. MAGNUSON,
HON. HENRY M. JACKSON,
HON. JULIA BUTLER HANSEN,
HON. WALT HORAN,
HON. CATHERINE D. MAY,
HON. THOMAS M. PELLY,
HON. K. W. STINSON,
HON. THOR C. TOLLEFSON,
HON. JACK WESTLAND,
Washington, D.C.

DEAR CONGRESSMEN: I have studied the revised "truth-in-packaging" bill (S. 387) as it appeared in the Congressional Record of January 21, 1963.

I urge your support of Senator Hart's bill and/or the companion bill introduced in the House of Representatives by Congressman Celler. In my opinion, the measure will materially contribute to uniform labeling of packaged commodities and improved consumer information and protection.

Enactment of such a statute is an essential first step, by applying these standards to commodities shipped in interstate commerce, toward uniform programs in these areas throughout the Nation. Many State weights and measures units, including those in the State of Washington, have been actively supporting these efforts for many years. Such a Federal statute would immeasurably assist these efforts in the States and municipalities.

Sincerely,

JOE DWYER, *Director.*

[Western Weights & Measures Association Newsletter]

TRUTH-IN-PACKAGING BILL

A number of top Government officials have declared themselves to be wholeheartedly in favor of the truth-in-packaging bill. Among them we cite George P. Larrick, Federal Food and Drug Commissioner and Wilbur J. Cohen, Assistant Secretary of Health, Education, and Welfare. Secretary of Commerce Luther H. Hodges spoke in favor of this legislation when he addressed the Subcommittee on Antitrust and Monopoly on March 6, 1963. To quote some of his words, "I come to express administration support of Senate bill 387, a bill designed to prevent deceptive methods of packaging or labeling consumer commodities. This bill, in my opinion, would not only serve to protect the interests of consumers throughout our country but would also serve to protect and advance the interest of manufacturers, packagers, and all other business elements participating in the distribution of consumer products."

Last year, the President took express notice of the problems involved in packaging and labeling practices. In his Consumer Message to the Congress, the President referred to the hearings which Senator Hart and members of his subcommittee have conducted and he had this to say: "Misleading, fraudulent, or unhelpful practices * * * are clearly incompatible with the efficient and equitable functioning of our free economy. Under our system, consumers have a right to expect that packages will carry reliable and readily usable information about their contents. And those manufacturers whose products are sold in such packages have a right to expect that their competitors will be required to adhere to the same standards."

Senate committee investigation of the many package labeling abuses has been going on for about 1½ to 2 years. We know that they have done a very thorough and searching job. At hearings, recently concluded, some industry witnesses brought forth statements such as, "Such legislation is unnecessary and undesirable" and "we are entirely capable of policing our own business by establishing a basic code of conduct for the industry that would cure the abuses without

legislation." If they, the industry, had any honest desire to do this—and had done so—would there be any need for this new legislation? We who are in the weights and measures inspection field have worked for the principles of equity for many long, hard years. We have constantly seen the abuses in the packaging and labeling of commodities. It is not without good cause that this legislation is being sought. We must seek the cure. We urge you to read, understand and back Senator Hart's bill S. 387. A letter to your Congressman to indicate that you favor this much needed packaging legislation would help. Do it today!

U.S. SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
May 7, 1963.

HON. ESTES KEFAUVER,
*Chairman, Subcommittee on Antitrust and Monopoly Legislation,
Senate Judiciary Committee, Washington, D.C.*

DEAR ESTES: Enclosed is a copy of one of the most intelligent, thoughtful, and well-documented letters I have received on S. 387, the so-called truth-in-packaging bill, introduced by Senator Hart.

I would very much appreciate it if you would have the enclosed letter from Mrs. Lee James York of Salt Lake City included in the record of the hearings on this bill.

Sincerely,

FRANK E. MOSS.

SALT LAKE CITY, UTAH, April 18, 1963.

HON. FRANK E. MOSS,
*U.S. Senate,
Washington, D.C.*

DEAR SENATOR MOSS: In your consideration of Senate bill 387, the truth-in-packaging bill, please take time to read "The Package Shall Not Bear False Witness," pages 246-249 in the May 1963 Consumer Reports. We have subscribed to this publication for several years and would consider our money well spent if only on its fight against deceptive packaging.

We have three small children and a job that is fast "on the way," but not "arrived" financially. We have the ironic, but not unusual, situation of having more take-home pay, but less left over, than ever before. We're both University of Utah business school graduates and vitally interested in national economics and our own economy. We read, vote, budget, pay our bills—like so many, many others.

With an afternoon's effort, I manage to compute our income tax forms. We have compiled market research reports on several occasions. I graduated at the top of my senior class, but I could easily make use of a calculator at the grocery store.

I read and compare food ads before embarking on this mathematical venture. We eat 21 meals a week and I plan accordingly. I am aware that luxury foods and precooked items seldom can be included on my list. I know the reasons, but also the cost, of advertising, and try manufacturers' off-brands and specials. I am very concerned that every purchase is the best value at the price, and I do not have much brand or store loyalty. Our budget and my interest in marketing demand these actions. And every time I discover a deceptive package, I boil.

Many consumers do just as I do; they have to buy food and they do the best they can. However, many others cannot afford time or effort to turn shopping into a math bee, except when buying a large item such as a house or car. They're tired, hungry, in a hurry, or don't have to budget that closely. But I get mad in behalf of these people, too.

I'll go along with the producer who wants to produce, package, and advertise his wares so attractively that I'll consider them necessities instead of luxuries. But why does he spend so much effort making it hard for me to find out if his product really is a good value? I wish he'd use the same talent and money to send me a good product at a lower cost, or at least one I can calculate.

To spare you, I'll mention but a few examples:

1. At a Safeway store, I had my choice of their White Magic Bleach in 1-gallon bottles (128 fluid ozs.) or a new "Jumbo" bottle of Clorox which contained 1 gal-

lon, 1 quart, and 1 pint of bleach (no ounces notation). Unable to compare these in the allotted time, I brought home the White Magic. It had a small deception of its own: a "Special Offer!" label on the front for buttons. A small box on the back explained that they were obtainable with 50¢ and a label from Empress Preserves. (Not White Magic.)

2. Whisk detergent recently changed from can to a handy plastic container. The price per $\frac{1}{2}$ gallon accompanying this change was increased from \$1.17 to \$1.49. Gerber's Baby Food, now in bottles, has also increased.

3. I searched a package of Kitchen Charm paper napkins for the contents. Finally on the bottom back corner I found "60 napkins" in type half the size of this. Incidentally, the package size is very nearly the same as several competitors' which contain 80 napkins.

4. Canned goods come in No. 300, 303, $2\frac{1}{2}$, ad infinitum. Why not in pounds, grams, fluid ounces or some meaningful and computable amount? Why not in about six standard can sizes?

5. Why do I have to buy shredded wheat to get rose bushes, pancake mix to get dishtowels? Why not just cut out the offers and lower the price?

6. The cereal boxes in my cupboard today have the contents clearly printed. The amounts run as follows: $\frac{5}{8}$ oz., $13\frac{7}{16}$ oz., and 8.5 oz. Why not 1 oz., 15 oz., and 10 oz?

In general, I am against rigid legislation, preferring to let those who invest their capital and run the risks accept the responsibility. But in the light of many competitive gimmicks like those above, I feel that Senate bill 387 is very reasonable. Producers who haven't used these selling techniques won't be affected; but I hope the consumers will. In their behalf, I urge you to read the May Reports and support Senator Philip A. Hart and the truth-in-packaging bill.

Sincerely,

Mrs. LEE J. YORK.

EXHIBITS AND APPENDIX

CONSUMER ADVISORY COUNCIL

The Consumer Advisory Council endorses the principles and purposes of the Hart truth-in-packaging bill (S. 387).

1. We believe that legislation to bring order into the field of packaging is necessary at the present time, in the interest of both consumers and honest producers, and in order to promote the effective, rational functioning of the American enterprise system. The need for such legislation has been made abundantly apparent by the testimony before the Senate Judiciary Committee, and our own experience fully confirms the evidence there presented. Present legislation is inadequate to cope with the confusion and deception which has come to characterize the packaging of a large proportion of the goods sold to American consumers.

2. It is true that existing means of eliminating deceptive packaging are not being fully used. If manufacturers and distributors chose to use the simplified practice and commercial standards procedures of the Department of Commerce, they could eliminate much of the confusion in packaging by voluntary agreement, as was done with respect to many industrial products under the simplification and standardization program introduced by Herbert Hoover as Secretary of Commerce 40 years ago. But manufacturers and distributors have not taken advantage of this machinery and have, rather, continued to proliferate unnecessary variety and forms of packaging which impede intelligent consumer choice.

3. If the Food and Drug Administration had a larger budget, it might pursue more cases that could be identified as misbranding. The Federal Trade Commission, in the interest of fair competition, might institute cease-and-desist proceedings in additional cases involving packaging. But many practices which are quite legal at present contribute to the pattern of confusion and deception. And what is needed to break the pattern is a broadscale attack on the problem as a whole, not merely a case-by-case pursuit of individual practitioners of deception.

4. We endorse the bill's requirements with respect to the kinds of information which must be clearly and prominently displayed on the label and the prohibition of misleading words, phrases, illustrations, or price statements. We also endorse the authorization for the promulgation of regulations relating to permissible sizes and shapes of packages, standards for the designation of sizes and net quantity, and information as to ingredients and composition of commodities.

5. The proposed legislation is in the line with the historic exercise of Government responsibility to provide a framework within which the American economy can operate rationally, in terms of honest competition and intelligent consumer choice. It is designed to meet the conditions of today, when the package has become the salesman for the vast multitude of complex goods. It carries out the well-established principles reflected in Government's establishment of weights and measures, protection of the public against fraud, promotion of fair competitive practices, establishment of standards of identity and quality, and requirements of labeling under the Food, Drug, and Cosmetic Act. The Standard Container Acts of 1916 and 1928, and the Alcoholic Beverages Administration Act of 1936 have applied the kind of regulation proposed by this bill to the packaging of fruits and vegetables and of alcoholic beverages.

The bill authorizes the kind of regulations which other countries have found necessary and conducive to the proper functioning of their economies. Great Britain for 35 years has limited the packages of many standard foods to multiples of 2 ounces up to half a pound and multiples of 4 ounces up to 2 pounds. Canada's labeling requirements for foods, recently revised with the support of industry, correspond to the kinds of labeling requirements proposed by this bill.

6. We would like to see the bill strengthened in two respects:

(a) We believe that regulations with respect to sizes and shapes of containers and related matters should be mandatory under the law with respect to items basic to the family budget and not left to the discretion of the Secretary of HEW

or the Federal Trade Commission in their respective jurisdictions to determine whether they are necessary. The labeling provisions of the bill are mandatory, but it is precisely the multiplicity and irregularity of packages that prevent rational consumer choice and have brought the need for this legislation.

(b) We believe that the bill should apply to as wide a range of consumer commodities as possible and therefore that the coverage should be broadened. In particular, we do not think that meat and meat products and materials used for the maintenance and repair of housing and home furnishings should be excluded.

7. With respect to enforcement, we think that the method of enforcement and penalties should be the same for all commodities which come under the act regardless of which agency is responsible for them. The Food and Drug Administration and the Federal Trade Commission have different procedures, neither of which wholly fits the needs of this bill. We believe that the bill should provide uniform, rapid, and strong enforcement procedures, to be applied by both agencies with respect to the commodities in their respective fields.

WOMEN SHOPPERS' OPINIONS OF SPECIAL OFFERS

A survey conducted for Association of National Advertisers, Inc., by Alfred Politz Research, Inc., in March 1963

INTRODUCTION

Purpose

The purpose of this study was to determine women shoppers' preferences among four kinds of special sales offers which manufacturers sometimes make, and women shoppers' opinions as to whether Congress should pass a law making one kind of sales offer illegal.

Population studied

The population studied by this survey is women living in private households in the United States (excluding Alaska and Hawaii) who do most of the grocery shopping for their households. There are estimated to be about 56 million¹ total private households in the United States, of which about 52 million² contain one woman who is the principal grocery shopper. The findings of this study are intended to represent these 52 million U.S. women who are the principal shoppers for their households, within margins for sampling variation which are reported herein.

Sample size and selection

The 1,402 personal interviews were completed with an area-type probability sample of the defined population. The sample was selected in this way:

Within the 48 States, "primary sampling units" were defined as metropolitan areas and as nonmetropolitan counties. With known probability 65 such units were selected.

Within each selected primary sampling unit, "locations" were defined as blocks demarcated by streets, in the case of cities and towns; and as small land areas clearly demarcated by roads and other civil and natural terrain features, in the case of open country. A total of 140 locations was selected with known probability.

Within each selected location, "segments" were defined as small groups of consecutive dwelling units, of a size such that one interviewer could usually canvass one segment in one visit. One segment was selected with known probability within each location, for a total of 140 segments.

Within each selected segment, all occupied dwelling units or "households" were selected, with probability equal to one (certainty). Every selected household was visited for interview, and a record kept of the results of household calls. A summary record of field calls is included in the appendix to this report. All interview visits were made in the evening, to include daytime-employed women shoppers in the sample.

At each household wherein someone was found home and cooperative, it was first established whether there was any woman member of the household

¹ Estimated as 55,850,000 from Bureau of the Census data.

² Estimated as roughly 51,630,000 by this survey, as subsequently explained.

who did most of the grocery shopping. If no such person existed, the household was skipped because it did not contribute to the population under study; 93.7 percent of households wherein someone was home and cooperated were found to contain a principal woman shopper. This percentage was projected against the estimated 55,850,000 total U.S. households, to estimate the total number of woman shoppers as roughly 51,630,000.

The interview questions were always addressed individually to the particular woman who was the principal grocery shopper. If she could not be interviewed, no one was interviewed in her place: substitutions were not permitted. Interview refusals were minimized by making a second call the same evening on people who were temporarily too busy at the first call to grant the interview (cooking, dining, telephoning, entertaining, etc.).

We discuss subsequently (see "estimating procedure") the steps taken to represent women shoppers who did not happen to be home when called on, or who permanently refused the interview.

Interviewing

Seventy-four interviewers worked on this study, each an experienced member of our field force who has done good work for our firm on prior surveys.

A printed questionnaire form was used for every interview, to assure standard wording of the questions asked, and standard recording of the answers given. A copy of the questionnaire is included in the appendix to this report.

Each interviewer received a printed set of interviewer instructions explaining all phases of his assigned work. The 1,402 interviews were completed between March 2 and 6, 1963.

Coding of answers

The recorded answers from each interview were numerically coded and punched into standard business machine punch cards. Several survey questions asked the shopper to give her reasons for holding a certain opinion. These reasons were recorded verbatim by the interviewer, and later numerically coded into appropriate categories. A set of code sheets is included in the appendix, showing the kinds of individual answer included in each reported category.

Estimating procedure

After transferring the answers from each interview to a separate punchcard, the card for each interview received an individual tabulating weight according to the respondent's probability of being selected for the sample. For example, respondents with half the average probability of selection received twice the average tabulating weight, since the proportion of such respondents in the sample (before weighting) was half their proportion in the population. Such weighting is an integral part of probability sampling theory and practice, and depends only and entirely on respondents' known probabilities of being selected for the sample.

Each respondent's probability of selection depended, first of all, on the probability of selecting the respondent's household, which is known as a consequence of the sampling previously outlined. Weighting each respondent according to this probability represents principal women shoppers whose households were not in the sample.

In addition, each respondent's probability of selection depended on her probability of being home in the evening when our interviewer called. This probability was estimated at the end of each interview by questioning the respondent about her past at-home frequency in the evening. Weighting each respondent according to this probability represents principal women shoppers who were not home at the times our interviewers called on their household.³

Adjustment for principal women shoppers who refused the interview was made by assuming that a noncooperating shopper in a particular sample segment would have answered similarly to the average shopper interviewed in the same segment.

After sample weighting, all tabulations were performed on standard business machines.

³ For a full technical explanation of this procedure, see "An Attempt To Get 'Not at Homes' Into the Sample Without Callbacks," by Alfred Politz and Willard Simmons, *Journal of the American Statistical Association*, March 1949, vol. 44, pp. 9-31. Since 1949, this procedure has been endorsed by leading statisticians and frequently used on major market surveys done by many firms.

Margins of sampling variation

Findings of this study are reported as percentages, applicable to the population of around 52 million women shoppers which this study sampled. Because a sample was used, findings obtained from the sample vary somewhat from the corresponding population values which would have been found had all U.S. principal women shoppers been surveyed by the same methods. Because a probability sample was used, however, it is possible to compute margins for such sampling variation, at various levels of confidence.

Each sample finding has its own margin of variation. Findings of similar numerical size (even though concerning different subjects), however, have similar margins of variation. The following table reports average margins of sampling variation for sample findings of given magnitudes. These margins refer to the sample of 1,402 completed interviews, and take into account the following sources of variation, in aggregate, between a sample finding and the corresponding population value of which the sample finding is an estimate: (1) differences between women shoppers selected for the sample, and those not selected; and (2) differences between women shoppers selected for the sample who were successfully interviewed, and those sometimes home in the evening who were not interviewed because they chanced not to be home at the particular moment their household was called on.

Approximate (average) margins of sampling variation

Given a sample finding of—	One may conclude with the indicated degree of confidence that the population value differs from the sample finding by no more than the indicated margin—		
	97.7 percent confidence	95.5 percent confidence	68.3 percent confidence
Percent	Percentage points	Percentage points	Percentage points
5	±3.0	±2.0	±1.0
10	4.1	2.7	1.4
20	5.5	3.6	1.8
30	6.2	4.2	2.1
40	6.7	4.5	2.2
50	6.8	4.5	2.3
60	6.7	4.2	2.2
70	6.2	3.6	2.1
80	5.5	2.7	1.8
90	4.1	2.0	1.4
95	3.0		1.0

¹ See example, below.

For example, consider a sample finding of 60 percent. One may conclude with 95.5 percent confidence that the population value differs from this sample finding by no more than 4.5 percentage points, plus or minus. Thus, given a sample finding of 60 percent, one may conclude with 95.5 percent confidence (or with favorable odds of about 19 to 1) that the population value is somewhere between 55.5 and 64.5 percent.

Question 1:

Ranking of offers

[In percent]

	All women shoppers=100.0 percent				
	Like best	Like second best	Like third best	Like least	Did not rank this offer
Offers studied:					
Cents-off sales.....	61.3	19.0	10.4	2.8	6.5
Coupons.....	19.3	37.9	27.7	7.7	7.4
Premiums.....	11.4	30.9	41.6	8.4	7.7
Contests.....	2.3	4.3	11.2	73.9	8.3
Did not place any offer in this rank.....	5.7	7.9	9.1	7.2	
Total.....	100.0	100.0	100.0	100.0	

CUMULATED RANKINGS

[In percent]

	All women shoppers=100.0 percent	
	Like first or second best	Like first, second, or third best
Offers studied:		
Cents-off sales.....	80.3	90.7
Coupons.....	57.2	84.9
Premiums.....	42.3	83.9
Contests.....	6.6	17.8

Question 4:

Opinion whether Congress should pass law making cents-off sales illegal

[All women shoppers=100 percent]

	Percent
Think Congress should not pass such a law.....	63.8
Think Congress should pass such a law.....	8.9
No opinion.....	27.1
Not reported.....	.2
Total.....	100.0

BY RANKING OF CENTS-OFF SALES

[In percent]

	All women shoppers=100.0 percent					
	Total	Like cents-off sales:				Did not rank cents-off sales
		Best	Second best	Third best	Least	
Think Congress should not pass such a law.....	63.8	42.4	12.1	5.8	0.9	2.6
Think Congress should pass such a law.....	8.9	4.8	1.0	1.0	.8	1.3
No opinion.....	27.1	14.1	5.9	3.6	1.0	2.5
Not reported.....	.2				.1	.1
Total.....	100.0	61.3	19.0	10.4	2.8	6.5

NOTE.—Each percentage in table based on total women shoppers.

BY RANKING OF CENTS-OFF SALES (CUMULATED RANKINGS)

[In percent]

	All women shoppers=100 percent				
	Total	Like cents-off sales			
		Best or 2d best	Best, 2d, or 3d best	3d best or least	2d, 3d best or least
Think Congress should not pass such a law.....	63.8	54.5	60.3	6.7	18.8
Think Congress should pass such a law.....	8.9	5.8	6.8	1.8	2.8
No opinion.....	27.1	20.0	23.6	4.6	10.5
Not reported.....	.2			.1	.1
Total.....	100.0	80.3	90.7	13.2	32.2

Question 2:

Why like cents-off sales best?

[All women shoppers=100 percent]

	Percent
Like cents-off sales best-----	61.3
You save money-----	23.4
You know you are getting a bargain-----	6.6
You get your saving right away-----	6.5
You know how much you are saving-----	4.7
More convenient, simplest-----	9.8
More convenient than coupons-----	4.9
I look for the brand that costs less-----	4.9
Take advantage of it to buy more-----	.5
Other specific reasons-----	2.0
Just like, prefer to other offers-----	2.2
Total reasons-----	65.5
Don't know-----	.3
Not reported-----	

Question 3:

Why like cents-off sales least?

[All women shoppers=100 percent]

	Percent
Like cents-off sales least-----	2.8
Don't believe you get that much off-----	.9
Don't believe it's true-----	.5
Other specific reasons-----	.7
Just don't like, prefer other offers-----	.4
Total reasons-----	2.5
Don't know-----	.4
Not reported-----	

Question 2:

Why like coupons best?

[All women shoppers=100 percent]

	Percent
Like coupons best-----	19.3
More convenient, simple-----	6.2
You save money-----	4.9
You save more money-----	2.0
You know you are getting the saving, how much you are saving-----	1.4
You know you are getting a bargain-----	1.2
Gets you to try new products-----	1.7
Have choice of using or not using-----	.7
Other specific reasons-----	.8
Just like, generally use-----	1.3
Total reasons-----	20.2
Don't know-----	.2
Not reported-----	.1

Question 3:

Why like coupons least?

[All women shoppers=100 percent]

	Percent
Like coupons least.....	7.7
Forget, lose them.....	3.3
Too much trouble, confusing.....	2.0
Coupons are (usually) for brands I don't want.....	1.1
Other specific reasons.....	.8
Just don't use, don't like.....	1.2
Total reasons.....	8.4
Don't know.....	.2
Not reported.....	

Question 2:

Why like premiums best

[All women shoppers=100 percent]

	Percent
Like premiums best.....	11.4
Nice to receive gift.....	3.6
Nice to get something free.....	1.2
Premium makes purchase a bargain.....	.6
Premiums are (often) useful, desirable.....	2.1
You get it right away.....	1.1
You know (see) what you are getting.....	1.0
More convenient, simpler.....	.8
Other specific reasons.....	1.5
Total reasons.....	11.9
Don't know.....	
Not reported.....	

Question 3:

Why like premiums least

[All women shoppers=100 percent]

	Percent
Like premiums least.....	8.4
Don't want (need) premiums offered.....	2.3
Premiums are poor quality.....	1.5
You get less of product in package.....	1.0
Price of product marked up.....	.7
Too much trouble.....	.9
I don't select products according to premiums.....	.6
Hard to get complete premium sets.....	.5
Other specific reasons.....	1.1
Just don't like.....	.2
Total reasons.....	8.8
Don't know.....	.2
Not reported.....	

Question 2:

Why like contests best

[All women shoppers=100 percent]

	Percent
Like contests best.....	2.3
Enjoy contests.....	1.1
Like to try to win.....	.7
Other specific reasons.....	.2
Just like, prefer to other offers.....	.1
Total reasons.....	2.1
Don't know.....	.1
Not reported.....	.1

Question 3:

Why like contests least

[All women shoppers=100 percent]

	Percent
Like contests least.....	73.9
Too much trouble.....	32.4
Not interested.....	21.8
Never won, too little chance of winning.....	17.2
Distrust them, no one wins.....	6.4
Costs (too much) money to enter.....	1.8
I only buy what I need.....	1.6
Don't understand them.....	.7
Other specific reasons.....	1.9
Total reasons.....	83.8
Don't know.....	1.1
Not reported.....	.5

Question 5:

Why think Congress should not pass law making cents-off sales illegal

[All women shoppers=100 percent]

	Percent
Think Congress should not pass such a law.....	63.8
Manufacturers have right to price as they please.....	18.8
Would interfere with private enterprise.....	10.0
No concern of Congress.....	6.6
Doesn't seem fair (right) to make them illegal.....	4.7
Grocers should be allowed to set own price.....	.9
Too many laws now.....	.8
Don't think it's constitutional.....	.7
Any savings helps family budget.....	13.6
(They) make it possible to afford products.....	.9
Like to get bargains.....	.8
(They) help promote products, stimulate sales.....	5.2
Don't think law would work.....	.5
Other specific reasons.....	3.1
Just like them.....	4.6
Total reasons.....	71.2
Don't know.....	.6
Not reported.....	.7

Why think Congress should pass law making cents-off sales illegal

[All women shoppers=100 percent]

	<i>Percent</i>
Think Congress should pass such a law.....	8.9
You don't really get (full) saving.....	2.7
Original price is raised.....	1.1
Manufacturers take advantage of public.....	.6
Prefer single price.....	2.0
Prices might be less.....	.6
Other specific reasons.....	1.7
Just don't like them.....	.3
Total reasons.....	9.0
Don't know.....	.4
Not reported.....	.1

Record of field calls

Total dwelling units in sample segments.....	3,066
Less: Those found vacant (unoccupied).....	168
Occupied dwelling units=households.....	2,898
Less:	
No one found home.....	¹ 848
Household refused cooperation.....	² 168
Households wherein someone found home and cooperative.....	1,882
Less: No principal woman shopper existed in household.....	118
Households found to contain principal woman shopper.....	1,764
Less:	
Principal woman shopper not home.....	¹ 223
Principal woman shopper refused cooperation.....	² 139
Principal women shoppers interviewed.....	1,402

¹ Principal women shoppers who were not home are fully represented by the estimating procedure used, and the contribution thereof to sampling variation is fully included in reported margins of sampling variation, except for those principal women shoppers (if any) who were never home in the evening, throughout the interviewing period. (See Introduction: "Estimating Procedure" and "Margins of Sampling Variation.")

² Principal women shoppers who refused the interview are represented to the degree that they would have answered similarly to the average shopper interviewed in the same sample segment. (See introduction: "Estimating Procedure.")

ALFRED POLITZ RESEARCH, INC.
527 MADISON AVENUE
NEW YORK 22, NEW YORK

FEBRUARY, 1963

STUDY #1918

Location Number _____ (5-10) Household Number _____
Family Name _____
Street (or RFD) Address _____
Town or City _____ State _____
Interviewer _____

We are making a survey that concerns grocery shopping. May I please speak with the woman member of this household who does most of the grocery shopping?

Female grocery
shopper available

No such person _____

Not home . . . _____

Refused . . . _____

RECORD ON CALL
RECORD SHEET.
ERASE & RE-USE
QUESTIONNAIRE.

Introduction (READ VERBATIM)

We would like your opinion on a subject that deals with grocery shopping. Let's imagine you are shopping for something like coffee or package soap or some other frequently purchased item. Now, as you know, manufacturers of such products are anxious to have consumers try their brand and they often offer various kinds of "inducements."

For example, some companies run contests. In order to enter the contest and try to win a prize, you have to send in a box top.

Then other companies send coupons through the mail. If you take the coupon to the store, you can buy the product at a saving.

Still other companies give a gift or premium which is packed inside or attached to their product, such as scissors or a pen. If you buy the product, you get the premium with it.

Another kind of offer is made by the manufacturer who marks on the package that the product is for sale at a certain number of cents off the regular price -- such as 5¢ off or 7¢ off.

1. Here is a card which lists these four kinds of offers (SHOW CARD #1)-- We would like to know how you would rank them in terms of the appeal they have for you.

In other words, which kind of offer do you like best, which do you like second best, which do you like third best, and which do you like least?

	Like Best	Like Second Best	Like Third Best	Like Least
a. Contests (you send in box top and try to win prize)	___ 11-1	___ 12-1	___ 13-1	___ 14-1
b. Coupons (come in the mail and you take to store)	___ -2	___ -2	___ -2	___ -2
c. Premiums (you get a gift with the product)	___ -3	___ -3	___ -3	___ -3
d. Cents-off sales (marked on package)	___ -4	___ -4	___ -4	___ -4

STUDY #1918
February, 1963
Page 2

2. Please tell us in a sentence or two why you chose the one you did as "liked best"?

_____ 15-
_____ 16-
_____ 17-

3. Also, please tell us why you chose the one you did as "liked least"?

_____ 18-
_____ 19-
_____ 20-

4. There was an article in the paper the other day that said Congress is considering a bill that would make it illegal for a manufacturer to offer his product to the consumer on a cents-off kind of sale. In other words, by law the manufacturer could not lower his price and mark the saving on the package accordingly.

What do you think about this--do you think that Congress should pass such a law, or not?

Congress should pass such a law	_____ 21-1	} Don't know _____ -3 (SKIP TO Q.6)
Congress should not pass such a law	_____ -2	

5. Why do you feel that way?

_____ 22-
_____ 23-
_____ 24-

CLASSIFICATION DATA

6. Counting yourself and all other adults, children and babies--how many people are there living in this household altogether?

Number _____ (25)

7. Do you pay rent for this home, or do you own it?

Rent _____ 26-1 Own _____ -2 Other (DESCRIBE) _____

8. Would you mind giving us your telephone number?

Telephone number (include Exchange) _____ Refused _____

9. Day of Interview (RECORD AUTOMATICALLY)

Monday	27-1	} ASK. Q. 10	Saturday	-6	} ASK Q. 11
Tuesday	-2		Sunday	-7	
Wednesday	-3				
Thursday	-4				
Friday	-5				

IF INTERVIEW ON WEEKDAY EVENING

10. We are interested in finding out how often people are home on weekdays at about this time of evening.

ASK ABOUT 5 PRECEDING WEEKDAYS. DO NOT
ASK ABOUT SATURDAY OR SUNDAY.

	<u>At Home</u>	<u>Not Home</u>
a. For instance, did you yourself happen to be home (NAME PRECEDING WEEKDAY) at about this time?	_____	_____
b. Were you home (NAME WEEKDAY BEFORE THAT) at about this time?	_____	_____
c. Were you home (NAME WEEKDAY BEFORE THAT) at about this time?	_____	_____
d. Were you home (NAME WEEKDAY BEFORE THAT) at about this time?	_____	_____
e. Were you home (NAME WEEKDAY BEFORE THAT) at about this time?	_____	_____

IF INTERVIEW ON SATURDAY OR SUNDAY EVENING

11. We are interested in finding out how often people are home on (Saturdays) (Sundays) at about this time of evening.

ASK ABOUT TWO PRECEDING SATURDAYS OR
SUNDAYS, WHICHEVER IS DAY OF INTERVIEW

	<u>At Home</u>	<u>Not Home</u>
a. For instance, did you yourself happen to be home last (Saturday) (Sunday) at about this time?	_____	_____
b. Were you home two (Saturdays) (Sundays) ago at about this time?	_____	_____
	<u>29-</u>	

12. Respondent's Race (RECORD AUTOMATICALLY)

White ____ 30-1

Non-White ____ -2

13. Interviewer's Signature: _____

9.2 Why Cents-Off Sale Liked Best (Code 11-4)

Col. 15

-1 Most convenient; simplest (general) (comparison with coupons not stated)

don't have to bother storekeeper; simplest form for me to take advantage of what they're giving; think that's the easiest there really isn't any trouble involved; it's the easiest; you are saving money the easiest way (D.C. with -4); the least bother; doesn't require any extra effort on my part

-2 More convenient than coupons

instead of sending out coupons, they could just mark it less; matter of convenience, I forget to use coupons; do not have to bother with coupons - cents off are right there; (you get your savings quicker than with coupons)

-3 You get your savings right away (coupons not mentioned specifically)

get your cents off there while you wait; it is a saving at the time; instant savings; you have use of extra savings immediately; it's right there - get advantage immediately of any discounted price; ~~get your savings right away~~

-4 You save money (general)

you are saving money the easiest way (D.C. with -1); because of the savings; makes the product less - everybody likes to save money; seems to be saving every time you buy product; saves money, that's all; get merchandise cheaper; I see it, I buy extra and stock in home to save money; you save money; good way to save money only just a few cents at a time; know you are getting it on sale; buy it and at the same time getting it cheaper; might help the grocery bill a little, etc.; might be saving something not sure; would count up over a period of time; a discount, a saving.

-5 You know you are getting a bargain

buy the merchandise because am getting bargain and know I am; I figure bargain is right there; realize my bargain there; feel getting bargain when buy these items marked so much off; if grocer gives cents off, feel I have had good buy; feel like get what I pay for when I buy with few cents off; it's the best buy; because item costs less and still have advantage of it.

-6 You know how much you are saving (emphasis on knowing amount saved)

this way you know actually how much you save immediately; you know what you are really paying for product and if you are getting bargain; you can readily see the money you save; you know just what you get and save money; because it's true I mean you know just what the product will cost you

-7 I look for the brand that costs less

look for the cheapest I can get; grocery bills so high always watch where we can cut costs; look for the cents off packages - that's how I shop; if see something on special or cents off I try it; if 2 products of which I use both, I will choose one with money off

Col. 15

- 8 Take advantage of it to buy more
Sometimes I can buy if cheap enough; if I see it, I buy extra and stock in home
- 9 The gift may not appeal to me (comparison with premiums)
because sometimes a gift doesn't appeal to me - I'd rather pay less for the item
- 0 Just like it, prefer to other offers (general)
prefer that to other stuff; wish they wouldn't even give stamps
- X Other answers
notice that first; suppose you have cent-off sale
- Y Don't know

Q. 3 Why Like Cents-Off sales least (Code 14-4)

Col. 18

- 1 Don't believe it's true (general)
- 2 Don't believe you get that much off
- 3 Just don't like, just prefer other offer
- 4 Poor quality merchandise
- x Other answers
- y Don't know

Q. 2 Way Coupons Liked Best (Code 11-2)

Col. 15

- 1 More convenient, simple
Easy to redeem them; simple way to get money back (D.C. with -2); more convenient for me; it's easy; it's the simplest; I carry them in my purse and buy product with it; handier; like convenience in mail and you take them with you as you need them; they come in real good when I go to store; can redeem them when you like; they come in mail - so it's a waste not to use; can take them to store and redeem them right away; easy way to save some money (D.C. with -2)
- 2 You save money (not save more money)
Chance to buy product at a savings; can redeem them for cash; usually redeem them; good to save money; like to save money; coupons are like money; money actually saved; nice to save on, simple way to get money back (D.C. with -1); easy way to save some money (D.C. with -1); take them to store and buy products and get savings right away; coupons give a deduction and help save; same as a discount; coupons give you a rebate; it's a few cents in your hand since you are going to buy it anyway; get something off on product; feel like I've saved 5¢ or 10¢
- 3 You save more money
You save more money with coupons - usually 10¢; the coupon offer gives more money; seem to save more with coupons; you save more; (you save more with coupons than with other specific kind of offer)
- 4 You know you are getting free saving, how much you are saving
You are sure of saving; you really do get your cents off; you know you get the amount off on the coupon; you know exactly how much you get off; you see what you buy; I know it is true; savings more obvious
- 5 You know you are getting a bargain
I think this is a good bargain; I know I am getting a bargain; they are a good deal; a bonus with product. (Code "You know how much of a bargain you are getting" in -4)
- 6 Gets you to try new products
Good way for manufacturer to get you to try their products; you get to try different products; gives me an idea what to buy; many different kinds, prepares what to buy
- 7 Coupons are usually for brands you want
Usually things you can use are offered; coupons are for brand name products - things I use every day; you get some coupons for brands you regularly use
- 8 Have choice of using or not using
Can decide yourself whether you want to take advantage of them

Col. 15 **11-2**

- 9 Like surprise
Enjoy surprise of coupon
- 0 Like coupons, generally use them
Usually use it - will buy an item if I get coupon; always use coupons;
use coupons occasionally
- x Other answers
- y Don't know

Q. 3 Why Coupons Liked Least (Code 14-2)

Col. 18-1 Forget, lose them

Always forget to carry coupons to store - therefore lose them; forget them till they expire; I leave them at home or at my desk; I lose coupons that come through mail; I find if you don't have them with you they get lost; you forget about coupons and never get to use them; lay around house until after expiration date; can never find them when I need them; too busy to remember to use them

-2 Too much trouble, can't be bothered, confusing

Too hard to keep track of things; too much trouble to keep with; I can not keep up with coupons because of confusion and accumulation; too much trouble to take them to store; just can't be bothered

-3 Coupons are (usually) for brands I don't want

It's always something I never use or want; half of the time I feel obliged to buy the product because of coupon and then don't use it; seldom use articles couponed

-4 Stores don't like them

Grocers do not like to fool with these coupons; I was raised in a grocery store and coupons were a lot of trouble for us; when the cashier is too busy I feel funny about giving her coupons and wait for money

-5 Just don't use them, don't like them

Never pay any attention to coupons; I discard most of the coupons I get

-x Other answers-y Don't know

Q. 2 Why Premiums Liked Best (Code 11-3)

Col. 15

- 1 Premiums are often useful, desirable (emphasis on quality of premium)
Get nice things in package; I have been buying Breeze with Cannon Towels - some of best (towels) advertised; get my glassware, cups and towels this way; sometimes it is something you have needed; sometimes you get something of value; something you can use right now; get things might not have bought; I get all my wash cloths out of Silver Duz
- 2 Nice to get something free ("free" or equivalent specifically stated)
(Do not D. C. with -4)
Nice to get premium free; get something for nothing; get something free when you buy this way; used product and received gift without spending extra money; like to open package and get a free gift; you get two things for one
- 3 Nice to receive gift ("free" or equivalent not stated)
Very nice to receive gifts; get an extra gift; buy a product as needed and gift sometime is nice addition; like to receive my premium when I buy item; like the gift in the box; like to open box and get a gift - this appeals to me
- 4 Premium makes purchase a bargain (Do not D.C. with -2)
Premium makes it more attractive; get your money's worth; get better bargains; sure of getting a good bargain; like to get premium with product - I know I have gotten a bargain (Do not D. C. with -1)
- 5 Like surprise of gift ("surprise," "curiosity" or equivalent specifically stated)
Most of the time I'm curious about what the premium is; like to get a gift I guess - a surprise
- 6 Know (see) what you are getting
Know what you're getting right away; you know what you are going to get; like to see what I'm getting; get something you can see right away; if you see what you are getting you save that way (D.C. with -9); you see what you're getting
- 7 You get it right away
Get something right away; it's something in my brand right now
- 8 More convenient, simpler
It's easier; more convenient to get saving this way (Do not D.C. with -9); you don't have to save tops; get what you pay for and don't have to send away; don't have any trouble getting gift
- 9 You save (more) this way
I think I save this way; (best way to save); (premium worth more than other offers) (Code "More convenient to save this way" in -5); if you see what you're getting you save that way (D.C. with -6)

Col. 15

-0 I chose the product with premiums

Will buy any product I use extra gifts with them; (look for products with premiums); (I like to buy products with premiums); (that's the way I shop)

-X Other answers

-Y Don't know

Q.3 Way Premiums Liked Least (Code 14-3)

Col. 18

-1 Premiums are poor quality

What you get is not any good; gifts don't amount to much and it's usually something you never use hardly (Do not D.C. with -2); usually inferior products; mostly cheap stuff; you could get the gift at a dime a dozen

2 Don't want (need) type of premium offered (poor quality not specifically stated)

Never anything you really want; usually don't need premium - or I wouldn't want them anyhow; dislike most of premiums offered; don't care for items usually; usually useless item; usually something you don't want

-3 You get less of product in package (to offset premium cost)

You pay for this because you get less of product; think you get less in package; you get so much less of product

-4 Price of product marked up (to offset premium cost)

They have already marked price up and you aren't getting a bargain

-5 Quality of product is lower (offsetting premium cost)

Don't get such a good product when you get a gift; anything you have to give gift with is probably not good

-6 Hard to get complete premium sets

Never buy enough to match things up

-7 I don't select products according to premiums

Don't care about what's in box - I go by the product

-8 Too much trouble (general)

Too much bother; it is more work

-9 Just don't like premiums (general)

Don't like premiums

-0 I'd rather have them lower the price-X Other answers-Y Don't know

Q. 2 Why Contests Liked Best. (Code 11-1)

Col. 15

-1 Enjoy contests
(no expectation of winning stated)

I never win but it is fun to try; enjoy it; (contests are fun whether you win or not)

-2 Like to try to win

I like to try my luck to win things; like to enter contests to see if I can win anything

-3 Contests are educational

Contests are educational; (you can learn something)

-4 Just like contests, prefer over other offers

Prefer it to other offers

-X Other answers

-Y Don't know

Q. 3 Why Contests Liked **Least** (Code 14-1)Col. 18-1 Too much trouble (expense not stated)

Too much trouble to mail stuff in; it's a lot of confusion; don't have time for it; sometimes I never bother to send in the box top; it's a nuisance; too much trouble to mail something; there's always something more you have to (do), who has time for it?

-2 Never won a contest, too little chance of winning

Never won contest in my life; used to join in this and that contest, slim chance will ever win and stopped trying; never win anything - so never bother to enter anymore; don't win; **too little chance of winning**

-3 Not interested in contests

Never enter contests; never have been interested; not a contest enterer

-4 Distrust contests, no one wins

Don't think anybody ever wins; don't feel it's legitimate - believe contests are fixed; no one ever wins them contests; distrust of contests since the TV fixes

-5 Costs money to enter

Costs too much money to send stuff away; have to send money;

-6 Don't know what you will win

Don't know what prize you will win

-7 Have to buy what you don't want

I only buy what I have to have; (would have to buy something I didn't want)

-8 Don't understand contests-x Other answers-y Don't know

9. 5 Why Congress Should Not Pass Law (Code 21-2)Col. 22-1 Manufacturers have right to price as they please

Manufacturer should decide about price to charge for his products; manufacturer knows if he can cut price or has to raise it; up to manufacturer to decide on any price; up to manufacturer to decide; everyone should be allowed to price as they please; if they can afford to mark down, let them do it; should be law of supply and demand; price fixing - stabilization.

-2 Would interfere with private enterprise

Just another effort to interfere with private enterprise; interferes with private business; should allow a manufacturer free enterprise without so much regulation; business isn't free anymore - sounds like Russia

-3 Doesn't seem fair, right to do away with cents-off (Do not D.C. with -0)

Can't see why they will determine it illegal for manufacturer to price his product; why should they have law like this - doesn't make sense; it's not right; don't think it is right; why are they against savings?

-4 Shouldn't be concern of Congress

No concern of Congress; think Congress could be doing better things with their time; not for any Congress to say; Congress busy enough without this; they have enough to do without this law; not Congress business; they shouldn't have anything to say about it

-5 Any savings helps family budget (because of high price)

Groceries are high enough - if you can get a few cents off, it adds up; be help to me to get the saving; people should have savings; money is limited, and it's good idea when we get to save something; if I can save a penny or two it's OK; the salary I make needs it

-6 Helps promote product, stimulate sales

Can raise sales that way; might increase sales; just draws trade, might as well let them put price in; good way for manufacturer to sell more; should be able to; better for company concerned; helps introduce new products

-7 Makes it possible for me to afford product

Sometimes only some can afford bread; I can't afford it

Q. 5

Col. 22

- 8 Like bargains
Like to be able to get bargains
- 9 Like cents off method
Likes to see saving shown on package
- 0 Don't think it's constitutional (Do not D.C. with -3)
- X Other answers
Convenient; helps small storekeeper
- Y Don't know

Col. 23

- 1 Don't think law would work
Manufacturer would find a way around it
- 2 Just don't want the law (general)
- 3 Good products don't need cents off
- 4 Benefits consumer (no reference to saving or bargain)
- 5 Too many laws now
- 6 Grocer should be allowed to set own price (no mention of manufacturer)

Q. 5 Why Congress Should Pass Law (Code 21-1)

Col. 22

-1 You don't really get (full) savings

Do not believe grocery store give you the cents off; if we get savings OK - if not pass this law; if grocer does not give cents off - think they should do away with it; I actually don't think you get the money off; I think the mark down doesn't mean anything; it's not a bargain - don't fool public

-2 Original price was raised

Never sure what original price - usually jacked up at the start; should stick to original price and not fool the people by raising it in first place; think it is deceptive pricing

-3 Price is raised later

Just to get you into store - afterwards the price is the same; when product comes out they give lower price then jack it up - it's just a come-on

-4 Prefer single price (no reference to lower price without offer)

Think one price is the fair thing; would keep prices the same; keep prices stable, uniform; saves price confusion

-5 Price might be less

Maybe the prices wouldn't go up any more; would be less expensive for housewives with law

-6 Price should be lower to begin with

Should have lower price to begin with

-7 Just don't like it, prefer other offer

Don't care for this myself; foreign to our economic system

-8 Manufacturers take advantage of public-X Other answers

They should advertise in different way

-Y Don't know

[From Advertising Age, Mar. 25, 1963]

COST PER POUND OF DETERGENTS

During the Senate Antimonopoly Committee hearings on Senator Philip Hart's, Democrat, of Michigan, labeling bill, a Procter & Gamble witness had some interesting things to say about cost-per-ounce comparisons of detergents.

Arguing against the setting up of Federal standards in order to help consumers buy through such comparisons, J. Gibbons Pleasants, P. & G. vice president for research and development, had this to say:

"If all detergents were exactly alike, cost per ounce would be a meaningful basis of comparison." But he maintained that no two detergents have precisely the same formulation, so such comparisons are not significant, "just as cost per pound of an automobile, or the cost per ounce of a dress" is not significant.

Anyone who travels to the supermarket and immerses himself in the myriad offerings in the soaps and detergents department will probably disagree strongly with Mr. Pleasants' reasoning. Maybe there are differences in formulation, but net weight of contents is the major factor when it comes to pricing. When looking at two different brands of detergent, in comparable sizes and at the same price, the shopper expects them to be of the same weight. With so many brands in so many different sizes confronting the consumer, it is unrealistic to expect the consumer to carefully search all over for the correct weight.

No one expects the manufacturer to display size and weight information so prominently that they drown out the brand name and selling copy on the package. But it does seem reasonable to ask manufacturers to standardize their various sizes and to present pertinent contents data in a prominent enough position, so that consumers can be spared unnecessary confusion.

GIBSON ASSOCIATES, INC.,
Canford, N.J., April 4, 1963.

HON. PHILIP A. HART,
U.S. Senate, Washington, D.C.

DEAR SENATOR HART: On March 14, the Cosmetic Industry Buyers & Suppliers Association, in conjunction with the trade publication, Drug Topics, sponsored a seminar meeting in New York. The subject concerned the truth in packaging bill and some 200 men and women interested in the packaging field attended.

After the meeting, I had the opportunity to meet Mr. J. S. Cohen, of your committee and who was on the discussion panel of this meeting. I also met Miss Dorothy Goodwin of your committee. Our interest in the question of deceptive packaging, as recently interpreted in California, prompted me to ask Mr. Cohen to come to Washington to informally discuss the general framework and intent of your sponsored legislation. My request was willingly and enthusiastically accepted, and I came to Washington last Thursday and fortunately found not only Mr. Cohen awaiting my visit, but as well Mr. George Clifford.

I have been asked to address this letter to you, setting forth our contentions as to why we feel the design of our plastic containers is engineered to take advantage of the properties of particular thermoplastic resin materials and do not in any way violate the intent of your sponsored legislation. I heartily support the need for fair and just regulations. I ask that my opinion be given consideration and an awareness be made known to your committee, so that proper safeguards as to the meaning of deceptive packaging is not confused. I am certain that ingenuity and skill to bring forward better packaging is not meant to be stifled.

The packaging industry is an exciting, dynamic force in marketing our country's merchandise, at point of sale, through all available advertising media, and in every way so that brilliant, functional design can spur a consumer to spend his hard cash for the products offered for sale.

The original idea of the plastic cosmetic "double wall" jar goes back now 25 years. I have been in the packaging field since 1937. In no other material will you find demonstrated what has been made possible as has been accomplished through plastics.

The economics feasibility to the manufacturer of a product marketed is immediately evident. From the standpoint of standardization in many of today's automated, high-speed, filling-line operations, the desirability of being able to change back and forth between glass and plastic containers would minimize, or rather,

not make necessary any loss of time due to changeover required in physical size and shape.

Actually, we started at the end and worked backward to the beginning. We took the accepted standard containers produced by the glass companies and followed exactly all of the external and internal dimensions in order to produce a product of the exact physical impression the consumer had become accustomed to accept and look for, especially in a branded product being purchased on a repeat basis. It is dangerous to even slightly alter appearance in any way for many customers know what a given package looks like.

There are many reasons for our two-piece construction. By using polypropylene for the molding of the inner cup, we have selected the best material possible for chemical resistance, excellent physical properties of (a) zero moisture vapor transmission rate, and (b) completely shatterproof and virtually indestructible. This material, however, is difficult to decorate. Hence the outer cup is molded in modified impact polystyrene. Not only is this resin less costly, but it can be decorated by offset printing, silk screening, hot-leaf stamping, or simply paper labeled. In the decorating process, should a container be spoiled, the least expensive part is involved as a reject, whereas in glass, the entire container is lost.

Of course, the outer cup can be molded in any color desired and the inner cup the same selection of color exists. Glass used in cream jars is almost always dead white (called opal glass). They can be sprayed with a paint to get colors, and ceramic fired, but this is a very costly method.

The savings possible in shipping freight expenses are tremendous. For example, in the 4-fluid-ounce size, one glass jar weighs as much as seven plastic jars.

Glass jars will break and chip in all the handling operations they must go through. With our plastic jar, even under extreme hard treatment, only the outer cup might crack but never shatter into dangerous pieces. When a glass jar breaks on a filling line, and crushed glass mixed with cold cream flies all over the equipment, it is one big mess to clean up.

When a wholesale druggist makes a delivery to the corner drugstore, a broken glass jar of cream can spoil any other products in the shipment.

The glass jar is even more hazardous when put into use by the consumer. The most common place to use cosmetic preparations is in the bathroom. A dropped jar into a sink, or on a tile floor, results not only in the loss of all the product, but the cleaning up of broken glass. For the person who shampoos in the shower, double jeopardy exists, for wet, soapy hands are no good for holding a heavy, slippery glass jar. Not any more so our plastic jar. However, the difference is the only loss is spillage, for the contents are completely protected from breakage by the dual-cup construction.

It's a simple scientific fact that the best insulation is "dead air" space. An example is thermopane glass windows. The dead air between the two panels of glass gives the insulation value. It's the best way to prevent heat transfer. We have taken advantage of this in the construction of our containers. Stores display merchandise in windows or on lighted glass case counters. We accomplish this insulation factor, and the jar contents are protected from heat and cold.

Perhaps the cosmetic manufacturers failed to explain to the consumer this packaging improvement for their product. Perhaps something in broad usage on a nationwide basis for 25 years was considered as accepted, and why spend advertising budgets of old-hat information.

Enclosed are two polaroid pictures I took both of 4-fluid-ounce glass and plastic jars. Could you tell any difference? Also an engineering print showing detailed dimensions of these competing containers. (Approximately the same.)

All I do know is, we think we have developed a better container to bring better products to market.

When a new packaging form is developed that competes in the marketplace against competitive forms of a different material construction, shall it be considered deceptive packaging when the same physical size and dimensional requirements and the same amount of product is within the package?

Very truly yours,

ROYAL H. GIBSON, *President.*

[From the Consumer Bulletin, May 1963]

HOLLOW-WALL PACKAGING OF COSMETICS SOMETIMES SHORT WEIGHT ADDS TO THE DECEPTION OF THE WOMAN CONSUMER

"Hollow ware" is a term well known in the silverware trade, where it refers to cups, bowls, pitchers, and other items which can hold water, cream, sugar, or nuts and other comestibles, even calling cards. Now some manufacturers of cosmetics are utilizing for their various creams a kind of plastic jar or container which might properly be called hollow hollow ware. The containers are made of plastic fabricated with an inner and outer wall, and a generous air space between, so that a jar of small net volume looks like a much larger one, as is seen in the picture at the right.

Very recently, the attorney general and weights and measures officials in the State of California accused 23 leading cosmetic companies of using deceptive packaging for their products. The officials also complained that a large number of cosmetic products are deficient in weight; thus a double deception of the women who buy many popular cosmetics is involved.

Some 175,000 jars of 1 product were seized as illegal, and 2,000 to 3,000 cases of products were marked "off sale" in Contra Costa and Alameda Counties alone; there were additional seizures in 10 other counties. The products involved included skin cream, hair coloring, cream shampoo, soothing, cleansing, and foundation creams, and other items.

The law of California and that of a number of other States prohibits use of retail packages with a hollow wall, for the very good reason that many—if not most—consumers judge the quantity of the contents of the container by its external volume or bulk, and therefore anything that makes the package look bigger than the quantity of its contents as it would be judged by one's estimate of the size of the container can mislead greatly.

The legal actions in California are initiated not only by the State government, but also by city and county officials. One well-known cosmetic manufacturer has been charged in a Sacramento municipal court with 10 counts of short measure and the sale of products in deceptive containers.

Plastic readily lends itself to hollow-wall packaging, which is not feasible with the opal glass used as jars for creams and other popular cosmetic products by most manufacturers. In California, alone, it is estimated that at least 3,000 stores received for retail distribution a product made by a single firm, and, according to newspaper reports, one sealer of weights and measures reported finding that the hair conditioner product was short one-third of an ounce to an ounce below the 4 fluid ounces marked on the container. Another weights and measures official found shortages as high as half an ounce, and half of the samples tested were short in weight.

The makers of about half of the 23 different makes under investigation used deceptively formed containers. The manufacturers' story, so far, has been that they made use of the double-wall container to "provide maximum product protection."

The California statute is clear and specific. It provides that "no container wherein commodities are packed shall have a false bottom, false side walls, false lid or covering, or be otherwise so constructed or filled, wholly or partially, as to facilitate the perpetration of deception or fraud." This very recent disclosure of the bad packaging practices by California officials, widely reported in west coast newspapers, is a rather startling one, in view of the fact that packaging people have been on the pan recently to the extent of hundreds of pages of congressional hearings under Senator Hart's very effective Subcommittee on Packaging and Labeling of the U.S. Senate Committee on the Judiciary. One might surely expect that the package designers would have avoided the risk of any direct prosecution for any sort of misleading packaging or short measure practices, in view of their strong protests against the extensive publicity given the findings of the Hart committee.

The burden of the defense of the manufacturers who have been heard in Senator Hart's hearings on deceptive packaging has been: First, that there never has been any attempt on the part of leading manufacturers to deceive consumers (a claim which was clearly contrary to fact); second, that consumers do not care whether a package is filled to the top or only partially, or whether it contains the full declared weight or volume. Indeed manufacturers and trade representatives have claimed that the women who buy their families' supplies at supermarkets and drugstores are not interested in the quantity

received for their money. The manufacturers' story is that the customers who buy a detergent, for example, are buying "service" in the product—whatever that may mean—not quantity, and that strengthening of labeling and package-size requirements with respect to quantity and quality would be of little or no interest to most homemakers in their purchasing.

It would appear that, in the California *short-measure-deceptive-package* cases, almost the whole toilet goods industry is involved, with most of the respected and widely-advertised names in the business, in view of the fact that an association of toilet goods manufacturers has engaged attorneys to work out the problem with enforcement officials.

A striking aspect of this whole development is in the failure of the Federal officialdom, which has the power under the Food, Drug, and Cosmetic Act to control false and misleading labeling and packaging, to interfere with the interstate shipment of containers and cosmetics which lend themselves to the deception of consumers. The Federal officials simply were not on the job, and have not been, where the consumer's rights are invaded in an economic sense. The Food and Drug chiefs have considered mere money losses to the citizens to be too unimportant to warrant their serious attention. Moreover, where, in a few scattered cases, they have brought legal actions against deceptive packaging, they have regularly lost, because they had done their "homework" badly. They had failed to prepare for legal action by setting up standards that would set forth clearly requirements covering the adequacy of package labeling, size, shape, and other elements of consumer interest in packaging, so that the manufacturer and his marketing and packaging consultants would know what they were permitted, and what they were not permitted to do.

Our several articles on breakfast cereals show that manufacturers in that field are extraordinarily free in their use of unoccupied air space along with the air entrained in the krispy, krinkled, flaked, and puffed cereals in their containers. Some of the packages tested by Consumers' Research were found to be only little over half full, and 30 percent slack filling was common.

The FDA has been notoriously laggard in this respect; its equivocal position and failure to take obviously needed action have been much criticized by States' weights and measures people, whose own work has been sorely hampered by failure of action or wrong action at the Federal level. Such limited work as could be done has been dependent upon the initiative and industry of State, city, and county officials who do a better job by far in some instances, especially where food products are concerned, than the corresponding Federal agencies.

Each State, and each large city, of course, has power to proceed in such cases by injunction or by criminal complaints to local courts, whenever false or misleading package designs and short weight are involved. (In some States control is exercised through county weights and measures officials.)

Up to the sudden and surprising development in California, cosmetics have pretty much escaped attention by weights and measures officials, possibly on the assumption that since the value of cosmetic products is almost uniformly very low in relation to selling price, women, in some degree, are buying glamour rather than quantity, and are thus fair game for the clever sales executives in the industry.

Our readers may wish to see that this situation and the general practices in packaging by the cosmetic industry are brought to the attention of the State, city, and county officials in their region. It would be most important that the tightening up of controls over a long neglected field of sharp practice should not be limited to the outstanding initiative of the California administrative officials.

There has not yet been time for Consumers' Research to do much more than a very brief review of a few cosmetic packages, but those already examined indicate that the practice of making a little look like a lot is not unusual. For example, "Eterna 27," a facial cream with pregnenolone acetate, comes in a large cubical box $2\frac{1}{2}$ inches on a side, with a volume of 15.6 cubic inches. The volume of the actual contents of the jar is slightly more than one-fourth of the bulk of the box and only a little over one-half of the bulk, outside, of the plastic jar (without cap). However, the makers of "Eterna 27" did not cheat on quantity; the jar was found to be full weight, with 5 percent over, for good measure. The manufacturers of Clairol Conditioner (for troubled hair) built an exceptional amount of air into their container. The volume it contained when full to the top is only about half the apparent volume of the plastic jar (without the cap), as seen from the outside. The cream should be sold by weight, but the quantity was marked in fluid ounces.

Two containers of Clairol Conditioner that were checked by CR were found to be several percent short of the 4 fluid ounces claimed. A third sample purchased some weeks later was found to contain slightly over the 4 fluid ounces claimed.

Two packages of Max Factor Cream Deodorant were found to be short in weight to about the same extent as the two jars of Clairol Conditioner.

Cara Nome Transcenda cream was short by one-third of being full to the top of the small jar, and its weight was nearly 20 percent short of the amount claimed on the label.

The National Conferences on Weights and Measures have worked for many years on a model for State weights and measures laws. One of these model State laws provides in section 28 that no commodity in package form shall be so wrapped, nor shall it be in a container so made, formed, or filled, as to mislead the purchaser as to the quantity of the contents of the package, and the contents of a container shall not fall below such reasonable standard of fill as may have been prescribed for the commodity in question by the director.

This is similar to the provision of the California law, but somewhat more general in its terms. Though there are a number of States that have a law prohibiting hollowwall or falsebottom containers, from what we can learn, very little effort has been made to enforce this law, a lack which is ascribed to the general inactivity in this field of the Federal Food and Drug Administration as already mentioned. It has been in a position where it could plead that matters affecting adulteration of products, correct labeling as to variety, etc., were so important that attention could not be spared for mere economic cheats such as deceptive packaging of breakfast cereals and other food products (reported at length not long ago by Consumers' Research), spaghetti, pasta products, cosmetics, etc. Manufacturers have thus known for many years that the FDA's work was not effective where weights and measures problems are concerned, and have therefore felt that they had a wide scope for packaging in ways that lend unjustified appearance of volume and "buyer appeal" to their products.

If you are in a position to bring these matters to the attention of legislators in your city, county, or State, it will be well worth while, from your standpoint and that of all other consumers, to urge prompt official attention to this type of problem, first, to see that appropriate changes are made in the laws; second, to see that weights and measures officials are on the job, and start the long task of checking cosmetic and other products, especially the ones that sell at a high price per avoirdupois or fluid ounce.

Many weights and measures officials are doing an excellent job with the means at their disposal. Others take life very easy, and almost never bring cases in court against offenders who ignore weights and measures laws and regulations, and they fail to proceed in other effective ways to stop cheating in respect to numerous labeling or other offenses within their jurisdiction.

The value (factory cost) of the cream or lotion contained in the cosmetic package is so very small, as a rule, that one wonders that any manufacturer would feel the need either to deliver a deficient quantity or to use packages which make the product bulk larger than it should. When a manufacturer sells at \$6 to \$10 an ounce a product that costs only a few cents to manufacture, it seems odd that he would risk operating in ways to run afoul of laws and regulations relating either to short weight or deceptive package design. He would not have done so if the Federal Food and Drug Administration had been on the job, with an occasional prosecution, or even some effective publicity prepared for newspapers and magazines on what the inspectors learn when they check weight and volume of food, drug, and cosmetic products as a part of their regular routines. Releases sent out by the Food and Drug Administration have, by long practice and tradition, supported the policies of major manufacturers, are only very rarely critical of their operations.

It is hardly practicable for the woman buyer of cosmetics to check the net weight of products in bottles and jars to see if she is being shortchanged in that respect, but she can at least avoid, if she cares to, the hollowwall plastic containers, and the bottles that are specially designed by clever men to give the appearance of a greater volume of contents than is actually present. The hollow-wall plastic jars are readily distinguishable from the opal glass, the more usual container for creams and products of similar consistency, by any of three methods.

First, the plastic container is usually much lighter than a glass container of corresponding outside dimensions. Second, the plastic container has a different sheen than one made of glass; the difference is easily recognized after one has observed the two together. Third, strong finger pressure—a man's strong fingers may be needed—on the wall or bottom of the plastic container will usually result in a small deflection of the surface shell which can be detected.

[From Good Housekeeping, July 1962]

THE BETTER WAY—LABELS: HOW GOOD? HOW USEFUL?

ARE THEY PROVIDING THE INFORMATION YOU NEED FOR INTELLIGENT SHOPPING? NOW, A SPECIAL SURVEY DISCLOSES THE FACTS YOU USE AND WANT

What sort of shopper are you? Do you buy mainly by habit? or on impulse—likely to be attracted to a product by its distinctive package? Or do you really read labels and printed material on packages to find out what's in the product? how it compares in price to similar items, how it should be used correctly? What about your neighbors? do they pay more or less attention than you do to labeling? You probably don't know for sure. Now, though, for the first time, a special Good Housekeeping survey has uncovered facts that give an enlightening picture of the role played by labeling information in selling packaged goods to you. Among questions the survey sought to answer were:

Does information on a label and package have real importance to the shopper?

Are women satisfied with the information they get on packaged goods? Or do they believe that important facts are not given, or, if they are supplied, that they are hidden and/or difficult to understand?

Does a shopping trip leave women confused and bewildered? sometimes unable to make sensible buying decisions simply because of the maze of varying sizes, shapes and types of packages?

Many people have strong, preconceived ideas about the answers to those questions. Is the following view from a young mother in a tiny Indiana town typical of most women? "As a whole, labels are quite complete and informative." Or is this opinion from a West Virginia housewife more representative? "I believe the manufacturer uses the label or package to too great an extent as a salesman or advertiser. There is so much printed on the label or package about how great the product is, that you can't find directions or instructions about its use."

These two comments were among hundreds made by women surveyed in a sample of 1,963 members of the Good Housekeeping Consumer Panel. (This magazine has long been concerned about labeling and packaging practices. Products accepted for advertising, in addition to meeting various Federal regulations, must also meet Good Housekeeping's own standards for adequacy and accuracy of labeling and packaging. For instance, manufacturers, at our suggestion, have often rewritten directions for use to make them clearer—even though they may already have met Federal requirements.)

The group surveyed represented the more than 10 million women who read Good Housekeeping. Based on a careful analysis of the survey findings by our market research experts, the editors believe these conclusions to be in order:

1. Women do read labels and other material on packages. They do so both in the store while shopping—particularly when unfamiliar with the product—and at home before using the product.

2. The overwhelming majority believe they are getting the information they need on labels and packages.

3. A sizable number, though, indicate they would like additional information on clothing labels. Many women are concerned by what they consider to be a lack of complete, clear instructions for care, cleaning, or washing of clothing.

4. Finally, many women do have special complaints and criticisms about packaging and labeling, usually in connection with specific products. However, no single type of complaint is dominant. In general, women seem to be most interested in how easy a package is to open and use, adequacy of use directions, thoroughness of description of ingredients or fabric composition, location of weight information on a package, etc.

Women do read labels

	Percent
When in store shopping ¹ for—	
Food.....	95
Drugs and health items.....	92
Clothing.....	91
Household cleaning supplies.....	90
Cosmetics, beauty preparations.....	86
At home, before using product ¹ —	
Household cleaning supplies.....	95
Drugs, health items.....	95
Food.....	92
Cosmetics, beauty preparations.....	89
Clothing.....	86

¹ Especially when unfamiliar with product.

The extent to which labels are read may be surprising to some observers who characterize the typical woman shopper as virtually a captive customer, most likely to buy on the basis of impulse, whim, and feminine fancy. Before buying, most women read and use labeling information. (As one Californian commented: "I am a real nut about labels and read them all.") Too, the fact that a package may be attractive may help to get women to pick it up, but, by itself, the packaging design apparently is not enough to sell the product if it lacks essential information about its use and contents. "An attractive package will catch my eye first and I will gravitate to it," admits a mother of six from a large Ohio city, "but if the information contained on the label does not satisfy me I will buy the product whose information does."

What does a woman look for on a label? Not just price. Although cost is a prime consideration, the survey indicates there is other information which, depending on the product, appeared to be almost equally important to women. For example, more than 8 out of 10 women check food products for price and amount in the package. But on household cleaning supplies, drugs, health items, and clothing, more women check labeling for instructions for use than for any other information. Consequently, manufacturers who do not give complete details, perhaps beyond those which are legally required, may well risk losing customers. The package is, indeed, the manufacturer's "silent salesman." If it fails to tell the buyer what she wants to know, it does not have a chance to answer her questions and resolve her doubts.

What women check for when they read labeling-packaging material in a store, women in survey look for—

Food: Price, 81 percent of respondents; amount, 81 percent; manufacturer, 57; ingredients, 53; instructions for use, 47.

Household cleaning supplies: Instructions for use, 80; price, 74; amount, 55; manufacturer, 37; ingredients, 28.

Drugs, health items: Instructions, 74; price, 67; manufacturer, 53; ingredients, 48; amount, 42.

Cosmetics, beauty preparations: Price, 74; instructions, 66; manufacturer, 61; amount, 32; ingredients, 31.

Clothing: Instructions for care, 86; fiber content, 83; price, 83; manufacturer, 57.

Regular readers of *Good Housekeeping's* "Speaker for the House," Charlotte Montgomery, will not be surprised by the survey's disclosure that a sizable number of women—one out of three—report they do not usually find all the information they need on clothing labels and tags. "I feel the poorest job (in labeling) is done by clothing manufacturers," said a New Jersey mother who holds a full-time job. "All articles of clothing should contain labels, well attached to the garment stating the material used and whether it is hand washable, machine washable or to be drycleaned."

Although some women noted progress is being made in clothing labels, the frustration felt by many seemed to be summarized by this Midwest panel member, a mother of three: "They usually have loose tags hanging from the garment giving fiber content and washing instructions, but they are not attached permanently. Some new fibers are dripdry, some can be put in a dryer * * *. It is hard to keep everything clear in your mind with only a bunch of loose tags to go by. I would like to see permanent tags (sewn in tight) giving size and washing instructions."

Food was the only other category in which more than 10 percent of the women said they wanted additional label and package information. One out of five women cited specific food information desired. These comments were scattered fairly evenly among several categories including weight, instructions for use, calorie data, more recipes, and ingredients.

Have you ever complained to a store or manufacturer about a label or package? One out of four women said they had. At first glance, the number of complaints might indicate that shopping for packaged goods frequently produces unsatisfactory results. However, it is important to keep in mind that the question asked was based on total shopping experiences ("Have you ever complained, etc."). In some instances, this experience could stretch over periods of many years. Too, a breakdown of complaints disclosed that most centered about a defective product and/or package and were made to the store.

Manufacturers regularly review package and label designs. It is not only because they are looking for more attractive packages to help sell their products and to distinguish them from those of competitors. Most companies are sensitive to consumer complaints. For instance, if a large number of complaints reach a company about a particularly hard-to-open package, you can be sure it will try to find out whether the package can be made to open more easily. (A complicating problem may be the package has to stay tightly sealed on a shelf for a long period of time and may be subjected to a great deal of handling.) Because of such industry interest in a woman's critical opinions about packaging and labeling practices, Good Housekeeping asked members of the survey panel to comment generally on the subject. This question followed the one on complaints to elicit the greatest number of suggestions and criticisms which might pinpoint areas where definite improvements are needed.

As indicated earlier, most of the unfavorable comments were related to the kind of package, the clarity and completeness of directions and ingredients, and the location of weight information. Less than 10 percent referred to packages which are too large for contents. (This particular complaint received major attention during recent Senate hearings on packaging.) Manufacturers report that certain products, particularly cereals, settle considerably after the package is closed and shipped. The stated weight of contents, of course, must be correct, regardless of the container's size. Smaller packages could be used in some cases if production lines were slowed down so that additional vibrating would settle contents more. Some industry spokesmen insist that to slow production lines enough to do this would add appreciably to the price of the product.

Can clothing labels be improved?

One-third of the women surveyed say they do not usually find information they need on clothing. Here's what they requested (some cited several points)—

	Percent
More, better, clearer instructions for care.....	21
Composition of entire garment including trim, buttons, etc.....	7
Permanent sewn-in labels for sizes, care.....	3
More about shrinking.....	3
More about colors, fading, running, bleeding.....	3
Children's clothes marked by weight and height, not by year and size.....	2
Standard sizing.....	2

Following are comments that give a good idea of the most frequently voiced criticisms:

"My biggest gripe about packages and labels is when it says, 'Press here with thumbnail to open,' and then it takes a sledge hammer to do it."—from Michigan.

"When the manufacturer reduces contents and keeps cost the same, I would prefer a small-sized package. In this way, you would know the contents were less. It is aggravating to buy something you use regularly and then find less of it when you are home and ready to use it."—Tennessee.

"I wish food, etc., manufacturers would all agree on the same system to mark weight and contents (pounds, ounces, etc.). I have to be a computer to figure out the best values."—Ohio.

"I definitely read all instructions, uses, weights, etc., before using a product and I resent it when instructions are not clearly stated."—Washington.

Complaints

More than 60 percent of the women commented generally about packaging-labeling practices. Most of those who commented mentioned specific products. Here are some of the major criticisms:

	Percent
Package unsatisfactory in use—hard to open, close, store, handle, etc.....	¹ 15.8
Want better, more complete description of ingredients (including harmful effects) or fabric composition.....	11.5
Weight should be easier to find.....	10.8
Container too big for contents.....	8.8
Want different packaging material, design.....	8.5
Want more, better instructions for use or care.....	7.4
Weights confusing—should not include fractions and grams.....	6.2
Labels hard to read.....	5.9

¹ Percentages based on the 1,221 respondents who commented. (Some cited several points.)

Upon completion of hearings by a subcommittee of the Senate Committee on the Judiciary, Senator Philip A. Hart, of Michigan, announced that he believed new Federal legislation is needed to protect the consumer against "the many unsatisfactory packaging and labeling practices." Good Housekeeping editors agree with Senator Hart that consumers are entitled to full information about packaged products to enable them to make rational shopping decisions. The editors believe consumers have indicated by this survey, however, that in most instances they are getting such information. Too, our survey indicates that where there is substantial criticism by consumers, it centers on defective package performance and a lack of adequate use and care information, rather than on any "deceptive" and "misleading" practice. Finally, women themselves appear to have developed their own way to deal with those few manufacturers who do not give them information they want: they simply buy products which do.

[From Food World, March 1963]

P. & G. OFFICIALS DEFEND "CENTS-OFF" PACKS

Albert N. Halverstadt, vice president, advertising, and Dr. J. G. Pleasants, vice president, research and development, the Procter & Gamble Co., appeared before a Senate subcommittee last week and suggested the proposed packaging control bill (S. 387) would hurt rather than help American consumers.

Mr. Halverstadt told the Senate committee existing Federal and State laws already protect consumers against packaging irregularities, and questioned the need for additional Federal legislation.

Mr. Halverstadt said the 126-year-old Procter & Gamble Co. was as much interested in "good quality, fairly priced and honestly packaged" items sold on supermarket shelves, as the sponsors of the bill. Protecting the consumer is nothing new to P. & G.

And the promotion of merchandise is nothing new to P. & G. either. Retailers, for years, have known the value of soap products as traffic builders. As Mr. Halverstadt said, the argument of the bill's proponents that retailers do not pass on such "cents-off" savings to their customers is based on "unwarranted fear or incomplete information." Wonder if any of the Senate investigators ever ran a neighborhood grocery store to say nothing of a modern 20,000-square-foot supermarket.

It takes an awful lot of traffic to keep the gigantic retail food industry moving. A. & P.'s net was only 1 percent on a \$5 billion volume. Compare this with other industrial profits.

Of course, the public benefits by "cents-off" deals. Of course, retailers benefit by "cents-off" deals.

P. & G. realizes there's nobody better to "pay off" than Mrs. Consumer. P. & G. for years has attracted customers into stores by the sheer weight of terrific promotion—door-to-door giveaway sampling, in-store promotion, legitimate "cents-off" packages—plus the greatest advertising programs ever.

Certainly nobody in his right mind could say that the retailer did not benefit by this kind of promotion—to say nothing of Mrs. Consumer. For Mrs. American

Consumer is the most meticulous of buyers. She knows a bargain like no purchasing agent in any chain anywhere. She can't be fooled. She can read. She can listen. She talks to her neighbors.

As Mr. Halverstadt said, " * * * we cannot believe that the money savings which result (for 'cents-off') are anything but welcomed by the American housewife."

"Cents-off," premiums, special promotions, etc., may not conform with some manufacturers' way of doing business. But today, more than ever, manufacturers who help move products and keep costs down should be given front and center position.

CREATIVE FOOD SERVICE,
New York, N.Y., April 26, 1963.

Senator PHILIP A. HART,
U.S. Senate, Committee on the Judiciary,
Subcommittee on Antitrust and Monopoly,
Senate Building, Washington, D.C.

DEAR SENATOR HART: In our final remarks yesterday, we moved from a question of principle to a specific item—bar soaps. While I agree with you that it is all to the good to have net contents stated on the labels of most nonfood items, there are a number of specific products for which this general principle does not hold. Bar soaps, which became the subject of our discussion, happen to be an example of that, and this is why I felt there were more important considerations than knowledge of weight alone. For one thing, the weight of a bar of soap changes, from the time it is made, to the time it is used.

Many women, realizing that a hard bar of soap lasts longer, unwrap bar soap when they bring it home, to enable it to harden more rapidly. This hardening is a dehydration process; it goes on even while the bar is wrapped. It does not alter the cleaning power of the soap.

This can create problems in the attempt to label bar soaps by weight. Even if the soap were accurately weighed when made, it would lose weight in the store. Soaps which sell less rapidly lose more weight, and this could be almost an ounce on an 8-ounce bar.

From the best educational point of view, other factors than weight are more important in soap. One is the knowledge of the best size to use for a given purpose. The shape of a soap has much to do with its practicality; a longer, flatter bar has more surface exposed to water and disappears in use more rapidly. If weight becomes too important a factor, it would be possible to weight soaps with inexpensive, noncleaning materials, and this is hardly your goal.

I do believe there are some areas of agreement in our discussion. We both want to see consumers get their rightful dollar's worth in food and nonfood expenditures. But I respectfully submit that some caution must be exercised in labeling as fraud certain practices for which reason may exist either in the wants of women or the needs of products.

These practices have often resulted from years of experience, from special training and skill, from the investment of millions of dollars of research in building our largest industry. The producers of our grocery store products are not out, by and large, to fleece the public, but to serve their customers in ways which the customers want.

There are no doubt areas of improvement necessary. I believe your hearings have done much to provide searching examination on the part of producers. I hope they will also focus attention on the need for sound consumer education, to enable our people to take best advantage of the plenty available to them. If we can do anything to help toward that end, I know you would receive the cooperation and help of the best minds in the industry.

I would appreciate it if you would add this in the record as a supplement to my statement.

Thank you for your interest.

Cordially,

SYLVIA SCHUB.

(THE 48TH NATIONAL CONFERENCE ON WEIGHTS AND MEASURES JUNE 10-14, 1963, SHERATON-PARK HOTEL, WASHINGTON, D.C.—SPONSORED BY THE NATIONAL BUREAU OF STANDARDS OF THE U.S. DEPARTMENT OF COMMERCE)

TENTATIVE REPORT OF THE COMMITTEE ON LAWS AND REGULATIONS

INTERIM MEETING

The committee held an interim meeting in Washington, D.C., on February 19 and 20, 1963. One open session on the "Standardization of Package Sizes" was held on February 19. Private hearings and executive sessions were held throughout the remainder of the 2-day period.

GENERAL

Presented here are the specific items that are being considered by the committee, under appropriate headings for easy identification and reference, including any tentative conclusions of the committee.

1. STANDARDIZATION OF PACKAGE SIZES

1.1. *General.*—This continued to be the major item on the committee's agenda. The subcommittee on standardization of package sizes continued its activities, together with the assistance of the other two members of the committee. Active contact with the (1) National Coffee Association, (2) Institute of Shortening and Edible Oils, Inc., (3) National Macaroni Manufacturers Association, and (4) International Potato Chip Institute was continued. Also, contacts were established in a few other areas. The committee suggests that all readers of this report review this item as it appeared in the committee's final report to the 47th National Conference on Weights and Measures.

1.2. *Open meeting.*—The open hearing on standardization of package sizes, at the interim meeting of the committee, was well attended. The entire afternoon of Tuesday, February 19, was devoted to this subject. All four of the trade associations mentioned in the preceding item were represented. Spokesmen for three of these associations made statements or comments, as did representatives of other segments of industry. Most of the speakers representing industry pointed out some of the difficulties involved in the standardization of package sizes, in certain areas and with particular products. All industry representatives indicated their desire to cooperate with the committee in its effort in this field. Some of the speakers indicated that, in their opinion, their particular companies had standardized package sizes in all areas where such standardization is appropriate and desirable. The committee is not in complete agreement with these statements. The committee is of the opinion that further standardization of package sizes is practical and desirable. The committee is most appreciative of the generous offers of cooperation, however.

1.3. *Cooperative effort.*—When the committee reestablished this project on its agenda, it was understood that it would be pursued as a cooperative and voluntary effort with business and industry. It is the intention of the committee to continue to vigorously pursue this project and the full cooperation of all segments of the packaging industry is earnestly solicited.

1.4. *Opening statement.*—At the opening of the Tuesday afternoon session the committee chairman read the following statement:

"The desirability of practical package standardization has long been recognized, not only by weights and measures officials, but by the prepackaging industry and consumers. Some 25 years ago, during the late thirties, a great deal of concern was expressed, surveys were made, and a committee on package standardization served ably and well to alert the members of the National Conference on Weights and Measures to the importance of this matter. Almost the entire 29th National Conference (1938) was devoted to a study of package standardization. At that time, representatives of industry recognized the undesirability of producing a needless and wasteful multiplicity of sizes and the resulting consumer reaction. The responsibility of manufacturing, warehousing and marketing all of the many containers needed to meet the growing demands, encouraged a sincere efforts to standardize sizes and quantities.

"The position taken by weights and measures people was the same then as it is now: (1) the consumer is best served and true competition exists when it is possible to make easy price comparisons. To facilitate this, the consumer must be

able to make comparisons based on packages of like commodities packed in standard units. (2) Commodities should be packed in even multiple units of weight or measure, the ideal being packages in binary submultiples of standard units of weight, measure, or count. (3) It is realized that there are practical limits with respect to certain commodities, but even in these, packaging to serve the benefit of the consumer, rather than packaging to price or to confuse the consumer, is a desirable end. Many can remember the commendable way the industries responded and cooperated, and in numerous instances, voluntarily took steps to eliminate odd sizes, odd shapes and misleading or confusing deviations from standard weights and standard measures. This desirable action resulted from the cooperative approach taken through the auspices of the national conference some 25 years ago.

"Today, we face many of the same undesirable practices our predecessors faced at the inception of the prepackaged way of merchandising. Today, the magnitude of the problem is emphasized by the manifold increase in the number of prepackaged items on the market. Today the same amiable solution seems to be the best. We of this committee strongly advocate a program of effective voluntary cooperation between industry, weights and measures officials, and others to solve these challenging problems. By working together to achieve desirable goals in the field of package standardization, we will, in my opinion, build a stronger free enterprise system. We extend our deep appreciation to the industries meeting with us on this occasion and have every confidence our efforts will not be in vain."

In this opening statement, the chairman recognized that "even multiple units" and "binary submultiples of standard units of weight, measure, or count" represent the "ideal" in package sizes. He recognized, also, "that there are practical limits with respect to certain commodities" and indicated a willingness on the part of the committee to be practical in the further consideration of this subject.

1.5. *Review suggested.*—While the committee is not making any specific recommendations at this time, it does most earnestly solicit the full cooperation of business and industry in reviewing the prevailing situation objectively and in taking necessary steps to improve the situation which currently confronts the prospective purchaser in the marketplace.

1.6. *Commodity standards section.*—The committee has been assured of the cooperation of the Commodity Standards Section of the U.S. Department of Commerce in this cooperative effort to achieve a better degree of standardization of package sizes. This offer of cooperation is appreciated and the committee suggests that business and industry take full advantage of the opportunities offered thereby.

1.7. *Continue activity.*—The committee will continue its active contacts with representatives of trade associations, manufacturers, packers, and individuals in the months to come, with the hope that further progress can be reported in the committee's final report to the 48th National Conference, June 10-14, 1963.

2. CONSPICUOUSNESS AND PLACEMENT OF QUANTITY STATEMENTS ON PACKAGES, DECEPTIVE PACKAGES, SLACK FILLINGS; ETC.

In the committee's final report to the 47th Conference, item 2.3., under the above title, read as follows:

"2.3. *Conspicuousness and placement of quantity statements on packages, deceptive packages; slack filling; etc.*—The matters covered under this title are of great interest to weights and measures officials, to food and drug officials, and to all consumers. From whatever direction the committee approaches the problem, it comes directly to the conclusion that the problem is nationwide and that the only way that uniformity in requirements and in enforcement can be brought about is through the efforts of the Federal Government and its Food and Drug Administration. It is the belief of the committee that the Food and Drug Administration has ample legislative authority and a firm obligation to initiate immediately such actions as will bring about corrective measures in an area of commerce that does no credit to the United States.

"The committee urges that the officials of the Food and Drug Administration make a thorough study of their regulations, organization, and enforcement procedures, and that there be brought about positive guidance to packagers with a general elimination of indefinite terms such as 'clear,' 'conspicuous,' and 'reasonable,' that are difficult of interpretation and almost impossible of enforcement. The committee offers its cooperation and undoubtedly that of all

weights and measures officials, to the end that packaging in the United States be honest and that labeling be so as to reflect, beyond doubt, the contents."

After considerable discussion, particularly centering around the statement in the second sentence of paragraph 1 of the item, upon motion from the floor, and by voice vote of the conference, this item was held over for 1 year for further study. Although the committee's basic thinking has not changed, it is probable that too much emphasis was placed upon the words "only way," in the above mentioned sentence. The committee continues to feel that the Federal Food and Drug Administration does have both "authority" and "responsibility" in this important area. It also feels that complete and satisfactory national uniformity cannot easily be achieved without the full cooperation and objective leadership of the Federal Food and Drug Administration, in this area.

In taking this item under further advisement, the committee requests that all readers of this report review item 2.3., page 53, Report of the 47th National Conference on Weights and Measures-1962, National Bureau of Standards Miscellaneous Publication 244, and register their comments and suggestions relative to this item, with the committee secretary.

3. MODEL LAW

3.1. Sec. 26. Same: Packages: Declaration of quantity and origin; variations; exemptions.—In order to modernize and strengthen this important section of the model law, the committee recommends that it be amended to read as follows:

"Sec. 26. Same: Packages: Declarations of quantity and origin; variations; exemptions.—Except as otherwise provided in this act, any commodity in package form introduced or delivered for introduction into or received in intrastate commerce, kept for the purpose of sale, or offered or exposed for sale in intrastate commerce shall bear on the outside of the package a definite, plain, and conspicuous declaration of (1) the identity of the commodity in the package unless the same can easily be identified through the wrapper or container, (2) the net quantity of the contents in terms of weight, measure, or count, and (3) in the case of any package kept, offered, or exposed for sale, or sold any place other than on the premises where packed, the name and place of business of the manufacturer, packer, or distributor: *Provided*, That neither the qualifying term 'when packed' or any words of similar import, nor any term qualifying a unit of weight, measure, or count (for example, 'jumbo,' 'giant,' 'full,' and the like) that tends to exaggerate the amount of commodity in a package or the size of the package,¹ shall be used: *And provided further*, That the director shall, by regulation, prescribe (a) the minimum type size, style, and placement of any statement required by this section to appear on the package, (b) reasonable variations to be allowed, which may include variations below the declared weight or measure caused by ordinary and customary exposure, only after the commodity is introduced into intrastate commerce, to conditions that normally occur in good distribution practice and that unavoidably result in decreased weight or measure, (c) exemptions as to small packages, and (d) exemptions as to commodities put up in variable weights or sizes for sale intact and either customarily weighed or measured at time of sale to the consumer.

4. MODEL STATE REGULATION PERTAINING TO PACKAGING; EXEMPTIONS, MARKING REQUIREMENTS, VARIATIONS

4.1. General.—The committee has given much attention to the model regulation pertaining to packages and is of the opinion that several strengthening and clarifying amendments are desirable. While none of the amendments are designed to appreciably alter the original basic intended meaning of the regulation, it is believed that they will facilitate uniform and effective enforcement of the regulation. The most pronounced change that is being suggested is in relation to section 6, having to do with prominence and placement of required declarations. It has long since been felt by many weights and measures officials that more specific guidelines should be provided in this area. The committee is endeavoring to do this in the recommendations that will follow.

4.2. Section 2. Declaration of identity.—Amend to read as follows:

"2. Declaration of Identity.—The declaration of identity shall positively identify the commodity in the package by its common or usual name, descrip-

¹ Italic indicates new material.

tion, generic term, or the like, unless the commodity may easily be identified through the wrapper or container."

4.3. *Section 3.6. Reduction of fractions.*—Amend to read as follows:

"3.6. *Reduction of Fractions.*—Declarations of quantity may employ only binary submultiple common fractions or decimal fractions. A common fraction shall be reduced to its lowest terms, and, except in the case of drugs, a decimal fraction shall not be carried out to more than two places: *Provided, That, if there exists, with respect to a particular commodity, a firmly established general consumer usage and trade custom contrary to the requirement for the use of only binary submultiples of common fractions or for the reduction of a common fraction to its lowest terms, the declaration may be made in accordance with such usage and custom.*

4.4. *Section 6. Prominence and placement.*—Amend to read as follows:

"6. PROMINENCE, PLACEMENT, AND LEGIBILITY OF DECLARATION

"6.1. *Prominence.*—All information required to appear on a package shall be prominent, definite, and plain, and shall be conspicuous as to size and style of letters and numbers and as to color of letters and numbers in contrast of color of background.

"6.2. *Placement.*—All information required to appear on a package shall appear on the principal display panel of the package. *The "principal display panel" shall be construed to mean that part or panel of a package that is so designed as to render it most likely to be presented, displayed, or examined, under customary conditions of purchase. (The "principal display panel" is sometimes referred to as the "main panel" or the "front panel.")*

"6.3. *Legibility.*—The declaration of net quantity of contents of a package shall shall meet or exceed the following minimum requirements: It shall appear in boldface type (or equal) and shall be not less than—

"(a) one-sixteenth of an inch in height on packages, the principal display panel of which has an area of fifteen square inches or less;

"(b) one-eighth of an inch in height on packages, the principal display panel of which has an area of more than fifteen but not more than thirty square inches;

"(c) one-quarter of an inch in height on packages, the principal display panel of which has an area of more than thirty but not more than sixty square inches;

"(d) three-eighths inch in height on packages, the principal display panel of which has an area of more than sixty but not more than one hundred twenty square inches;

"(e) one-half inch in height on packages, the principal display panel of which has an area of more than one hundred twenty inches but not more than two hundred forty square inches;

"(f) three-quarters of an inch in height on packages, the principal display panel of which has an area of more than two hundred forty square inches but not more than four hundred eighty square inches; and

"(g) one inch in height on packages, the principal display panel of which has an area of more than four hundred eighty square inches.

5. MODEL REGULATION FOR PAPER PRODUCTS

5.1. *Section 7. Supplementary quantity declarations.*—For a number of years, and at the request of The Tissue Association, Inc., the model regulation has permitted a supplementary quantity declaration, in addition to the quantity of contents statement required by law, on packages of multiple-ply tissue products. Specifically, this means that in addition to the required quantity statement of the number of "usable units" in the package, the manufacturer could include a supplementary declaration giving the total number of "single sheets" in the package. The Tissue Association has now notified the committee that this privilege of supplementary labeling will not be necessary after December 31, 1963, and has recommended that this section be amended accordingly.

The committee recommends that, to become effective January 1, 1964, section 7 of the model regulation for paper products be amended by changing the period at the end of the section to a colon and by adding the following: "Pro-

vided, That no supplementary declaration of the number of "single-ply sheets" in a package containing a 'multiple-ply' product shall be permitted.

J. H. LEWIS, *Chairman*

J. L. LITTLEFIELD

J. G. GUSTAFSON

MATT JENNINGS

H. M. TURRELL

W. S. BUSSEY, *Secretary*

Committee on Laws and Regulations.

U.S. DEPARTMENT OF COMMERCE,
BUSINESS AND DEFENSE SERVICES ADMINISTRATION,
Washington, D.C., May 27, 1963.

HON. PHILIP A. HART,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HART: This is in further reply to the request in your letter of April 29 to Secretary Hodges for some objective figures concerning the cost to manufacturers if S. 387, the truth-in-packaging bill were to be enacted into law.

It is difficult to be precise about what costs may be incurred by manufacturers as a result of the enactment of the truth-in-packaging bill. First, no one knows at this time what exact regulations will be formulated under the bill, so it is impossible to tell the extent to which present packages do or do not conform to the provisions of the bill. Second, once the regulations are known, undoubtedly it will be found that there will be wide variety in the extent to which packages require change in order to conform to the provisions of the bill and the regulations; some will require no change at all, some will require minor change, some more extensive change. Third, there are many types of packaging used on the products covered by the bill, for example, bags, paperboard boxes, plastic boxes, metal or fiberboard cans, glass or plastic bottles, metal or plastic tubes, aerosol containers, and others, and each of these types of packages has its own cost structure which will determine the cost of changes.

It should be noted that even without passage of the bill, packaging changes at the present are more or less frequent for many of the products covered in the bill. Entirely new products are being introduced regularly and some older products are being dropped. New advertising appeals are developed for an existing product, and this frequently calls for change in the design of its package. New recipes, special offers, menu suggestions, toys and games such as on the backs of cereal packages, are being developed frequently and require changes in packages. Sometimes the package changes are merely changes in surface printing, but oftentimes they are complete changes in the type of package, such as the shift from a fiberboard can to a plastic squeeze bottle to an aerosol container.

Any packaging changes required by the provisions of the bill and the regulations might well be accommodated in the above changes which the manufacturer contemplated making in the ordinary course of events for purposes of improving the convenience of the package, or heightening its appeal to the consumer, or tying in with a new advertising campaign. In such a case there would be no special cost to the manufacturer because of packaging changes required by the bill. In any case, the manufacturer would be allowed to run out his present inventory of packages before making any changes so that there would be no loss or wastage.

Section 3A(c), which covers the mandatory provisions of the bill, would require packaging changes in terms of surface printing only. These changes would be of two main types:

(1) Minor changes in type only, probably in one color only, to comply with the requirements on how the net quantity within the container must be stated. For those packages not already complying with these provisions, it is conceivable that many of them could achieve compliance by slug changes, which could be made on the printing plates presently being used. While the cost of these slug changes would vary widely and depend upon the package involved, in most cases it can be expected that the cost would be no more than \$100 per package-type.

(2) Changes in the illustrations, which may well be four-color or more process printing, to comply with the requirement that the illustrations not be deceptive. For those packages—probably a small number—not already complying with this provision, this will require a number of new printing plates, plus new design work and probably new color photography work. Here, too, the cost would vary widely depending upon the type of package, but as a general rule these changes would in all likelihood be accomplished at a cost of \$10,000 a package or less.

One of the mandatory provisions of the bill (sec. 3A(c)(4)) could result in savings to the manufacturer. It calls for the elimination of "cents off" printed matter. Companies frequently make up extra printed plates carrying these extra captions and keep them in inventory for use from time to time. Making up such extra plates and maintaining inventory would no longer be necessary if this provision became law.

Section 3A(e) of the bill, covering those products which individually are determined to require further regulation beyond the mandatory provisions, might require additional cost in complying with the provisions of the bill. Some of the requirements under this subsection would involve changes in surface printing only, such as the requirement with respect to the printing of ingredients. In these cases the same cost factors would apply as noted above for compliance with the mandatory provisions of the bill.

Compliance with some of the other provisions of this subsection, however, would require a change in the size and shape of the package itself. If the package were to retain its shape but be made only slightly larger, this might mean slight additional cost in the packaging material itself. On the other hand, it might mean a cost savings if the package were to be made smaller. Costs would be higher if the changes in size or shape required new molds, as in the case of plastic containers, for example. Any change in the size and shape of the package would, of course, require a change in the surface printing, which in all likelihood would require new design, new plates, etc., at the average cost figures noted above under discussion of the mandatory provisions of the bill.

Beyond that, a change in the size or shape of the package would also involve changes in the packaging line, which includes the machinery for sorting, weighing, measuring, filling, package forming, closing, sealing, labeling, and packing into shipping cases.

Where the packaging line is set up for a large volume operation, the line is specifically designed to serve a specific package. The machinery is adaptable to other packages, but the changeover may well require 2 or 3 days downtime and it may involve a cost of \$12,000 to \$15,000 per packaging line. The impact of this change would, of course, be lessened if it were done in connection with a change which the manufacturer was planning to make in any case for reasons of his own, including product modification, new promotions, new advertising appeals, etc. The cost of adapting the packaging line is comparatively low per package because it is amortized over a large volume of packages.

In the case of a low volume product, the packaging line is much less complex and it is not profitable to design it for use with that one package alone. Therefore, the machinery is adjustable, and with some types of packaging machinery the adjustment can be made by hand in a matter of a few minutes. Here the changeover in the machinery from one package to another would cost almost nothing.

It is our understanding that additional provisions for consultation with industry have been added to the bill since hearings were held. During such consultation, consideration should be given to the extent of change, in printing, in package design, in package construction, and in package machinery operation, that would be required by new regulations. Every effort should be made to establish regulations that are compatible with existing standards for package sizes and shapes and for machinery operation.

We trust that this information is helpful. If the committee has any examples it would like us to analyze, or if it requires additional information, we would be pleased to be of assistance.

Sincerely,

DANIEL L. GOLDY, *Administrator.*

BIOGRAPHICAL MATERIAL

THOMAS F. BAKER, EXECUTIVE VICE PRESIDENT AND GENERAL MANAGER, AMERICAN BOTTLERS OF CARBONATED BEVERAGES

Thomas F. Baker joined the staff of the American Bottlers of Carbonated Beverages in September of 1935 and during 1939 was given the responsibilities of monitoring the association's various management services programs. These programs included the American Bottlers of Carbonated Beverages standard accounting system, profit, planning, aptitude testing, job evaluation, and direction of the association's various statistical studies.

On January 1, 1956, Tom Baker was named assistant secretary of the American Bottlers of Carbonate Beverages and on July 7, 1959 appointed secretary. During the 1960 annual convention this title designation was changed, by the membership, to executive vice president and general manager of American Bottlers of Carbonated Beverages.

Tom Baker attended public schools in Maryland and graduated from Benjamin Franklin University, Washington, D.C., in June of 1941, where he majored in business administration and accountancy.

During March of 1942, he enlisted as a private in the U.S. Air Corps (U.S. Air Force) and served in the Army and Airways Communications System. In March of 1943 he was graduated from the Air Corps Officer Training School and returned to the communications system. He left the service during January of 1946 with the rank of major.

Mr. Baker has been very active in civic affairs, and is past president of the Ravenwood Civic Association located in Fairfax County, Va., where he resides with his wife. He also has served as cochairman of the ball committee of the annual Washington, D.C. Cherry Blossom Festival, and is currently a member of the Washington Trade Association Executives group and the National Association of Cost Accountants. In addition, he is a member of the executive board of the Private Truck Council of America, and a member of the board of governors of the National Highway Users Conference.

GILBERT MILES

Gilbert Miles was born in Palo Alto, Calif., and attended the University of California at Los Angeles, where he majored in chemistry. Mr. Miles also studied organic chemistry at Brooklyn Polytechnic Institute. He had 2 year's training in perfumery in France. He was employed in manufacturing toiletries by Max Factor for 2 years. For the past 26 years, since 1937, Mr. Miles has had wide experience in cosmetics and packaging with the Colgate-Palmolive Co. For 8 years he was in charge of physical chemistry research; for 12 years he was manager of new products; and for the last 6 years he has been manager of packaging. Mr. Miles is a member of the American Chemical Society, American Association for Advancement of Science, New York Academy of Sciences, Society of Cosmetic Chemists, and Packaging Institute. He is the recipient of many U.S. and foreign patents in the field of chemical processes, articles of manufacture, packaging, and chemical compounds. He has had published many scientific papers in the field of surface chemistry.

ROBERT H. NORTH

Robert H. North became executive secretary of the International Association of Ice Cream Manufacturers on November 1, 1957. On April 30, 1962, his title was changed to executive vice president. He joined the staff of International Association of Ice Cream Manufacturers in 1945 as executive assistant and was named assistant executive secretary in 1954. He came to the International from the Information Department of the U.S. Department of Agriculture.

Mr. North holds law degrees from Southeastern and George Washington Universities. He is a member of the bars of Wisconsin and the District of Columbia.

He is secretary-treasurer and member of the board of the Dairy Products Im-

provement Institute, secretary-treasurer of the Dairy Industry Committee, a member of the board of the Private Truck Council of America and serves on the administrative committee of the National Highway Users Conference. He is senior vice president of the American Society of Association Executives, a member of the board of directors and executive committee and former treasurer of that organization. He is chairman of the board of regents for organization management of the Chamber of Commerce of the United States. This group directs six national institutes offering 3-year training courses in trade association management. He has been an instructor in the institutes at Yale, Northwestern, Syracuse and Michigan State Universities. He is chairman of the Special Dairy Industry Board which was created last year to carry out research and special education programs for the dairy industry.

In addition to directing the affairs of the International he is also executive vice president of the Ice Cream Merchandising Institute, Inc.

E. SCOTT PATTISON

Secretary and manager of The Soap and Detergent Association. A chemical engineering graduate of Rensselaer Polytechnic Institute. He later studied business administration at MIT as an Alfred P. Sloan Fellow.

Prior to 1951, when he joined the association, Mr. Pattison was executive vice president of G. M. Basford Co., and earlier was associated with Olin Mathieson Chemical Corp. and McGraw-Hill Publishing Co.

He is a member of the American Chemical Society, American Oil Chemists' Society, Chemical Market Research Association, The Chemists' Club of New York, and is a director of Brand Names Foundation.

FREDERICK M. ROWE

Partner, Kirkland, Ellis, Hodson, Chaffetz & Masters, Washington, D.C., and Chicago, Ill.

Law clerk, Mr. Justice Tom C. Clark, U.S. Supreme Court, 1952-53.

Conferee on Antitrust Policy in Distribution, Attorney General's National Committee to Study the Antitrust Laws, 1953-55.

Chairman, Committee on the Clayton Act, section of antitrust law, American Bar Association (current).

Author of book, "Price Discrimination Under the Robinson-Patman Act" (Little, Brown, 1962).

Author of numerous articles on antitrust and trade regulation problems in legal journals and symposia.

LLOYD E. SKINNER

Mr. Lloyd E. Skinner, president of the Skinner Macaroni Co., of Omaha, Nebr., and current president of the National Small Business Association, Washington, D.C., was born in Marinette, Wis.

He received his high school diploma from Creighton Prep in 1932 and his A.B. degree from Creighton University in 1936.

Mr. Skinner takes an active interest in many civic organizations and is presently director of the Mississippi Valley Association, the National Macaroni Manufacturers Association (past president), the Omaha Urban League, Junior Achievement of Omaha, Omaha Civic Opera, and the Salvation Army. He is chairman of the Southern Merchandise Committee of the Grocery Manufacturers Association and cochairman of the Nebraska chapter of the National Conference of Christians and Jews. Mr. Skinner is also a member of the Advisory Board of Duchesne College, Creighton Preparatory School, St. Catherine's Hospital, and the Douglas County chapter of the American Cancer Society.

WILLIAM R. TINCHER

May 1961 to present: Member of Advisory Board, Antitrust and Trade Regulation Report, Bureau of National Affairs, Inc., Washington, D.C.

June 1961 to present: House counsel, Purex Corp., Ltd.

March 1961 to June 1961: Antitrust section, legal department, Westinghouse Electric Corp.

November 1959 to March 1961: Associate Director, Bureau of Litigation, Federal Trade Commission.

June 1959 to March 1961: Assistant Director, Antimonopoly, Bureau of Litigation, Federal Trade Commission.

July 1954 to June 1959: Trial Attorney, Bureau of Litigation, Federal Trade Commission.

1961: FTC's Distinguished Service Award.

1959: FTC's nominee for Outstanding Young Government Employees Award.



