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Part 1
FAIR PACKAGING AND LABELING



HEARINGS
BEFORE THE
COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES
EIGHTY-NINTH CONGRESS
SECOND SESSION
ON
H.R. 15440, S. 985
AND SIMILAR BILLS RELATING TO FAIR PACKAGING AND LABELING

JULY 26, 27, 28, 29; AUGUST 2, 3, 4, 16, 17, 18, 23, 24, 25, 30, 31;
SEPTEMBER 1, 7, 8, 1966



Serial No. 89–44

Printed for the use of the
Committee on Interstate and Foreign Commerce



AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
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FAIR PACKAGING AND LABELING

TUESDAY, JULY 26, 1966

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to call, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

The Committee on Interstate and Foreign Commerce this morning is beginning 2 weeks of hearings on truth in packaging legislation. If the number of bills introduced on this subject and the number of witnesses, including Members of Congress, who have expressed a desire to testify upon this legislation, are an indicator of the importance of this legislation, one would reach the conclusion that this legislation ranks among the most important ever to come before this committee.

Over 40 bills have been introduced in the House, and we have also before us S. 985, which was passed overwhelmingly by the other body.

(The list of bills, and sponsors, as introduced in the House are as follows:)

H.R. 7493, by Mr. Halpern, of New York.
H.R. 7534, by Mr. Ottinger, of New York.
H.R. 7600, by Mr. Kastenmeier, of Wisconsin.
H.R. 7619, by Mr. Dent, of Pennsylvania.
H.R. 8475, by Mr. McGrath, of New Jersey.
H.R. 8764, by Mr. Helstoski, of New Jersey.
H.R. 11982, by Mr. Roybal, of California.
H.R. 12043, by Mr. Howard, of New Jersey.
H.R. 12759, by Mr. Farnum, of Michigan.
H.R. 12977, by Mr. W. D. Ford, of Michigan.
H.R. 13660, by Mr. Patten, of New Jersey.
H.R. 13719, by Mr. Schmidhauser, of Iowa.
H.R. 13779, by Mr. Vivian, of Michigan.
H.R. 13951, by Mr. Hicks, of Washington.
H.R. 14158, by Mr. McCarthy, of New York.
H.R. 14498, by Mr. Vanik, of Ohio.
H.R. 14633, by Mr. Donohue, of Massachusetts.
H.R. 15102, by Mr. Love, of Ohio.
H.R. 15269, by Mr. Stalbaum, of Wisconsin (title I only).
H.R. 15370, by Mr. Karth, of Minnesota.
H.R. 15440, by Mr. Staggers, of West Virginia.
H.R. 15617, by Mr. Olsen, of Montana.
H.R. 15707, by Mr. Multer, of New York (title I only).
H.R. 15708, by Mr. O'Neill, of Massachusetts.
H.R. 15711, by Mr. Pucinski, of Illinois.
H.R. 15832, by Mr. Bingham, of New York.
H.R. 15850, by Mr. Rooney, of Pennsylvania.
H.R. 15856, by Mr. Thompson, of New Jersey.
H.R. 15924, by Mr. McCarthy, of New York.

H.R. 15949, by Mr. Helstoski, of New Jersey.
H.R. 15958, by Mr. Udall, of Arizona.
H.R. 16002, by Mr. O'Hara, of Michigan.
H.R. 16010, by Mr. Burton, of California.
H.R. 16014, by Mr. Moorhead, of Pennsylvania.
H.R. 16047, by Mr. W. D. Ford, of Michigan.
H.R. 16059, by Mr. Schmidhauser, of Iowa.
H.R. 16163, by Mr. Dent, of Pennsylvania.
H.R. 16207, by Mr. Conyers, of Michigan.
H.R. 16298, by Mr. Ryan, of New York.
H.R. 16429, by Mr. Rosenthal, of New York.
H.R. 16566, by Mr. Clevenger, of Michigan.

Thus far 10 Members of Congress have notified the Chair of their desire to be heard, and 52 witnesses have notified the committee clerk of their desire to testify. These come from every section of America.

It must be obvious under these circumstances to the members of the committee as well as to the witnesses that the Chair must do his utmost to conserve the time of the committee in these hearings. The Chair is prepared to discharge this responsibility to the best of his ability.

The chairman introduced a bill, H.R. 15440, which is substantially identical with the Senate bill, except that it contains a prohibition against the distribution of any commodity in deceptive packages, which is not contained in S. 985.

At this point in the record there will be included copies of S. 985 and H.R. 15440.

There will further be included copies of the agency reports on these bills.

(The bills S. 985 and H.R. 15440 and reports thereon follow:)

[S. 985, 89th Cong., 2d sess.]

AN ACT To regulate interstate and foreign commerce by preventing the use of unfair or deceptive methods of packaging or labeling of certain consumer commodities distributed in such commerce, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Packaging and Labeling Act".

DECLARATION OF POLICY

SEC. 2. Informed consumers are essential to the fair and efficient functioning of a free market economy. Packages and their labels should enable consumers to obtain accurate information as the quantity of the contents and should facilitate price comparisons. Therefore, it is hereby declared to be the policy of the Congress to assist consumers and manufacturers in reaching these goals in the marketing of consumer goods.

PROHIBITION OF UNFAIR AND DECEPTIVE PACKAGING AND LABELING

SEC. 3. (a) It shall be unlawful for any person engaged in the packaging or labeling of any consumer commodity (as defined in this Act) for distribution in commerce, or for any person (other than a common carrier for hire, a contract carrier for hire, or a freight forwarder for hire) engaged in the distribution in commerce of any packaged or labeled consumer commodity, to distribute or to cause to be distributed in commerce any such commodity if such commodity is contained in a package, or if there is affixed to the commodity a label, which does not conform to the provision of this Act and of regulations promulgated under the authority of this Act.

(b) The prohibition contained in subsection (a) shall not apply to persons engaged in busines as wholesale or retail distributors of consumer commodities

except to the extent that such persons (1) are engaged in the packaging or labeling of such commodities, or (2) prescribe or specify by any means the manner in which such commodities are packaged or labeled.

REQUIREMENTS AND PROHIBITIONS

SEC. 4. (a) No person subject to the prohibition contained in section 3 shall distribute or cause to be distributed in commerce any packaged consumer commodity unless in conformity with regulations which shall be established by the promulgating authority pursuant to section 6 of this Act and which shall provide that:

(1) The commodity shall bear a label specifying the identity of the commodity and the name and place of business of the manufacturer, packer, or distributor; and

(2) The net quantity of contents (in terms of weight, measure, or numerical count) shall be separately and accurately stated in a uniform location upon the principal display panel of that label; and

(3) The separate label statement of net quantity of contents appearing upon or affixed to any package—

(A) if expresed in terms of weight or fluid volume, on any package of a consumer commodity containing less than four pounds or one gallon, shall be expressed in ounces or in whole units of pounds, pints, or quarts (avoirdupois or liquid, whichever may be appropriate);

(B) shall appear in conspicuous and easily legible type in distinct contrast (by typography, layout, color, embossing, or molding) with other matter in the package;

(C) shall maintain letters or numerals in a type size which shall be (i) established in relationship to the area of the principal display panel of the package, and (ii) uniform for all packages of substantially the same size; and

(D) shall be so placed that the lines of printed matter included in that statement are generally parallel to the base on which the package rests as it is designed to be displayed.

(b) No person subject to the prohibition contained in section 3 shall distribute or cause to be distributed in commerce any packaged consumer commodity if any qualifying words or phrases appear in conjunction with the separate statement of the net quantity of contents required by subsection (a), but nothing in this subsection or in paragraph (2) of subsection (a) shall prohibit supplemental statements, at other places on the package, describing in nondeceptive terms the net quantity of contents: *Provided*, That such supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the commodity contained in the package.

ADDITIONAL REGULATIONS

SEC. 5. (a) The authority to promulgate regulations under this Act is vested in (A) the Secretary of Health, Education, and Welfare (referred to hereinafter as the "Secretary") with respect to any consumer commodity which is a food, drug, device, or cosmetic, as each such term is defined by section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321); and (B) the Federal Trade Commission (referred to hereinafter as the "Commission") with respect to any other consumer commodity.

(b) If the promulgating authority specified in this section finds that, because of the nature, form, or quantity of a particular consumer commodity, or for other good and sufficient reasons, full compliance with all the requirements otherwise applicable under section 4 of this Act is impracticable or is not necessary for the adequate protection of consumers, the Secretary or the Commission (whichever the case may be) shall promulgate regulations exempting such commodity from those requirements to the extent and under such conditions as the promulgating authority determines to be consistent with section 2 of this Act.

(c) Whenever the promulgating authority determines that regulations containing prohibitions or requirements other than those prescribed by section 4 are necessary to prevent the deception of consumers or to facilitate price comparisons as to any consumer commodity, such authority shall promulgate with respect to that commodity regulation effective to—

(1) establish and define standards for characterizing the size of a package enclosing any consumer commodity, which may be used to supplement the label statement of net quantity of contents of packages containing such commodity, but this paragraph shall not be construed as authorizing any limitation on the size, shape, weight, dimensions, or number of packages which may be used to enclose any commodity;

(2) establish and define the net quantity of any commodity (in terms of weight, measure, or count) which shall constitute a serving, if that commodity is distributed to retail purchasers in a package or with a label which bears a representation as to the number of servings provided by the net quantity of contents contained in that package or to which that label is affixed;

(3) regulate the placement upon any package containing any commodity, or upon any label affixed to such commodity, of any printed matter stating or representing by implication that such commodity is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail sale price advantage is accorded to purchasers thereof by reason of the size of that package or the quantity of its contents; and

(4) require that information with respect to the ingredients and composition of any consumer commodity be placed upon packages containing that commodity, except that (A) each such regulation shall be consistent with requirements imposed by or pursuant to the Federal Food, Drug and Cosmetic Act, as amended, (B) no such regulation shall apply to any consumer commodity for which a definition or standard of identity has been established and is in effect pursuant to a regulation promulgated under that Act, and (C) no such regulation promulgated under this paragraph may require the disclosure of information concerning proprietary trade secrets.

(d) Whenever the promulgating authority determines, after a hearing conducted in compliance with section 7 of the Administrative Procedure Act, that the weights or quantities in which any consumer commodity is being distributed for retail sale are likely to impair the ability of consumers to make price per unit comparisons such authorty shall—

(1) publish such determination in the Federal Register; and

(2) promulgate, subject to the provisions of subsections (e), (f), and (g), regulations effective to establish reasonable weights or quantities, and fractions or multiples thereof, in which any such consumer commodity shall be distributed for retail sale.

(e) At any time within sixty days after the publication of any determination pursuant to subsection (d)(1) as to any consumer commodity, any producer or distributor affected may request the Secretary of Comerce to participate in the development of a voluntary product standard for such commodity under the procedures for the development of voluntary product standards established by the Secretary pursuant to section 2 of the Act of March 3, 1901 (31 Stat. 1449, as amended; 15 U.S.C. 272). Such procedures shall provide adequate manufacturer, distributor, and consumer representation. Upon the filing of any such request, the Secretary of Commerce shall transmit notice thereof to the authority which has caused notice of such determination to be published.

(f) No regulation promulgated pursuant to subsection (d)(2) with respect to any consumer commodity may—

(1) vary from any voluntary product standard in effect with respect to that consumer commodity which was published—

(A) before the publication of any determination with respect to that consumer commodity pursuant to subsection (d)(1);

(B) within one year after the filing pursuant to this section of a request for the development of a voluntary product standard with respect to that consumer commodity; or

(C) within such period of time (not exceeding eighteen months after the filing of such request) as the promulgating authority may deem proper upon a certification by the Secretary of Commerce that such a voluntary product standard with respect to that consumer commodity is under active consideration and that there are presently grounds for belief that such a standard for that commodity will be published within a reasonable period of time;

(2) establish any weight or measure in any amount less than two ounces;

(3) preclude the use of any package of particular dimensions or capacity

customarily used for the distribution of related commodities of varying densities, except to the extent that it is determined that the continued use of such package for such purpose is likely to deceive consumers; or

(4) preclude the continued use of particular dimensions or capacities of returnable or reusable glass containers for beverages in use as of the effective date of the Act.

(g) In the promulgation of regulations under subsection (d)(2) of this section, due regard shall be given to the probable effect of such regulations upon—

(1) the cost of the packaging and the cost to consumers of the commodities affected;

(2) the availability of any commodity in a reasonable range of package sizes to serve consumer convenience;

(3) the materials used for the packaging of the affected commodities;

(4) the weights and measures customarily used in the packaging of the affected commodities;

(5) competition between containers made of different types of packaging material.

PROCEDURE FOR PROMULGATION OF REGULATIONS

SEC. 6. (a) Regulations promulgated by the Secretary under section 4 or section 5 of this Act shall be promulgated, and shall be subject to judicial review, pursuant to the provisions of subsections (e), (f), and (g) of section 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371 (e), (f), and (g)). Hearings authorized or required for the promulgation of any such regulations by the Secretary shall be conducted by the Secretary or by such officer or employee of the Department of Health, Education, and Welfare as he may designate for that purpose.

(b) Regulations promulgated by the Commission under section 4 or section 5 of this Act shall be promulgated, and shall be subject to judicial review, by proceedings taken in conformity with the provisions of subsections (e), (f), and (g) of section 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371 (e), (f), and (g)) in the same manner, and with the same effect, as if such proceedings were taken by the Secretary pursuant to subsection (a) of this section. Hearings authorized or required for the promulgation of any such regulations by the Commission shall be conducted by the Commission or by such officer or employee of the Commission as the Commission may designate for that purpose.

(c) In carrying into effect the provisions of this Act, the Secretary and the Commission are authorized to cooperate with any department or agency of the United States, with any State, Commonwealth, or possession of the United States, and with any department, agency, or political subdivision of any such State, Commonwealth, or possession.

(d) No regulation adopted under this Act shall preclude the continued use of returnable or reusable glass containers for beverages in inventory or with the trade as of the effective date of this Act, or the orderly disposal of packages in inventory or with the trade as of the effective date of the regulation.

ENFORCEMENT

SEC. 7. (a) Any consumer commodity which is a food, drug, device, or cosmetic, as each such term is defined by section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321), and which is introduced or delivered for introduction into commerce in violation of any of the provisions of this Act, or the regulations issued pursuant to this Act, shall be deemed to be misbranded within the meaning of chapter III of the Federal Food, Drug, and Cosmetic Act, but the provisions of section 303 of that Act (21 U.S.C. 333) shall have no application to any violation of section 3 of this Act.

(b) Any violation of any of the provisions of this Act, or the regulations issued pursuant to this Act, with respect to any consumer commodity which is not a food, drug, device, or cosmetic, shall constitute an unfair or deceptive act or practice in commerce in violation of section 5(a) of the Federal Trade Commission Act and shall be subject to enforcement under section 5(b) of the Federal Trade Commission Act.

(c) In the case of any imports into the United States of any consumer commodity covered by this Act, the provisions of sections 4 and 5 of this Act shall be enforced by the Secretary of the Treasury pursuant to section 801 (a) and (b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381).

REPORTS TO THE CONGRESS

SEC. 8. Each officer or agency required or authorized by this Act to promulgate regulations for the packaging or labeling of any consumer commodity, or to participate in the development of voluntary product standards with respect to any consumer commodity under procedures referred to in section 5(e) of this Act, shall transmit to the Congress in January of each year a report containing a full and complete description of the activities of that officer or agency for the administration and enforcement of this Act during the preceding fiscal year.

COOPERATION WITH STATE AUTHORITIES

SEC. 9. (a) A copy of each regulation promulgated under this Act shall be transmitted promptly to the Secretary of Commerce, who shall (1) transmit copies thereof to all appropriate State officers and agencies, and (2) furnish to such State officers and agencies information and assistance to promote to the greatest practicable extent uniformity in State and Federal regulation of the labeling of consumer commodities.

(b) Nothing contained in this section shall be construed to impair or otherwise interfere with any program carried into effect by the Secretary of Health, Education, and Welfare under other provisions of law in cooperation with State governments or agencies, instrumentalities, or political subdivisions thereof.

DEFINITIONS

SEC. 10. For the purposes of this Act—

(a) The term "consumer commodity", except as otherwise specifically provided by this subsection, means any food drug, device, or cosmetic (as those terms are defined by the Federal Food, Drug, and Cosmetic Act), and any other article, product, or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes for personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use. Such term does not include—

(1) any meat or meat product, poultry or poultry product, or tobacco or tobacco product;

(2) any commodity subject to packaging or labeling requirements imposed by the Secretary of Agriculture pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the Act of March 4, 1913 (37 Stat. 832–833; 21 U.S.C. 151–157), commonly known as the Virus-Serum-Toxin Act;

(3) any drug subject to the provisions of sections 503(b)(1) or 506 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)(1), 355, 356, 357);

(4) any beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act, (27 U.S.C. 201 et seq.); or

(5) any commodity subject to the provisions of the Federal Seed Act (7 U.S.C. 1551–1610).

(b) The term "package" means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers, but does not include—

(1) shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesaler or retail distributors thereof;

(2) shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity; or

(3) containers subject to the provisions of the Act of August 3, 1912 (37 Stat. 250, as amended; 15 U.S.C. 231–233), the Act of March 4, 1915 (38 Stat. 1186, as amended; 15 U.S.C. 234–236), the Act of August 31, 1916 (39 Stat. 673, as amended; 15 U.S.C. 251–256), or the Act of May 21, 1928 (45 Stat. 685, as amended; 15 U.S.C. 257–257i).

(c) The term "label" means any written, printed, or graphic matter affixed to any consumer commodity or affixed to or appearing upon a package containing any consumer commodity;

(d) The term "person" includes any firm, corporation, or association;

(e) The term "commerce" means (1) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, or territory and any place outside thereof, and (2) commerce within the District of Columbia or within any territory or possession of the United States not organized with a legislative body, but shall not include exports to foreign countries; and

(f) The term "principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

SAVING PROVISION

SEC. 11. Nothing contained in this Act shall be construed to repeal, invalidate, or supersede—

(a) the Federal Trade Commission Act or any statute defined therein as an antitrust Act;

(b) the Federal Food, Drug, and Cosmetic Act; or

(c) the Hazardous Substances Labeling Act.

EFFECT UPON STATE LAW

SEC. 12. It is hereby expressly declared that it is the intent of the Congress to supersede any and all laws of the States and political subdivisions thereof insofar as they may now or hereafter provide for the labeling of the net quantity of contents of the package of any consumer commodity covered by this Act which differs from the requirements of section 4 of this Act or regulations promulgated pursuant thereto.

EFFECTIVE DATE

SEC. 13. This Act shall take effect on the first day of the sixth month beginning after the date of its enactment: *Provided*, That the Secretary (with respect to any consumer commodity which is a food, drug, device, or cosmetic), and the Commission (with respect to any other consumer commodity) may by regulation postpone, for an additional twelve-month period, the effective date of this Act with respect to any class or type of consumer commodity on the basis of a finding that such a postponement would be in the public interest.

Passed the Senate June 9, 1966.

Attest:

EMERY L. FRAZIER,
Secretary.

[H.R. 15440, 89th Cong., 2d sess.]

A BILL To regulate interstate and foreign commerce by preventing the use of unfair or deceptive methods of packaging or labeling of certain consumer commodities distributed in such commerce, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Packaging and Labeling Act".

DECLARATION OF POLICY

SEC. 2. Informed consumers are essential to the fair and efficient functioning of a free market economy. Packages and their labels should enable consumers to obtain accurate information as to the quantity of the contents and should facilitate price comparisons. Therefore, it is hereby declared to be the policy of the Congress to assist consumers and manufacturers in reaching these goals in the marketing of consumer goods.

PROHIBITION OF UNFAIR AND DECEPTIVE PACKAGING AND LABELING

SEC. 3. (a) it shall be unlawful for any person engaged in the packaging or labeling of any consumer commodity (as defined in this Act) for distribution in commerce, or for any person (other than a common carrier for hire, a contract

carrier for hire, or a freight forwarder for hire) engaged in the distribution in commerce of any packaged or labeled consumer commodity, to distribute or to cause to be distributed in commerce any such commodity if such commodity is contained in a package, or if there is affixed to that commodity a label, which does not conform to the provisions of this Act and of regulations promulgated under the authority of this Act.

(b) The prohibition contained in subsection (a) shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons (1) are engaged in the packaging or labeling of such commodities, or (2) prescribe or specify by any means the manner in which such commodities are packaged or labeled.

REQUIREMENTS AND PROHIBITIONS

SEC. 4. (a) No person subject to the prohibition contained in section 3 shall distribute or cause to be distributed in commerce any packaged or labeled consumer commodity unless in conformity with regulations established by the promulgating authority pursuant to section 6 of this Act which shall provide that:

(1) The commodity shall bear a label specifying the identity of the commodity and the name and place of business of the manufacturer, packer, or distributor; and

(2) The net quantity of contents (in terms of weight, measure, or numerical count) shall be separately and accurately stated in a uniform location upon the principal display panel of that label if that consumer commodity is enclosed in a package; and

(3) The separate label statement of net quantity of contents appearing upon or affixed to any package—

(A) if expressed in terms of weight or fluid volume, on any package of a consumer commodity containing less than four pounds or one gallon, shall be expressed in ounces or in whole units of pounds, pints, or quarts (avoirdupois or liquid, whichever may be appropriate);

(B) shall appear in conspicuous and easily legible type in distinct contrast (by topography, layout, color, embossing, or molding) with other matter on the package;

(C) shall contain letters or numerals in a type size which shall be (i) established in relationship to the area of the principal display panel of the package, and (ii) uniform for all packages of substantially the same size; and

(D) shall be so placed that the lines of printed matter included in that statement are generally parallel to the base on which the package rests as it is designed to be displayed.

(b) No person subject to the prohibition contained in section 3 shall distribute or cause to be distributed in commerce any packaged consumer commodity if any qualifying words or phrases appear in conjunction with the separate statement of the net quantity of contents required by subsection (a), but nothing in this subsection or in paragraph (2) of subsection (a) shall prohibit supplemental statements, at other places on the package, describing in nondeceptive terms the net quantity of contents: *Provided*, That such supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the commodity contained in the package.

ADDITIONAL REGULATIONS

SEC. 5. (a) The authority to promulgate regulations under this Act is vested in (A) the Secretary of Health, Education, and Welfare (referred to hereinafter as the "Secretary") with respect to any consumer commodity which is a food, drug, device, or cosmetic, as each such term is defined by section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321); and (B) the Federal Trade Commission (referred to hereinafter as the "Commission") with respect to any other consumer commodity.

(b) If the promulgating authority specified in this section finds that, because of the nature, form, or quantity of a particular consumer commodity, or for other good and sufficient reasons, full compliance with all the requirements otherwise applicable under section 4 of this Act is impracticable or is not necessary for the adequate protection of consumers, the Secretary or the Commission

(whichever the case may be) shall promulgate regulations exempting such commodity from those requirements to the extent and under such conditions as the promulgating authority determines to be consistent with section 2 of this Act.

(c) Whenever the promulgating authority determines that regulations containing prohibitions or requirements other than those prescribed by section 4 are necessary to prevent the deception of consumers or to facilitate price comparisons as to any consumer commodity, such authority shall promulgate with respect to that commodity regulations effective to—

(1) establish and define standards for characterizing the size of a package enclosing any consumer commodity, which may be used to supplement the label statement of net quantity of contents of packages containing such product, but this paragraph shall not be construed as authorizing any limitation on the size, shape, weight, dimensions, or number of packages which may be used to enclose any product or commodity;

(2) establish and define the net quantity of any product (in terms of weight, measure, or count) which shall constitute a serving, if that product is distributed to retail purchasers in a package or with a label which bears a representation as to the number of servings provided by the net quantity of contents contained in that package or to which that label is affixed;

(3) regulate the placement upon any package containing any product, or upon any label affixed to such product, of any printed matter stating or representing by implication that such product is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail price advantage is accorded to purchasers thereof by reason of the size of that package or the quantity of its contents; and

(4) require (consistent with requirements imposed by or pursuant to the Federal Food, Drug, and Cosmetic Act, as amended) that information with respect to the ingredients and composition of any consumer commodity (other than information concerning proprietary trade secrets) be placed upon packages containing that commodity; and

(5) prevent the distribution of that commodity for retail sale in packages of sizes, shapes, or dimensional proportions which are likely to deceive retail purchasers in any material respect as to the net quantity of the contents thereof (in terms of weight, measure, or count).

(d) Whenever the promulgating authority determines, after a hearing conducted in compliance with section 7 of the Administrative Procedure Act, that the weights or quantities in which any consumer commodity is being distributed for retail sale are likely to impair the ability of consumers to make price per unit comparisons such authority shall—

(1) publish such determination in the Federal Register; and

(2) promulgate, subject to the provisions of subsections (e), (f), and (g), regulations effective to establish reasonable weights or quantities, or fractions or multiples thereof, in which any such consumer commodity shall be distributed for retail sale.

(e) At any time within sixty days after the publication of any determination pursuant to subsection (d)(1) as to any consumer commodity, any producer or distributor affected may request the Secretary of Commerce to participate in the development of a voluntary product standard for such commodity under the procedures for the development of voluntary product standards established by the Secretary pursuant to section 2 of the Act of March 3, 1901 (31 Stat. 1449, as amended; 15 U.S.C. 272). Such procedures shall provide adequate manufacturer, distributor, and consumer representation. Upon the filing of any such request, the Secretary shall transmit notice thereof to the authority which has caused notice of such determination to be published.

(f) No regulation promulgated pursuant to subsection (d)(2) with respect to any consumer commodity may—

(1) vary from any voluntary product standard in effect with respect to that consumer commodity which was published—

(A) before the publication of any determination with respect to that consumer commodity pursuant to subsection (d)(1);

(B) within one year after the filing pursuant to this section of a request for the establishment of a voluntary product standard with respect to that consumer commodity; or

(C) within such period of time (not exceeding eighteen months after the filing of such request) as the promulgating authority may deem proper

upon a certification by the Secretary of Commerce that such a voluntary product standard with respect to that consumer commodity is under active consideration and that there is presently grounds for belief that such a standard for that commodity will be published within a reasonable period of time;

(2) establish any weight or measure in any amount less than two ounces;

(3) preclude the use of any package of particular dimensions or capacity customarily used for the distribution of related products of varying densities, except to the extent that it is determined that the continued use of such package for such purpose is likely to deceive consumers; or

(4) preclude the continued use of particular dimensions or capacities of returnable or reusable glass containers for beverages in use as of the effective date of the Act.

(g) In the promulgation of regulations under subsection (d)(2) of this section, due regard shall be given to the probable effect of such regulations upon—

(1) the cost of the packaging of the products affected;

(2) the availability of any product in a reasonable range of package sizes to serve consumer convenience;

(3) the materials used for the packaging of the affected products;

(4) the weights and measures customarily used in the packaging of the affected products; and

(5) competition between containers made of different types of packaging material.

PROCEDURE FOR PROMULGATION OF REGULATIONS

SEC. 6. (a) Regulations promulgated by the Secretary under section 4 or section 5 of this Act shall be promulgated, and shall be subject to judicial review, pursuant to the provisions of subsections (e), (f), and (g) of section 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371 (e), (f), and (g)). Hearings authorized or required for the promulgation of any such regulations by the Secretary shall be conducted by the Secretary or by such officer or employee of the Department of Health, Education, and Welfare as he may designate for that purpose.

(b) Regulations promulgated by the Commission under section 4 or section 5 of this Act shall be promulgated, and shall be subject to judicial review, by proceedings taken in conformity with the provisions of subsections (e), (f), and (g) of section 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371 (e), (f), and (g)) in the same manner, and with the same effect, as if such proceedings were taken by the Secretary pursuant to subsection (a) of this section. Hearings authorized or required for the promulgation of any such regulations by the Commission shall be conducted by the Commission or by such officer or employee of the Commission as the Commission may designate for that purpose.

(c) In carrying into effect the provisions of this Act, the Secretary and the Commission are authorized to cooperate with any department or agency of the United States, with any State, Commonwealth, or possession of the United States, and with any department, agency, or political subdivision of any such State, Commonwealth, or possession.

(d) No regulation adopted under this Act shall preclude the continued use of returnable or reusable glass containers for beverages in inventory or with the trade as of the effective date of this Act.

ENFORCEMENT

SEC. 7. (a) Any consumer commodity which is a food, drug, device, or cosmetic, as each such term is defined by section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321), and which is introduced or delivered for introduction into commerce in violation of any of the provisions of this Act, or the regulations issued pursuant to this Act, shall be deemed to be misbranded within the meaning of chapter III of the Federal Food, Drug, and Cosmetic Act, but the provisions of section 303 of that Act (21 U.S.C. 333) shall have no application to any violation of section 3 of this Act.

(b) Any violation of any of the provisions of this Act, or the regulations issued pursuant to this Act, with respect to any consumer commodity which is not a food, drug, device, or cosmetic, shall constitute an unfair or deceptive act or practice in commerce in violation of section 5(a) of the Federal Trade Commission Act and shall be subject to enforcement under section 5(b) of the Federal Trade Commission Act.

(c) In the case of any imports into the United States of any consumer commodity covered by this Act, the provisions of sections 4 and 5 of this Act shall be enforced by the Secretary of the Treasury pursuant to section 801 (a) and (b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381).

REPORTS TO THE CONGRESS

SEC. 8. Each officer or agency required or authorized by this Act to promulgate regulations for the packaging or labeling of any consumer commodity, or to participate in the development of voluntary product standards with respect to any consumer commodity under procedures referred to in section 5(c) of this Act, shall transmit to the Congress in January of each year a report containing a full and complete description of the activities of that officer or agency for the administration and enforcement of this Act during the preceding fiscal year.

COOPERATION WITH STATE AUTHORITIES

SEC. 9. (a) A copy of each regulation promulgated under this Act shall be transmitted promptly to the Secretary of Commerce, who shall (1) transmit copies thereof to all appropriate State officers and agencies, and (2) furnish to such State officers and agencies information and assistance to promote to the greatest practicable extent uniformity in State and Federal regulation of the labeling of consumer commodities.

(b) Nothing contained in this section shall be construed to impair or otherwise interfere with any program carried into effect by the Secretary of Health, Education, and Welfare under other provisions of law in cooperation with State governments or agencies, instrumentalities, or political subdivisions thereof.

DEFINITIONS

SEC. 10. For the purpose of this Act—

(a) The term "consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic (as those terms are defined by the Federal Food, Drug, and Cosmetic Act), and any other article, product, or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use. Such term does not include—

(1) any meat or meat product, poultry or poultry product, or tobacco or tobacco product;

(2) any commodity subject to packaging or labeling requirements imposed by the Secretary of Agriculture pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the Act of March 4, 1913 (37 Stat. 832–833; 21 U.S.C. 151–157), commonly known as the Virus- Serum-Toxin Act;

(3) any drug subject to the provisions of sections 503(b)(1) or 506 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)(1), 355, 356, 357);

(4) any beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C. 201 et seq.); or

(5) any commodity subject to the provisions of the Federal Seed Act (7 U.S.C. 1551–1610).

(b) The term "package" means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers, but does not include—

(1) shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof;

(2) shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity; or

(3) containers subject to the provisions of the Act of August 3, 1912 (37 Stat. 250, as amended; 15 U.S.C. 231–233), the Act of March 4, 1915 (38 Stat.

1186, as amended; 15 U.S.C. 234–236), the Act of August 31, 1916 (39 Stat. 673, as amended; 15 U.S.C. 251–256), or the Act of May 21, 1928 (45 Stat. 685, as amended; 15 U.S.C. 257–257i);

(c) The term "label" means any written, printed, or graphic matter affixed to any consumer commodity or affixed to or appearing upon a package containing any consumer commodity;

(d) The term "person" includes any firm, corporation, or association;

(e) The term "commerce" means (1) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, or territory and any place outside thereof, and (2) commerce within the District of Columbia or within any territory or possession of the United States not organized with a legislative body, but shall not include exports to foreign countries; and

(f) The term "principal display panel or panels" means that part, or those parts, of a label that is, or are most likely to be, displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

SAVING PROVISION

SEC. 11. Nothing contained in this Act shall be construed to repeal, invalidate, supersede, or otherwise adversely affect—

(a) the Federal Trade Commission Act or any statute defined therein as an antitrust Act;

(b) the Federal Food, Drug, and Cosmetic Act; or

(c) the Hazardous Substance Labeling Act.

EFFECT UPON STATE LAW

SEC. 12. It is hereby declared it is the express intent of Congress to supersede any and all laws of the State or political subdivisions thereof insofar as they may now or hereafter provide for the labeling of the net quantity of contents of the package of any consumer commodity covered by this Act which differ from the requirements of section 4 of this Act or regulations promulgated pursuant thereto.

EFFECTIVE DATE

SEC. 13. This Act shall take effect on the first day of the sixth month beginning after the date of its enactment: *Provided*, That the Secretary (with respect to any consumer commodity which is a food, drug, device, or cosmetic), and the Commission (with respect to any other consumer commodity) may by regulation postpone, for an additional twelve-month period, the effective date of this Act with respect to any class or type of consumer commodity on the basis of a finding that such a postponement would be in the public interest.

DEPARTMENT OF AGRICULTURE,
Washington, D.C., July 25, 1966.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for a report on S. 985, a bill "To regulate interstate and foreign commerce by preventing the use of unfair or deceptive methods of packaging or labeling of certain consumer commodities distributed in such commerce, and for other purposes."

This Department recommends passage of the bill.

With the increasing number and variety of packaged products available, there is an increasing need for adequate information regarding quantity, quality, and prices in order for consumers to make rational choices. This bill would do much to meet that need.

The provisions of this bill are in many respects comparable to the labeling requirements under the Poultry Products Inspection Act. Under the Meat Inspection Act extensive regulations regarding labeling are also in effect. Provision has been made in S. 985 for exemption of meat and poultry products and certain other commodities and containers that are now regulated under Federal laws administered by this Department.

The requirements of this bill with respect to labeling of consumer commodities are extensions of comparable requirements under the Food, Drug, and Cosmetic Act governing the labeling of foods other than meat and poultry products.

This report is also in response to your request for comments on H.R. 15440, a bill "To regulate interstate and foreign commerce by preventing the use of unfair or deceptive methods of packaging or labeling of certain consumer commodities distributed in such commerce, and for other purposes."

The Bureau of the Budget advises that there is no objective to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, D.C., July 20, 1966.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your request for our comments upon H.R. 15440 and S. 985, bills to prevent the use of unfair or deceptive methods of packaging or labeling of certain consumer commodities. The bills may be cited as the "Fair Packaging and Labeling Act."

The Department of Labor is on record as favoring legislation to ensure truth in packaging and labeling. The most recent expression of this support is found in testimony by Mrs. Esther Peterson before the Senate Commerce Committee on S. 985. Mrs. Peterson testified on behalf of the Department of Labor and also as Special Assistant to the President for Consumer Affairs.

We note that there are some differences between S. 985 and H.R. 15440, but defer to the administering agencies for specific comment upon these differences.

The Bureau of the Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

W. WILLARD WIRTZ,
Secretary of Labor.

OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., August 22, 1966.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your requests for the views of the Department of Justice concerning the bills S. 985 and H.R. 15440 "To regulate interstate and foreign commerce by preventing the use of unfair or deceptive methods of packaging or labeling of certain consumer commodities distributed in such commerce, and for other purposes."

The bills would be cited as the "Fair Packaging and Labeling Act." The legislation would, with certain exceptions, make it unlawful to package or label consumer commodities for distribution in commerce whose labels or packages fail to conform to regulations to be promulgated under the measure. The Secretary of Health, Education, and Welfare would administer the Act in its application to foods, drugs, devices, and cosmetics, and the Federal Trade Commission would administer the Act with respect to other consumer commodities. While the bills differ in certain respects, we defer to the agencies primarily concerned as to the provisions which would best accomplish the desired purpose.

The Department of Justice favors the enactment of this legislation which is designed to implement the recommendations of the President on fair packaging and labeling.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

RAMSEY CLARK,
Deputy Attorney General.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., August 4, 1966.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your requests for the views of this Department on S. 985, H.R. 15440, and H.R. 15707, bills to regulate interstate and foreign commerce by preventing the use of unfair or deceptive methods of packaging or labeling of certain consumer commodities distributed in such commerce.

The bills are designed to prevent unfair and deceptive packaging and labeling of certain consumer commodities. The Secretary of Health, Education, and Welfare, with regard to foods, drugs, and cosmetics, and the Federal Trade Commission, with regard to all other consumer commodities, would be directed to promulgate regulations to insure that certain essential product information is included on the label of a commodity. The administering agencies would also be authorized to promulgate certain regulations on a commodity line basis and to establish reasonable retail weights or quantities in certain cases. S. 985 would implement the recommendations of the President for fair packaging and labeling legislation.

The only provision of the proposed legislation of primary interest to this Department is section 7(c) of S. 985 and H.R. 15440, which would direct the Secretary of the Treasury to enforce the packaging and labeling provisions with regard to imports of commodities. The Department anticipates no unusual enforcement problems under section 7(c) and would have no objection to its enactment.

The Department has been advised by the Bureau of the Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

FRED B. SMITH,
General Counsel.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., July 26, 1966.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your requests for the views of the Bureau of the Budget on S. 985, H.R. 15440, and H.R. 15707, three bills each entitled the "Fair Packaging and Labeling Act." These bills, while differing in some respects, have the common purpose of preventing unfair or deceptive methods of packaging or labeling certain consumer commodities, and thus enabling consumers to obtain accurate information essential to the effective operation of the markets in these commodities.

In his message of March 21, 1966, the President renewed his previous recommendations for equitable and effective legislation on packaging and labeling in order to help assure fair consumer choice based upon reliable information. The Special Assistant to the President for Consumer Affairs and representatives of the agencies principally interested in this legislation, in statements they have presented to your Committee, endorse S. 985 as approved by the Senate.

Enactment of S. 985 would be in accord with the President's program.

Sincerely yours,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., July 23, 1966.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Your letter of June 15, 1966, requested a report by the General Services Administration on S. 985, 89th Congress, an act "To regulate interstate and foreign commerce by preventing the use of unfair or deceptive

methods of packaging or labeling of certain consumer commodities distributed in such commerce, and for other purposes."

The purposes of the act are to insure that the labels of packaged consumer commodities adequately inform consumers of the quantity and composition of their contents and to promote packaging practices which facilitate price comparisons by consumers.

The proposed legislation would affect the responsibilities and functions of the Department of Health, Education, and Welfare and the Federal Trade Commission rather than those of the General Services Administration. However, we are in accord with the purposes of S. 985 and favor its enactment as passed the Senate.

The Bureau of the Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this report to your Committee.

Sincerely yours,

LAWSON B. KNOTT, Jr., *Administrator.*

The CHAIRMAN. This morning it is my intention to hear from Members of Congress first. Following them, we shall hear from the representatives of the several executive departments and agencies which are concerned with this legislation.

I am most happy that the departments and agencies have agreed to testify as a panel in order to conserve the committee's time, and I am hopeful that this constructive effort to conserve time will be emulated by all other witnesses.

All of the Government witnesses will be permitted to complete their testimony before any of them will be available for questioning by the committee members. I would like to make that clear, that we will not question any of the panel until all of them have all completed their testimony.

Without anything further, our first witness this morning will be one of our colleagues in Congress, the Honorable Benjamin S. Rosenthal of New York.

Is the Congressman present?

If he is not present, the Honorable Edward J. Patten, a Member of Congress from New Jersey, will testify.

STATEMENT OF HON. EDWARD J. PATTEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PATTEN. Mr. Chairman, I would like to thank you for the opportunity to be here today. I come here at this time to testify in strong support of the need for action insuring fair packaging and labeling as proposed in legislation introduced by many of my colleagues, besides myself.

The need for protection of the consumer's interests can be ignored no longer by the Federal Government. In areas of public health and pure foods and drugs this interest has not been lacking. This same active interest on our part must now be extended into both the packaging and labeling of products.

The currently proposed legislation, however, is only an initial step toward presenting the consumer with a product that is clearly and distinctly packaged with regard to quality, quantity, and size. The bills we are considering today are only the first step forward in the protection of consumer interests. If armed with such basic information as product sizes, numbers, and weights, the American house-

wife, whose food budget is always of the utmost concern, can then more easily make the best choices for increased economy and savings.

It has been estimated from studies conducted at Eastern Michigan University that about $4 billion a year are drained from the pockets of Americans. These funds are lost when homemakers are misled by unclear advertising on boxes, or by a lack of information about packages which would help them to purchase more economical goods.

"Family," "Giant," "Super," and "King" are all more product sizes known to housewives. However, the relative sizes and values of each seem not to be. In Michigan tests, when 33 young homemakers made 660 purchases, they failed to buy the most economical purchase in 43 percent of their selections when shopping for the "best buy." Part of this results from a lack of truth in packaging. Clearly, there is a need for action.

As a letter from a homemaker informed me:

> I do not see how some things can be printed on packages that are so wrong and be gotten away with, such as serves 3–4 generously. Serves 3–4 what may I ask? Certainly not my two sons and husband.

Another letter inquired:

> Why must shoppers always have to look in the oddest places for sizes and weights on packages and boxes. Can't the government do anything to put them up front where they are easily visible.

Other mail that I have received has complained even of failure of products in some cases to list ingredients. One gentleman pointed out that there are certain foodstuffs to which he is allergic and would like to know if they are contained in products he might purchase.

Mr. Chairman, action on this measure should be immediate.

Every day's delay is costing American housewives many valuable food dollars. Effective and enforcible legislation is necessary to dispell the idea that the consumer is helpless to improve his own position as a buyer. The bills before this committee are primarily in response to thousands of American letterwriters.

I am especially interested that such legislation would be of special benefit to lower income families who spend more than one-third of their limited budgets on food. These homemakers are faced with the endless problem of making ends meet. Fair packaging and labeling would make their tasks easier by allowing them to quickly and easily employ economical shopping methods.

I want the chairman to know that I spent 2 years on the Science and Astronautics Committee, which handles legislation dealing with the Bureau of Standards, and we often discussed the question of the decimal system, the question of standards for sizes for baskets, etc., and the effect in foreign trade. I hope this committee does not handcuff industry. I hope they don't unfairly hamper the advertising field.

American know-how and initiative are known all over the world. I hope we still give them a chance to sell. But I do hope, too, we can protect our consumers against what I think are outright frauds in some of the packaging and labeling that I see.

I know your committee will consider all of these factors, and I hope you bring a bill to the floor that will not take the good initiative away from our industry, but which, at the same time, will protect the cus-

tomer from a package that will say "family-size," "the giant," "the super," "the king size," when we know the terms are meaningless.

I always get a kick out of a local bank when I go in and see a sign which says, "Interest on automobile loans, 4 percent." My efforts to have the bank tear the sign down have always failed. I know they are charging 11 percent; they are not getting 4 percent.

It is that kind of wrong impression that I would like to see stopped in packaging. I could give you many more illustrations, but out of consideration for the prominent guests here, I will not explore it any further.

I do know that our press, our public, and the consumers do want some of the things which Mrs. Peterson, her consumers group, and others brought forth as to whether the Federal Government will protect the consumer against fraudulent advertising and fraudulent packaging.

I would again like to thank the committee for giving me this opportunity to reaffirm my strong support for fair packaging and labeling legislation. Thank you, my colleagues, and Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Patten. The committee wishes to thank you for coming over and giving us the benefit of your views. We know your interests, when you have appeared before the committee in the past, you have always been for the general welfare of the Nation and the people.

Certainly this committee will not try to handcuff industry. All we want to do is see that the people get a fair deal.

Mr. Friedel?

Mr. FRIEDEL. I would like to compliment the gentleman on his statement. I know he is one of the hardest-working members we have. I am always glad to hear him testify.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Thank you for the panel.

I am interested in trying to find out wherein this bill treats subjects that are not already embodied in legislation. Will you point out in either the Senate bill or in H.R. 15440 items which are not now covered by existing law?

You mentioned about the advertising. Is there anything here that would give the Federal Trade Commission additional authority that they do not now have? That is, in regard to advertising?

Mr. PATTEN. I think your point is well taken. Certainly the first four chapters of the law are already covered. By our act, however, we could give the FTC some additional powers that would make the implementation more effective.

Mr. YOUNGER. Can you point out in this bill where that would be accomplished?

Mr. PATTEN. I don't have a copy of the bill in front of me.

Now I have received one. Thank you.

I think we are well aware that the great value of our bill is in the enforcement feature, which would be more effective under this bill than under current law.

Mr. Younger, it is true that the first four chapters of this bill are already law.

Mr. YOUNGER. Then it is not necessary to repeat them, in your opinion.

Mr. PATTEN. If you are going to talk about chapter 5, it will take us a good deal of time. I have some reservations about certain sections of chapter 5.

Mr. YOUNGER. Thank you.

The CHAIRMAN. Are there any further questions?

If not, thank you very much.

Mr. PATTEN. I thank the chairman.

The CHAIRMAN. At this time we will hear our colleague from Ohio, Hon. Charles Vanik, author of a similar bill, H.R. 14498.

STATEMENT OF HON. CHARLES A. VANIK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. VANIK. Mr. Chairman, I appreciate very much this opportunity to appear in behalf of legislation which your committee is currently considering on truth in packaging.

I have introduced a bill substantially like the legislation currently being considered by your committee.

As a Member of Congress, I have considered it my duty to carefully study consumer prices, packaging, and the quality standards of merchandise.

The case for uniform packaging has been substantially established. It seems to me that this requirement would impose no extraordinary burden on the producer of merchandise, at least no burden he should not be expected to assume. There is a place in our competitive system for fair and decent competition in merchandising. There is no place for merchandising deceit and fraud, such as results from the variables in packaging and misleading statements as to content and weight. There is room for artistry in packaging without fraud.

While I support the legislation which is before the committee, I would like to direct the committee's attention to those areas not covered by this legislation.

First of all, it seems to me that the name of the manufacturer should be required to be printed on the label of every product that is produced. Today there are vast quantities of items which are not identifiable, as to the manufacturer. The use of brand names of unmarked quality or origin should not be countenanced.

Another critical area not covered by this proposed legislation relates to the packaging of fresh meats and poultry. Recently, I have been distressed by the skyrocketing prices and the concurrent deterioration in the quality of bacon. I was shocked to discover that there is no minimum standard provided to determine what constitutes bacon and what constitutes compressed fat and water. The only standards which exist apply to Government procurement which provides that the fat content in bacon shall not exceed 68 percent, the sale content shall not exceed 2½ percent, while the moisture content 24.2 percent. Thus, Federal purchase standards provide for no less than 5.3 percent lean meat in bacon. The average consumer is generally provided with bacon far below these Federal purchase standards. At the current prices for bacon, the consumer is paying $14 to $16 per pound for the lean meat values in bacon—America's most expensive food.

It therefore seems to me that legislation on packaging should also cover this vital area of meat marketing. The processor should be

required to indicate on the package the fat and water content of meat and most certainly the pure meat content. The same packaging and labeling requirements should be required in all other meats where the fat and water contents vary significantly.

It is my hope, Mr. Chairman, that the legislation which your committee considers today is the beginning of truth in packaging, labeling, and quality statements on food and other items purchased by the consumer. Our efforts should be directed toward giving the consumer a decent break at the marketplace. This should not disturb truly competitive forces in our economy, which should begin to compete on the basis of truth in quantity and truth in standards of quality.

The CHAIRMAN. Thank you Mr. Vanik. If there are no questions we shall proceed by hearing next our colleague from New York, the Honorable Leonard Farbstein.

STATEMENT OF HON. LEONARD FARBSTEIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. FARBSTEIN. Mr. Chairman, on January 4 of last year, I introduced into the House of Representatives a truth-in-packaging bill, H.R. 993.

Extensive hearings on packaging and labeling, with particular reference to foods and household supplies, have revealed gross abuses of good business practices. I believe that consumer protection legislation is urgently needed for the following three major reasons.

First of all, the consumer is the pivot of our modern capitalistic system. As that great apostle of free competitive capitalism, Adam Smith said, "consumption is the sole end and purpose of all production."

Informed demand by consumers is theoretically, at least, the force that directs production into appropriate channels.

But how can Mrs. Consumer make rational choices among various commodities in the marketplace, faced, as she is, by a maze of many different sizes and shapes of packages, cans, and bottles?

Author and critic, Marya Mannes, declares that housewives need to take "a computer, a slide rule, and an MIT graduate to market, to figure out what we're buying."

And as Sarah Newman, general secretary of the National Consumers League, relates, pointing to two bottles of all-purpose cleaners—

> They certainly look the same, but this one contains 1 quart, while the other, marked "giant size" contains only 1 pint, 12 ounces—12 percent less. . . ."

Furthermore, one labor official complained that "it is very difficult to make choices based on quality, quantity, and price, or even sometimes to know just what is being bought. Competition appears to be based less and less on price, quantity, and quality, and more and more on the sales pitch carried by packages, shapes, and sizes and by printed messages designed to persuade rather than to inform."

Second, pilfering of pounds by slick packaging techniques is downright dishonest. "Fraud and cheating are common practices in our prepackaged foods," charges Arch W. Troelstrup, chairman of the Consumer Education Department of Stephens College. These unethical practices by businessmen mount up to big money. Some sources claim that the American consumer is cheated to the tune of almost $20 million in grain products alone by such packaging methods.

Not only are consumers swindled, but in addition, the ethical businessman is penalized by such unfair marketing tactics. How can the honest dealer compete against trickery?

Third, the Johnson administration, supported by many of our lawmakers, is intensely concerned with poverty-poor segments of our society—those elements which have been bypassed by the general affluence in America.

To quote from the esteemed Senator Hart, leader of the campaign in the Senate for consumer protection, "truth-in-packaging legislation would save an average family about $250 a year." Mind you, this is equivalent to more than a 10-cent-an-hour raise for the average worker.

Let me now enumerate briefly the following six most frequent abuses in the field of packaging and labeling.

1. The widespread lack of uniformity in the location of the information, such as the quantity statement, that is required by law to appear on the packages.
2. The lack of reasonable and efficient standardization of package sizes.
3. The use of such misleading qualifying terms as "jumbo," "giant," "full," and other.
4. The smallness of type and the lack of contrast in colors.
5. The use of packages and containers in designs that make the package appear to be larger than its actual contents justify.
6. The practice of marking a package "cents off" when all too frequently such offers represent no actual price reductions.

My bill would correct these abuses by adding a new section to the Clayton Antitrust Act prohibiting unfair and deceptive packaging and labeling on certain consumable commodities. The measure would—

Require that net weight or net content statements or both be stated on the front panel of packages and labels.

Establish minimum standards regarding the location and prominence of net weight or contents statements.

Establish minimum standards regarding type size and face in which weight or content statements are printed.

Prohibit qualifying words or phrases regarding net weight or content.

Prohibit the printing upon packages by the packager or distributor of information implying that the product is offered for sale at a price below the customary retail price or that a price advantage is being accorded to the purchaser because of the size or quantity of the package. This section would not apply to the ultimate retailer.

Prohibit the use of deceptive pictures or illustrations on packages or labels.

My bill would also grant authority to the Food and Drug Administration to establish industrywide regulations to achieve the measure's objectives where food, drugs, and cosmetics are concerned; the Federal Trade Commission would have jurisdiction in other areas.

Such regulations would:

Establish reasonable weights or quantities in which a commodity can be sold.

Prevent the sale of a commodity in a package whose size, shape, or proportions may deceive purchasers as to the weight or the quantity of the product within the package.

Establish standards of size terminology such as "small," "medium," or "large."

Establish serving standards.

Establish standards to designate the quantitative contents of a package where net weight or number is not meaningful.

Require that sufficient information about the ingredients or composition be displayed prominantly on the package or label, with the exception of trade secrets.

Those who oppose truth-in-packaging legislation argue that only more vigorous administration of present laws is necessary. I disagree. It is true that several Federal agencies, such as the Federal Trade Commission, the Food and Drug Administration, the U.S. Department of Agriculture, the Bureau of Weights and Measures, and others, do have jurisdiction over consumer goods which are shipped in interstate commerce but they have limited and fragmented authority.

Now ladies and gentlemen, President Johnson envisages the Great Society, in which the ravages of poverty will be wiped out. Many of us here in the Congress earnestly share with him his hopes and plans for realization of this boldly conceived new order.

But let me ask you two questions. Shouldn't the American consumer, therefore, assume a role of prime importance in a chart for the Great Society? Shouldn't a consumer protection measure rate a high priority on the list of must legislation designed to implement this brave new world?

I say "Yes." The responsibility I bear to my district could dictate no other answer. In my district there are many people whose economic plight has been a focus for the antipoverty program. Surely they are least able to afford deceptive packaging. Moreover, there are many who receive various forms of relief—they can least afford to be misled by confusing labels.

I say that to protect the consumer against confusion and abuses in packaging and labeling, to protect the honest businessman against unfair marketing techniques and to place much-needed funds in the pockets of the average consumer, we must delay no longer in passing a truth-in-packaging law. Therefore, I urge immediate approval of my bill, H.R. 993, by this committee.

The CHAIRMAN. Thank you for your views, Mr. Farbstein.

Mr. FARBSTEIN. Thank you for the opportunity, Mr. Chairman.

The CHAIRMAN. If there are no questions we shall hear next the testimony of our colleague from Massachusetts, the Honorable Thomas O'Neill. You may proceed Mr. O'Neill.

STATEMENT OF HON. THOMAS P. O'NEILL, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. O'NEILL. Mr. Chairman, it is an honor and a privilege to testify before this committee in behalf of legislation I consider long awaited and long overdue. I speak in favor of H.R. 15708, companion bills, and other legislation of this nature.

These proposed measures are known as Fair Packaging and Labeling Acts and popularly called truth in packaging. The names are important. The legislation being considered today would protect the consumer against unfair practices in packaging and labeling. It would end misleading and deceptive methods currently being used in the packaging and labeling of consumer products. The fair packaging and labeling legislation pending before this committee would require manufacturers to put accurate and visible information on packages describing the nature and quantity of their contents. It would also prevent the use of words to describe amounts, if those words were misleading or false.

The legislation does not introduce nor require any unnecessary or extraneous regulations on free enterprise; it only insures that fair practices will prevail.

This fair packaging legislation was spurred by thousands of letters from thousands of housewives all over the country who complained about packaging and labeling practices. These housewives complained because they were unable to be proficient comparison shoppers. They wrote that they could not make correct price comparisons because the information about contents of packages was not complete nor clear.

The confusion created by many of these "accepted" business practices make good comparisons impossible. There are over 8,000 items in the average supermarket today. The average shopper makes hundreds of decisions every time she goes shopping for her family. She cannot make the best decisions if she is deceived by the information presented on the package.

There are several practices which make it impossible for a shopper to choose the least expensive items. The number of items of course makes it difficult, but that in itself would not preclude correct decisions. One of the biggest obstacles to comparison shopping is the unreasonable weights and measures used in packaging products.

Products formerly packaged in even pounds or ounces are now packaged in odd sizes such as 14¼ ounces, at the same price as was previously charged for a full pound. This sleight of hand would be successful with all but the most suspicious shopper, and what busy housewife has the time to carry around lists of weights and measures so that she can tell when a product has been changed from one day to the next?

The use of qualifying words in the description of contents is also misleading. Calling a quart of soda a "large quart" implies that there is more soda than in an ordinary quart; this is not so. A quart is a quart no matter how it is described. This bill would end such practices

This legislation would also require front-panel content labeling so that the contents could be readily identified as to quantity and ingredients. This would put an end to content labeling that complies with the letter and not the spirit of the law. There would be no more labeling on hidden or obscured parts of a package.

Another common practice that would be eliminated by this legislation is the deceptive use of the word "servings." There have been many cases of a package guaranteeing six or eight servings, that when cooked or baked only provided three or four servings of a reasonable amount. If the housewife can't trust the information on the package

how can she judge how much of a product she should buy? There is no other recourse except trying every product and then judging.

Much of the confusion created by these common practices may be unintentional and the practices themselves may be thoughtless rather than contrived to trick the buyer. But when does confusion created by what are now "accepted" business practices become deceit? There are too many common practices that cannot be justified by the phrase, "It's just business as usual." There are too many practices which appear to be deliberate attempts to mislead and trick the consumer.

One of these is the well-known "cents off" approach. The manufacturer produces an item already marked so many cents off. However, he has no control over the price of the article which is determined by the retailer. Quite often the price is the exact same as without the cents-off deal, yet the buyer is tricked by outright deceptive practices.

Another method is to package an "economy size" container. This package may have twice the amount of a smaller package but costs more than twice as much; or the "economy" package costs less than two smaller packages, but it also has less content than two smaller packages. All of these "bargains" appear to save the buyer money, but none of them do.

One of the worst abuses of the free marketing system has been in false claims of content or ingredients. We are all familiar with canned fruit or vegetables that are half liquid and half fruit. Equally misleading are pictures or words on a package which imply that ingredients are contained in the package which are not.

We are all familiar with these practices, but perhaps we are not conscious enough of the implications of such practices.

There comes a point when almost every good thing, in excess, becomes bad. Too much ice cream makes a little boy sick; too much sun brings a not too comfortable sunburn. Perhaps we have been allowing manufacturers too much freedom in their packaging and labeling practices. When this freedom works to the detriment of the country as a whole—and that is exactly what it does—then it must be curbed, like a little boy's intake of ice cream.

I say it harms the country as a whole for a very definite reason. When anything hurts the American family it hurts the society as a whole. This is not a dramatic overstatement of the problem. Every housewife is at the mercy of the integrity of the manufacturer. She depends upon him to fairly and truthfully inform her about the contents of his packaged product. Without trying each of 8,000 products found in the average supermarket, the housewife has no other alternative except the package itself. If she could know that every statement on the package were true, that the statements on the package did not imply contents or savings that weren't really there, there would be no need for this bill. But the housewife can't be sure.

Opponents of this bill have tried to interpret it as a slight against the American housewife. This is not a very neat bit of subtlety. The American housewife is the smartest shopper in the world. She can rarely if ever, be fooled. Yet packaging and labeling practices across the country have often made it impossible for the intelligent shopper to find the best buy unless she carries around a magnifying glass, a note pad, and a slide rule.

As an example of the tremendous obstacles in the path of comparison shoppers, I would like to insert at this point in the record an article entitled "Sharp Shoppers Miss Low Cost 43 Percent of Time." (See exhibit A.)

This article describes an experiment conducted by Monroe Friedman, professor of psychology at Eastern Michigan University, with the aid of the American Association of University Women. Professor Friedman directed 33 young, university-graduate homemakers to make the least expensive purchase of 20 supermarket items. They took three times the amount of time the average shopper takes in making her purchases. These intelligent, skillful, economy-minded young women had to make 660 decisions in the course of buying 20 ordinary household products. Of these decisions, 43 percent were wrong. Of 660 items, over 280 were purchased at more than the lowest price. Because of odd-size packages and misleading labeling, it was impossible to choose correctly.

The proposed legislation would end practices that make efficient comparison shopping impossible. This would aid the consumer definitely, but it would also aid the honest businessman who is caught in the competitive merry-go-round of "accepted" business practices. It would establish basic ethical principles for business. The mandatory and discretionary provisions would end the penalization of the honest businessman who has to compete against manufacturers who do not share his sense of ethics. It is now impossible to compete fairly against firms that package their products in shapes or sizes that exaggerate the size of the product or have false claims printed on the package.

The end of misleading and deceptive packaging and labeling would perpetuate rather than diminish fair and free enterprise. The legal uncertainty which allows unfair practice to prevail would be ended by this legislation; it is important that we pass it.

EXHIBIT A

SHARP SHOPPERS MISS LOW COST 43% OF TIME

SAN FRANCISCO (C&S).—Thirty-three young Michigan homemakers tried recently to select the lowest-priced package of 20 supermarket products—and failed 43% of the time.

As a result of this confusion, they spent 9% more than if they'd been able to select the lowest-cost package. Their mistakes on these 20 items alone would cost them $11 a year—$11 they could have spent on other goods and services for their families.

These mistakes are mainly the result of packaging practices that tend to confuse consumers rather than help them choose wisely.

These are the main conclusions of a study Esther Peterson, special assistant to President Johnson, referred to December 10 in speaking here to the AFL–CIO Auxiliary.

Monroe Friedman, professor of psychology at Eastern Michigan University, asked the American Association of University Women volunteers to help him answer the question: "Within a reasonable time and without computing devices, can consumers select the package that offers the most for the money?"

Friedman recognized that price per-pound or per-pint isn't the only factor influencing each consumer's decision. It is, however, basic. Even if a consumer prefers Detergent A to Detergent Z, she still must be able to tell what her preference costs her.

She may find the smaller package easier to store on the cupboard shelf, but she must be able to tell what this convenience costs.

Friedman directed each of the 33 women to buy the same 20 products. These ranged from canned peaches to toothpaste. Except for meat, fresh fruits and

vegetables, dairy products, and bakery goods, these 20 products represent the whole range of packaged goods sold in supermarkets.

To select each of the 20 products, a shopper had one to four minutes, depending on the number of packages in that product category. She took 2.35 minutes, on the average—three times as much as the average shopper spends in reaching her decisions.

Because of their "considerable education" and their "strong interest in economy," Friedman said, they performed much better than the average shopper. Yet 43% of their 660 decisions were wrong!

None of them were able to choose the lowest-cost detergent. Only one chose the lowest-cost liquid bleach. Only three picked the best buy in paper towels. Only six figured which was the least expensive cola.

On the other hand, none of the 33 made a mistake in choosing granulated sugar or solid vegetable shortening. Sugar is sold in 1-, 5-, and 10-pound packages, and shortening comes in standard 1- and 3-pound cans.

Friedman noted two particular sources of confusion. In choosing paper towels, shoppers found sizes ranging from 7½ x 11- to 11 x 11-inches. Rolls varied from 75 to 200 towels, and they were packaged one or two to the package.

A second source was liquid bleach. For years manufacturers have made a standard product. Under any brand, bleach has been a 5¼% concentrative of sodium hypochlorite, dissolved in water. Just before Friedman undertook his study, however, one nationally advertised brand dropped its concentration to 3¼%—without cutting the price—and announced the change in tiny print on the back label.

Because these and other packaging practices thwarted the shoppers in their pursuit of "the most for the money," they paid 9% more for these 20 products than if they'd been able to select the least expensive package in each category.

From various studies of U.S. spending patterns, Friedman figured the average family spends $121 a year for these 20 products. That's a loss of $11 a year.

Over-all, how much does this packaging confusion cost the typical U.S. family? Friedman doesn't say. However, the average family spends $1,500 a year in supermarkets, and 60% of this is spent for packaged products similar to the 20 items covered in Friedman's survey.

This puts the price of confusion at $81 per family per year—or a $4½-billion drain on living costs every year. And that assumes all shoppers are as skilled and zealous in pursuit of the least expensive package as these 33 young university graduates.—DWA

The CHAIRMAN. Thank you for your testimony Mr. O'Neill.

Mr. O'NEILL. Thank you for the opportunity Mr. Chairman.

The CHAIRMAN. The next witness is our colleague from Iowa, the Honorable John Schmidhauser. Mr. Schmidhauser, we will be glad to hear you at this time.

STATEMENT OF HON. JOHN R. SCHMIDHAUSER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Mr. SCHMIDHAUSER. Mr. Chairman, I have come before this committee to present my views concerning the problem of unfair or deceptive methods of packaging or labeling consumer commodities. The legislation under consideration today, H.R. 16059, I have introduced in an effort to cope with this problem. Not only will my bill more effectively curb deceptive labeling practices, but it will also help consumers stretch their dollars and thereby increase the total purchasing power of our entire economy.

Need for this legislation has been clearly demonstrated by studies which have shown that consumers have great difficulties in coping with modern packaging devices. When one recalls that food purchases account for approximately 25 percent of total consumer expenditures, the significance of these labeling techniques becomes obvious. This

problem is, of course, far more important to low-income families, for they spend a proportionately higher amount of their total income on food purchases than do more affluent families. Mr. Chairman, I would like to take this opportunity to say that as the father of six children, I am only too well aware of the bewildering maze of different sizes and weights of consumer products both my wife and I face now on the market. This problem of fair packaging techniques has been thoroughly investigated by numerous reputable groups. In a recent study conducted by Eastern Michigan University, 33 young married women were instructed to select the most economical package for each of 20 products on sale at a selected supermarket. Time limits set for this experiment corresponded to the amount of time that an average housewife spends shopping. According to the analysis of the results of this study, these shoppers made mistakes in 43 percent of the cases. This represents, Mr. Chairman, a loss of 9 cents on every dollar spent. The study stressed that these results could not be attributed to any other factor than the differences in packages. It also noted that the shoppers selected not only had a strong interest in making the most economical purchases, but being college graduates, they could have been expected to make intelligent decisions. Furthermore, the analysis stated that other shoppers generally, and less educated individuals, in particular, would not perform as well as they did. It is this consumer, the less educated one, the indiscriminate one, as well as the informed buyer, Mr. Chairman, that H.R. 16059 is designed to protect.

H.R. 16059, briefly, would first require that "packages and labels should enable consumers to obtain accurate information as to the quantity of the contents and facilitate price comparisons." It would, secondly, prohibit unfair and deceptive packaging and labeling. Thirdly, authority to promulgate this legislation would be vested in the Secretary of Health, Education, and Welfare with respect to any consumer commodity which is a food, drug device, or cosmetic and the Federal Trade Commission with respect to any other consumer commodity. Fourthly, and last, this act will provide for a uniform national policy for it would supersede any and all laws of the State or political subdivisions thereof insofar as they differ from the requirements of section 4 of the act.

It is my firm belief that approval of a consumer's "bill of rights," the right to safety, the right to be informed, and the right to choose, should be one of the major tasks of the 89th Congress.

The CHAIRMAN. Are there any questions? If not, we thank you for your testimony, Mr. Schmidhauser.

Mr. SCHMIDHAUSER. Thank you, Mr. Chairman.

The CHAIRMAN. We have several other Members to hear so our next witness will be the Honorable Henry Helstoski, sponsor of H.R. 15949.

STATEMENT OF HON. HENRY HELSTOSKI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. HELSTOSKI. Mr. Chairman, and distinguished members of the committee, thank you for the privilege and opportunity to make my statement on behalf of my bill, H.R. 15949, legislation to regulate interstate and foreign commerce by preventing the use of unfair or

deceptive methods of packaging or labeling of certain consumer commodities distributed in such commerce.

In taking action on this proposed legislation we are following the President's recommendation, when in his state of the Union message he said:

> We must also act to prevent the deception of the American consumer, requiring *all* packages to state clearly and truthfully their contents.

The matter of truth in the packaging, labeling, and pricing of products in the American market has been the subject of controversy in recent years. And, much of the current attention comes from the fact that many bills have been introduced on this subject, expression on this subject through numerous newspaper articles and in popular magazine pieces read by the American housewife.

The truth in packaging legislation can be based upon three basic assumptions which can be listed as follows:

1. That a state of consumer confusion exists in this Nation with regard to the true contents and prices of many common retail products.

2. This confusion has resulted from improper packaging and labeling practices by American manufacturers and packagers of consumer products.

3. The remedy for these improper practices is a change in the Federal law by which greater authority would be given to proper Federal authorities in the regulation of packaging and labeling practices.

Present packaging practices which cause the greatest confusion in the supermarkets of today can be itemized in the following.

Poorly presented information concerning both the nature of the contents and the quantity of the contents. These deficiencies in display may take on many forms; for example, too small print, a weak contrast between the printed information and the background print, and failure to present information in a prominent location on the package.

There is much misleading information concerning both the nature of the contents and the quantity of contents. A typical example of the latter practice is "the giant half quart" instead of simply saying "full pint."

Concerning prices, there is much misleading information in the often cited "cents off" specials. Many consumer groups claim that the supermarket managers do not acknowledge these "specials" in their pricing policies.

Unnatural numbers to indicate quantity are also a factor in the packaging field. The use of fractional or mixed numbers instead of whole numbers tend to confuse the American consumer and complicate any effort to determine the truth in the "price per ounce or unit" structure of merchandising of packaged goods.

Mr. Chairman, this committee is gathered here today to protect the consumers from false advertising and other deceptive practices which would victimize them in the marketplace. Because the consumer's voice is sometimes weak and inarticulate, we must be particularly attentive to their problems.

I might say that complaints of unfair packaging come not only from the consumers, they come also from businessmen who would prefer to

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operate on a higher level of ethics than the level to which they are being forced by local competition.

The terms "unfair" and "deceptive" encompass all lines of business, and all types of practices which may be detrimental to competition or injurious to consumers. This language includes, but is not limited to, practices such as "bait" advertising, fictitious pricing, oral misrepresentation by house-to-house salesmen, misbranding, sale of reconditioned products as new, false claims as to quality or performance of products, agreements among competitiors to fix prices to eliminate a competitor.

Mr. Chairman, some people would have us believe that the truth-in-packaging bill before this committee today is not of great interest to the American consumer. To me this argument strikes me as inadequate, spurious, and not having any validity.

I cannot accept the argument that the housewife or shopper, who would be most directly affected by this legislation, does not want or need this bill. The housewife and frequent shopper has for too long been forced to accept the confusion of package sizes, serving portions, jumbo and superjumbo designations. This need not and should not be the case.

The bills before this committee will enable the consumer to make a valid decision in buying many commodities, without the necessity of being mental giants in mathematics to determine solid values.

The intent of the manufacturers is not the issue at hand this morning. The problem is the confusion which results from current packaging practices. Since the inception of this type of legislation in the Congress, some years ago, manufacturers have made some changes in their packaging practices, but they have not gone far enough. The legislation at hand will establish a basic procedure for packaging and labeling.

Mr. Chairman, I believe that my bill, H.R. 15949, is a good bill, a sound bill, a workable bill and one which will solve a problem in a responsible way and sensible fashion. I think that, as responsible legislators, it is our duty to look at the contents of the legislative packages presented to us and exercise our judgement with respect to the merits of the contents, and not by avoiding responsibility by concerning ourselves with what the bills may be called by label. The contents of this bill are desirable and appropriate. And, the truth-in-packaging label is in the interest of the American consumer.

Mr. Chairman, and gentlemen of the committee, I thank you for the opportunity in presenting my story in support of the legislation your committee has before it today.

The CHAIRMAN. Thank you, Mr. Helstoski. Are there any questions? If not, we shall hear next from Congressman McGrath of New Jersey.

STATEMENT OF HON. THOMAS C. McGRATH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. MCGRATH. Mr. Chairman, in April 1965 I polled the Second District of New Jersey, which I have the honor to represent, and one of the questions I asked was: "Do you favor truth-in-packaging legislation requiring use of standard weights and measures in merchan-

dising?" Among 7,000 replies I received to this questionnaire, 97 percent of my constituents favored such legislation.

As a result of this mandate, I introduced H.R. 8475, which is one of the bills this hearing is concerned with, and I wish to speak on its behalf.

In addition to the overwhelming vote in favor of which "truth-in-packing" legislation among those of New Jersey's Second District on my poll, I found that many of those who replied penned notations in regard to this important matter. For instance, one woman asked, "When a package says '7 cents off!' I want to know what it's off of." Another asked if legislation can correct a situation where cans of peaches, for instance, achieve the weight listed on the can's label by the addition of peach juice instead of portions of peaches. There were other similar questions and statements, all indicating the importance of such legislation to the consumer. Consumer, of course, is a synonym for citizen, since nearly every American is a consumer.

When a similar bill—S. 985—was introduced in the Senate, hearings were held during which I noted some of the statements made by opponents of this legislation. Most of these were in the area of consumer responsibility. It was testified that present regulations are sufficient—this despite the fact that thousands of letters have been and are still being received by Members of both Houses detailing personal experiences with insufficient packaging and labeling regulations. If the present laws were adequate, Mr. Chairman, the practices which the bills on which this hearing is being conducted would not persist.

I have studied some of the deceptive devices which present regulations permit. Illustrations on packages and labels are a case in point. The contents of a package containing cherry pie, for instance, depicts the contents in brilliant clarity and crammed full of cherries. However, removal of the gay wrapper discloses a thin serving with perhaps a third the number of cherries shown on the wrapper. Consumers write to me and to other Congressmen that they find abuses in the size and shape of packages which suggest more content than actually is inside. Here are some other abuses I noted:

Misleading the consumer with complicated and even false claims regarding the nutritive value of vitamins, minerals, and even calorie content.

Using misleading terms such as "tall," "giant," "king size," "economy size," "extra large," "super," and other similar labeling.

Using language the consumer cannot be expected to understand; words like "nordihydroguaiaretic acid," "butylated hydroxytoluene," and other chemical names for food additives and preservatives.

And here are a few specific complaints received by investigators during a survey held in Michigan:

A roll-on deodorant in a box twice the size required for the product, which was labeled, "Giant 1⅛ fluid oz."

Canned pork and beans, very heavy on the beans and equally light on the pork, with a label which gave reason to expect a generous helping of meat.

Hand or bath soaps, labeled "bath size," with many variations of size and no indication of weight.

Two hair spray preparations each containing 15 ounces; one marked "Giant $2 value reduced to 98¢" and the other marked "Special $1.09."

Chocolate peppermint cookies with the contents revealing artificial flavoring and failing to mention peppermint.

Pineapple-filled oatmeal cookies without filling and without pineapple.

Strawberry gelatin dessert without strawberries, although containing artificial flavoring and bits of other fruits.

The "fast count" is another gimmick consumers are confronted with, according to mine and other Congressmen's mail. A new modern package of paper napkins may contain 80 napkins instead of the 100 in the old box of the same size. Air makes up the difference in many cases. The new count is marked in small type somewhere out of sight, but few customers bother to look and those who do rarely remember how many napkins were offered at the old price in the old container.

The practice of "packaging air" was discussed in a recent congressional hearing. It was testified that it costs money to box air—to put the box containing air in a larger box for shipment and move the shipments of boxed air around the country. Boxed air is anything but free.

Mr. Chairman, experts in this field have estimated that the American consumer spends 11 cents more out of each shopping dollar than he needs to, and this is due to cheating and misleading practices which I hope a "truth-in-packaging" bill will bring to an abrupt end.

In the Senate committee hearings, officials of the National Consumers League, the National Federation of Independent Businessmen, and the Federation of Homemakers urged prompt passage of a "truth-in-packaging" bill.

Yet, in the same hearings, representatives of the National Association of Manufacturers and the U.S. Chamber of Commerce contended that the proposed measure would stifle competition and that purchasers are content with the status quo. They even showed public opinion polls to "prove" that the buyer is well pleased with present packaging and labeling methods and thinks they have added a lot to the joys and pleasures of living.

They reported that 84 percent of consumers are satisfied with food product pictures on the labels, that 83 percent are satisfied with the information the packages and labels furnish, that 83 percent are satisfied with the shapes of packages, and that 74 percent are even satisfied with the fullness of the packages.

How different this poll is from my own poll which indicated that, for whatever reasons, 97 percent of those whom I heard from favored an improved "truth-in-packaging" law.

Mr. Chairman, on behalf of my constituents and as a consumer myself, I urge favorable consideration of H.R. 8475 and the other bills with similar intent and hope your committee will report a "truth-in-packaging" bill to the House so that the consumers of our Nation may have much-needed additional protection against nefarious practices which are rampant today.

The CHAIRMAN. Thank you for your views Mr. McGrath. Has Mr. Rosenthal arrived?

If not, we will proceed with our panel: Hon. John T. Connor, Secretary of the Department of Commerce; Hon. Paul Rand Dixon,

Chairman, Federal Trade Commission; Hon. Wilbur J. Cohen, Under Secretary, Department of Health, Education, and Welfare; and Mrs. Esther Peterson, Special Assistant to the President for Consumer Affairs.

STATEMENTS BY A PANEL CONSISTING OF HON. JOHN T. CONNOR, SECRETARY OF COMMERCE; HON. PAUL RAND DIXON, CHAIRMAN, FEDERAL TRADE COMMISSION; HON. WILBUR J. COHEN, UNDER SECRETARY, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE; AND MRS. ESTHER PETERSON, SPECIAL ASSISTANT TO THE PRESIDENT FOR CONSUMER AFFAIRS

The CHAIRMAN. We are happy to have this distinguished panel before us to give us the benefit of your views. You might be involved in some intensive questioning. I will warn you of that now.

I understand, Secretary Connor, that you have an engagement and you have to leave at 12 o'clock.

I want to let the committee know this so that you can depart, but return for questioning at a later time.

Secretary CONNOR. That is correct, Mr. Chairman.

The CHAIRMAN. You are the leadoff witness, I understand.

Secretary CONNOR. Yes, Mr. Chairman. We thought I might start the testimony and then Mr. Dixon on behalf of the Federal Trade Commission, Mr. Cohen for the Department of Health, Education, and Welfare, and then Mrs. Peterson, who will give more detailed testimony concerning some of the consumer problems that are involved in the administration proposal.

We appreciate the willingness of the committee to wait until all four have spoken before answering questions, because our testimony intertwines. I think you will find that some of the questions that you might have, say, after my testimony will be covered by the testimony of some of the other witnesses.

We appreciate that very much, Mr. Chairman.

The CHAIRMAN. You may proceed.

Secretary CONNOR. Mr. Chairman and members of the committee: I appreciate this opportunity to appear before your committee to express my views on H.R. 15440 and S. 985. Both of these very similar measures are intended to enable the public to obtain more complete and meaningful information from the labels and packages of consumer commodities.

This legislation would also promote sound packaging practices, assisting the consumer in making price and content comparisons and benefiting the overwhelming majority of producers of consumer commodities who already treat the public fairly in their labeling and packaging practices.

The Department of Commerce strongly recommends the passage of S. 985 in the form in which it passed the Senate. This bill is in line with the goals set forth by President Johnson in his message to Congress on consumer legislation in March in which he urged Congress to enact fair packaging and labeling legislation.

S. 985 is important to all Americans as consumers. When the American housewife goes to the marketplace, she should be able to

quickly and easily determine the measure or amount in the container and to compare its price with the prices of competitive products.

This bill, which is intended to aid the consumer, should also work to the advantage of the manufacturer. Without question, most businessmen employ high standards. They should be able to count on their competitors also adhering to high standards. There is a common interest between Americans as producers and Americans as consumers.

S. 985 would require regulations to insure that labels of packaged consumer commodities bear adequate information as to contents of the packages. This information would include identity of the commodity and its manufacturer, and a statement of net quantity of contents expressed in ounces or fractions there, or in whole units of pounds, pints, or quarts.

This net quantity statement would be required to be printed in a prominent and uniform manner as to type size and location on the label, and could not be qualified by descriptive words or phrases. However, nondeceptive descriptions would be permitted elsewhere on the label. The bill also provides for exceptions to the mandatory regulations to cover those situations where compliance either is impracticable or unnecessary for consumer protection.

In addition to the mandatory regulations, which apply to all consumer commodities, S. 985 also provides discretionary authority for regulations on a commodity-by-commodity basis.

These regulations would be promulgated when necessary to prevent deception or to facilitate price comparison. They would concern statements of ingredients, cents-off sales, standards defining size descriptions relating to quantity such as "small," "medium," or "large," and serving standards.

Fears have been expressed that the promulgating agencies could be unreasonable in exercising discretionary authority. This is, of course, an argument that could logically be made about every bill. But it should be noted that these regulations cannot arbitrarily be imposed. They must be based on public hearings, and opportunity for judicial review also is provided in the bill.

As I stated in my testimony last year before the Senate Commerce Committee, the Department of Commerce is hopeful that appropriate use would be made of its voluntary product standards program. This has been accomplished under section 5(d) of S. 985. If a voluntary standard on weights and quantities is published within the time prescribed in these bills, any regulations which are promulgated by the enforcing agencies, FTC and FDA, could not vary from the existing standard. Indeed, if there is compliance with the voluntary standard, there may be no need for regulation. In a very real sense, this is a form of self-regulation.

In any event, this bill will not permit arbitrary and unreasonable regulations regarding weights and quantities. The bill not only permits industry to participate in setting its own standards, but it explicitly requires that due regard must be given to cost, availability, materials, weights and measures customarily used, and competition.

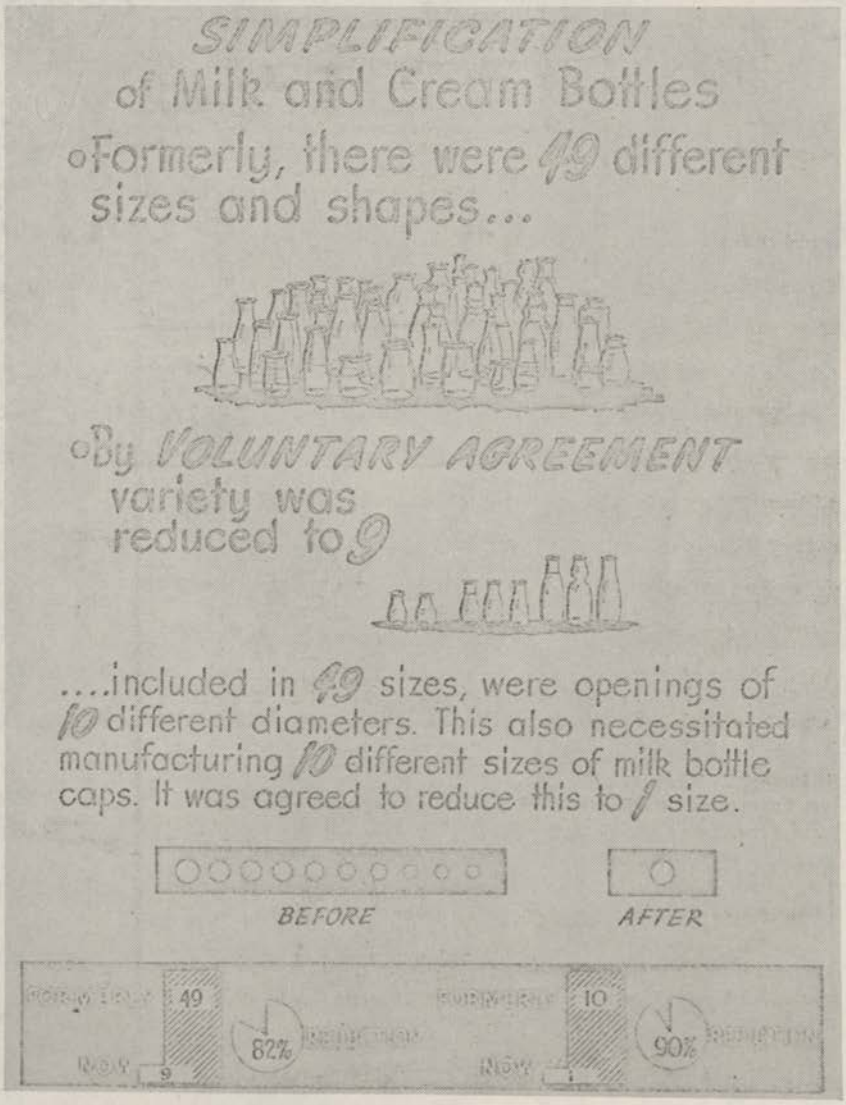
The argument that regulation of weights and quantities would create excessive industry costs assumes that such regulations would go far beyond the continuous changes already being made in this area by

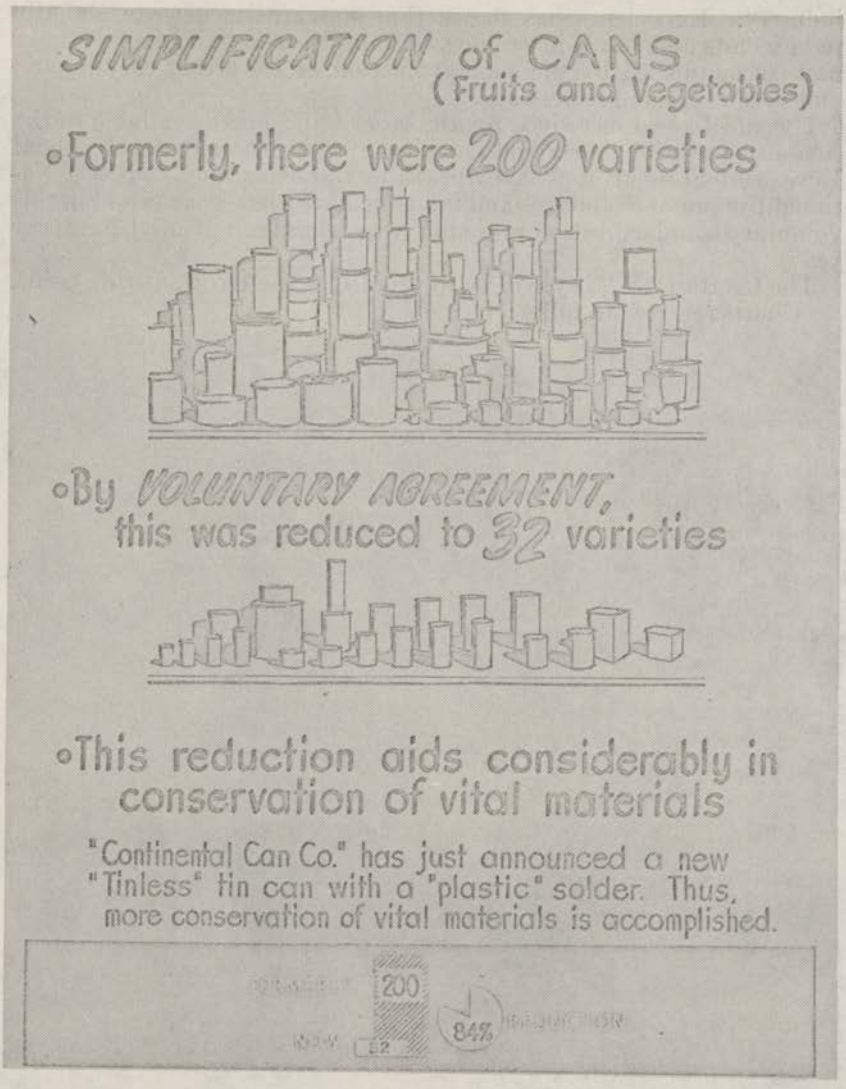
industry. Experience has shown that standardization can actually reduce costs and result in savings. Examples are savings which have been accomplished by the standardization of ice cream cartons and molds, can sizes and paper bags.

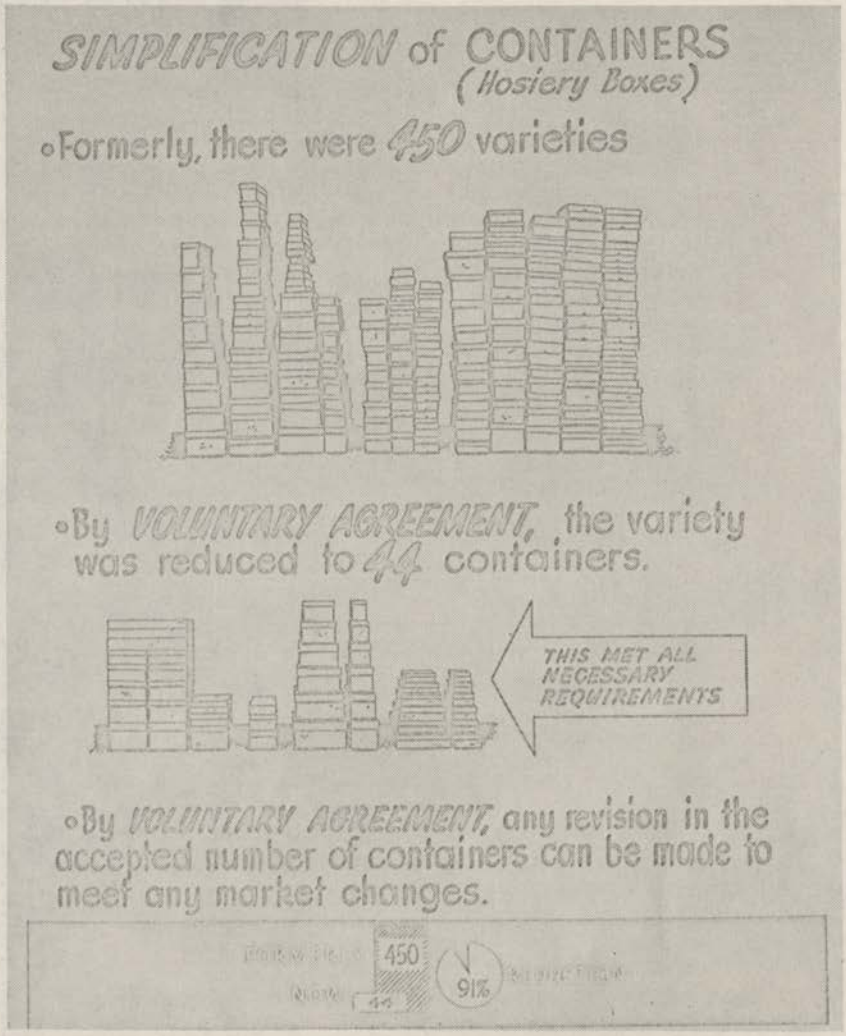
I would like to introduce for the record and make available to the committee several charts that have been put together by the National Bureau of Standards, which illustrates the experience that the National Bureau of Standards and industry have already achieved in this voluntary standardization procedure which has been in effect for many years.

The CHAIRMAN. They will be inserted into the record at this point.

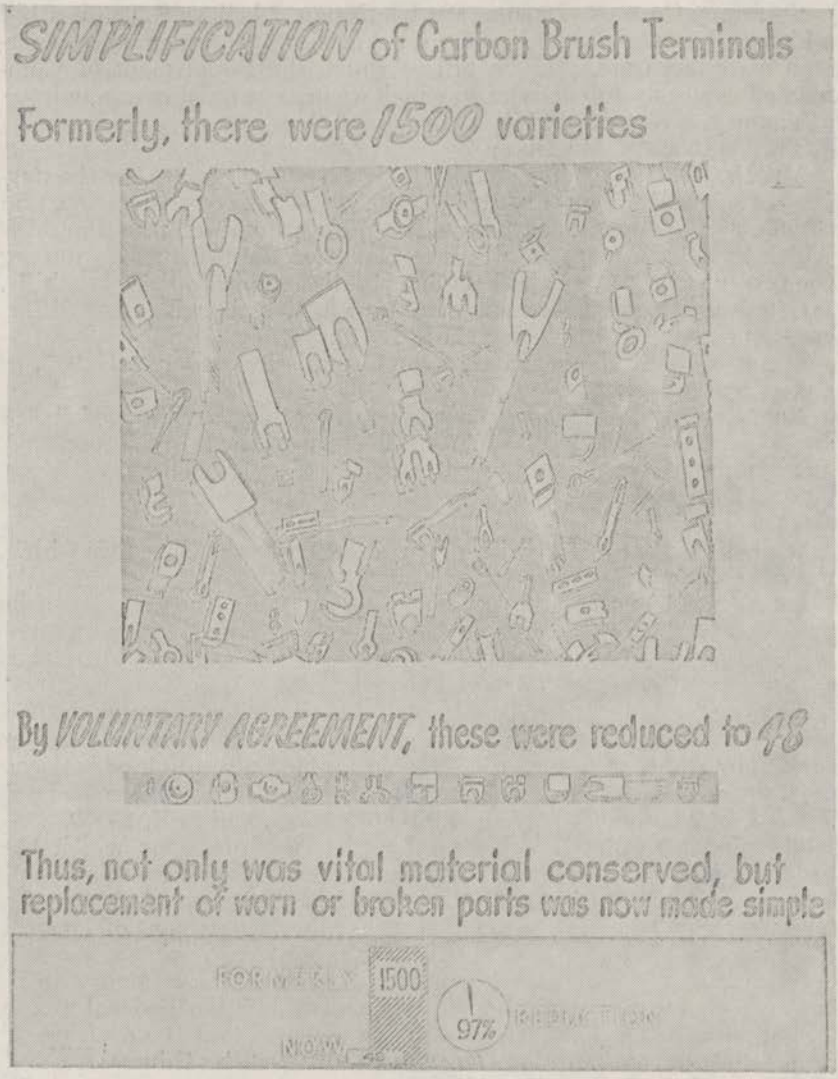
(Charts referred to follow:)




SIMPLIFICATION of CANS
(Fruits and Vegetables)
•Formerly, there were 200 varieties
•By VOLUNTARY AGREEMENT, this was reduced to 32 varieties
•This reduction aids considerably in conservation of vital materials
"Continental Can Co." has just announced a new "Tinless" tin can with a "plastic" solder. Thus, more conservation of vital materials is accomplished.
200
32
84%


SIMPLIFICATION of CONTAINERS
(Hosiery Boxes)
•Formerly, there were 450 varieties
•By VOLUNTARY AGREEMENT, the variety was reduced to 44 containers.
THIS MET ALL NECESSARY REQUIREMENTS
•By VOLUNTARY AGREEMENT, any revision in the accepted number of containers can be made to meet any market changes.
450
44
91%


SIMPLIFICATION
of Pipes, Ducts and Fittings
(WARM AIR AND AIR CONDITIONING)
Formerly, there were 5,580 varieties
PIPES
DUCTS
By VOLUNTARY AGREEMENT, this number was reduced to 1,225
Many manufacturers now make only one set of sizes. This allows distributor or dealer to install new system in one day. Thus customer gets better service and lower prices.
5,580
1,225
78%


SIMPLIFICATION of Carbon Brush Terminals
Formerly, there were 1500 varieties
By VOLUNTARY AGREEMENT, these were reduced to 18
Thus, not only was vital material conserved, but replacement of worn or broken parts was now made simple
1500
97%

Secretary CONNOR. In sum, Mr. Chairman, I believe S. 985 is a bill which will create mutual benefits for American consumers and American manufacturers. It is a bill to which the Department of Commerce vigorously subscribes and which we urge be quickly enacted.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Mr. Dixon?

Mr. DIXON. Mr. Chairman, although these hearings are for the purpose of discussing not only H.R. 15440, 89th Congress, 2d session, and S. 985, 89th Congress, 1st session, but also a number of similar bills which have been introduced in the House of Representatives during the present Congress, I shall confine my discussions to these two bills.

S. 985, as it passed the Senate on June 9, 1966, is, with some differences, substantially the same as H.R. 15440.

May I state at the outset that the Commission endorses S. 985, as passed by the Senate.

No attempt is here made to discuss any specific provisions of S. 985 and H.R. 15440 or any provisions contained in the other House bills. You undoubtedly are familiar with such provisions and other witnesses before the committee, I am certain, will have comments regarding them.

We believe that S. 985 will offer protection to the consumer which, under existing law, is not afforded to him.

I have not had the opportunity to discuss with this committee the proposed truth-in-packaging bill, but I have appeared, at the request of the Senate Committee on the Judiciary on three different occasions to discuss with them such proposed legislation.

At these hearings I, on behalf of the Commission, have advocated that the Commission should be designated as the agency to administer such a law and that such administration should not be divided between the Department of Health, Education, and Welfare and the Federal Trade Commission, as is provided in both S. 985 and H.R. 15440.

The Commission is of the opinion that the problems which the proposed legislation seeks to solve are in the area of economic deception and not in the protection of health and insurance of safety. In the latter field, there is no doubt but that the Department of Health, Educaion, and Welfare has considerable expertise.

In the realm of economic deception and problems associated with it, however, the agency with the greatest expertise is the Federal Trade Commission. For that reason, we have believed that the division of responsibility between the Department of Health, Education, and Welfare and the Federal Trade Commission whereby the greater bulk of the authority to issue regulations would be assigned to the Department, creates a somewhat anomalous situation.

Both bills in section 11 have specific provisions to the effect that nothing in them shall be construed as repealing, invalidating or superseding the Federal Trade Commission Act or any statute defined therein as an antitrust act (H.R. 15440 also provides that nothing contained in the act shall be construed as "otherwise adversely" affecting "the Federal Trade Commission Act * * *").

It is on the basis of these provisions, that I am assuming enactment of S. 985 will not in any way affect the jurisdiction of the Federal Trade Commission under existing law, and if this assumption is correct,

then such enactment should be an adjunct to, or a supplement to, the Federal Trade Commission Act and strengthen its effectiveness in protecting the consumer.

The goal of S. 985, as we interpret it, is primarily to enable the supermarket shopper to make an intelligent choice of products from a cost savings and a quality standpoint.

Section 5 of the Federal Trade Commission Act is directed toward the prevention of "unfair methods of competition" and "unfair or deceptive acts or practices" in commerce. Thus, in the absence of unfairness or deception, the Commission presently is not authorized to take action which would assure the shopper of being provided with sufficient information upon which to make meaningful and proper comparisons of goods in the supermarkets. Frequently the problem facing the shopper is one of chaos and confusion rather than deception.

All of us have had the experience of trying to determine whether we would save money by buying one "giant" or "family" size of a product rather than two packages of the same product in smaller sizes. For example, I am informed that recently a member of the Commission's staff sought to purchase for 88 cents a bottle of a certain mouthwash which according to the label contained 1 pint and 4 ounces. The clerk told him it would be cheaper for him to buy two of the smaller bottles of the same product which contained 14 ounces, for 98 cents. Of course, after some mathematical deductions on his part, he found the clerk was correct and so he purchased the two smaller bottles.

But why should a shopper be required to do this? It would have been much simpler for the larger package to state on its label that it contained 20 ounces so that he could compare this amount with the two smaller bottles containing 14 ounces each.

If in the example I have given, the bottles of mouthwash actually contained the amount specified on labels, there was no deception but there certainly was confusion. The subject bills are aimed at preventing such confusion.

Confusion and deception also arise out of cents-off labels. Many questions arise as to cents-off claims. What, for instance, is the price to which the cents-off statement applies? What legal means does the manufacturer have of guaranteeing that the cents-off has been, or will be, passed on to the consumer?

In this area of consumer purchases, the forces of competition do not always provide a sufficient safeguard for the consumer's interests. Our competitive economy, to be effective, proceeds on the assumption that consumers will have knowledge enabling them to make reasonably intelligent comparisons between competing products.

There does not appear to be any valid argument why the label on a consumer product should fail to disclose accurately in terms understandable to the consumer the nature of the product which is being offered for sale, how much is in the package, and the price. Also, there is no question but that consumers should be protected against packages which contain inordinate amounts of air or nonfunctional material. They should not be lured by fake "bargains," "cents off," "free deals," or "combination offers." They should not be confused by goods packaged in such miscellaneous sizes as to defy rational price comparisons.

Under existing law, with reference to consumer products, in order for the Commission to act there must be deception or misrepresentation in the packaging or labeling of the product, either pictorially or by other means. This includes the failure to disclose information on packages or labels, but the law is applicable only when the result is likely to be purchaser deception.

Because of this burden, the Commission has not found it feasible to issue orders requiring affirmative disclosures on packages of net contents or establishing reasonable quantities in which a commodity shall be distributed for retail sale, or defining what constitutes a "serving," or requiring labels to disclose information concerning product ingredients or composition.

With the exception of some instances involving the proper labeling of goods of foreign origin and those relating to deceptive pricing of various commodities by means of preticketing, the Commission, under the limited authority applicable to these practices granted by section 5 of the Federal Trade Commission Act, has issued relatively few cease-and-desist orders prohibiting deceptive packaging and labeling of consumer commodities.

In the instances where the Commission has proceeded, it has issued orders to require sellers of the commodities involved to cease offering them in containers or packages which are substantially larger in size or capacity than that required for packaging of the quantity of product contained therein (docket 3064, 25 FTC 937 (1937); docket 3732, 32 FTC 1014 (1941); docket 3729, 35 FTC 643 (1942); docket 5128, 39 FTC 188 (1944); docket 6580, 53 FTC 1174 (1957); and docket 8489, decided Dec. 24, 1963).

Additionally, it has prohibited packaging depictions which misrepresented the number of pieces contained in the package (docket C–690, decided Jan. 21, 1964).

And it has prohibited such practices as the use of a method of packaging insulating tape which gave a visually deceptive image of the amount of tape on the spool.

These, however, represent the extent to which the Commission has felt that it could go in this field under the Federal Trade Commission Act.

The Commission has been given specific authority by Congress to administer four labeling laws: the Wool Products Labeling Act, 1941; the Fur Products Labeling Act, 1952; the Flammable Fabrics Act, 1954; and the Textile Fiber Products Identification Act, 1960.

Gratifying results have been achieved from the enforcement of these laws in affording protection not only to consumers who purchase such products, but also to honest merchants and sellers.

The Wool Products Labeling Act covers the labeling of any product containing woolen fiber. It is the first act of this nature passed by Congress which provides for an affirmative act of labeling textile products. It covers both domestic and imported wool merchandise from the first manufacturing process applied to the wool until the wool is made into cloth and other end products.

Notable among the products covered would be men's, women's, and children's outer clothing, overcoats, jackets, mackinaws, skirts, slacks, sweaters, hosiery, wool hats, and even wool house slippers.

The Fur Products Labeling Act covers the labeling, invoicing, and advertising of fur products from the manufacturer right on through to their sale to consumers.

The Flammable Fabrics Act, effective in 1954, prohibits the introduction or movement in interstate commerce of articles of wearing apparel and fabrics which are so highly flammable as to be dangerous when worn by individuals.

The Textile Fiber Products Identification Act became effective in 1960 and it has by far the greatest coverage of any of the labeling acts. It covers items made of natural fibers other than wool, reprocessed wool, and reused wool, as well as products which are composed of synthetic fibers or blends of synthetic or natural fibers. The labeling requirements of the Fur Products Labeling Act are also present here in substantially the same general fashion.

I refer to these acts not only because they are for the protection of consumers, as are the subject bills, but also they have demonstrated the effectiveness of congressional action directing an administrative agency to issue regulations which are to have the effect of law. Once this is done and they are violated, it is a per se law violation.

Just as these laws are adjuncts, so to speak, to section 5 of the Federal Trade Commission Act, so would be the subject bills if enacted. That is, they would spell out the acts and practices related to the packaging and labeling of consumer products which would constitute violations of section 5 of the Federal Trade Commission Act, and of the appropriate sections of the Food, Drug, and Cosmetic Act.

It then authorizes the Commission and the Department of Health, Education, and Welfare to issue the necessary regulations to make effective these provisions. This is the approach followed in the labeling acts.

I am convinced that enactment of these bills will also be beneficial from the producers' standpoint. The Commission has endeavored through its trade practice rules, guides, and trade regulation rules to achieve a measure of industrywide corrective action of unlawful industry practices through voluntary or guidance procedures. But we believe, based upon the Commission's experience in administering the labeling acts, that more prompt, equitable, and simultaneous corrective action can be achieved by enactment of the subject bills.

I request that the committee consider this statement as expressing the comments of the Commission on H.R. 7493, H.R. 15269, H.R. 15440, and H.R. 15707 on which we were asked to comment. This statement, which has been approved by and was made at the direction of the Commission, is in lieu of separate reports by the Commission on these bills.

In conclusion, may I reiterate the Commission's position that it favors enactment of S. 985 as it passed the Senate on June 9, 1966.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Cohen?

Mr. COHEN. Mr. Chairman, it is always a pleasure for me to come before this committee to testify. This committee has done so much in the past for improvement of public health and consumer protection legislation.

This morning I want to discuss the support of the Department of Health, Education, and Welfare for fair packaging and labeling legislation. We are very gratified that the chairman has shown his

keen interest in the improvement of consumer protection demonstrated by the introduction of H.R. 15440 and also gratified to see the bipartisan support which has been given to this legislation.

The proposals contained in S. 985 offer reasonable solutions to the problems which were extensively explored by the Senate Subcommittee on Antitrust and Monopoly Legislation and the Senate Commerce Committee.

The Senate subcommittees have held hearing on this type of legislation over the 5-year period 1961–65. Six volumes of hearings have been published, containing more than 2,000 pages. The arguments pro and con for the legislation have been widely discussed.

Senators Prouty and Dominick have pointed out in their individual views in the 1966 Senate committee report:

> The bill was the subject of long and careful consideration by the committee. Numerous executive sessions were held during which the bill was substantially amended and, in our view, greatly improved.

In opening the 1965 hearings Senator Magnuson said that in connection with this legislation "we are in a very complex and economically sensitive field." I believe S. 985 has been developed with a keen sense of what is reasonable and practical in today's economy, taking into account both the complexities and sensitivities present in industry and in the Congress.

I have appeared before this committee on a number of occasions. I hope to come back in the future and support other legislation improving consumer protection. I do not think the legislation before you today is the last time this committee will consider consumer legislation.

But this legislation is an important step forward. It does not solve all the problems. It is the product of compromise between those who want the Federal Government to take a stronger role in regulating and preventing the use of unfair or deceptive methods and those who favor exclusive reliance on present methods. I believe only experience—practical experience in operation—can judge the merits of the fine balance between regulatory authority and the use of voluntary product standards embodied in the bill.

In reading some of the testimony of those who appeared before these Senate committees in opposition to this legislation I am reminded of the opposition to the original Pure Food and Drug Act of 1906. Here is what one group said in July 1905 in an article entitled, "How To Fight Pure Food Legislation" in opposition to the basic legislation, which was finally enacted:

> * * * We believe that it is the part of wisdom to fight the proposed legislation on principle, to make no compromise whatever with the scamps who are behind it, and to refuse to treat with them on any kind of terms. * * * Therefore, as we have said, it seems to us that the wisest course is to oppose all laws which have for their aim the regulation of private enterprise, under whatever pretext they may be urged.

I am sure that today there is widespread support among both industry and consumers for the laws of 1906 and 1938 and the constructive improvements of 1962 recommended by this subcommittee and passed by the Congress.

These laws have helped to preserve and expand private enterprise and assure fairer competition. When these proposals are being

debated there is strong opposition to any new legislation as a matter of principle, but after the Congress has modified various details and the proposals are enacted, they become an accepted and workable part of the American way of life.

I believe the same situation will prevail when this bill is enacted into law.

American consumers today have learned that they can rely on the wholesomeness and purity of most food and drug products. Industry and Government have established standards to safeguard the public health. These standards are enforced, not only by Federal and State officials but by conscientious and responsible manufacturers.

Yet even today after more than 60 years of effort and constant improvement of our food and drug laws, we find violations of these fundamental protections—violations due to carelessness, inadequate manufacturing controls, overhasty marketing, and excessive promotion. Nevertheless, industry today is to a large extent self-policing in the area of health protection and safety. Food and Drug Administration officials do not maintain a 24-hour watch over every processing plant, yet the number of violations of law, in comparison to the unlimited possibilities for dodging the law, is very small.

We believe most industry is responsible. It is significant to note, however, that the development of a philosophy of responsible self-regulation parallels almost exactly the development of a strong and effective food and drug law. Experience indicates that voluntary regulation needs the support of law in order to make it effective, so that the violators, who are in the minority, do not take unfair advantage of the vast majority of companies that are fair, honest, and conscientious.

The shocking irresponsibility of some companies at the turn of the century was called to the attention of the public by Dr. Harvey W. Wiley, but it was not until the Congress enacted basic legislation that industry assumed more responsibility for the safety of its products.

Thus, over the years and through a combination of responsible manufacturers, vigorous enforcement of the food and drug laws, and growing public enlightenment, we have established a supply of foods and drugs that is, in the main, safe and reliable.

While we have reached a point in time when the concept of safety and efficacy with respect to food and drugs, has been firmly embedded by Congress in law and accepted by our society, we have not yet fully developed the concept of truth in packaging and distribution of these commodities. In the area of consumer health and safety, the old doctrine of "buyer beware" has been generally replaced with "seller beware," yet in sales promotion and merchandising, the "buyer beware" doctrine still prevails in many cases.

Existing law and existing rulemaking authority are not adequate to update packaging and labeling regulations in the light of dramatic changes in technology and marketing practices. Just as the small grocery store, manned by salesmen-clerks, is being supplanted by the huge self-service supermarket, so must existing practices be supplanted by new consumer interest measures.

What the proposed legislation does is to give clear and firm statutory authority to the Department of Health, Education, and Welfare and

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the Federal Trade Commission to promulgate regulations that apply industrywide to accomplish the purposes of the basic laws enforced by these two agencies. Thus, uncertainties will be clarified and voluntary compliance by responsible industry will be greatly facilitated.

We pledge our Department's full cooperation with industry and the other governmental agencies in making this legislation work fairly, efficiently, and effectively. We believe it can be administered in a way which will assure continued legitimate innovation in packaging, labeling, and merchandising, and at the same time protect the consumer's interest.

In conclusion, Mr. Chairman, we urge the prompt and favorable consideration of this legislation by your committee.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Cohen.

Mrs. Peterson?

Mrs. PETERSON. Thank you, Mr. Chairman.

It is a great honor for me to be able to testify before your committee. It is the first time that I have had this opportunity. I have testified before many other communities, but I am pleased to have this opportunity to testify before you today.

I want to congratulate you, Mr. Chairman, for your leadership. I would like to congratulate the entire committee. I think yesterday you took a great step ahead for the American consumer, the American people, in your legislation on a national safety program and the establishment of safety standards for motor vehicles. I feel that today you are beginning another work in another area that is equally significant.

I appear before you today in behalf of the fair packaging and labeling legislation. I speak to you today in my capacity as special assistant to the President for consumer affairs, and as Chairman of the President's Committee on Consumer Interests.

I have previously testified for this legislation for the Department of Labor, in my position as Assistant Secretary for Labor Standards. I must say that we feel that there is a very strong relationship between what a persons earns and what he spends. So there is an extremely important relationship in this bill between our interest in consumer affairs and in labor areas as well.

On behalf of the administration, I support S. 985, the fair packaging and labeling bill as passed by the Senate. President Johnson, in urging fair packaging and labeling, has stated:

> The Government must do its share to insure the shopper against deception, to remedy confusion and to eliminate questionable practices.

S. 985, the fair packaging and labeling bill, is a good bill. I speak confidently when I say that American consumers support this bill. President Johnson and President Kennedy both have urged fair packaging legislation. President Kennedy, in his first consumer message to the Congress in 1962, said:

> * * * 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.

President Johnson has supported fair packaging in both his consumer messages. He has said:

> The shopper ought to be able to tell at a glance what is in the package, how much of it there is, and how much it costs.

I must say I especially like that small phrase of "at a glance" since I am the one in my household who does the shopping. How important it is to be able to tell readily and easily what is in the package, how much it contains, and what it costs.

The President goes on to say:

> Packagers themselves should take the initiative in this effort. It is in the best interests of the manufacturer and the retailer as well as the consumer.
>
> The Government has had, and has exercised a responsibility toward the consumer in this field for a long time. But the case-by-case trail to which we are limited by existing law is a long winding one.
>
> More clear-cut regulations are needed. * * *

Mr. Chairman, this is precisely what the bill would accomplish. It would eliminate much of the confusion which shoppers meet today in the supermarket. If this bill were to become law, we as consumers could see quickly and easily from the label on the principal panel of the package or the can how much we are buying, and what we are buying. We would be able to compare quantities and prices of competing brands much more readily.

We would be spared many of the present near deceptions—however legal they may be—that make really economical buying so difficult. I refer to the superlatives describing size, the proliferation of weights, the ill-defined "servings," the confusing manner in which quantity is stated, and the "cents off" deals that may not represent true price reductions. In short, this legislation would help the consumer to buy more wisely and more economically and, may I add, with far less frustration than at present.

At the same time, Mr. Chairman, I am convinced that this measure would benefit manufacturers and distributors as well. The mandatory provisions for labeling establish clear ground rules for packagers. The bill would enable producers to compete on quality and price of their products and the attractiveness of their presentation rather than irrelevant packaging gimmicks.

Most manufacturers would prefer to sell on the merits of their product, not on the cleverness of its label. I have been told by wholesalers and retailers that they would welcome it, too.

The fewer sizes and the fewer odd "cents off" deals they have to contend with, the simpler their stock records and the less shelf space they need. Their costs would be reduced along with their customers' dissatisfaction.

At the same time, Mr. Chairman, producers are amply protected against any possible arbitrary actions in the application of the permissive sections of the bill. This is as we want it. The conditions under which commodity-by-commodity regulations can be issued are clearly spelled out, and industry is invited to determine its own voluntary standards to reduce the confusing array of weights and sizes.

The bill, in short, is positive, not punitive; and constructive, not constrictive.

Again, the reaction of consumers to this bill has also been favorable. Ever since assuming my consumer office 2½ years ago, I have received

a continuous flow of letters from thousands of consumers telling of packaging abuses and urging remedial action.

Packaging has, in fact, been the leading topic of all our mail. In my term of office, we have conducted four consumer conferences in various parts of the country. We also have met with individual consumers—and consumer organizations and other groups—in most of the States. In these meetings, no subject has been raised more often than the need for clearer and more informative labeling and more comparable package sizes.

Continued support has come from prominent organizations representing a broad cross section of the American public. Senator Hart has estimated that organizations passing resolutions in support of fair labeling and packaging have a combined membership of over 40 million. They range from national organizations to local groups, from women's clubs to trade unions, from the young to our senior citizens.

Mr. Chairman, there is clear-cut need for this legislation. It grows out of the abundance and complexity of the American economy with its thousands of packaged products. It grows out of the efficiency of of our large-scale, self-service system of retailing. No longer do we have the informed clerk and the solicitous proprietor to answer our questions. The label on the package is frequently the sole source available to tell us what we must know about the products we select. It should do just that, in a simple, direct, clear, and honest way.

Modern marketing calls for modernization of our labeling and packaging laws. We need simple, understandable, specific rules about labels. Legal action against deceptive and unfair acts on a case-by-case basis is not effective in regulating misleading and confusing packaging practices. It is too slow, too cumbersome. A poor label with inadequate information can prevent price comparisons and economical shopping, whether or not the intent is to deceive.

Some packaging practices stump even college-educated housewives. In an experiment at Eastern Michigan University last year 33 young married women—all with at least 1 year of college training—shopped in a supermarket for the most economical package of each of 20 specified products. They were told to get the largest quantity for the lowest price.

They were given more than the usual time taken for shopping by housewives. Yet they made a lot of mistakes. In fact, 43 percent of their purchases were not the most economical. And they spent 9 percent more money than if they had chosen the best value.

I emphasize this study was based on quantity, not quality. Quality is a personal matter, but you have to know the price per unit so that you have a basis for the decision as to whether a higher price is worth paying to get the additional quality. You could not make a study of this type of purchases on quality. This was a quantity study.

The college-educated women made no mistakes on staples like sugar and flour, which are sold in whole-unit packages. They had the greatest difficulty with the products where there was a proliferation of sizes and mixed units of measure.

This legislation would reduce this kind of confusion and would result in savings and more value for consumers.

Let me now turn to the specific provisions of S. 985 and show, by means of examples and my own experience, how this bill would assist in restoring the consumer's ability to seek out the best selections and to make effective price comparisons of packaged and canned goods.

The mandatory provisions of the bill, in section 4, deal exclusively with labeling. Every package must have a label identifying the contents and the manufacturer and the net weight.

The statement of net quantity must be placed in a prominent position on the principal panel of the label and in a line parallel to the base of the package. It must be printed in legible type against a contrasting background. To simplify quantity comparisons which are obscured by different units of weights and measures, the bill requires that when the contents are less than 4 pounds or 1 gallon, they shall be expressed in ounces or in whole units of pounds, pints, or quarts. Finally, it bans qualifying phrases in the statement of quantity. I am referring to the "giant quart," and the like, which enlarge the quantity.

The Senate Commerce Committee was unanimous in supporting these mandatory provisions. The minority members stated it very well.

> Packages should be labeled so the busy housewife can determine their contents without juggling the package six different ways, without having to convert from pints and pounds into ounces, and without he need for a magnifying glass.

Now I would like to add parenthetically that one of the satisfying factors of working on this bill, Mr. Chairman, is the bipartisan support it has received. This is an issue for all the people, and I feel comfortable in the fact that it does pass across party lines so distinctly.

The provisions in section 5 are discretionary. They give the Secretary of Health, Education, and Welfare and the Federal Trade Commission authority to issue additional regulations on a commodity-by-commodity basis whenever necessary "to prevent the deception of consumers or to facilitate price comparisons as to any consumer commodity." There are definite conditions which must be met before these regulations are issued, and the procedural safeguards are clearly spelled out. In my opinion, they provide full protection against any possible arbitrary application.

Let me consider these sections separately and illustrate their importance.

Subsection 5(c) (1) gives authority for the establishment and definition of "standards for characterizing the size of a package." It aims at bringing sense out of the chaos over the "king," "giant," "family," "extra large," "jumbo"—and even, sometimes—the "small," "medium" and "large" sizes in many product lines.

I have had many letters complaining about the absurdities and the confusion of this competition in adjectives. And I have had many experiences myself in seeing confusing size terminology as I shop. Many people have written to me of their experiences with these undefined sizes which differ in quantity from one manufacturer to the next.

For example, a husband wrote telling how he had been instructed to buy the large size in soap powder. He bought the "large size," which is really very small, and then found that his wife really wanted what is called the "giant size," which is actually larger.

The other day I heard a woman call to her son and say, "Get me a big size" of a certain package. He came back and she said, "Don't

you know, it is a jumbo that is the biggest?" This is the kind of confusion you hear when you go around the shops.

A man from Milwaukee discovered this when he purchased a tube of shaving cream. He wrote me, enclosing the package:

> I would like to bring the attached package to your attention in connection with your "truth in packaging" legislation. As you can see, the package is marked "large." However, I think it is the smallest made by (Company X).

On a supermarket shelf this week were a "regular size" package and a "large size" package of the same brand detergent, both with the same weight of 1 pound 4 ounces.

There should be a correlation between what a size is called and what it contains. It is irrational for one manufacturer's "large" to be the same as his competitor's "medium" size. Yet a week ago a Washington housewife went shopping for toothpaste and found two brands of the same quantity—1.75 ounces—packaged in the same size box for the same price. One was called the "medium size." The rival brand was the "large size."

In another supermarket, I found detergent powder sold by the following designations: "regular," "medium," "king," and "giant." Let's look at what is called "giant." In four different brands these "giants" contained 2 pounds, 2 pounds 6 ounces, 3 pounds 1 ounce, and 3 pounds 6 ounces.

The size designations without standards permit the manufacturer to lower the quantity of a product while maintaining the same price and even the same size box, without the consumer knowing about the quantity change.

How many times we pick up or order a size which we have become accustomed to using in our household without examining the actual weight. This practice has been called "concealed inflation." One housewife from Denver, Colo., alert to such subtle changes, wrote to me:

> Will you please look into the matter of the "king size" box of (Brand X) [soap powder] weighing 5 pounds 4 ounces and selling for $1.17. Two weeks ago I bought the "king size" box (both the same box size) of (Brand X) for $1.17 and it weighed 5 pounds 12 ounces. I think this is an outrage, one-half pound less in weight. To me this is wrong when both boxes are "king size." There should be a standard weight when it is called a certain size.

Confusing terminology stands in the way of easy price comparisons. A degree of order is certainly called for. On this provision also there are general agreements in the Senate Commerce Committee. The minority views of the Senate Commerce Committee supported this provision, saying:

> There being extensive law already on the books barring the deceptive use of such terms as "large size," "family size," or "giant size," we see no crippling consequences in providing slight additional authority over the use of such terms.

Section 5(c)(2) deals with servings. It gives authority to "establish and define the net quantity of any product (in terms of weight, measure, or count) which shall constitute a serving." The need for this provision is obvious. If one label says the package has "five servings" and another says it has "seven servings," the one with seven servings will obviously have an edge with the buyer. But since every manufacturer is free to define a serving, it may well be that the seven

servings, taken together, may amount to less than the rival five servings.

My letters on this topic point up the difficulties. A Rose Valley, Pa., woman wrote:

> Apropos of your drive to insure a fair deal to the customer, I submit a label from a can of peaches, which I purchased * * * for 43¢. This can contained only five peach halves which were literally swimming in juice. Please observe the printed description, particularly "Average Servings * * * 6–7." Can you visualize the seventh average serving? I feel this is deceptive and dishonest. (I use this example to illustrate the "serving" problem, while recognizing that there is a standard of fill of container established for canned peaches.)

Perhaps the classic complaint in this area came from a New York City woman who wrote to the manufacturer and sent me a copy of her letter. In it she said:

> GENTLEMEN: What kind of game are you playing?
> Your mashed potato flakes are sold in three sizes: 8-serving box contains 5¾ ounces and uses .718 ounce per serving; 24-serving box contains 15¾ ounces and uses .656 ounce per serving; 25-serving box contains 16 ounces and uses .640 ounce per serving.
> Looked at another way, the 25-serving box weighs ¼ ounce more than the 24-serving box. Therefore, one serving weighs ¼ ounce. Therefore, a 16-ounce box makes 64 servings (four quarter-ounces per ounce times 16 ounces).

Here again, the Senate Commerce Committee was in general agreement. The minority voiced its approval:

> Neither do we quarrel with allowing a Federal agency to define the quantity of a product which might constitute a serving, thankless though the task may be.

Section 5(c)(3) aims at curtailing the use of meaningless bargain deals, particularly "cents off" deals. It would—

> regulate the placement upon any package * * * of any printed matter stating or representing by implication that such commodity is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail sale price advantage is accorded to purchasers thereof by reason of the size of that package or the quantity of its contents.

Every shopper likes a bargain, and this fact is responsible for the widespread use of "cents off." The problem here is that "cents off" frequently does not represent a true bargain, creating an additional barrier to price comparisons. The difficulty arises because the deal is advertised on the package by the manufacturer, but it is implemented, or not implemented as the case may be, by the retailer, over whom the manufacturer has no control. The common phrase "cents off the regular price" creates another difficulty in price comparisons. What constitutes the "regular price"?

This particular practice has led to a great many complaints from consumers. A woman from Des Moines wrote, for example:

> By the enclosed label you can see that there is a definite moral promise that this can of coffee is sold to me at 20 cents off the regular price. I wrote to the manufacturer and received the reply that they have no control whatsoever over the price when I purchase it. This seems to me completely dishonest. The label definitely states "20 cents off." Off what?

One of the complaints I get in many letters is the practice of labeling a product, "NEW"; I am told that the only thing new that could be found is a reduction in the contents with no reduction in price. But the "NEW" is prominently on the label.

There is a thread that goes through the letters that I am getting and the conversations that I am having with many people, and it goes to this very question of the moral and ethical standards in these practices. It is another subject, but I think it does indicate a growing awareness on the part of our consumers about many of these problems that we confront every day in the marketplace, and in raising our families, I might say as well.

A Madison, Wis., man wrote, enclosing a soap label:

> * * * It is worth noting that apparently identical bars of this soap—all marked "5 cents off"—were being marketed at the (company X) store on March 19, 1966, at two different prices, 2 for 28 cents and 2 for 35 cents.

The point is that when the price is not properly reduced, the "cents off" can be confusing.

The confusion can be encountered anywhere. Some of these "cents off" deals are actual price reductions, but the consumer cannot always be sure they are.

A Washington housewife bought a box of tea last week which carried a price of 29 cents and a label that promised a 5-cents-off deal. The checkout girl charged her only 25 cents. Another Washington shopper found identical brands and sizes of toothpaste in a store, one box was marked "5 cents off", the other with no special deal—the price of both was the same.

A correspondent from Evanston, Ill., expressed sentiments of many when she wrote:

> Isn't it time for an adequate truth-in-packaging law? Please. Six cents off here, 10 cents off there, with stores shifting their own prices at times.

Again, to quote the Commerce Committee minority views:

> Similarly, with respect to "cents off" promotions, while existing Federal Trade Commission guides against deceptive pricing appear to provide adequate protection to the public, we are not disposed to object to making the authority apparent, properly safeguarded, to deal effectively with the problem.

Section 5(c)(4) deals with a clear statement of ingredients. It would—

> require that information with respect to the ingredients and composition of any consumer commodity be placed upon packages containing that commodity.[1]

This is essential, because knowledge of the composition of the product is necessary for a proper price comparison. Pancake sirups containing maple sugar provide a good example. If one brand contains more maple sirup and less cane sirup than another, it is worth a higher price. Yet I have never seen the ratios of these sirups printed on any label.

Fruit drinks provide another case in point. Consumers want to know how much of the drink is fruit juice; how much is water and other ingredients. It affects their judgment about its health value as well as its price.

The final category of these discretionary provisions tackles the important and difficult problem of how to reduce the proliferation of package and container sizes.

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[1] There are two exemptions to this provision: It shall not apply to any consumer commodity for which a definition or standard of identity has been established; and it does not require the disclosure of information concerning proprietary trade secrets.

Section 5(d)(2) provides for regulation of weights or quantities in which a commodity may be sold if the ability of consumers to make price comparisons is likely to be impaired.

This would be accomplished by encouraging the industry itself to agree upon most wanted sizes and to establish under the voluntary product program a reasonable range of weights and measures under procedures already established by the Secretary of Commerce. These procedures require a consensus among interested parties—producers, distributors, users, and consumers and any other appropriate general interest groups.

Such a voluntary procedure for weights or quantities would be initiated by the publication of a finding of need by the administering agency, after which a producer or distributor might request the Secretary of Commerce to set in motion the machinery for agreement on a voluntary product standard.

If this were not accomplished within a year—or a year and a half, at the discretion of the administering agency—the administering agency itself might promulgate regulations to establish reasonable weights or quantities for a consumer commodity. This provision further protects the businessman and the consumer by assuring reasonable weights and quantities. It requires consideration of the costs of the packaging and the costs to the consumers, the range of existing sizes, the materials involved in packaging, the competition between containers made of different types of materials, and the weights and measures customarily used.

It also has specific protections to prevent changes which would affect existing voluntary product standards, reusable glass containers presently in use, weights, or measures of less than 2 ounces, and customarily used uniform-size containers with different weights because of varying densities, such as baby foods.

I would like to emphasize the reasonableness of the thought that has gone into this bill as it is now drafted, to be sure that the legitimate difficulties that might be encountered are honestly and adequately cared for, still preserving the right of the consumer and the needs of the consumer, and preserving the rights and the needs of the business community as well.

Many voluntary standards have developed on the initiative of industry. Both manufacturers and consumers have accepted standard-size jars of sour cream and various standard-size cans used for fruits and vegetables agreed upon by the Canners Association and generally followed by the industry. They provide variety of size for the small or the large family; for the apartment with limited storage space or the house with an ample storage cupboard or a big freezer. At the same time, they make possible direct price comparisons of different brands or varieties of the same product in the same size container with the same net weight. While this bill does not standardize the size or dimensions of packages or containers, but rather permits voluntary regulations of a reasonable range of weights or quantities where such are necessary for price comparison and feasible, I point this out only to illustrate the favorable experience which industry has encountered in the operation of this program.

I wish manufacturers and package designers knew how much housewives appreciate packages in comparable weights and quantities like

sugar and flour, all sold in even pounds, and like regular coffee in pounds and half pounds. I like attractive bottles and packages as much as anyone. However, I do not believe that restricting the numbers of weights to a reasonable range will eliminate imaginative packaging and innovation.

Rather, it should challenge the producer to concentrate his new and unique packaging concepts within reasonable bounds.

Studies of efficient shopping, like the Eastern Michigan University survey I mentioned earlier, all indicate that the greatest number of errors on "best values" came from packages that are in odd quantities that are not comparable.

Mr. Chairman, by rationalizing package weight ranges and improving labeling this bill will help buyers to save time and effort, to get more value for their money—and to save money, too. And let us not underestimate these savings. On each item, the saving may be only pennies, but pennies add up. And where incomes are very limited, every penny counts.

No one can estimate total savings with accuracy, but there is no doubt that they are significant.

The packaged goods covered by this bill account for nearly 40 percent of average family expenditures on nondurable goods; that is, all goods in the family budget except automobiles, refrigerators, furniture, and the like; and for 17 percent of expenditures on all goods and services. Expenditures on packaged goods represent a significant proportion of the family budget. These estimates by the Bureau of Labor Statistics are based on the Bureau's survey of family expenditures in 1960 in selected large cities.

Consider the importance of food. Food bought for home use takes nearly 20 percent of the budget of an average family with an income of $5.550 after taxes, and almost 25 percent for families who have only $2,000 to spend. Packaged and canned foods like bread, cereals, canned fruits and vegetables, and frozen foods make up two-thirds of the food budget of the average family, and a still larger share for poor families.

Now, add to food the many housekeeping supplies—soap, detergents, household paper products—and the cosmetics and toilet goods which this bill covers—and you can see how important it is to make the savings that could come from better price comparisons. For the low-income families, these "savings" are not saved money, but money needed to spend on more or better food and other household supplies.

We all realize, Mr. Chairman, that fair packaging and labeling legislation is not new. The Constitution provides for the establishment of weights and measures. What this bill really does so effectively is to update our weights and measures legislation. It also updates and implements our laws governing labeling and packaging. It is essentially a modernization bill.

We have had labeling laws since early in the 20th century, ever since the passage of the first Food and Drug Act. We have long had laws forbidding false advertising and deceptive practices and laws preventing acts which interfere with competition. True competition requires effective price comparison. This bill would go a long way toward providing it.

S. 985 builds upon existing laws. It has the great merit of establishing clear, specific, and positive rules for informative labeling, especially for designations of net weight. But its most important feature is that it makes possible direct and specific regulations on commodity lines. The complexities of present-day packaging and the confusing and misleading practices of the modern market cannot be contained by laws designed to deal with occasional deceptions among the few prepackaged groceries of 50 years ago. The legislation provides exemptions where needed and it carries the usual procedural safeguards.

Mr. Chairman, this bill has had long and careful consideration. There are hundreds of pages of informative record from these hearings. This record bears testimony to the spirit of cooperation in which this legislation was shaped. Criticisms were considered and many constructive changes were made. The Senate Commerce Committee marked up this bill through long executive sessions. S. 985 reflects this careful consideration. Its positive nature is best indicated in the declaration of purpose:

> Informed consumers are essential to the fair and efficient functioning of a free market economy. Packages and their labels should enable consumers to obtain accurate information as to the quantity of the contents, and should facilitate price comparisons. Therefore, it is hereby declared to be the policy of the Congress to assist consumers and manufacturers in reaching these goals in the marketing of consumer goods.

Mr. Chairman, this is a laudable purpose and policy. This legislation is in the public interest. I urge that this bill be given favorable consideration by this committee, so that it may become law in this session of the Congress.

Thank you.

The CHAIRMAN. Thank you very much.

The Chair will state that earlier we called on the Honorable Benjaman S. Rosenthal of New York to come forward. He was unavoidably detained and could not be present when we convened.

He now is here but has other business and if the panel will bear with me, I would like to give Mr. Rosenthal an opportunity to present his testimony at this time.

We sometimes have to do this in order to accommodate work on other committees.

You may proceed, Mr. Rosenthal.

STATEMENT OF HON. BENJAMIN S. ROSENTHAL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. ROSENTHAL. Thank you very much, Mr. Chairman.

Mr. Chairman, I am glad to have this opportunity to testify before you today on behalf of your bill, H.R. 15440, and H.R. 16429, an identical bill cosponsored by me, which are commonly designated as "truth in packaging" legislation.

Mr. Chairman, this is a good bill but it is far from the end of the rainbow. I don't think we should be satisfied at all with enactment of this bill or say we have done sufficient for the American consumer. Considerably more has to be done.

I am doubtful about the long period of delay in the enforcement provisions of the bill. I have cosponsored this bill, and I have done it because I think it is a starting-off point for discussion.

For 4 years, Members of Congress have been debating the need for this measure while their wives, lost in jungles we call supermarkets, have been trying to understand why a "giant economy size" is a better buy than a "jumbo sale special." My point, of course, is that evidence of misleading packaging is something with which all of us are now well acquainted. Its larger significance, however, is yet to be fully appreciated.

The effectiveness of a market economy requires something we like to call "consumer sovereignty." The preconditions for that sovereignty are knowledge and the freedom to choose. When those conditions are threatened, the effects are felt throughout the market system.

And, of course, the most basic economic right, the right to be informed, is placed in extreme jeopardy. To protect that right is the function of the Federal Government, both because of a general commitment to justice, and a specific obligation to assure the efficiency of the market.

I take these principles to represent the basis of these hearings and of the legislation we are considering. We are familiar with the sort of abuses the legislation before us is designed to correct. There is ample evidence, which I am sure the committee will be soliciting from qualified experts, which documents the nature and extent of deceptive packaging.

Much of this evidence has already been brought before the Senate Committee on Commerce. Similar documentation has been collected by the National Commission on Food Marketing, of which I was a member, and which recently concluded in its final report to the President:

> Packages and their labels should assist consumers in gaining an accurate impression of the contents and in making price comparisons.

None of this evidence is esoteric or difficult to procure. "Cents off" sales and packages are available in any modern market, though we usually have no idea from what initial price those unspecified cents have been deducted.

"Large economy size" packages appear on our shelves. Yet none of us have any real idea whether the implied savings has any basis in fact. For we cannot easily compare package weights and qualities.

The point is, Mr. Chairman, and members of the committee, our wives—actually all American consumers—are shopping blindfolded, in a market which is presently serving to mystify them into purchases of whose wisdom they can never be sure.

This is a condition of relative anarchy, a breakdown in a system which pretends to be equitable though it often victimizes those whom it is intended to serve. It is a condition which requires quick correction, and correction by the only power with proper neutrality and power—the Federal Government.

The basic purpose of this measure, then, is to return packaging to its initial function: to provide clear information and thus promote informed choice. This principle underlies the labeling standards which the Federal Trade Commission and the Food and Drug Administration would establish for all packaging.

Such standards, for example, would guarantee clear commodity identification and accurate statement of weight. They would prohibit use of misleading qualifying phrases such as "jumbo," or "giant," or distorted claims to unspecified price savings. They would require label information designating ingredients and composition, which wolud appear in clear lettering parallel to the base of the package.

I believe these standards are an absolute necessity if we are to assure consumer sovereignty in a market characterized by increasing proliferation of goods, new techniques in advertising, and rapid development of new products.

It should be noted, in passing, that the legislation before the committee has highly flexible enforcement provisions. Many of the regulations are discretionary; and much room, perhaps too much, is left for voluntary development of standards.

I want to make it clear that I regard it as important that we give industry the chance for self-improvement. Yet, I think it equally important that the commitee and the Congress be quite clear on the risks we might run by allowing too many loopholes. We cannot pass a bill which contains within itself the seeds for its own destruction. For that reason, let me touch upon several problems regarding the implementation of the legislation before us.

I am initially disturbed by the possibility of long delay in the enforcement of the legislation before us. As presently planned, the bill will not take effect until 6 months after enactment, and the enforcing authority may at its discretion delay the effective date an additional year for any class of commodity.

I would hope the committee would give consideration to the adequacy of such a schedule, and the possible loopholes provided in the sections giving companies a year to develop voluntary standards.

Nor am I altogether confident that voluntary standards can be effectively developed and still meet the specific consumer interest. The legislation we are discussing today provides that in developing voluntary product standards: "Such procedures shall provide adequate manufacturer, distributor, and consumer representation."

Yet who can really represent the consumer? Existing consumer lobbies are in no way as organized and powerful as producer organizations. Neither the President's Committee on Consumer Interests, nor the Consumer Advisory Council can effectively present the consumer viewpoint in standards review committees.

And of course, voluntary standards are difficult to enforce. If they are being ignored, they must then be made mandatory before the Food and Drug Administration can seize the goods, or the Federal Trade Commission can issue cease and desist orders. And the process of delay and obstruction can continue still further.

Federal Trade Commission cease and desist orders are issued only after full determination of "unfair or deceptive acts or practices in commerce." Penalties can be imposed only after subsequent violations. These penalties, in turn, may be appealed through the courts.

In the meantime, unfair and deceptive practices continue, the consumer remains a victim rather than a beneficiary, and the obedient and cooperative businessman is placed at a marketing disadvantage. The prospect, in short, is not a happy one. Those of us who believe in the

goals of truth-in-packaging have reason to be confused and skeptical concerning the prospect of its swift and effective enforcement.

In reading the extensive hearings already held on this legislation, one is not impressed by the lack of evidence on deceptive packaging. We all know the problem is a very real one. That is why I believe the legislation we pass must be vigorous, and our own intent clear and firm.

We should try to make it known, in our legislative history, that the most important violators, not the easiest to catch, should be prosecuted first. It will require political courage and muscle to ignore minor violations by small firms, and concentrate on the hard-to-win but vital cases against corporate giants whose legal and material resources make them difficult to prosecute.

Yet these are exactly the cases of which the American consumer is most aware. The important battles must be fought and won early if the war against misleading packaging is really to be won.

This is why I hope the committee will given due consideration to the entire problem of enforcing truth-in-packaging legislation. The Federal Trade Commission's record of prosecution has not been impressive over the past several years. The Commission is slow. It shows reluctance to take on tough, but critical cases.

Are we really confident that the Commission can handle the new load of work which will be assigned to it by this legislation? I have my doubts. Nor am I confident that there will be effective enforcement coordination between the Federal Trade Commission and the Food and Drug Administration.

I would hope the committee would solicit further information on the mechanisms for cooperation between the two.

I believe the American public wants this legislation passed. I believe the Congress is adequately apprised of the conditions which warrant its passage. I am aware of the problems in reaching a proper balance of voluntary and mandatory standards, and of necessary and discretionary enforcement. But I also believe the judgments must be weighed on behalf of the consumer who has for too long been "the forgotten man of the American economy."

Mrs. Peterson's office has done an admirable and very useful job, Mr. Chairman, in all of these areas, but still they do not have a statutory basis for operation and lacks, in my opinion, adequate staffing to really do a job for the American consumer.

The American consumer will not have any voice, any representative on any of the voluntary panels that are going to effect the regulations under section 5 of the bill.

I think without being necessarily critical of the FTC that their staffing procedures are somewhat inadequate. I think in some cases, there has been even a flabby performance of cases such as there are some cases that have taken 30 years for final disposition and still have yet to be disposed of.

The FTC in recent years has turned the corner from having principally economists to have principally lawyers. I think the FTC has often taken on the easy case against the small manufacturer, the small producer, rather than take the more difficult case against the powerful Wall Street law firms that represent the national manufacturers.

I think all of these things the committee should take into consideration.

As I suggest, Mr. Chairman, I think the committee ought to consider this bill a first step rather than the final culmination of the efforts on behalf of the American consumer.

I am delighted that you have permitted me this opportunity, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Rosenthal. I want to thank you for giving us the benefit of your views.

Mr. Springer.

Mr. SPRINGER. May I say to my distinguished colleague from New York: Are you familiar with the activities of the Federal Trade Commission?

Mr. ROSENTHAL. Yes. I also have two staff aids spending the entire summer examining records of performance of the Federal Trade Commission. I personally plan to make a number of special audits concerning the activities of the Federal Trade Commission.

I might also say I was a member, together with the distinguished gentleman from Kansas, Mr. Cunningham, of the National Commission on Food Marketing. The commission in its final report recommended a bill similar to the one under consideration here today, and we covered much ground and much territory concerning the activities of the Federal Trade Commission.

Mr. SPRINGER. May I ask, does the gentleman think now that the Federal Trade Commission has jurisdiction covered by this bill?

Mr. ROSENTHAL. I think the Federal Trade Commission in the present structure couldn't conceivably enforce the kind of things the American consumer needs.

Mr. SPRINGER. I just want to be sure, because the Federal Trade Commission is under our jurisdiction. I want to be sure that the record is clear on this. You understand they do not have jurisdiction of this problem at this time?

Mr. ROSENTHAL. I think the point is that their present structuring does not permit them to act prudently and wisely in the effective enforcement of the measure.

I think the most important thing that can ever be done for any group in the country is for Congress to affirm by statute what they want done. The Federal Trade Commission presently is, of course, interested in deceptive advertising, deceptive selling practices.

But until Congress says to the Federal Trade Commission or any executive branch, including Mrs. Peterson's branch, a branch that is thoroughly sympathetic to the essential points of this bill, "this is what we want done, and we as the representatives of the American people statutorily say this is your responsibility," it will never be done.

Mr. SPRINGER. Then you are in agreement that the Federal Trade Commission at this time does not have authority?

Mr. ROSENTHAL. I think the authority that they have is——

Mr. SPRINGER. Could you answer that question first instead of just going around the barn?

Mr. ROSENTHAL. It is not necessarily going around the barn. I think their jurisdiction is fudged precisely the same way my answer is fudged. They do and they don't have jurisdiction. I am interested in enforcement powers.

The question, in my opinion, is until Congress gives some Executive Branch direction to act, that will not be done in the best interest of the American consumer.

Mr. SPRINGER. Actually, that is the very purpose for which we set up the Federal Trade Commission, that neither this Congress nor the Executive was to give the direction. We created that Commission. They are a legislatively created Commission of this body, but they are an independent body, supposedly acting in the public interest.

As I have watched the Federal Trade Commission in these past few years, I have had disagreements with them, but I never saw, at any time it was called to my attention, where they were not acting in the public interest as best their judgment dictated them to do.

But I don't believe it would be up to the President of the United States to give them any direction whatever. They are a creation of the Congress, but they are an independent body. To make an examination of the records that come to them and determine what ought to be done in the public interest is their function.

But what I would say is this: They don't have the authority to cover this particular problem which I assume the gentleman is testifying to today. If you are going into the question of advertising, that is a different thing, not before the committee.

But I would certainly say that I think the Commission has done its job in its field thus far, but it certainly doesn't have the authority to act on this problem which is under consideration today. That is the only difference I would have with my distinguished colleague from New York.

The CHAIRMAN. Are there any further comments or questions?

Mr. MACDONALD. I would like to comment to my distinguished colleague.

Is he aware of the great job that the FTC did during the cigarette advertising dispute? If you feel that they don't protect the consumer, I can tell you, and I know the rest of the members of this committee know it, that they were very active in trying to protect the health of the people of this country. So in that one instance obviously you are wrong.

Secondly, I would like to inquire as to the name of the case that you say dragged on for 30 years within the Federal Trade Commission.

Mr. ROSENTHAL. This is only one of dozens that I am searching out now during the summer period. That particular case was the *Holland Furnace Company* case.

The point that I might make, Mr. Macdonald, is the Federal Trade Commission surely sees their role in society as protection for the American consumer. The point is that until Congress mandates specific directions for them to act in areas such as this, they are neither equipped—I shouldn't say by desire—they are not equipped by mandate, staff, or even appropriations to act in these areas.

I think that this bill is really not a culmination of efforts on behalf of the American consumer. I would rather see it as a starting-off point.

The CHAIRMAN. Are there any further comments?

Mr. Kornegay?

Mr. KORNEGAY. I might say that while I have not always agreed with the position taken by the Federal Trade Commission, there have

been certain instances when matters appeared to be unfair trade practices have come to my attention from constituents.

I have referred those to the Federal Trade Commission. I don't know of any agency of the Federal Government that I would say had gotten into the picture and has done a better job than they have done. They have been very fair in the areas that I have had experience with them about.

Mr. SPRINGER. May I say to my distinguished colleague that we have a special subcommittee on investigations and if we come to the conclusion that the Federal Trade Commission is not doing its job, this committee has plenty of authority to act, and we have done that in some cases.

It is a herd-riding committee to see that commissions do act. If they don't, we investigate them.

The CHAIRMAN. Are there any further comments?

Mr. CUNNINGHAM. Mr. Rosenthal referred to the National Commission on Food Marketing. He and I served on that Commission for 18 months. It was made up of five Members of the House, five of the Senate, and five appointed by the President. We did find, during all of our hearings, many shortcomings of the Federal Trade Commission in fields where they have jurisdiction, where they were not doing, in our opinion, the job that they were supposed to do.

Isn't that right?

Mr. ROSENTHAL. That is precisely correct.

Mr. CUNNINGHAM. We have conducted hearings all over the country. In our report, which we presented to the President the 30th of June, a very voluminous report, you will find our criticisms of the Federal Trade Commission.

The CHAIRMAN. Mr. Farnsley?

Mr. FARNSLEY. I am not clear whether the Federal Trade Commission already has this jurisdiction and we are giving it to them again. I don't have a fear of redundancy. I don't see anything wrong with giving it to them twice.

Is there anything in this that limits their jurisdiction or takes it away from them?

Mr. ROSENTHAL. In the proposed bill passed by the Senate?

Mr. FARNSLEY. Yes.

Mr. ROSENTHAL. Not in my judgment.

Mr. FARNSLEY. Is there anything that increases it?

Mr. ROSENTHAL. I think it mandates the will of the American people via the congressional role.

It may be that under the heading of deceptive trade practices, deceptive advertising, they could have done this many years ago, but I don't think that they felt that Congress wished them to do that. We are opening a new page.

Mr. FARNSLEY. You think this says if we say scat, we mean scat? There is the old story about the man who had the big and little holes for the cats to get out of the barn, and he said, "When I say scat, I mean scat." Is that what you mean?

Mr. ROSENTHAL. I am not sure I understand the story.

Mr. FARNSLEY. I apologize. There were several holes for several size cats.

That is all.

67-914—66—pt. 1——5

The CHAIRMAN. Mr. Nelsen?

Mr. NELSEN. Mr. Rosenthal, you mentioned that you wanted the Congress to specify what needs to be done in this area. What I am wondering about, is in the language of the bill which makes provision for promulgation of rules and regulations.

What will the rules and regulations be? They will have force and effect of law. Will they be fair? Is Congress in effect just handing over the right to make a decision without provisions for review? There is no opportunity for review.

Aren't we missing the mark a bit when you say you want the Congress to specify, yet by this broad authority for "promulgation of rules," we give you the right to specify.

Mr. ROSENTHAL. I don't consider it to be any inconsistency at all. Under section 4 of the bill Congress mandates certain things that cannot be done and certain things that should be done.

The more simpler things as to whether the size of packages are deceptive, these are the kinds of things we leave to the joint committee of the industry, the Secretary of HEW, the Food and Drug Administration, and the Federal Trade Commission. In other words, under the terms of this bill, Congress handles the more readily identifiable problems and the more easily legislated.

Then under section 5 of the bill it permits these additional regulations of the more complex or more sophisticated problems to be handled that way.

Mr. NELSEN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very kindly, Mr. Rosenthal, for your testimony before this committee.

Mr. ROSENTHAL. Thank you, Mr. Chairman.

The CHAIRMAN. I would like to say if there was any question brought up about our faith in the Federal Trade Commission, I would say we all have faith in it, as we do in the other agencies downtown. We don't always agree, however. If the need ever arises, as Mr. Springer says, we shall use our oversight committee to look into any of the agencies under our discretion.

At this time we will be ready to begin the questioning. We will be under the 5-minute rule to save time.

Mr. NELSEN. Mr. Chairman, before we proceed, may I make a suggestion? I would like to have the opportunity, after the proponents have appeared, to ask questions of the people from downtown. Certainly there are things that will come up that we would like to review with the folks from downtown.

There are questions that we would like to ask later and I hope we will have the opportunity to do so, if it meets with the Chairman's approval.

The CHAIRMAN. I understand that all of them will be available.

Any time you have to leave, Mr. Secretary, you may depart.

Secretary CONNOR. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Mr. Chairman, under your 5-minute rule, that applies to one witness, generally. We have four witnesses here. Are you going to give 5 minutes of questioning to a witness?

The CHAIRMAN. I think we will give 5 minutes and then come back.

Mr. Rogers of Texas.

Mr. ROGERS of Texas. Thank you, Mr. Chairman.

Mr. Secretary, I know that both you and the other distinguished members of the panel indicated your desire for the passage of S. 985 as it passed the Senate. Would you, for the purpose of the record, specify the difference between S. 985 and H.R. 15440?

STATEMENTS OF HON. JOHN T. CONNOR, HON. PAUL RAND DIXON, HON. WILBUR J. COHEN, AND MRS. ESTHER PETERSON—Resumed

Secretary CONNOR. Yes, sir, Congressman Rogers. I will address myself to the committee print of H.R. 15440, dated July 21, 1966, which contains some annotations. I understood that that was in front of the committee.

In any event, I will refer to the specific provisions.

Section 5(c)(5), on page 7 of this annotated version and on page 7 of the bill, et cetera, is the only substantive addition, as I understand it, which does not appear in the Senate bill. This would make the provisions of section 5(c) with respect to the promulgation of regulations applicable to sizes, shapes, or dimensional proportions of packages in addition to the other qualifications that appear before and after.

In section 5(c)(1), there is a paragraph at the end which reads "But this paragraph shall not be construed as authorizing any limitation on the size, shape, weight, dimensions, or number of packages which may be used to enclose any product or commodity."

In our opinion, that provision that I have just read would have to be modified if section 5(c)(5) is adopted by this committee. But 5(c)(5) constitutes the only additional provision that does not appear in substance in the Senate bill.

Mr. ROGERS of Texas. You are saying that the Senate bill would grant authority to the Secretary and the Commission to determine the size, shape, weight, dimensions, or number of packages which may be used to enclose any product or commodity, and that the House bill does not? Would that be a correct statement?

Secretary CONNOR. No, sir; the Senate bill does not give any authority with respect to package sizes, shapes, or dimensional proportions, just in connection with weights, measures, and the other specified characteristics.

Mr. ROGERS of Texas. What I am getting at is that the Secretary or the Commission is not seeking authority by this legislation to determine the size or the shape of packages. Is that correct?

Secretary CONNOR. That is correct. The administration support is for the Senate bill as it stands.

Mr. ROGERS of Texas. Mr. Dixon, did I understand you to say that you felt that it would be better if the enforcement of this act was under one agency rather than dividing it between two?

Mr. DIXON. I said this to the Senate, and they had that information. But they passed the bill in its present form and we have endorsed it. I did wish to be consistent and point it out to this committee.

Historically, since the passage, certainly, of section 5, as amended, in 1938, where the words were added to the statute, "unfair or deceptive

act or practice," the Commission has been, in my opinion, considered legislatively as primarily responsible for advertising, as such, or advertising or representations that could be characterized as economic representations.

I think this bill is addressed primarily to economic representations, how you sell the product. As I would understand the delineation between the two agencies, although the statutes are broad enough and they do overlap, Food and Drug, through the departmental structure, has primary responsibility for the health and safety.

I merely pointed out that the expertise, if there be expertise in the staff, has been built up over the years in this specific area.

Mr. ROGERS of Texas. If my memory serves me correctly, wasn't Dean Landis, among many of his activities, commissioned by President Kennedy to make a report on the delays, the dilatory situations that developed in administrative actions and recommended that these matters ought to be confined, jurisdictionalwise, to one agency because otherwise there were delays occasioned when they were divided up?

Mr. DIXON. I believe he mentioned that. I spent a whole afternoon talking him out of that.

Mr. ROGERS of Texas. Let me just ask you one more question. With regard to the jurisdictional situation, is it your position at the present time that the Federal Trade Commission has jurisdiction only with regard to unfair and deceptive practices insofar as trade is concerned?

Mr. DIXON. This is correct. This is the basic statute.

Mr. ROGERS of Texas. What else does this bill do, Mr. Dixon? Where does it expand this?

Mr. DIXON. This bill, sir, is similar to the bill that the Congress passed, such as the Wool Products Labeling Act. We had that authority when you passed the Wool Products Labeling Act. But following the mandate of the Wool Products Labeling Act, once we issued and promulgated regulations, a violation of the act became a per se law violation of section 5.

This same pattern is followed here.

Mr. ROGERS of Texas. This is the pattern in this act?

Mr. DIXON. That is correct.

Mr. ROGERS of Texas. Thank you.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. Mr. Chairman, thank you.

I would like to ask each one of the witnesses this question, and, Mr. Secretary, we might as well begin with you.

Has there been any separate investigation or study as to what the enactment of this legislation would do on costs to the consumer?

Secretary CONNOR. Mr. Springer, no detailed study has been made of possible added cost to the consumer or possible added savings, aside from the type of testimony that has been volunteered and which has been put together by Mrs. Peterson and summarized in her testimony.

Mr. SPRINGER. I didn't understand from what Mrs. Peterson said that there was any study made.

Secretary CONNOR. I prefer for her to summarize that herself.

Mr. SPRINGER. I will ask her that question. Mrs. Peterson.

Mrs. PETERSON. Relative to the cost to the consumer, I did give you the data and the summary of a study that was made at Eastern Michigan University. A study was made there by having some college-

educated women shop under some prescribed patterns and instruction and then computing how much they could have saved had they made the correct purchasing decisions. We have had several spot surveys made to determine the ability and facility of the housewife to make the most economical purchases. However, the Eastern Michigan University study is the only study by a university or research group that has been made to measure scientifically the possible saving potential of buying decisions if made on the basis of understanding the best buy quantitively.

Mr. SPRINGER. We are not talking about the same thing, Mrs. Peterson. I am talking about whether or not this 12-ounce package which sells for $1 today will cost more or less if this bill is put into effect.

Mrs. PETERSON. I do not know of any studies made about that. It is almost impossible to calculate what additional costs might be incurred by the manufacturer given the safeguards in the bill until the procedures have taken place and what changes, if any, will be required on a commodity-line basis. But we do know this: there is today a tremendous cost to the consumer because of the proliferation of packagings in many weights and quantities.

These costs of proliferation, of course, are now being passed on to the consumer in the price he pays for his goods. I am informed that the changes in labels and packages occur frequently in some commodity lines.

Mr. SPRINGER. May I ask, Mr. Dixon, if you have any studies? That is, on this problem.

Mr. DIXON. We have no studies and I don't think it would ever be possible for you to create such a study unless you try to put a value upon what will inure to the consumer by not being deceived or confused. If you allege paying 9 cents, 2 cents, 3 cents, 5 cents more for a commodity, and this is generally found, what does this cost? I don't know how you evaluate.

What is the cost for burying caveat emptor. I say it is an informed, enlightened public.

Mr. SPRINGER. May I ask, Mr. Cohen, whether you have made any study of the impact of cost from the enactment of this bill?

Mr. COHEN. No; we have not, and I don't think it would be possible to make such a cost evaluation on specific commodities until you knew exactly what the regulations were. So while I think you could make a very generalized type of study, I don't think it would be possible to answer the question commodity by commodity.

Mr. SPRINGER. The thing that surprises me is that we have these distinguished witnesses who come here and seek the enactment of a bill which will affect every consumer in this country, and the very first thing that the consumer is going to ask is does this bill bring costs up per ounce or per pound, or will they reduced or will they be the same?

I am not saying anyone of those three. But the most amazing thing to me is that you bring here a far-reaching piece of legislation which will affect not only every consumer, but every retailer in this country, and I presume every manufacturer, without asking that substantial question of "Will this increase the cost per unit of production?"

I have run through the Senate hearings and I can't find a single word of testimony on this particular problem. It seems to me that if

there is one important question the consumer is going to ask me as a Congressman when I go home: Will this increase the cost per unit to me when I buy it from the store, whether it is in one package or another?

I have one more question, Mr. Dixon.

Mr. Dixon, it was my understanding that you indicated we should regulate market practices where neither unfairness or deception exists.

It was my impression that the bill was to prevent unfair and deceptive practices, or at least that is what it purports to do in the title. Is that your understanding of this, based on your testimony? I might have misunderstood you, but I wanted to be sure.

Secretary CONNOR. Mr. Chairman, if I may be excused, I will return tomorrow morning.

The CHAIRMAN. Certainly.

Mr. DIXON. This bill, as has been pointed out to the committee, would apply whenever it is necessary to prevent the deception of consumers or to facilitate price comparisons as to any consumer commodity.

Mr. SPRINGER. Then this would cover that which is being retailed today fairly and under the law?

Mr. DIXON. It could be said, sir. We have a law today in the broadest type of language to proceed against unfair or deceptive acts or practices. This bill is addressing itself to deception.

On page 5 of S. 985, in the language of 5(c) you will find it there.

Mr. SPRINGER. Parallel with that, you used the word "quality" in your statement. Can you tell me how this would be assured under this bill?

Mr. DIXON. Quality?

Mr. SPRINGER. Yes, sir. You used the word "quality" in your statement.

Mr. DIXON. I would have to go back and pick it up.

Mr. SPRINGER. I think I marked it. At page 3:

> The goal of S. 985, as we interpret it, is primarily to enable the supermarket shopper to make an intelligent choice of products from a cost savings and a quality standpoint.

Mr. DIXON. Maybe that was an ill-advised choice of words, sir.

Mr. SPRINGER. I didn't understand that part about quality under the bill. I thought maybe you knew something I didn't know.

Mr. DIXON. No, sir. I think it is an ill-advised word.

The CHAIRMAN. Mr. Friedel.

Mr. FRIEDEL. Mr. Chairman, I have listened to the four statements and each one was very good and to the point. The goal is wonderful.

I have been confronted by some manufacturers who said if they have to conform with this bill, it will cost from $3 million up to $10 million to reshape their mass production with new equipment to try to get equal size packages.

If it does run into that kind of money, it is only natural they will pass this cost on to consumers. Will that help the consumers, by making such restrictive regulations? I believe in putting the weight and sizes on each package, but if you are going to try to regulate what size of package, that is something else.

One example is soda crackers. They are much lighter than Nabisco crackers. If you make them each 1-pound packages, they will be

different size packages. Is that your thought in this bill, to make them all uniform packages?

Mrs. PETERSON. I think the important thing about this is that all we want and all the consumer wants is to be able to have the information on the package so that they can make these comparisons among competing products. There is no desire for any change that is unreasonable or any change where the consumer has facility already in making price comparisons and the information necessary to make a rational choice. The reason why it is extremely difficult to be specific about cost is that one does not know until after the fact what commodity lines will lend themselves to the voluntary program and even then what changes, if any, will be required. It is not feasible to make assumptions for changes relative to sizes without analyzing the factors involved in each commodity line and without knowing what the industry in joint consultations will recommend for its own industry. The legislation is certainly not intended to require that all commodities will have to be in a certain size package or that there will be any standardization of packaging. Before any change is made, there has to be a showing of need and nobody is going to ask for any kind of arbitration when there isn't a need.

The consumer loves the abundance of the marketplace and we like new packaging devices, interesting shapes and sizes and the variety of choice of today's market. But when we can't make price comparisons, then we will need some rationalization.

It will be in those areas where some new regulations may be necessary.

The point is that it is almost impossible to say what self-regulation will evolve from the voluntary program because first one has to go through all the prescribed procedures. The legislation requires that you take into account five safeguards—and these are safeguards for the benefit of both the consumer and the manufacturer. They include: costs to the consumer and costs of packaging, the availability of the commodity in a reasonable range of package sizes, the materials used for the packaging, the weights and measures customarily used, and the competition between containers. But further and most important to protecting industry from changes in weights and quantities where it uses a standard package for several commodities, the bill prevents regulations which would preclude the use of any package of particular dimensions or capacity customarily used for the distribution of related commodities of varying densities (unless it is determined that the continued use of such package for such purpose is likely to deceive consumers), and other provisions to guard against increases in costs.

I think that the first step in assessing probably costs of this legislation is to weigh the limited changes which would result from the legislation against the costs to the consumer as a result of the proliferation of quantity sizes. When I discussed this with some manufacturers they suggested that we might look at how many changes there are now and then think about what reductions could take place. Possibly the savings from nonproliferation or a reasonable range of weights and quantities could be passed on to the consumer and we could still have a reasonable number of size designations so that we can have the sizes we need.

I think you should know how frequently there are already changes that are made. There are changes being made in the packaging constantly to meet competition or to create uneconomic competition based upon packaging rather than price and quality. Maybe where there is a heavy degree of proliferation certain ground rules and standardization will help and reduce the costs.

You can't estimate what these costs will be until you know what commodities will be subject to what regulations; and it could be reasonably expected that since if a change is required it will only occur once and since the change will be aimed at a reduction in the proliferation of weights and quantities, the regulations will require fewer weights and quantities in the range and therefore lower costs.

Mr. FRIEDEL. These people I have talked to are in favor of the bill, but they don't want their hands tied. They want a reasonable bill on weights and sizes.

Mr. DIXON. I would like to make one short comment at this point. You are addressing yourself to that part of the proposed bill which would be section 5(d). If either the Federal Trade Commission or the Food and Drug Administration, after some kind of administrative hearing and a finding of need, were to publish that in the Federal Register under this bill, if there is a single citizen that would be affected, he would be afforded the opportunity to request the voluntary standards procedure of the Commerce Department—one person, only one.

Then that machinery would come into play. Within the framework of 12 months or 18 months, and the framework of the group brought together under the guidance of the bill, they would promulgate, let us say, a sensible standard.

Then, if that standard is promulgated and it is violated, then it would come back to the agency, which, under the bill, is bound to do no more than accept that standard and promulgate it into an effective law. So if every Congress built in the safeguard they built in here, what you are driving industry toward here is voluntary compliance as I would understand it.

This is the first step. Before we walk, you are saying here, "Let us take a step."

Mr. FRIEDEL. Thank you.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

I would like to ask a question of each one of you.

This is the first hearing I have had where the witnesses have come in recommending one bill. All of you are recommending the Senate bill as though we should take it without any examination or any witnesses.

I will start with you, Mrs. Peterson. Why do you do that? Are you fearful that the House might exercise its will?

Mrs. PETERSON. Not at all. I think we have given you our opinion because we know what work has been done. But the very fact that we are here testifying and wanting to answer questions I am sure indicates our willingness for you in your good judgment to make this bill what you think it should be. I think the point is that this is a good bill as it passed the Senate.

Speaking for the consumers, I want the very best bill possible. I think this is a very fine step toward that goal.

Mr. YOUNGER. Mr. Dixon?

Mr. DIXON. Mr. Congressman, I made mention in my statement that over a 2-year period I testified before the Senate Judiciary Committee. This bill didn't even come from the Judiciary Committee. It came from the Commerce Committee when it was reintroduced.

This is certainly no new and novel subject. They certainly rehashed and considered many views. Even with respect to Congressman Staggers' bill, the chairman's bill, and even the deviation, if it is the will of this committee to add that to the bill, certainly my agency is not going to object to it because you are giving us the mandate.

What we are telling you is that with respect to that feature of the bill, I think under present law we could handle that phase of it. I don't think you need to start to go that far right now. We have to report to you from time to time. You would know how it is working.

Mr. YOUNGER. Mr. Cohen?

Mr. COHEN. My comment is exactly the same as Mr. Dixon's. While we favor the Senate-passed bill, we would support fully the additional provision that is in Mr. Staggers' bill, except as Mr. Dixon indicates, we think that he has the present authority to deal with that.

I think we would abide by whatever the will of the committee was on that, as to whether you wished to make it more explicit or not. But I would say that the Senate-passed bill, which is the product of so much work and so much thinking, is a good bill.

On the other hand, I must say I have never seen a bill in Congress that couldn't be changed or improved by working on it. So I know that is true.

If the committee in the hearings finds something that can be improved, I certainly would hope that you would consider it very carefuly.

Mr. YOUNGER. Thank you.

Mr. Dixon, I have one question about the enforcement. Am I correct in understanding from you that if this bill were passed, it would no longer be necessary for the Government agency to have to prove that particular actions of packages were deceptive in order to impose all the penalties?

Mr. DIXON. Not quite. I think what this bill does is to set up a procedure and a modus operandi which we would have to follow. We would have to have hearings. We would have to make determinations in those hearings.

I might point out something else to you, that in this bill it says that the hearing we have to have is under section 7 of the Administrative Procedure Act. Do you know what section 7 does? It makes it an adversary proceeding.

It means it is adversary in the sense that parties there have the right to cross-examine and to bring witnesses. Either this agency or Food and Drug, if we decide that under the mandate of this bill we are going to have a hearing, you have provided a type of hearing that goes far beyond the regulatory rulemaking hearing.

You have provided in the Senate bill and in your bill that it shall be section 7 of the Administrative Procedure Act. This means a real rhubarb is what it means, in an adversary proceeding.

Mr. YOUNGER. You also made the statement, I think, in your testimony, that following a hearing of that kind the court would have no choice but to sustain your action.

Mr. DIXON. Would have no choice? If Congress passes this bill and based upon the record, following section 7 of the Administrative Procedure Act, and we make a finding of the need and deception, then you have provided howjudicial review is to take place.

I say to you that judicial review would be as to whether we were arbitrary and capricious when we made the finding. There are safeguards on the judicial side in this bill.

Mr. YOUNGER. But the statement you made in previous testimony that now the court would have no choice but to sustain your action if this law is passed and the rules are ultimately promulgated, is it your opinion that the court would have no authority beyond that?

Mr. DIXON. Let us go back to the Wool Products Labeling Act. We had section 5 which said it was against the law to engage in an unfair or deceptive practice. But you passed another act, and the act was rather specific.

All of the instructions that we had in the act led us to believe that we could issue rules and regulations. Once they were issued under the authority of the act, they became violations of section 5 of the Federal Trade Commission Act. So when one violated the regulation, the rule, we would merely cite the violation and rest.

The case would be rested because already we had established the rule under the procedures of the Congress which could be reviewed.

Mr. YOUNGER. Thank you.

The CHAIRMAN. The time has run out.

Mr. SPRINGER. Mr. Chairman, we have the civil rights bill on the floor. I hope this will not be prolonged because all of us ought to be on the floor for that.

Mr. Macdonald.

Mr. MACDONALD. I will try to be as brief as I can.

There is one thing that bothers me about the bill, and Mr. Springer brought out part of it, is this: I have been through the bill and I don't see any place where you will get additonal help, if the Congress says that FTC should be in charge of enforcing this bill.

I would think one of the first things you would do would be to make a request for some money for more help to enforce this rather far reaching bill.

I am for the bill. Don't misunderstand me.

Mr. DIXON. As I sat here and listened to Congressman Rosenthal, champing at the bit to answer him or disagree with him, I could turn here and say sure, we could do a much better job if Congress gives us more money.

But we go through this every year and every session. I accept the will of the Congress, and the way the Congress is set up and the way we work, we do the best job we can with the funds we are given.

If this law passes, sir, we will ask for more money. If you say to me "Why haven't you asked for it before"? I have asked for it before.

But as I say to you, this law, as I would understand it, has a bit of equity in it. It is an encouragement to say "Here is another tool, and adjunct, that you can use across the board on problems."

Right to this very day, we are having hearings on "cents off" on coffee under our present procedures. Under our present procedures, no matter how we proceed, it ultimately would come to a case by case. This procedure says "If you follow this same type of procedure, and you ultimately would promulgate something, once it is promulgated, then it is a per se law violation and that is the end.

Mr. MACDONALD. But my point is that the bill is now up and it may run into some opposition by people saying it is just another way for more bureaucrats to be put on the Federal payroll. I have heard that so many hundreds of times. Don't you think it is better to face up to that fact, that you might run into that sort of opposition, to start out with?

Mr. DIXON. I don't think we will ask for over $250,000. I have been asked for that. But this is not a large amount of money to try to do this kind of a job in these areas. It is a rather small amount.

Mr. MACDONALD. My last question, because all of us on the committee, I am sure, have heard from manufacturers and other interested people. One of the things they point out is that they wonder why the previous legislation in 1938, the Federal Food and Drug Consumer Act, doesn't give you all the power you need to do whatever one says needs to be done.

Frankly, I haven't been able to answer. Could you answer them for me?

Mr. DIXON. I will try, sir. I came to the Federal Trade Commission in 1938 just as this act was passed. I have, of necessity, had to review the legislative history many times. There was a great argument in the Congress at that time to center all this in one place or another.

But the Congress made a decision there, in my opinion, to have what we ended up with. They amended section 5 of the Federal Trade Commission Act, and they added sections 12, 13, 14, and 15 to the act, and they strengthened, I believe, Food and Drug at the same time.

In the broadest type of language, let it be said that maybe Congress had in mind for a certainty that the Federal Trade Commission was to move against deception.

We have been moving against deception. But as Mrs. Peterson has said many times very eloquently, and I have tried to say it myself on occasions, there have been changes since 1938 in the way the consumer buys products.

Today the consumer buys them by sight. Shelf space is important.

Mr. MACDONALD. Without going into all that, which we all agree to, and which is so obvious, if you have the power, why do we have to give you the power all over again?

Mr. DIXON. Maybe I am going too tediously for you, too slowly. But you gave us the power and certainly, there is no doubt to move case by case. There may be potentially several thousand cases confronting us today. I have put out investigators, as this legislation has been pending, to determine just where we would be if we could

really do the job. I have agreed that we could do a better job if you pass this legislation than trying cases one at a time.

Let us take detergents. You know there are many people who make and manufacture detergents, and they have "giant," "family," and so forth. They will use the connotation of so many pounds and ounces to where even some college graduates who are not quite good on fractions or they don't remember how many ounces are in a pound, so that they can't make comparisons.

Suppose we picked one and sued them, and we brought in the people that are brought in under these bills, and a record was made where you could very clearly make a finding that there was deception inherently in this, and then we would say, "You shall cease and desist from marketing the way you are."

We would still have won, but what about the rest of the people. Do you think about the lawyers that we oppose—Mr. Rosenthal says we drag our feet. You should come down and see some of the lawyers that my men have to face. I would like to have him down there sometime and see how well we do.

But I say to you frankly, sir, that if we chose one we would have a case; we would have one scalp, let somebody say. But what about the other people? The first thing that the party we proceed against would say is "Why did you pick me? Who told on me? How did I get elected? Why don't you pick the others?"

The CHAIRMAN. The committee will have to recess until tomorrow morning at 10 o'clock.

Would you all please return at that time?

(Whereupon, at 12:10 p.m., the committee recessed, to reconvene the following day at 10 a.m.)

FAIR PACKAGING AND LABELING

WEDNESDAY, JULY 27, 1966

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to recess, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

The committee, when it recessed yesterday, was in the process of questioning the panel. At this time I would like to ask the indulgence of the members of the panel. A Member of Congress who has another committee meeting that he must go to has asked to appear briefly and present his statement.

If it is all right with the panel, we will ask Congressman Howard of New Jersey if he will come forward.

You may proceed, Congressman Howard.

STATEMENT OF HON. JAMES J. HOWARD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. HOWARD. Thank you very much, Mr. Chairman.

I appreciate being afforded the opportunity to testify this morning in behalf of this much needed legislation for the housewives of America.

I am sure that this committee will, in its deliberations, come out with a fine bill. I am looking forward to its passage during this session.

The problem of truth in packaging first came to my attention during the last year, as I imagine many Americans were made aware of this, through the complaints of their wives. My wife had been shopping for many, many years trying to stretch a schoolteacher's somewhat meager salary, and met with constant frustration in the supermarkets of America, not that she was being cheated due to untruthfulness, but very often the mental and mathematical gymnastics that she had to go through to try to find the best bargain were a bit too much for her.

This was compounded by the fact that very often our housewives are on a rush trip to the supermarket with their young children pulling at their skirts, throwing boxes of cookies, and so forth, into the basket while their backs are turned.

The plight of the housewife is certainly a difficult one. I went to the supermarket to try to check out some of these complaints, and was overwhelmed with the amount of frustration involved in trying to shop in the supermarkets today. I saw such things as a major coffee

company selling 1-pound, 2-pound, and 3-pound cans of coffee. The 1-pound and the 3-pound cans were listed as having a "cents-off" sale. In eliminating the "cents-off" and trying to determine the proper or original or regular cost of the coffee, I found that the housewife would pay more per pound for the coffee in buying the 3-pound can than the 2-pound can.

I feel this is not in the spirit of salesmanship nor fairplay.

An instant-coffee company had a 10-ounce jar which had 15 cents off on the label which came from the manufacturer. About half of the jars were labeled this way. The other half were labeled 20 cents off, the same brand, the same amount. The "cents-off" sale had a 5-cent differential, 15 and 20. In looking at the cost, one sold for $1.27 and the other sold for $1.38, an 11-cent difference in the cost, which should have been a 5-cent difference.

Alongside of that, to compound the confusion, they had a 12-ounce jar listed as "12-ounces for the price of 10." So the housewife could be very easily confused. She could have bought of the same brand, 10 ounces for $1.27, 10 ounces for $1.38, or 12 ounces for $1.27.

The growing importance of the individual as a consumer is an inevitable result of the industrial system, especially the American development of mass production.

However, extensive hearings on packaging and labeling, with particular reference to foods and household supplies, have brought to light flagrant abuses of good business practices. Therefore consumer protection legislation is urgently needed. Let me outline the three main reasons why such legislation is needed without delay.

First, the need has arisen out of the role of the package as salesman in today's food market. Regrettably, many abuses have crept into packaging techniques, confusing the consumer.

As Senator Hart explained, "the need is for sufficient information presented in such a way that will allow and encourage the shopper to make rational price comparisons among competing products."

However, it is very difficult to make reasonable choices based on quality, quantity, and price, in view of the many different sizes and shapes of packages, cans, and bottles of food products and other merchandise.

How can the housewife make rational price comparisons on price-per-unit basis when faced by odd-ounce packaging? As Marya Mannes, the writer and critic, says, "you need a computer or a slide rule when you go marketing."

Further, the use of deceptive sizes, shapes, and proportions frequently exaggerates the quantity inside. For example, an irate consumer wrote to Mrs. Esther Peterson, Special Assistant to the President for Consumer Affairs:

> I recently bought a pre-packaged pizza and I was horrified—why this pizza is only 13¼ ounces and it's in a box that would fit a 17 or 18 ounce pizza—I feel gypped * * *.

The use of descriptive adjectives, such as "jumbo" quart, "giant" size, and so forth, are also deceptive. As Mrs. E. A. S. of Ceres, Calif., wrote in a complaint to Mrs. Peterson, concerning a certain oil:

> * * * The smallest bottle they sell is called large. I still can't remember which is bigger, super, giant, or king. I say a giant is bigger than a king but my husband uses the theory that a king rules the land and is therefore bigger.

"Cents-off" promotions are also questionable. To quote Mr. Paul Rand Dixon, Chairman of the Federal Trade Commission, "Cents-off is a troublesome thing. Cents off what? Who puts what the price is on a product in the store?"

Another disturbing practice is the use of labels with very fine print, and obscure location of information.

Then, advertisements of servings are frequently misleading. For instance, an elderly wife from Pennsylvania wrote to Mrs. Peterson:

> I am enclosing a bag that contained instant sweet potatoes. The product is very good but the label distinctly says that the package serves four generously. I have bought this product several times but it never serves more than two of us. (My husband and myself). Since we are both 70 and are not possessed of an excessive appetite, I feel we are being cheated.

Finally, slack fill is a common complaint of consumers. This occurs especially in the cereal products industry. All too often, at least a third of a package of cereal is nothing but air. Don't tell me that such products need to "settle" that much.

Second, questionable packaging techniques result in actual dishonesty. On the one hand, the consumer is cheated and on the other, the ethical businessmen is penalized.

Senator Hart claims that fair packaging legislation would save the average family of consumers about $250 a year. And as Mr. George P. Larrick, Commissioner of Food and Drugs testified last year:

> Most businessmen earnestly endeavor to label and package their product ethically and legally. But hearings * * * have shown that a minority indulge in dishonest and undesirable practices and that this forces the honest competitors to adopt such practices to remain in business.

Third, present laws, the Food, Drug, and Cosmetic Act and the Federal Trade Commission Act are inadequate to deal with dishonest and misleading packaging practices. President Johnson himself stated:

> The case-by-case trail, which is the procedure under the generalized language of present laws is a long and winding one. More clear-cut regulations are needed.

George P. Larrick explains the existing muddle in regulation of packaging as follows:

> We have faced great practical difficulty in enforcing the requirements of the Federal Food, Drug and Cosmetic Act with respect to conspicuousness of labeling and with respect to deceptive packaging.
>
> Where there is no well-established practice in the industry, most courts have looked with a skeptical eye upon our attempts to bring about correction of practices which we have thought involved economic deception.
>
> We have lost every contested action involving deceptive packaging of food. We believe that the fair packaging and labeling bill is an improved approach in that it makes unnecessary the ineffective case-by-case approach we have had to take under the Food, Drug and Cosmetic Act.
>
> Under suggested legislation the Secretary will be able to promulgate industry-wide binding regulations, thus bringing about improved packaging of foods, drugs, and cosmetics.

Perhaps the most cogent argument in favor of new legislation is this: If present laws were adequate, abuses in the packaging field would be "few and far between."

My bill H.R. 12043, like Senator Hart's earlier bill would authorize the issuance of regulations which would:

1. Require the net quantity of contents to be stated on either the front panel of packages or labels affixed thereto;
2. Establish minimum standards with respect to the prominence of net quantity statements;
3. Prohibit the addition to such statements of qualifying words;
4. Specify exceptions to the foregoing which may be required because of the nature of the particular commodity;
5. Prohibit the placement upon such packages by persons other than retailers of data relating to possible retail price savings through the purchase of the commodity;
6. Prevent the use of deceptive illustrative matter on packages.

The bill would authorize the Secretary of Health, Education, and Welfare and the Federal Trade Commission to promulgate regulations, and additional regulations as needed, to preserve fair competition among competing products by enabling consumers to make rational comparisons and to prevent deception.

Such regulations would:

1. Establish reasonable weights or quantities in which the commodity would be distributed for retail sale, provided that no weight established is less than 2 ounces;
2. Prevent distribution of packages likely to deceive retail purchasers as to net quantity with exceptions for certain packages of distinctive appearance;
3. Establish standards relating to package size which may be used to characterize quantitatively the contents of packages;
4. Define the net quantity of a commodity which constitutes a serving if such commodity bears a representation as to the number of servings contained;
5. Define standards for the quantitative designation of package contents if such cannot be described in terms of weight, measure, or count;
6. Require the ingredients and composition of commodities to be placed in a prominent position.

Jurisdiction over food, drugs, and cosmetics would be assigned to the Food and Drug Administration of the U.S. Department of Health, Education, and Welfare, while all other consumer commodities would be under the authority of the Federal Trade Commission.

There is, of course, a vociferous opposition to fair packaging legislation. The opponents say that such a measure would result in product standardization and regimentation, which would lessen competition.

Furthermore, if the suggested legislation were enacted, they claim that consumers would be deprived of new and better products.

They believe that costs to the consumer would rise; and the economy would become sluggish with economic harm to both industry and labor.

It seems to me that these objections to packaging legislation are refuted by the following, forthright statement of Evelyn Dubrow, of the AFL–CIO:

> We see no validity in the dire predictions of some opponents of this bill to the effect that it will stifle ingenuity and innovation in packaging techniques; increase costs to the consumers; reduce sales; curtail production; cause unem-

ployment * * *. The very extravagance of these protests exposes their absurdity.

We cannot believe that bamboozling the consumer is the only way in which free competitive enterprise, job security for workers, and a prosperous economy can be maintained. On the contrary, this bill is designed to stimulate honest competition on the basis of quality and price, and to increase the consumer's real purchasing power by enabling him to make rational choices more easily. And there is nothing in this bill that says that packages may not be as attractive, convenient, and distinctive as imagination can make them. Is the faculty of imagination so poor that it can operate only in the realm of deception and confusion?

Finally, of course, opponents of fair packaging legislation argue that only more vigorous enforcement of present laws is necessary. However, as the following testimony from the AFL–CIO explains, there are strong grounds for believing this is not enough. To quote:

We think there ought to be general regulations (ground rules) under which the Administrator can act—there ought not to be a need to go into court and take a long time to get a decision, because by that time the consumer has already been deceived or bilked or used unfairly.

I believe that in any consideration of the need for new packaging legislation the "ayes" have it. I believe that the evidence rendered in the hearing on truth in packaging unequivocally points to the necessity for additional measures to deal with present-day abuses of packaging practices.

At this point, I want to introduce into the record excerpts from letters I have received from housewives all over New Jersey in support of this legislation.

Mr. D. K., Lavallette

* * * You need a college education to find out what contains how much. Ask your wife if she would * * * go to the fresh fish department and buy some frozen fish by the pound. Let it thaw and see how much water she has paid for. This week I have ¾ of a quart of water with two pounds of fish, when I thawed it out.

Mrs. J. O., Long Branch

* * * I hope you succeed in your good effort * * * I called the Better Business Bureau (to complain) * * * they said, they could do nothing about it.

Mrs. R. F., Manasquan

(A) cold water liquid soap was marked 77¢. That seemed high * * * today the (liquid) had marked across the front "10¢ off." The price marked on top was 75¢. To end my little tale, I checked the bottle in my trash that had been purchased approximately one month ago, it was marked 65¢.

A Women's Club, Paramus

* * * We have over and over again encountered the misleading practices you would like stopped.

Mrs. W. G. F., New Monmouth

There are so many things that are falsely advertised. Some things come in such big boxes and cans and no value in it. I do hope as one of America's millions I will one day be able to go shopping and get my dollars worth and not have to come home * * * wondering whether I was gyped or not.

Mrs. J. C. S., Princeton (copy of a letter sent to a leading hair lightener product)

Today I bought a package of this product for $1.00. I read all the data on the box. I *always* read everything on the cartons. I am one of a growing group of consumers who are sick and tired of being victimized by business. There are too many industrialists masquerading as fine, upstanding citizens who are, in

fact, charlatans. Now, absolutely nowhere on this hair lightener box does it tell the consumer that this product has to be mixed with that old standby, Peroxide. It is now 10:30 o'clock on a Saturday night, and I don't have any of that in my house. What would you suggest I do in order to be a blonde by 7 a.m. tomorrow? I will tell you one thing I am not going to do. That is, ever buy or use (your) product again.

Mrs. B. G., Toms River

* * * I've also had some terrible experience finding fat turned under a piece of meat or a large bone that you cannot see under.

Senior Citizen's Club, Jersey City

* * * We want value received for every cent of money we spend. We feel sure the housewives of America will agree with us.

Mrs. J. L., East Keansburg

I do a slow burn everytime I shop. It is almost impossible to make a comparison of prices today, and I waste more time standing over an item, trying to figure out the "per ounce" cost of a package weighing a nonsensical 11¼ oz. as compared with a "giant" size 3 lb. 2 oz. box. It is a deliberate system by the Food Industry of confusing the consumer. * * * Your bill, if passed, will be a godsend to the consumer.

Mrs. J. Mc., Convent, N.J.

An intelligent shopper must be able to compare in order to spend wisely and a good product at a reasonable price will sell if it is sold in 4, 8, 12 or 16 ounce sizes * * *.

Mrs. C. W. S., Bound Brook

My special "gripe" is the way cereal manufacturers fill their boxes only to about ¾ capacity. Regardless of proper weight, it is disgusting to fool us into thinking we are getting so much more than we really do. I don't "buy" the idea that there is all that shrinkage in already dried-out cereal. This goes for cookies, crackers, etc., too.

Mr. W. V., Princeton

I thought you might be interested in this slide rule I made for my wife to solve the "Economy Size" package problem. If you think it would be useful to you or other women in their shopping struggles, I'd be glad to arrange to get you a supply.

I believe these are just a few of the things that stress and show the need for fair packaging and labeling. I am sure that many Members of Congress have received letters from their constituents urging them to help.

I believe, Mr. Chairman, that in their wisdom this fine committee will come out with a bill that we can all support which will help the housewife, give her an even break, and relieve Congressmen no end by eliminating frustrating problems such as this.

Thank you very much for affording me this time this morning. I look forward to supporting vigorously the fine bill that I know this able committee will present to the House.

Thank you.

The CHAIRMAN. Congressman Howard, I would like to compliment you for taking the time off from your committee and coming over here to give us the benefit of your views. I am sure the housewives of America will thank you, too.

I was glad to hear you say that you had finally gone to the supermarket once. I have to go every so often myself, and I get into this confusion. I do it when I get home, so I can be with my wife.

Mr. HOWARD. I go as seldom as possible, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Are there any questions that anyone would like to ask the Congressman?

If not, thank you again for taking the time to come and giving us the benefit of your views.

We will now hear from our colleague from Wisconsin, the Honorable Lynn Stalbaum.

STATEMENT OF HON. LYNN E. STALBAUM, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Mr. STALBAUM. Mr. Chairman, as Members of Congress, we are keenly aware of the throngs of organizations into which the American people have banded to protect and promote particular spheres of interest. Yet every one of us and every one of our constituents has no such guardian angel diligently watching over our interests as consumers. The Congress must fill this vacuum or shirk its obligation as the "people's advocate."

My experience as a consumer has convinced me that it is next to impossible to make a sound judgment of the "best buy" from an array of packages in myriad sizes, shapes, and weights. Accordingly, I introduced a Consumer Protection Act which includes a truth-in-packaging section. The interest and enthusiasm that greeted this measure indicates that families from all parts of the Nation are being victimized by the use of optical illusion and the abuse of poetic license.

As the first step in halting this outrageous exploitation of the consumer, I urge the committee to approve an effective truth-in-packaging bill.

Opponents of this legislation argue that existing law affords sufficient protection to the consumer. It is true that there is ample authority for prosecuting flagrant dishonesty in merchandising. However, the case-for-case basis on which it must be enforced severely limits the number of complaints that can be adjudicated.

Furthermore, there is a vast and legally uncharted gray area between outright fraud and legitimate advertisting. That area grows larger and murkier as new products pour into the market and their manufacturers draw on the outer limits of imagination to compete for the shopper's attention, and money. Too often this desperate search for a compellingly seductive sales pitch yields empty promises, on a half-empty package.

Some exhortations earnestly enlist opposition to the bill on the grounds that it would "kill creativity." This is an absurd allegation. Creativity can flourish within the bounds of truth.

Mr. Chairman, previous testimony has spelled out the shoddy sales strategies which nibble away at our shrinking dollar. These practices are provoking a swelling national indignation and cynicism that will not reform the unprincipled minority but will ultimately injure the ethical majority. Passage of truth-in-packaging legislation would protect not only the consumer but also the manufacturers who honor and depend on his confidence in their products. I urge this committee to provide that protection.

However, a truth-in-packaging law is only one broom to clean a house of many rooms. Legislation is urgently needed to sweep out

other areas which also directly menace the consumer's health, welfare, and pocketbook. I respectfully request the committee to consider the possibility of coordinating legislation on these fronts rather than dealing with them piecemeal.

The advantages of such a comprehensive approach motivated my introduction of the Consumer Protection Act. In addition to its truth-in-packaging section, the act requires disclosure of the true cost of credit and amends the Food, Drug, and Cosmetic Act to improve the safety of drugs, cosmetics, and toys.

These objectives deserve equal priority. In our society, the individual deserves top priority. It is high time that his welfare is courted as fervently as his dollar.

It is therefore my hope that your committee would see fit to recommend for passage a bill which is not limited only to truth in packaging but rather one which covers all areas of consumer protection now under consideration.

The CHAIRMAN. Thank you for your views Mr. Stalbaum. If there are no questions we shall continue by hearing another colleague from Wisconsin, the Honorable Robert Kastenmeier.

STATEMENT OF HON. ROBERT W. KASTENMEIER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Mr. KASTENMEIER. Mr. Chairman, with your permission and indulgence, I would like to open my statement with a brief quotation from A. A. Milne's inimitable Bear of Little Brain, "Winnie the Pooh":

> What shall we do about poor little Tigger?
> If he never eats nothing he'll never get bigger.
> He doesn't like honey and haycorns and thistles
> Because of the taste and because of the bristles.
> And all the good things which an animal likes
> Have the wrong sort of swallow or too many spikes.

"He's quite big enough anyhow," said Piglet.

"He isn't *really* very big."

"Well, he seems so."

Pooh was thoughful when he heard this, and then he murmured to himself:

"But whatever his weight in pounds, shillings and ounces, He always seems bigger because of his bounces."

"And that's the whole poem," he said. "Do you like it, Piglet?"

"All except the shillings," said Piglet. "I don't think they ought to be there."

"They wanted to come in after the pounds," explained Pooh, "so I let them. It is the best way to write poetry, letting things come."

"Oh, I didn't know," said Piglet.

Mr. Chairman, "letting things come" because they want to come in may be the best way to write poetry, but it is not necessarily the best way to market consumer goods. Yet the testimony of many witnesses before this committee implies that that should be the rationale governing, for instance, the size of soap packages. "If the 13⅜ and the 9⅞ ounces want to come, let them come in," these people seem to say, "It's the best way to sell soap." Even if it is the best way to sell soap, it is certainly not the best way to buy soap. The same may be said of another underlying assumption of the packagers—the assumption that whatever its weight in pounds, shillings, and ounces (or even in just

pounds and ounces), you should always make it seem bigger by adding in a few bounces—or air spaces, or irrelevant "serving" designations. Again I say, this is not the best way to buy a product even if it may be the best way to sell it.

The fact that it is not the best way to buy a product is in itself sufficient rationale for passing truth-in-packaging legislation. The rights of the consumer deserve a little more attention than marketing corporations are prone to give them. Certainly the consumer has a right to be able to make rational price comparisons, and I submit that when a choice has to be made between two 14⅜ ounce packages for 79 cents, or one 1 pound 7⅛ ounce package for 59 cents, or one 1 pound 10⅞ ounce package for 69 cents—even without the shillings—that right is being abused. I submit that when one company's "serving" is reduced to 87 percent of another company's "serving," that right is being abused; that when 25 percent of a box of mint candies is air space, that right is being abused. And finally, I submit that it is the responsibility of Congress to take a giant step forward in consumer protection by insuring through passage of truth-in-packaging legislation, that due attention is given to the rights of the consumer which have been abused.

It would be repetitious, however, for me to provide you with more examples of the numerous packaging and labeling practices which mislead the American consumer. I am sure this committee has heard them explained in great detail—if not by witnesses at these hearings, then perhaps by your irate wives. If neither of these is the case, there are seven volumes of hearings by committees in the other body to which reference can easily be made. Even the brief examples I have given, however, make it clear that just letting things come in because they want to falls short of an ideal situation for the buyer.

But opponents of truth-in-packaging legislation disagree, arguing that in attempting to improve on the existing system, in attempting to make the choices clear to the buyer, we would succeed only in destroying the competition which produces those choices. They acclaim the range of products and packages and tell us we must ignore the impossibility of rationally choosing among them. You can't have one without the other, they claim. Thus, they conclude, just letting things come in is, in fact, the best way to buy.

For similar reasons, the opponents claim that the present chaotic system is not only the best way to sell, but the only way. Truth-in-packaging, they prophesy would so deaden the creative processes, that is, just letting things come, which produces the wide range of choice, that the whole system would be ground to a halt.

It is this aspect of the problem that I wish to concentrate on. Rather than presenting another list of malpractices, I would like to approach this legislation from a positive point of view. And in doing so, I think I can answer those who say that "letting things come" is the only way to operate an economy.

I would like to quote briefly several comments on the proposed truth-in-packing bill by Mr. D. Beryl Maneschewitz, chairman of the board of the B. Maneschewitz Co., presented on behalf of the National Association of Manufacturers at the hearings of the Senate Commerce Committee. These criticisms are typical of comments by opponents of the truth-in-packaging legislation.

Mr. Manischewitz said:

> The buyer's most reliable assurance of maximum freedom of choice, and highest quantity and quality of goods at lowest prices, flows from sustained competition between production and distribution of the various forms of goods.
>
> Such drastic intervention in economic processes would have a chilling effect on the present dynamic factors which are benefiting consumers.
>
> New materials for containers and packages, and new sizes and shapes are constantly being innovated to promote convenience, health, safety, and cost-saving for the consumer.
>
> Standardized packages can lead to standardized products and standardized quality, and thereby limit the range of choice of the purchasing public. Under such conditions, marketing innovation and competition as well cannot help but suffer.
>
> It is impossible to imagine any more deadening influence on the dynamic forces of innovation and competition which have served American consumers so well.

His criticisms can be fairly paraphrased as follows: First, he contends the convenience, health, safety, and low cost of products on the American market are due to competition, differentiation, and innovation, in both product content and product packaging. And, secondly, he argues the legislation we are considering would have a "deadening influence" on these three factors, thereby not only limiting the freedom of choice of the consumer, but also increasing his costs, impairing his health and safety, and decreasing his general convenience.

Mr. Chairman, I challenge the accuracy of each of these contentions. We have been treated to a great deal of rhetoric about the virtues of the free-enterprise system, and about the threat that this legislation poses to those virtues. I submit, however, that very few facts have been produced to support this rhetoric.

I would like to discuss with you a few facts which cast doubt on the extent to which these dire consequences will actually occur.

In looking through those seven volumes of hearings that have already been held in the Senate, I was struck by the fact that no witness ever used the dairy industry or dairy products as an example of any of these nefarious practices which the committee has been considering. I comment parenthetically at this point that when I use the terms dairy and related products, I am including oleomargarine, which, despite its other vices also complies with the excellent example that real Wisconsin butter has set it in regard to packaging. The industry is strictly regulated, particularly at the State level so that, in effect, it is already covered by truth-in-packaging legislation. Because of this, consumers are adequately protected, these malpractices do not occur, and the problem of price comparison simply does not exist.

Yet, absolutely none of the predicted dire consequences have materialized. The industry itself is still in business, competition is healthy, differentiation is rampant, and innovation continues both in product content and in packaging.

Most regulation of dairy products occurs at the State level. Although there are some differences from State to State, most States base their laws on a series of model State regulations adopted by the National Conference on Weights and Measures. It is sponsored by the National Bureau of Standards in partial implementation of its statutory responsibility for "cooperation with the States in securing uniformity in weights and measures laws and methods of inspection." I would like to submit these rules and regulations for your consideration.

(The material referred to follows:)

RULES AND REGULATIONS

NATIONAL BUREAU OF STANDARDS—HANDBOOK 44, 3RD EDITION, 1965, SPECIFICATIONS, TOLERANCES, AND OTHER TECHNICAL REQUIREMENTS FOR COMMERCIAL WEIGHING AND MEASURING DEVICES

Liquid measures

S.1. Units.—The capacity of a liquid measure shall be 1 gill, ½ liquid pint, 1 liquid quart, ½ gallon, 1 gallon, 1¼ gallons, or a multiple of 1 gallon, and the measure shall not be subdivided. However, 3-pint and 5-pint brick molds and 2½ gallon (10 quart) cans shall be permitted when used exclusively for ice cream.

Milk bottles

A.1.—This code applies to any container that is used for the measurement and delivery of milk and other fluid dairy products at retail.

S.1. Units.—The capacity of a milk bottle shall be 1 gill, ½ liquid pint, 10 fluid ounces, 1 liquid pint, 1 liquid quart, ½ gallon, 1 gallon or 2 gallons.

S.1. Marking requirements.—A milk bottle shall be permanently marked with a statement of its capacity. The capacity statement shall not be on the bottom of the bottle.

NATIONAL BUREAU OF STANDARDS—MODEL STATE LAW ON WEIGHTS AND MEASURES, FORM 2

Sec. 26. Method of sale of commodities: 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 cases 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 in connection with the declaration required under clause (2), 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, shall be used: And provided further, that under clause (2) the director shall, by regulation, establish (a) reasonable variation 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, (b) exemptions as to small packages, and (c) exemptions as to commodities put up in variable weights or sizes for sale intact and either customarily not sold as individual units or customarily weighed or measured at time of sale to the consumer.

Sec. 27. Same: Declarations of unit price on random packages.—In addition to the declarations required by Section 26 of this Act, any commodity in package form, the package being one of a lot containing random weights, measures, or counts of the same commodity and bearing the total selling price of the package, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight, measure, or count.

Sec. 28. Same: Misleading packages.—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 or 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.

Sec. 29. Same: Advertising packages for sale.—Whenever a commodity in package form is advertised in any manner and the retail price of the package is stated in the advertisement, there shall be closely and conspicuously associated with such statement of price a declaration of the basic quantity of contents

of the package as is required by law or regulation to appear on the package: Provided, that in connection with the declaration required under this section there shall be declared neither the qualifying term "when packed" nor any other word of similar import, nor any term qualifying a unity of weight, measure, or count (for example, "jumbo," "giant," "full," and the like) that tends to exaggerate the amount of commodity in the package.

Sec. 33. Bread.—Each loaf of bread and each unit of a twin or multiple loaf of bread, made or procured for sale, kept, offered, exposed for sale, or sold, whether or not the bread is wrapped or sliced, shall weigh ½ pound, 1 pound, 1½ pounds, or a multiple of 1 pound, avoirduposis weight, within reasonable variations or tolerances that shall be promulgated by regulation by the director.

Sec. 34. Butter, oleomargarine, and margarine.—Butter, oleomargarine, and margarine shall be offered and exposed for sale and sold by weight, and only in units of ¼ pound, ½ pound, 1 pound, or multiples of 1 pound, avoirdupois weight.

Sec. 35. Fluid dairy products.—All fluid dairy products, including but not limited to whole milk, skimmed milk, cultured milk, sweet cream, sour cream, and buttermilk, shall be packaged for retail sale only in units of 1 gill, ½ liquid pint, 10 fluid ounces, 1 liquid pint, 1 liquid quart, ½ gallon, 1 gallon, or multiples of 1 gallon: Provided, that packages in units of less than 1 gill shall be permitted.

NATIONAL BUREAU OF STANDARDS—MODEL STATE REGULATION PERTAINING TO PACKAGES: EXEMPTIONS, MARKING REQUIREMENTS, VARIATIONS

2. Declaration of identity.—The declaration of identity shall positively identify the commodity in the package by its common or usual name, description, generic term, or the like, unless the commodity may easily be identified through the wrapper or contained.

3. Declaration of quantity.

3.1. Net quantity.—The declaration of quantity shall disclose the net quantity of the commodity—that is, the quantity of commodity in the package exclusive of wrappers and any other material packed with such commodity.

3.9. Qualification of declaration prohibited.—In no case shall a declaration of quantity be qualified by the addition of the words "when packed" or any words of similar import, nor shall any unit of weight, measure of count be qualified by any term (such as "jumbo," "giant," "full," or the like) that tends to exaggerate the amount of commodity.

6. Prominence and placement.

6.1. General.—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 in contrast to color of background. The declaration of identity, if required, and the net quantity statement shall appear on the principal display panel of the package. The name and address of the manufacturer, packer, or distributor shall appear either on the principal display panel or an any other appropriate pane. Any required information that is either in hand lettering or hand script shall be entirely clear and equal to printing in legibility.

Mr. KASTENMEIER. In addition there are a few Federal regulations and a considerable amount of self-regulation by the industry itself. This latter is particularly important in States which have not adopted all the relevant sections of the model code.

Thus, by a combination of State and Federal regulations, and voluntarily observed standards, the practices which truth-in-packaging legislation is designed to insure already exist in most of the dairy industry. No one has ever tried selling 15½ fluid ounces of milk. There are several different kinds of milk, all selling for slightly different prices, but the consumer does not have to worry about finding herself with skim milk when she wanted vitamin A or D supplemented milk, because these facts are clearly marked on the most conspicuous part of the container.

When my wife buys butter, the same is true: with the exception of some sold in 2-pound "bulk," all butter is sold in 1-pound packages.

If she wants to buy only one-fourth pound at a time, that is possible, too, but the price comparison is no more difficult than if she were buying the entire pound.

The same situation is also true in the packaging of oleomargarine. Even the introduction of the new whipped margarine has not changed this fact. Because it is considerably lighter, the new packages are half as large as the old ones, in order to maintain the 1-pound weight. There are six "quarters" instead of four. Think of the confusion that would have been caused if the companies producing lighter marmarine, in order to avoid the horrendous expense of converting to a larger package, had simply put four ⅙-pound "quarters" into an old box and, quite probably, not changed the price. It would then be necessary to compare 1 pound with two-thirds pound. As it is, however, the 1-pound unit of comparison remains universal.

The introduction of the new type of margarine is only one major example of the innovation which has continued to occur, despite all the predictions to the contrary. Other examples include the liquid non-fat milk, the new "Danish" margarine, and vanilla (or some other) flavored ice cream, which is neither ice milk, sherbet, nor real ice cream. The fact that packaging standards exist means only that the consumer is able to compare the cost of the new product—the innovation—with the cost of the old.

Innovation in product content often leads to innovation in packaging, and since I have indicated that product innovation still does occur, we can expect to find packaging innovation. Again, soft margarine is a case in point. Some of it is sold in 1-pound packages containing two ½-pound pound trays. It is perhaps not unreasonable to predict that this device may soon be tried by some of the "hard" margarine sellers. A few years ago, cardboard milk cartons were introduced. This particular innovation for the convenience—remember that convenience was one of the results of competition and innovation which Mr. Manischewitz pointed to—for the convenience of both producer and consumer proved so popular that cardboard cartons have almost completely replaced glass bottles. And this happened, let me remind you, despite the existence on the books of regulations requiring those cartons to be of certain sizes, to declare the address of the producer, to declare conspicuously the type of milk and any special additives in a conspicuous place, and prohibiting the use of qualifying words such as "jumbo" quart. Some witnesses have claimed that regulations on package shape and size would prevent this type of innovation, but this is not true.

Mr. Chairman, I think the committee will agree that as far as innovation is concerned, in both product content and packaging, the arguments of Mr. Manischewitz and his superiors are not entirely accurate. He also mentioned differentiation, and while innovation, differentiation, and competition are all closely related and indeed overlapping, I think it will be fruitful to examine each one separately.

In regard to differentiation, it has been argued that the small amount of standardization which this bill does require will lead to complete uniformity in both product and price; that product differentiation, which in turn leads to product improvement, would wither away and the American foods industries would stagnate in their present con-

dition. A quick journey to a supermarket would indicate the speciousness of that argument, too.

I have already mentioned one very striking example of product differentiation—hard and soft margarine. There are more. Oleomargarine can be made from corn oil, safflower, or cottonseed oil. Butter can be bought salted or unsalted, sweetened or unsweetened. Milk can be bought skimmed, homogenized, with vitamin D added, or with both vitamins D and A added. Vanilla "ice cream" can range anywhere from a rich dessert with plenty of real cream, to low-calorie products made mostly with water, and some milk. It can be solid ice cream, or very often it can be blown full of air.

And that only covers real product differentiation. Opponents of this legislation claim that package differentiation, which can unquestionably serve a useful purpose for various reasons, would be entirely eliminated, if all products had to be sold in packages of comparable weight. This, too, as I have already indicated, is not true. One of my staff members spent a couple of hours in a local supermarket a few weeks ago looking at packages and prices of dairy products and oleo. He found plenty of package differentiation. Butter can be purchased in at least five types of packages: ¼-pound blocks; 1-pound boxes of ¼-pound blocks, with a choice between two shapes of box—those with the ¼-pound blocks are on top of each other, and those with the ¼-pound blocks next to each other; 1-pound unquartered blocks which are usually only wrapped in paper, but sometimes in boxes also; or 2-pound bulk circular cartons.

At this particular store, milk was sold only in cardboard containers, but half gallons could be purchased either in ½-gallon containers or in two attached quart containers. In other places, particularly markets in Wisconsin, I have seen milk available in glass bottles, some of which have special rubber handles and some of which do not.

The same quantity of vanilla ice cream could be purchased in a cardboard box, a bucket-shaped cardboard container, or a circular plastic container.

The greatest differentiation occurred in oleomargarine. In addition to the sizes and shapes used for butter, which with the exception of the 2-pound bulk, also are used for margarine, the following variations were found: shipped margarine boxes in which six 1/6-pound blocks, or in two ½-pound trays; ½-pound patties, and the 1-pound boxes with little windows in them so the buyer could see the product inside. Not to mention all sorts of variations in color, design, title, and other normal package decorating practices.

The third and final question that has to be dealt with is that of competition. We have already seen quite conclusively that competition is strong enough to encourage continual innovation and considerable differentiation. So far, however, I have said nothing about price or about quality. I think you will agree that price competition is a reasonably accurate indication of quality competition. Obviously, this is not 100 percent accurate, but it is certainly the general assumption on which the market operates; people will not pay top prices for bottom quality.

Despite the fact that there are limits to which both milk and butter, coming almost straight from "ol' Bossy" as they do, can differ in quality, there was a significant price range in similar types of butter and milk. Regular homogenized milk ranged 3 cents per half gallon,

a 5½ percent spread. The spread for salted butter was 6 cents from 72 to 78 cents, and 16 cents for all types of butter. It is possible to pay anywhere from 17½ to 43 cents a pound for oleomargarine; cheese prices range at least from 69 to 93 cents per pound; and vanilla ice cream from $1.39 to $2.38 per half gallon.

Again, we can assume that these prices indicate at least some quality competition, despite all the regulations. They certainly indicate that there is no lack of price competition.

Mr. Chairman, I hope the committee will agree with me that this quick review of an industry, which in effect, is already covered by truth in packaging, indicates that the arguments against it which invoke the threat of dire consequences to innovation, differentiation, and competition, and thereby to the entire American economic system, do not withstand close scrutiny. In other words, just letting things come in because they want to, is not the only way to sell products, or even the best way. This being so, it is possible to consider the bill before us on its real merits: on the fact that just letting things come in is very definitely not the best way to buy products because it precludes any standards by which buyers can make rational comparisons. Truth in packaging will insure that some minimum standards exist. It will make it possible for the consumer to judge before purchase all of the factors of competition which are not dependent on a product's actual use for comparision. Rather than eliminating all competition, or limiting competition to price factors, the real effect of this bill is to make it possible for the consumer not only to understand competition in quality, convenience and attractiveness, but also to determine with reasonable facility the value of the many alternative choices which that competition affords him. Truth in packaging legislation, if passed this session, will give the 89th Congress the distinction of having made the first significant breakthrough in this field, ranking with such other major accomplishments of this Congress as the Traffic Safety Act, aid to education and medicare.

I wholeheartedly urge you to make this great step forward in consumer protection.

The CHAIRMAN. We appreciate your testimony Mr. Kastenmeier.

Mr. KASTENMEIER. Thank you for the opportunity Mr. Chairman.

The CHAIRMAN. We will now hear the statement of our colleague from Ohio, the Honorable Rodney Love. You may proceed Mr. Love.

STATEMENT OF HON. RODNEY M. LOVE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. LOVE. Mr. Chairman, it is a credit to both your leadership and this committee that you have held hearings on the packaging and labeling legislation so soon after the Senate passed S. 985. Passage of this legislation will stand out as a major accomplishment of the 2d session of the 89th Congress.

Although consumers are not well organized, this interest draws its strength from numbers. When we discuss packaging and labeling, we are speaking of an issue which affects 180 million Americans. Much credit goes to Mrs. Esther Peterson, Special Assistant to the President on Consumer Affairs, and the many others who have helped make the voice of the people heard.

All of us who have ever gone into a large supermarket are aware of the difficulty in comparing the price of the many available brands and sizes—"giant," "large," "regular," "cents off," "5-cent savings," and "three servings" are characteristic eye catchers. Actually, they tell you nothing. The weights of the product, if you can isolate it from the other information on the label, is often in fractions. It has come to the point where only an engineer equipped with his slide rule can work out the cost per ounce and determine which size package or container is most economical.

On the other hand, the industries involved—producers, canners, and packers—have conscientiously outlined the ramifications and difficulties which they feel this legislation would usher upon both themselves and the consumer public. A major objection is that the proposed act would impose too tight standards. Government established, can and package sizes, would preclude the use of the same container for products of varying densities. Packers fear that they will not have sufficient flexibility to develop and try out new container sizes. These are legitimate concrens to both the manufacturers and the consumers.

Over the past year, I have been following this controversy in the newspapers and have read several witness statements. There are a few observations I would like to make. First, some regulatory legislation is necessary. This is not because the packagers, producers, and canners are out to bamboozle the public. For example, the canning industry has taken significant voluntary steps to facilitate price comparison by standardizing some can sizes. This is a good beginning, but more must be done. Federal legislation is nesessary to eliminate the earlier cited labeling abuses. Second, it seems to me that the main purpose of this bill is to enable the housewife to walk into a grocery store, glance at the various product lines, and determine which costs the least. As Mrs. Bray, editorial director of the Consumers Union, emphasized before the Senate Commerce Committee, price determination is not the consumer's only problem. Quality is also important but, before you can make a meaningful judgment on quality, you must know the price.

Today, much partisan debate centers on the poverty program. Much of the money for rent supplements, food stamps, and similar welfare measures would never be needed if consumers—especially the poor—were given a better break in the first place. Deceptive labeling fools the poor and the uneducated most. Families earning less than $2,000 spend at least 25 percent of their total income on food and home products. The Bureau of Labor Statistics estimated in 1960 that poor families spend more than two-thirds of the food and home product portion of their income on canned and packaged items. Esther Peterson mentioned the fact that a eastern Michigan university study involving 33 young married women with at least 1 year of college were sent to the supermarket and instructed to purchase the most economical buy on 20 items. They actually paid 9 percent more money than if they had successfully bought the most economical items. This average loss of 9 percent amounts to $33 per year on food and home product goods. This loss is equal to over a month's food budget for a family whose annual income is $2,000.

Mr. Chairman, my bill, H.R. 15102, is similar to S. 985 and H.R. 15440, and I join in support of these two bills. It is my hope that the

89th Congress will soon have to its credit a packaging and labeling law.

Thank you.

The CHAIRMAN. Thank you for your testimony Mr. Love.

We have several more Members to hear so we will proceed with our next witness, the Honorable Frank Thompson.

STATEMENT OF HON. FRANK THOMPSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. THOMPSON. Mr. Chairman, I would like to thank you and the members of the committee for the opportunity to be here today to testify in support of H.R. 15440 cited as the Fair Packaging and Labeling Act—a bill to prevent the use of unfair or deceptive methods in the packaging or labeling of certain consumer commodities distributed in interstate and foreign commerce.

These truth-in-packaging bills are in the long tradition of progressive legislation dating back to 1906 with the passage of the first Federal Food and Drug Act. The Government has performed an invaluable service to the consumer by protecting him from harmful drugs, adulterated food, and false advertising. We now have the opportunity to extend this protection against certain merchandising practices which have arisen in recent years—namely, deceptive labeling and misleading packaging.

These merchandising practices are results of the revolution in which the packaged item has become in reality, the live salesman. What market item of today does not have its attractive color, enticing display, and imaginative lure to command the attention of the consumer? Let us add to these qualities the jungle of confusions of weights, measures, quantities and sizes; we have "jumbo," "colossal," "mammoth," "big economy," "large," "medium," "small," all to describe sizes of packages. Now to these features let us add some 8,000 items on the shelves of the average supermarket of today. How can the American housewife, whose ability as a shopper is incomparable, find the best buys for her family without the aid of slide rule and magnifying glass? What will she do in 10 years when it is estimated that the number of items (mostly prepackaged) on the shelves of the average market will increase to 20,000?

I want to make it perfectly clear that I yield to no one in my admiration of the entrepreneurs responsible for the continuing revolution in packaging. Nowhere in the world are foodstuffs and other commodities more attractively or imaginatively presented for sale than in the American supermarket. Yet the consumer's opportunity to make accurate comparisons of weights or sizes is made extremely difficult since many of the weights are given in odd figures and there is no standardized agreement as to what the words "jumbo," "family size" and so on mean. The legislation we are concerned with today will be helpful in establishing a market in which the exercise of wisdom is at least possible. The housewife is entitled to know the exact contents of a package offered for sale, its precise price, and a clear and understandable expression of both in figures and letters large enough to be readily visible. Fair competition will be stimulated and efficiency in

the concerned industries will be promoted. The informed consumer will reward the most efficient producer who offers the best product at the best price.

One of the most important and significant benefits of this legislation will be to our lower income families who, according to the Bureau of Labor Statistics, spend some 30 percent of their annual income on food. Since food and the other immediate necessities of life comprise such a large share of the cost of living budget, the working man's family has been put upon far more heavily than have others. Our aged citizens have been found to be in the same position as shown by the fact that in 1962 the median income of the family headed by a person age 65 or over was only $3,204. This bill, if passed, will result in substantial savings for these groups who can ill afford to waste dollars in consumer buying because of false representation of products. It has been estimated that for each family these savings will amount to some $250 yearly through wiser purchasing. No matter what the amount, this bill will save the American consumer money.

All of us here today know of the concern of the many constituents from whom we have received correspondence urging us to consider the consumer and his plight and in some way, to help alleviate it. This bill is a fine first step. It is part of a new "fair deal" for the American consumer. It will not infringe on the consumer's free choice but will rather aid him to make a more meaningful and informed one.

I would like to take this opportunity to reaffirm my strong support for this bill. I believe that this legislation will be beneficial to business, to the economy as well as to the consumer. The need is urgent. I would ask that favorable consideration be given the fair packaging and labeling bill. Thank you.

The CHAIRMAN. Thank you, Mr. Thompson. If there are no questions we shall hear next from Mr. McCarthy, of New York. We welcome you to this committee, Mr. McCarthy.

STATEMENT OF HON. RICHARD D. McCARTHY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. MCCARTHY. Mr. Chairman, members of the committee, my name is Richard D. McCarthy, and I am the Representative of the 39th Congressional District of New York.

I am happy to have this opportunity to testify in support of S. 985 as amended by the Senate Committee on Commerce. I cosponsored this bill (H.R. 14158) in the House.

The legislation before this committee would prevent the use of unfair or deceptive methods of packaging or labeling of certain consumer commodities distributed in interstate and foreign commerce.

The purpose of this bill, as amended, is to insure that the labels of packaged consumer commodities are adequate, meaningful and reasonably uniform to inform consumers of the quantity of composition of the contents of the packages. In addition, it is intended to promote packaging and labeling practices which facilitate clear and easily computed price comparisons by consumers.

One provision of the bill directs the Secretary of Health, Education, and Welfare and the Federal Trade Commission to promulgate regulations to insure that the package label bears the name of the commodity and adequate identification of its manufacture.

Another provision would insure that the package label bears a separate statement of the net quantity of the contents expressed in ounces or fractions thereof. Exceptions are made for packages marketed in even pounds, pints, or quarts.

It seems to me that in order for the consumer who is constantly bombarded with increasing vast rows of competing products to make a meaningful choice with respect to value among packages of similar content, but with different packages and labels, he must first have the opportunity to compare prices.

Labels like "giant," "supergiant," "economy size," "family size" and "jumbo size" confuse today's supermarket shopper to such an extent that often the beleagered housewife or her equally confused husband might well take along a scale, slide rule or even an MIT graduate in order to compute comparative prices.

The use of qualifying adjectives to exaggerate the quantity of contents both confuses and deceives the consumer. One product labeled "giant" may contain an entirely different amount of net contents than another product labeled "giant." How is a consumer to make a rational choice in a case like this?

To protect the consumer, the legislation before this committee would require that the separate net quantity statement be printed in conspicuous and legible type which is uniform as to type size and location on the label, minus qualifying words or phrases.

The administering agencies are also authorized to promulgate regulations on a commodity line basis when necessary to define and establish standards for designating the relative size of packages such as "small," "medium," and "large"; to establish and define servings; and to require the diclosure on labels of relevant ingredient information.

In labeling the net contents of a package "6 jumbo ounces" or "three servings," the consumer is faced with rather complicated exercises in mathematics. Just what constitutes "6 jumbo ounces" as compared to 6 ounces?

And I would venture to say that more housewives have been led astray by labeling which states the number of servings the manufacturer thinks are in a package but do not fulfill the needs of all families. Without meaningful standards of reference, a label which states that a package will serve a certain number is misleading.

Many housewives could testify, I am sure, as to the difference between one commodity which has more solid content than liquid as compared to a similar commodity which has more liquid content than solid. Yet the labels on the packages indicate identical amounts of net weight at, of course, different prices.

And finally, the bill authorizes the administering agencies to establish reasonable weights or quantities for the retail distribution of any consumer commodity either where the agency determines that the consumer's ability to make price per unit comparisons among the packages in which the commodity is being marketed is likely to be impaired or after the industry has been given an opportunity (from 12 to 18 months) to participate in the develpment of a voluntary product standard through the procedures for such standards administered by the Secretary of Commerce.

Many of those who oppose this legislation are emphatic in their argument that present law is more than adequate to protect the consumer. I disagree. I believe that present law offers little or no protection to the consumer who desires to purchase or who is financially compelled to purchase that commodity which gives the most in quantity for a given amount of money. Quality also is given high priority by consumers.

To those whose sole argument against truth-in-packaging legislation is the cost factor to manufacturers, I hasten to remind them that the bill provides certain very important cost-saving factors: (1) the bill utilizes the voluntary product standards procedures of the Department of Commerce; (2) it gives ample opportunity for hearings and recourse to judicial review; and (3) it provides that no regulation under the mandatory or discretionary sections of the bill shall take effect until the manufacturers involved have had full opportunity to effect any necessary packaging or labeling changes, and to allow reasonable time for the disposal of existing stocks and inventories. The bill also provides that no regulation adopted under the act shall preclude the continued use of returnable or reusable glass containers for beverages which were in inventory or circulating.

And the bill provides that nothing contained therein shall be construed to repeal, invalidate, or supersede the Federal Trade Commission Act, the Federal Food, Drug, and Cosmetic Act and the Hazardous Substances Labeling Act.

In sum, Mr. Chairman, I respectfully urge this committee to report a meaningful and positive bill to protect the consumer from deceptive and misleading packaging and labeling of consumer commodities.

The CHAIRMAN. Thank you, Mr. McCarthy, for your interesting views. The committee will consider all such viewpoints as may be brought to our attention. We have one more Member to hear at this time, the Honorable Richard Ottinger, also of New York.

STATEMENT OF HON. RICHARD L. OTTINGER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. OTTINGER. Mr. Chairman, I am honored to speak before this distinguished committee in support of the truth-in-packaging bill. I am proud to have sponsored this important measure (H.R. 7534).

If you could see the number of complaints that come into my office each week from housewives and others about deceptive labeling and packaging, there would be no question in your mind that legislation is not only urgently needed but widely supported among the public as well.

Recently I distributed a questionnaire to the 160,000 families who live in my district. More than 18,000 took the time to answer 35 questions dealing with a wide range of domestic issues—and 95 percent supported this legislation. I am attaching a copy of that questionnaire for your records. I submit to this committee that this is an overwhelming expression of support—a popular demand for action.

I feel sure that the record of this hearing will be filled with the arguments for this bill, with catalogs of the abuses that have made its enactment an urgent necessity.

I would like to touch very briefly on some of the arguments that have been advanced against it. Frankly, I feel that these very arguments dramatize real need for this legislation.

In a recent syndicated column, a newspaper writer expressed grave concern over the damage that would be done to the economy if this bill "rushed" through Congress. I am going to ignore for a moment the strange use of the word "rush" that can cover more than 4 years of hearings, but what is the damage that he foresees? The writer points out that the housewife pays one-fourth of her total consumer dollar, or $63 million a year for these packaged goods. He is afraid that there will be severe dislocation in the whole market if the bill is passed. I think that this is an incredible admission. Is he arguing that many of the 8,000 packaged goods the housewife buys are deliberately deceptive? I reject that harsh judgment of the integrity of American industry. Of course, there are a substantial number, but is it so great that the market would be jeopardized if they all had to tell the truth in packaging?

The columnist makes it abundantly clear that packaging plays a vital role in the sale of products. He does not mention that the package on the average costs 20 percent of the total cost of the product, but he does stress that it is essential in persuading the housewife to purchase. If the package is that crucial, then obviously it is vital that it be honest. If it is honest, then this legislation will not affect it, anyway. In fact, by wiping out unfair, deceptive competition, this legislation will benefit the honest packager and the truthful labeler as much as the retailer and the consumer.

The prophets of doom who have so little faith in the honesty of American industry foresee chaos as packagers and labelers convert to honest practices. This bill is not so harsh. It provides that no packager is required to mend his ways until the deceptive package or labels on hand have been exhausted. How can this "cripple" industry? Every housewife knows that change in packaging is the rule rather than the exception, anyway. I am sure that they will welcome a change for the better.

The columnist makes the point that the shrewd housewife can enforce honesty by selective buying. Now, he has already told us that she depends on the package to purchase. If the package deceives, how can she make an informed decision? This is the old argument of the confidence man who snares his victim by assuring him of his superior intelligence and ability. Mr. Chairman, 95 percent of my constituents are sick of being sold the Brooklyn Bridge in a package that says "soapsuds."

I submit in addition that shrewdness and selectivity alone are not enough. The housewife today has to be a computer to figure out what kind of a deal she is getting.

Now, let's say you're standing at the counter faced with a special offer on two giant boxes of soda crackers, both packaged by well-known firms and both apparently containing products of identical quality. One box is the "large economy size" weighing "39 large ounces" and selling for a special low price of 51 cents, the other is the "giant economy size" offering "1 pound and big 15 ounces" and selling for "only" 56 cents. Which is the better buy? Well, if you bought the

"giant economy size" you would be getting nicked by slightly more than 2 cents and it took me almost 20 minutes to figure that out. Does any housewife have 20 minutes to spend on every box of soap, every package of food?

But aside from the time factor, what do mere pennies really mean to her? Is it worth worrying about? Well, the slightly more than 2 cents differential is about 5 percent of the total cost of the product. Who can afford a 5-percent hike in their food bill, especially when it isn't buying you or your family anything but air?

Is this extreme? I think not. Potato chips come in 17 different sizes under a pound and sell for an incredible variety of prices. Take a look at your cereal shelf and see the different sizes, the odd weights and labored measures.

That could mean a lot of new clothes for the children or a meaningful addition to their education fund. For some it could mean the difference between victory and defeat in their private war on poverty.

If you don't think those few pennies on each product are important, some of the less scrupulous elements of the food industry certainly do. They know that when you are dealing with an $80 billion industry, little stacks of pennies piled that high amount to a pretty substantial profit.

Mr. Chairman, this is not a harsh or restrictive bill. It will not unduly restrict private enterprise. It will not dictate pricing, sales, or interfere with any other legitimate marketing function. It only says that the label and the package must tell the truth. That is a simple, American tradition ardently supported by 95 percent of my constituents and the vast majority of economy-conscious Americans.

The CHAIRMAN. Thank you, Mr. Ottinger. That concludes those Members who wish to be heard at this time. Again we wish to say that we appreciate your presentation of your views, and all such views will be given every consideration by the members of this committee.

If there are no further questions, we shall continue with the panel members.

FURTHER STATEMENTS OF HON. JOHN T. CONNOR, SECRETARY OF COMMERCE; PAUL RAND DIXON, CHAIRMAN, FEDERAL TRADE COMMISSION; HON. WILBUR J. COHEN, UNDER SECRETARY, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE; MRS. ESTHER PETERSON, ASSISTANT SECRETARY FOR LABOR STANDARDS, DEPARTMENT OF LABOR; THEODORE ELLENBOGEN, ASSISTANT GENERAL COUNSEL (LEGISLATION), HEW; WILLIAM W. GOODRICH, ASSISTANT GENERAL COUNSEL (FOOD AND DRUG), HEW; AND WINTON B. RANKIN, DEPUTY COMMISSIONER, FOOD AND DRUG ADMINISTRATION

The CHAIRMAN. Mr. Jarman, have you any questions of the panel?

Mr. JARMAN. I will put my question to Secretary Connor first.

In the hearing in the other body, I noticed that a reference was made by one manufacturer as to complying with packaging requirements under Canadian law. Do we have any legislative guidelines from any other country that bear closely on the legislative proposal that we have before us?

Secretary CONNOR. Mr. Jarman, just to summarize what I know you are already familiar with, with respect to imports of the kinds of products in packages coming into this country from other countries, such as Canada, there is the provision in the bill that those imported products will have to comply with the provisions just as if they had been made and sold in the United States, and enforcement with respect to imports will be handled through the Secretary of the Treasury in its customs operations.

With respect to products made in the United States for export, there is an exception to the rules that are otherwise applicable. In other words, products made in the United States and sold in the export markets will be bound by the provisions of the laws in the countries in which they are sold, but not bound by the provisions with respect to products under this bill made and sold in the United States.

In specific answer to your question, our studies do not reveal that other countries have exactly the same requirements as would be imposed on U.S. manufacturers in this case.

Mr. JARMAN. Does England or any other country of which you know have anything in their laws comparable to parts of section 5?

Secretary CONNOR. I don't know of any personally.

Let me ask my colleagues. Mr. Dixon?

Mr. DIXON. I know of none. I think the British are getting a little more interested in this subject. I have read things recently that would indicate that they are taking quite an active interest in this general subject. But I don't think they have promulgated anything as yet.

Mrs. PETERSON. I was consulting with my staff person as to whether or not we could supply information on the experiences of some other countries in packaging legislation that might help in showing how this type of legislation has been effective elsewhere.

Mr. JARMAN. I would be particularly interested in whether we, in a sense, are leading the way in this field, or whether any other countries have actual legislation on the books that would be a guideline for us.

Mrs. PETERSON. There is some strong legislation in other countries, particularly in requirements for labeling. I think it might be helpful if we did supply this information for you. We would be very happy to.

(The information referred to follows:)

FOREIGN LAWS AND REGULATIONS ON PACKAGING AND LABELING IN SELECTED FOREIGN JURISDICTIONS

A. CANADA

Current Canadian laws regarding deceptive packaging and labeling practices are found in the consolidation of the Food and Drug Act (1953) and Food and Drug Regulations (1954). This combined document has been recently revised to include all subsequent amendments. The laws, based on those put forth earlier in the Food and Drug Act of 1938, parallel our own in large part. They set out similar broad ground rules for the manufacture and sale of foods, drugs, cosmetics, and devices.[1] They include extensive lists of particular products with standards of identity for each. They are promulgated under the authority of the National Department of Health and Welfare and are enforced by the appointed inspectors of this same organization. But they extend somewhat further in defining the realm of deceptive packaging and labeling than do our own.

[1] The definitions of "food," "drugs," "cosmetics," and "devices" are diffrent from the U.S. definitions.

Source: United States Senate, Committee on the Judiciary, Subcommittee on Antitrust and Monopoly, Hearings on Packaging and Labeling Legislation, pursuant to S. Res. 56 on S. 387, Appendix, Part 3, Eighty-eighth Congress, First Session, 1963 (materials prepared by the Library of Congress), pp. 933–974.

"FOOD AND DRUGS ACT

"*Interpretation*

"2. (a) *advertisement*—'any representation by any means whatever for the purpose of promoting directly or indirectly the sale or disposal of any food, drug, cosmetic, or device;'

"(c) *cosmetic*—'any substance or mixture of substances manufactured, sold or represented for use in cleansing, improving or altering the complexion, skin, hair or teeth, and includes deordorants and purfumes;'

"(d) *department*—'Department of National Health and Welfare;'

"(e) *device*—'any instrument, apparatus or contrivance, including components, parts, and accessories thereof, manufactured, sold or represented for use in the diagnosis, treatment, mitigation or prevention of a disease, disorder, abnormal physical state, or the symptoms thereof, in man or animal;'

"(f) *drug*—'any substance or mixture of substances manufactured, sold or represented for use in

"'(i) the diagnosis, treatment, mitigation or prevention of a disease, disorder, abnormal physical state, or the symptoms thereof, in man or animal,

"'(ii) restoring, correcting or modifying organic functions in man or animal, or

"'(iii) disinfection in premises in which food is manufactured, prepared or kept, or for the control of vermin in such premises;'

"(g) *food*—'any article manufactured, sold or represented for use as food or drink for man, chewing gum, and any ingredient that may be mixed with food for any purpose whatever;'

"(h) *inspector*—'any person designated as a Food and Drug Inspector under subsection (2) of sec. 24;'

"(i) *label*—'any legend, word or mark attached to, including in, belonging to or accompanying any food, drug, cosmetic, device, or package;'

"(j) *Minister*—'Minister of National Health and Welfare;'

"(k) *package*—'anything in which any food, drug, cosmetic, or device is wholly or partly contained, placed or packed;'

"(m) *sell*—'sell, offer for sale, expose for sale, have in possession for sale, and distribute.'

"PART I

"*Food*

"'5. (1) No person shall label, package, treat, process, sell or advertise any food in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character, value, quantity, composition, merit or safety.

"'(2) An article of food that is not labeled or packaged as required by the regulations, or is labelled or packaged contrary to the regulations, shall be deemed to be labeled or packaged contrary to subsection (1).

"'6. Where a standard has been prescribed for a food, no person shall label, package, sell or advertise any article in such a manner that it is likely to be mistaken for such food, unless the article complies with the prescribed standard."

"*Cosmetics*

"16. 'Where a standard has been prescribed for a cosmetic, no person shall label, package, sell or advertise any article in such a manner that itis likely to be mistaken for such cosmetics, unless the article complies with the prescribed standard.'

"PART II

"*Powers of Inspectors*

"21. (1) An inspector may at any reasonable time

"(a) enter any place where any reasonable grounds he believes any article to which this Act or the regulations apply is manufactured, prepared, preserved, packaged or stored, examine any such article and take samples thereof, and examine anything that he reasonably believes is used or capable of being used for such manufacture, preparation, preservation, packaging or storing;

"(b) open and examine any receptacle or package that on reasonable grounds he believes contains any article to which this Act or the regulations apply;

"(c) examine any books, documents or other records found in any place mentioned in paragraph (a) that on reasonable grounds he believes contain any information relevant to the enforcement of this Act with respect to any

article to which this Act or the regulations apply and make copies thereof or extracts therefrom; and

"(d) seize and detain for such time as may be necessary any article by means of or in relation to which he reasonably believes any provision of this Act or the regulations have been violated.

"(2) For the purposes of subsection (1), the expression 'article to which this Act or the regulations apply' includes

"(a) any food, drug, cosmetic or device,

"(b) anything used for the manufacture, preparation, preservation, packaging or storing thereof, and

"(c) any labelling or advertising material.

"(3) An inspector shall be furnished with a prescribed certificate of designation and on entering any place pursuant to subsection (1) shall if so required produce the certificate to the person in charge thereof.

"(4) The owner or person in charge of a place entered by an inspector pursuant to subsection (1) and every person found therein shall give the inspector all reasonable assistance in his power and furnish him with such information as he may reasonably require.

"(5) No person shall obstruct an inspector in the carrying out of his duties under this Act or the regulations.

"(6) No person shall knowingly make any false or misleading statement either verbally or in writing to any inspector engaged in carrying out his duties under this Act or the regulations.

"(8) Any article seized under this Act may at the option of an inspector be kept or stored in the building or place where it was seized or may at the direction of an inspector be removed to any other proper place.

"Forfeiture

"22. (1) An inspector shall release any article seized by him under this Act when he is satisfied that all the provisions of this Act and the regulations with respect thereto have been complied with.

"(2) Where an inspector has seized an article under this Act and the owner thereof or the person in whose possession the article was at the time of seizure consents to the destruction thereof, the article is thereupon forfeited to Her Majesty and may be destroyed or otherwise disposed of as the Minister may direct.

"(3) Where a person has been convicted of a violation of this Act or the regulations, the court or judge may order that any article by means of or in relation to which the offence was committed or anything of a similar nature belonging to or in the possession of the accused or found with such article, be forfeited, and upon such order being made, such articles and things are forfeited to Her Majesty and may be disposed of as the Minister may direct.

"(4) Without prejudice to the operation of subsection (3), a judge of a superior, county or district court of the province in which any article was seized under this Act may, on the application of an inspector and on such notice to such persons as the judge directs, order that the article and anything of a similar nature found therewith be forfeited to Her Majesty to be disposed of as the Minister may direct, if the judge finds, after making such inquiry as he considers necessary, that the article is one by means of or in relation to which any of the provisions of this Act or the regulations were violated.

"Regulations

"24. (1) The Governor in Council may make regulations for carrying the purposes and provisions of this Act into effect, and, in particular, but not so as to restrict the generality of the foregoing, may make regulations

"(a) declaring that any food or drug or class of food or drugs is adulterated if any prescribed substance or class of substances is present therein or has been added thereto or extracted or omitted therefrom;

"(b) respecting

"(i) the labeling and packaging and the offering, exposing and advertising for sale of food, drugs, cosmetics and devices,

"(ii) the size, dimensions, fill and other specifications of packages of food, drugs, cosmetics and devices,

"(iii) the sale or the condition of sale of any food, drug, cosmetic or device to prevent the consumer or purchaser thereof from being deceived or misled as to its quantity, character, value, composition,

merit or safety or to prevent injury to the health of the consumer or purchaser;

"(i) not inconsistent with this Act, respecting the powers and duties of inspectors and analysts and the taking of samples and the seizure, detention, forfeiture and disposition of articles;

"(j) exempting any food, drug, cosmetic or device from all or any of the provisions of this Act and prescribing the conditions of such exemption;

"(k) prescribing forms for the purposes of this Act and the regulations;

"(2) The Governor in Council may designate as an analyst or inspector any person on the staff of the department for such time as that person is employed in the department or for such time during the period of such employment as he may direct.[3]

"*Penalties*

"25. Every person who violates any of the provisions of this Act or the regulations is guilty of an offence and is liable

"(a) on summary conviction for a first offence to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months or to both fine and imprisonment, and for a subsequent offence to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months or to both fine and imprisonment; and

"(b) on conviction upon indictment to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding three years or to both fine and imprisonment.

"26. A prosecution under paragraph (a) of section 25 may be instituted at any time within twelve months from the time the subject matter of the prosecution arose.

"27. A prosecution for a violation of this Act or the regulations may be instituted, heard, tried or determined in the place in which the offence was committed or the subject matter of the prosecution arose or in any place which the accused is apprehended or happens to be.

"28. (1) Subject to subsection (2), in a prosecution for the sale of any article in contravention of this Act or the regulations, if the accused proves to the satisfaction of the court or judge that

"(a) he purchased the article from another person in packaged form and sold it in the same package and in the same condition the article was in at the time he purchased it, and

"(b) that he could not with reasonable diligence have ascertained that the sale of the article would be in contravention of this Act or the regulations,

the accused shall be acquitted.

"*Evidence*

"29. (2) Proof that a package containing any article to which this Act or the regulations apply bore a name or address purporting to be the name or address of the person by whom it was manufactured or packaged is *prima facie* proof, in a prosecution for a violation of this Act or the regulations, that the article was manufactured or packaged, as the case may be, by the person whose name or address appeared on the package.

"*Exports*

"30. This Act does not apply to any packaged food, drug, cosmetic or device, not manufactured for consumption in Canada and not sold for consumption in Canada, if the package is marked in distinct overprinting with the word 'Export', and a certificate that the package and its contents do not contravene any known requirement of the law of the country to which it is or is about to be consigned, has been issued in respect thereof in prescribed form and manner.

"FOOD AND DRUG REGULATIONS

"PART A—ADMINISTRATION

"*General*

A.01.002. These regulations, where applicable, prescribe the standards of composition, strength, potency, purity, quality or other property of the article of food, drug, cosmetic or device to which they refer.

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[3] See Regulations, p. 13.

"*Interpretation*

"*A.01.010.* In these regulations

"(b) 'Act' means the Food and Drugs Act,

"(d) 'Director' means the Director of the Food and Drug Divisions of the Department,

"(e) 'inner label' means the label on or affixed to an immediate container of a food, drug, cosmetic, or device,

"(f) 'Lot number' means any combination of letters, figures, or both, by which any food or drug can be traced in manufacture and identified in distribution,

"(g) 'manufacturer', except in DIVISION 3 and DIVISION 4 of *part C*,[4] means a person who under his own name, or under a trade, design or word mark, trade name or other name, word or mark controlled by him sells a food, drug, cosmetic or device, and includes a firm, partnership, or corporation,

"(h) 'official method' means the method of analysis or examination designated by the Director for use in the administration of the Act,

"(i) 'outer label' means the label on or affixed to the outside of a package of a food, drug, cosmetic or device.

"*A.01.012.* The Director shall, upon request, indicate that a method is acceptable or otherwise upon its submission to him for a ruling.

"PART B—FOODS

"*General*

"*B.01.001.*[5] In this Part

"(b) 'common name' means, with reference to a food, the name of the food printed on boldface type in these Regulations, or if the name of the food is not so printed, the name in English or French by which the food is generally known:

"(f) 'per cent' means per cent by weight, unless otherwise stated;

"*B.01.002.* Subject to section B.01.010, no person shall sell a food that is not labelled as required by these Regulations.

"*B.01.003.*[6] Except as otherwise provided in these Regulations, the label of a package of food shall carry

"(a) on the main panel of the label

"(i) the brand or trade name if any,

"(ii) the common name of the food, and

"(iii) in close proximity to the common name, a correct declaration of the net contents of the package in terms of weight, measure or number, as is the usual practice in describing such article,

"(b) grouped together on the main panel or on any panel other than the bottom of the package

"(i) a declaration by name of Class II, Class III or Class IV preservative therein,

"(ii) a declaration of any food colour added thereto,

"(iii) a declaration of any artificial or imitation flavouring preparation added thereto,

"(iv) in the case of food consisting of more than one ingredient and for which no standard is prescribed in these Regulations, a complete list of the ingredients by their common names in descending order of their proportions, unless the quantity of each ingredient is stated in terms of percentage or proportionate composition, and

"(v) any other statement required by these Regulations to be declared, and

"(c) on the main panel or on any panel other than the bottom of the package, the name and address of the manufacturer.

"*B.01.004.* All information required by these Regulations to be carried on a

"(a) clearly and prominently displayed thereon, and

label shall be

"(b) readily discernible to the purchaser or consumer under the customary conditions of purchase and use.

"*B.01.005.*[7] For the purposes of paragraph (a) of section B.01.004,

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[4] Part C is concerned with Drugs and is hence not relevant to our discussion.
[5] Amend. of 12–5–62.
[6] Amend. of 17–8–60.
[7] Amends. of 17–8–60 and 4–3–63.

"(a) a common name consisting of more than one word shall be deemed to be clearly and prominently displayed on the main panel of the label if each word (other than articles, conjunctions or prepositions) is in identical type and identically displayed; and

"(b) a declaration of net contents, including each numeral in any indicated fraction, on a package of food shall be deemed to be clearly and prominently displayed thereon if it is in boldface type and not less than

"(i) one-sixteenth of an inch in height on packages the main panel of the label of which has an area of twenty square inches or less;

"(ii) one-eighth of an inch in height on packages the main panel of the label of which has an area of more than twenty but not more than forty square inches;

"(iii) one-quarter of an inch in height on packages the main panel of the label of which has an area of more than forty but not more than one hundred square inches; and

"(iv) three-eighths of an inch in height on packages the main panel of the label of which has an area of more than one hundred square inches.

"*B.01.006.* Notwithstanding sub-paragraph (iii) of paragraph (a) of section B.01.003, a declaration of net contents is not required on

"(a) a package of food the weight of which including the package is less than two ounces, and

"(b)[8] fluid dairy products sold in glass containers of one-half pint, one pint, one quart, one-half gallon, three quarts or one gallon capacity.

"*B.10.007.*[9] Sub-paragraph (iii) of paragraph (a) of section B.01.003, and section B.01.004 do not apply to the position or size of the declaration of net contents on the label

"(a) of a package of food where the manner of declaration is described or prescribed by

"(i) a statute of the Parliament of Canada or any Regulation made thereunder, or

"(ii) a Provincial Statute or any Regulation made thereunder,

"(b) of a food packed in glass containers on which the declaration of net contents appears twice on the shoulder or upper part of the container in blown block lettering with flat stippled face, in numerals not less than

"(i) three-eighths of an inch in height where the containers are over ten ounces, and

"(ii) one-quarter of an inch in height on containers of ten ounces or less,

"(c) of alcoholic beverages or soft drinks.

"(d) of margarine ,shortening, lard and similar packaged food fats when packed in packages of one-quarter pound, one-half pound or one pound or multiples thereof,

"(e) of eggs packed in a carton, and

"(f) of food that is packed to a catch weight.

"*B.01.008.* Where inner and outer labels are employed on a package of food, all label declarations required by these Regulations shall appear on both the inner and outer labels.

"*B.01.009.* No reference, direct or indirect, to the Act or to these Regulations shall be made upon any label of, or in any advertisement for, a food unless such reference is a specific requirement of the Act or these Regulations.

"*B.01.010.* Section B. 1.003 does not apply to a food packaged from bulk at the place where the food is retailed unless that package bears a statement, mark or device describing the ingredients or the substances contained therein other than

"(a) the name of the food, and

"(b) the net contents of the package.

"*B.01.031.* Where a statement or claim implying a special dietary use is made on the label of, or in any advertisement for a food, the label shall carry a statement of the type of diet for which that food is recommended.

"*B.01.032.* Where a statement or claim implying a low sodium content is made on the label of, or in any advertisement for a food, the label shall carry a declaration of the sodium content in milligrams per 100 grams.

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[8] Amend. of 5–5–60.
[9] Amend. 21–12–61.

"*B.01.034.* A food containing saccharin, cyclohexylsulphamic acid or the salts of either shall carry on the label the following statement:

" 'Contains (naming the synthetic sweetener) a non-nutritive artificial sweetener which should be used only by persons who must restrict their intake of ordinary sweets.'

"*B.01.041.* Where a standard for a food is provided in these regulations, only those ingredients named in the standard shall be used in the food.

"*B.01.051.* Subject to section B.01.052, where the contents of a package of food are expressed in terms of weight, measure or number, no variation below the quantity declared on the label is permitted other than the following:

"(a) a variation due exclusively to weighing, measuring or counting that occurs in the course of packaging the food, but not to the extent that the content of the package is less than the quantity declared on the label, as determined by the official method.

"(b) variations due exclusively to differences in the capacity of containers resulting solely from unavoidable difficulties in manufacturing, but no greater variation is permitted because of the design of the containers than is usual in the case of containers of similar capacity that can be manufactured so as to be of approximately uniform capacity, and

"(c) variations in weight or measure that unavoidably result from the ordinary and customary exposure of the package to evaporation or to the absorption of water under normal atmospheric conditions.

"*B.01.052.* Notwithstanding section B.01.051, where the contents of a package of food are expressed in terms of minimum weight, measure, or number, the contents of the package shall not be less than the minimum expressed.

"PART E

"*E.01.001.* No person shall sell a cosmetic that is not labelled as required by these regulations.

"*E.01.002.* Except as provided in this *Part* a cosmetic shall carry

"(a) on both the inner and outer labels

"(i) the name, if any, of the cosmetic, and the description of the cosmetic if necessary for the identification thereof, and

"(ii) the name and address of the manufacturer or distributor, and where a manufacturer or distributor has more than one place of business such address shall be that of his head office or principal place of business, but the address of any branch place of business may be printed on the label in type no larger than that used for printing the address of the head office or principal place of business.

"(b) on the outer label, a declaration of the net content expressed in terms of

"(i) weight for solids,

"(ii) fluid measure for liquids, or

"(iii) weight for semi-solids except that fluid measure may be used if in accordance with established commercial practice and it gives accurate information in respect of the net content,

combined with numerical count if the content is subdivided, and

"(c) on the inner label

"(i) where a hazard exists adequate directions for safe use, and

"(ii) any warning, caution or special direction required by these regulations to be placed thereon.

"*E.01.003.* Notwithstanding E.01.002, a statement of the content need not appear on the outer label of

"(a) a package of perfume, toilet water or the like the net content of which does not exceed 4 fluid ounces, and

"(b) a package of solid or liquid cosmetic the net content of which does not exceed one ounce.

"*E.01.005.* Any statement or information required by this *Part* to appear on a label shall be legibly and conspicuously displayed thereon.

"*E.01.006.* Where a package of a cosmetic has only one label, such label shall contain all the information required by these regulations to be shown on both the inner and the outer labels.

"*E.01.012.* No persons shall sell any cosmetic which carries on the label thereof or in any advertisement therefor, any symbol or device to denote that the cosmetic has been prepared or compounded in accordance with a prescription.

"*E.01.015.* No person shall sell a cosmetic in a collapsible tube packed in a carton if the dimensions of the carton exceed

"(a) for all tubes without chip-board protectors, and tubes of less than 1¼" diameter with chip-board protectors:

"(i) length—over-all tube length filled and clipped plus 8/32"

"(ii) height—diameter of tube plus 4/32".

"(iii) width—1.25 times tube diameter plus 4/32", and

"(b) for all tubes of 1¼" diameter and over with chip-board protectors:

"(i) length—over-all tube length filled and clipped plus 10/32",

"(ii) height—diameter of tube plus 4/32", and

"(iii) width—1.25 times tube diameter plus 4/32".

"*E.01.016.* Notwithstanding E.01.015, when an applicator is essential to the use of a cosmetic solid in a collapsible tube packed in a carton, and such applicator is included in the carton, the dimensions of the carton may exceed those set out in E.01.015 provided that the main panel of the label of the carton clearly indicates that it is a combination package."

B. Great Britain

"STATUTES

"I. Merchandise Marks Act, 1887, *Public General Acts*, 50 & 51, Vict., 1886–1887, c. 28, Secs. 2(1)(d); 2(2); 3(1)(2) and 5, pp. 72–74.

"II. Merchandise Marks Act, 1953, *Public General Acts and Measures of 1953*, 1 & 2 Eliz. 2, ch. 48, pp. 645–648. Whole Act.

"III. Sale of Food (Weights and Measures) Act, 1926, in *Public General Acts and Measures*, 1926, 16 & 17 Geo. 5, ch. 63, Secs. 1–5, 9, 10, 11, 13, pp. 529–530, 533, 534–535, 537.

"IV. Food and Drugs Act, 1955, *Public General Acts* * * * of 1955, 4 Eliz. 2, ch. 16, Secs. 6–7, pp. 602–604.

"V. Weights and Measures Act, 1963, chapter 31.

"REGULATIONS

"I. *Statutory Instruments*, 1953, Part 1, No. 536.

"II. *Statutory Instruments*, 1957, Part 1, No. 1880.

Labeling and packaging in Great Britain are controlled by statute and implementing regulations.

"STATUTES

I. The Merchandise Marks Act, 1887 (50 & 51 Vict. Ch. 28). Section 2(d) of this Act provides that—

"Every person who [* * *] applies any false trade description[10] to goods; [* * *] shall subject to the provisions of this Act, and unless he proves that he acted without intent to defraud, be guilty of an offence against this Act."

The act also provides in section 2(3), that—

"Every person guilty of an offence against this Act shall be liable—

"(i) on conviction on indictment, to imprisonment, with or without hard labour, for a term not exceeding two years, or to fine, or to both imprisonment and fine; and

"(ii) on summary conviction to imprisonment, with or without hard labour, for a term not exceeding four months, or to a fine not exceeding twenty pounds, and in the case of a second or subsequent conviction to imprisonment, with or without hard labour, for a term not exceeding six months, or to a fine not exceeding fifty pounds; and

"(iii) in any case, to forfeit to Her Majesty every chattel, article, instrument, or thing by means of or in relation to which the offence has been committed."

And provides—

"(4) The court before whom any person is convicted under this section may order any forfeited articles to be destroyed or otherwise disposed of as the court think fit.

"(5) If any person feels aggrieved by any conviction made by a court of summary jurisdiction, he may appeal therefrom to a court of quarter sessions.

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[10] "'Trade description' means an description, statement, or other indication, direct or indirect, (a) as to number, quantity, measure, gauge, or weight of any goods, * * *"—Halsbury's *Statutes of England*. 2d edition (London, 1954), p. 916.

"(6) Any offence for which a person is under this Act liable to punishment on summary conviction may be prosecuted, and any articles liable to be forfeited under this Act by a court of summary jurisdiction may be forfeited, in manner provided by the Summary Jurisdiction Acts: Provided that a person charged with an offence under this section before the court, of summary jurisdiction shall on appealing before the court, and before the charge is gone into, be informed of his right to be tried on indictment, and if he requires be so tried accordingly."

Section 5 of the same act, concerned with the application of marks and descriptions of goods, provides that—

"A person shall be deemed to falsely apply to goods a trade mark or mark, who without the assent of the proprietor of a trade mark applies such trade mark, or a mark so nearly resembling it as to be caculated to deceive, but in any prosecution for falsely applying a trade mark or mark to goods the burden of proving the asset of the proprietor shall lie on the defendant."

II. The Merchandise Marks Act, 1953 (1 and 2 Fliz. 2, Ch. 48), section 1, amends the previous act by extending the provision regarding "false trade description" to include "misleading" trade descriptions.

"1. (2) In the said section three (which also defines 'false trade description' to mean a trade description which is false in a material respect as regards the goods to which it is applied, to include every alteration of a trade description making the description false in a material respect) that definition shall be amended by inserting after the word 'false' in the second and third places where it occurs the words 'or misleading'.

"(3) Without prejudice to the generality of those definitions as so amended, a trade description (to whichever of the matters mentioned in the definition of "trade description" as so amended it relates) shall be deemed for the purposes of the said Act to be a false trade description if it is calculated to be misunderstood as, or mistaken for, an indication as to the same or some other such matter which would be false or misleading in a material respect as regards the goods to which the description is applied, and anything calculated to be misunderstood as, or mistaken for, an indication of any of those matters shall be deemed for those purposes to be a trade description.

"4. Section two of the Merchandise Marks Act, 1887, shall be amended by the deletion of subsection (2) thereof and the insertion of the following subsection:

"'(2) Every person who sells, or exposes for, or has in his possession for, sale, or any purpose of trade or manufacture, any goods or things to which any forged trade mark or false trade description is applied, or to which any trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, as the case may be, shall, unless he proves either—

"'(2) that, having taken all reasonable precautions against committing an offence against this Act, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark or trade description, and that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things; or

"'(b) that otherwise he had acted innocently;

be guilty of an offense against this Act.'"

III. The Sale of Food (Weights and Measures) Act, 1926 (16 & 17 Geo. V. Ch. 63), specifies that—

"1. A person shall not, in selling any article of food by weight, measure or number, deliver or cause to be delivered to the purchaser a less weight, measure or number, as the case may be, than is purported to be sold.

"2. A statement as to weight or measure of a pre-packed [11] article of food shall be deemed to be a statement as to the weight or measure thereof unless otherwise specified.

"3. A person shall not, on or in connection with the sale of any article of food, or in exposing or offering any article of food for sale, make any misrepresentation either by word of mouth or otherwise, or commit any other act calculated

[11] "Pre-packed" article is interpreted as any article which is packed or made up in advance ready for retail sale in a wrapper or container, and where any article packed or made up in a wrapper or container is found on any premises where such articles are packed, kept or stored for sale, the article shall be deemed to be packed or made up in advance ready for retail sale unless the contrary is proved.

to mislead the purchaser or prospective purchaser, as to the weight or measure of the article * * *"

The act also contains provisions with respect to prepacked articles of food (tea, coffee, beans, ground coffee, cocoa, cocoa powder, chocolate powder, and potatoes).

Section 4(2) of the act states that—

"A person shall not sell or have in his possession for sale any pre-packed article of food of any kind of the kinds set forth in the First Schedule to this Act, unless—

"(a) the article is made up for sale in quantities of two ounces, or in multiples of two ounces up to a limit of eight ounces, in multiples of a quarter of a pound up to a limit of two pounds, in multiples of half a pound up to a limit of four pounds, or in multiples of one pound; and

(b) the wrapper or container bears thereon, or on a label securely attached thereto, a true statement in plain characters of the minimum net weight of the article contained therein, or, in any case where the weight of the wrapper or container is permitted by the preceding subsection to be included in the weight purported to be sold, of the minimum weight of the article with its wrapper or container:"

The Board of Trade is authorized by section 9 of the same act to make regulations for the purpose—

"(a) of making additions to or removals from or otherwise varying the list of articles set forth in the First Schedule to this Act:

"(b) of requiring any articles of food other than those required by this Act to be sold by weight or by measure to be sold only by weight or by measure, and of applying to any such articles any of the provisions of this Act, either without modification or subject to such modifications as may be specified in the regulations;

"(c) of requiring any pre-packed articles of food other than those mentioned in the First Schedule to this Act to be labeled with an indication of their weight or measure;

"(d) of prescribing the manner in which indications of weight or measure are to be marked on pre-packed articles required by or under this Act to be marked with such indications, and the manner of re-sealing wrappers and containers broken open under this Act;"

Penalties of fines not exceeding 5 pounds or, upon a second or subsequent conviction of such an offense, to a fine not exceeding 20 pounds can be levied.

"(2) Before any regulations other than regulations under paragraph (d) of subsection (1) of this section are made, the draft of the proposed regulations shall be laid before both Houses of Parliament, and the regulations shall not be made unless both Houses by resolution approve the draft either without modification or addition or with modifications or additions to which both Houses agree, but upon such approval being given the regulations may be made in the form in which they have been so approved.

"Regulations made under paragraph (d) of subsection (1) of this section shall be laid before both Houses of Parliament as soon as may be after they are made.

"10. (1) The power of inspection and of entry conferred upon inspectors of weights and measures by section forty-eight of the Weights and Measures Act, 1878, for the purposes therein specified shall extend to the inspection and weighing or measuring by any such inspector of any pre-packed articles of food for the purpose of ascertaining whether they comply with the requirements of this Act, and to the entry into any place in which the inspector has reasonable cause to believe that any such pre-packed articles intended for sale are situated.

"(2) Where any person has in his possession for sale or delivery on sale any pre-packed article of food of any kind which is required by or under this Act to be sold by weight or measure, or any article of food in respect of which any representation of weights and measure is made, he shall, if so requested by an inspector of weights and measures weigh or measure such article in the inspector's presence or permit the inspector to weigh or measure it, and, if necessary for this purpose, shall break open, or allow the inspector to break open, any wrapper or container in which such article is packed, and shall also if so requested by the inspector sell the article to him.

"11. (1) Any person who refuses to comply with a request made by an inspector of weights and measures under this Act, or in any other manner obstructs or hinders an inspector in the exercise of his duties under this Act, shall be liable on summary conviction to a fine not exceeding in the case of a first offence five pounds, and in the case of a second or subsequent offence ten pounds.

"(3) Any person who acts in contravention of any other provision of this Act for which no special penalty is provided shall be liable on summary conviction to a fine not exceeding in the case of a first offence five pounds, in the case of a second offence twenty pounds, and in the case of a third or subsequent offence fifty pounds."

IV. The Food and Drugs Act, 1955 (4 & 5 Eliz. 2, Ch. 16), contains, in *Section 6*, provisions prohibiting the use of labels on food or drugs that falsely describe any food or drug, or are calculated to mislead to the nature, substance, or quality of the article.

Section 7 authorizes the Minister of Agriculture, Fisheries and Food to make regulations for imposing requirements as to labeling, marking, or advertising of food and descriptions which may be applied to food.

Supervision with respect to labeling as to weight, measure, and number of food is under the control of the Board of Trade.

"6. (1) A person who gives with any food or drug sold by him, or displays with any food or drug exposed by him for sale, a label, whether attached to or printed on the wrapper or container or not, which—

"(a) falsely describes the food or drug, or

"(b) is calculated to mislead as to its nature, substance or quality, shall be guilty of an offence, unless he proves that he did not know, and could not with reasonable diligence have ascertained, that the label was of such a character as aforesaid.

"7. (1) Without prejudice to the provisions of the last foregoing section, but subject to the next following subsection, the Ministers may make regulations for imposing requirements as to, and otherwise regulating, the labeling, marking or advertising of food intended for sale for human consumption, and the descriptions which may be applied to such food.

"(2) In relation to the labeling and marking of food with respect to weight, measure and number, the last foregoing subsection shall apply with the substtiution for the reference to the Ministers of a reference to the Board of Trade.

"(3) Regulations made under this section may make provision for any purpose authorized by paragraph (c) of subsection (1) of section four of this Act in the case of regulations under that section.

"(4) Regulations made under this section may apply to cream, and to any food containing milk; but except as aforesaid such regulations shall not apply to milk."

REGULATIONS

Under the authority of the statutes referred to above, regulations have been invoked for carrying out the purposes and objectives of the legislation.

Specific regulations regarding labeling are set up by—

I. The Labeling of Food Order, 1953, in *Statutory Instruments* 1953, Part 1, No. 536, pages 666–67.

"*Labeling of pre-packed food for sale by retail*

"3. No person shall sell by retail or display for sale by retail any pre-packed food, unless there appears on a label marked on or securely attached to the wrapper or container a true statement as to the matters hereinafter mentioned in this Part of this Order.

"4. (1) The said statement shall be clearly legible and shall appear conspicuously and in a prominent position on the label, and if the food is pre-packed in more than one wrapper or container the label shall be marked on or attached to the innermost wrapper or container and, if it is not clearly legible through the outermost wrapper or container, a label bearing a like statement shall be marked on or securely attached to, or be clearly legible through, the outermost wrapper or container. For the purposes of this provision, a 'liner' (that is to say, a plain immediate wrapping which under ordinary conditions of use would not be removed from the next outer wrapper or container) shall not be counted as a wrapper or container.

"(2) The said statement shall specify the name of either the packer or the labeler of the food and an address at which such person carries on business:

"Provided that—

"(a) Where the food is packed or labeled on behalf of or on the instructions of another person and such other person carries on business at an address in the United Kingdom, the statement may specify the name and the said address of that other person instead of the name and address of the packer or labeler, as the may be;

"(b) it shall be sufficient if instead of the particulars specified in this paragraph there appears prominently on the label a trademark (other than a certification trademark) of which there is in the Trade Marks Register kept under the authority of the Trade Marks Act, 1938 (a), a subsisting entry in respect of such food, and if there is associated therewith on the label the words 'Registered Trade Mark'.

"(3) Except as respects intoxicating liquor pre-packed for sale as such, the said statement shall also specify—

"(a) in the case of a food consisting of one ingredient the appropriate designation of the ingredient;

"(b) in the case of a food made of two or more ingredients the common or usual name (if any) of the food and the appropriate designation of each ingredient, and, unless the quantity or proportion of each ingredient is specified the ingredients shall be specified in the order of the proportion in which they were used, the ingredient used in the greatest proportion (by weight) being specified first:"

II. The Pre-packed Food (Weight and Measures: Marketing) Regulations, 1957, in *Statutory Instruments*, 1957, Part 1, No. 1880 pages 1010–15 *passim*.

"*Sale of Pre-Packed Food by Retail. Marking of Wrappers and Containers*

"1. Except in the case of pre-packed food to which paragraph (2) of this Regulation applies, no person shall sell by retail or have in his possession for sale by retail any pre-packed food unless the wrapper or container in which it is packed or a label securely attached thereto is properly marked, that is to say, marked in accordance with the appropriate requirements set out in the First Schedule hereto, with a true statement of the minimum quantity of the food contained therein expressed in terms:

"(a) in the case of any article of food described in the Second Schedule hereto, of the number thereof;

"(b) in any other case, of net weight only, of measure only or of both net weight and measure.

"*Sale of Pre-packed Food otherwise than by Retail. Marking of Wrappers and Containers. Furnishing of Particulars*

"2. Every person who, for the purposes of a sale thereof otherwise than by retail, delivers or causes to be delivered any pre-packed food shall deliver that food or cause it to be delivered packed in a wrapper or container which is marked, or to which wrapper or container is securely attached a label which is marked, in accordance with the provisions of Regulation 1 as if it were being sold by retail:

"*Loose Labels inserted within Wrappers or Containers*

"3. A label not actually attached to a wrapper or container in which food is pre-packed but inserted within the wrapper or container or, where more than one wrapper or container is used, within the outer one shall be deemed for the purposes of these Regulations to be securely attached thereto if it is inserted in such a manner that it cannot be removed without first breaking open the wrapper or container or, as the case may be, the outer one.

"4. If any person contravenes or fails to comply with any of these Regulations he shall be guilty of an offence against that Regulation.

"(2) A person guilty of an offence against any of these Regulations shall be liable to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months, or to both, and in the case of a continuing offence, to a further fine not exceeding five pounds for each day during which the offence continues after conviction.

"FIRST SCHEDULE

"*Requirements with Respect to the Proper Marking of Wrappers and Containers*

"The requirements to be complied with for the proper marking of any wrapper or container in pursuance of Regulation 1 are the following:

"1. The statement of quantity in terms of weight, measure or number and the statement of aggregate weight shall be marked in ligible characters in a prominent place upon the wrapper or container or label where, in each case, it can be easily read and, in the case of food pre-packed in more than one wrapper or container, the marking shall be so placed (whether upon an inner or an outer wrapper or container or upon both or upon a label securely attached to one or to the other or to both) that it can be easily read without detaching or unwrapping any of the wrappers or containers.

"2. (a) Subject to the provisions of sub-paragraph (b) of this paragraph, the statement shall be marked upon a plain background and in distinct contrast thereto, that is to say, shall be in dark characters on a light background or in light characters on a dark background;

"Provided that, where by reason of the transparency of the wrapper, container or label, the contents thereof are visible, the said contents shall be deemed to be the background for the purposes of this paragraph.

"(b) In the case of food packed in a metal, plastic, glass or papier mâché container, or a container having a stopper, lid or other sealing device made of any of those materials, the statement may be marked upon the metal, plastic, glass or papier mâché (but not elsewhere) by means of embossed characters whether or not such characters are in distinct colour contrast to the background.

"3. A statement of any quantity in terms of metric weight or measure shall be accompanied in close proximity thereto by a statement of that quantity in terms of its equivalent in imperial weight or measure.

"5. A statement of any weight, measure or number shall not be qualified by any words, figures or other marks importing any approximation or modification in such statement (e.g., 'approximately', 'about', 'when packed').

"6. Where the weight to be indicated is the aggregate weight of the wrapper or container and the food contained therein, the designation of weight and the number of units thereof shall be followed or preceded by the word 'gross' or by the words 'gross weight'.

"7. A statement of measure on a container which is marked on the container itself, whether pursuant to paragraph 2(b) of this Schedule or otherwise, shall be expressed in terms of the appropriate designation of measure and the number of units thereof preceded by the word 'contents' (e.g. contents 10 fl. oz.) or the words 'minimum contents' (e.g. contents 10 fl. oz.).

"SECOND SCHEDULE

"Cereal biscuit breakfast food.
"Corn on cob packed without added liquid.
"Fruit preservative tablets.
"Rennet tablets.
"Saccharin tablets.
"Shell eggs.
"Soft drink tablets.
"Sweetening tablets.
"Vanilla pods."

1963 LEGISLATION

Additional weights and measures legislation has recently been passed by the English Parliament.

Pertinent provisions follow:

Part IV. Regulation of certain transactions in goods

"21. (2) The Board may by order make provision with respect to any goods specified in the order for all or any of the following purposes, that is to say, to ensure that, except in such cases or in such circumstances as may be so specified, the goods in question—

"(a) are sold only by quantity expressed in such manner as may be so specified; or

"(b) are pre-packed, or are otherwise made up in or on a container for sale or for delivery after sale, only if the container is marked with such information as to the quantity of the goods as may be so specified; or

"(c) are sold, or are pre-packed, or are otherwise made up in or on a container for sale or for delivery after sale, or are made for sale, only in such quantities as may be so specified; or

"(d) are not sold without the quantity sold expressed as aforesaid being made known to the buyer at or before such time as may be so specified; or

"(e) are sold by means of, or are offered or exposed for sale in, a vending machine only if there is displayed on or in the machine—

"(i) such information as to the quantity of the goods in question comprised in each item for sale by means of that machine as may be so specified; and

"(ii) a statement of the name and address of the seller; or

"(3) An order under subsection (2) of this section may be made with respect to any goods, including goods to which any of the provisions of any of the Schedules aforesaid applies, and may—

"(a) make provision for any of the purposes mentioned in the said subsection (2) in such manner, whether by means of amending, or of applying with or without modifications, or of excluding the application in whole or in part of, any provision of this Act or of any previous order under the said subsection (2) or otherwise,

"(b) make such, if any, different provision for retail and other sales respectively, and

"(c) contain such consequential, incidental or supplementary provision, whether by such means as aforesaid or otherwise, as may appear to the Board to be expedient, and may in particular make provision in respect to contraventions of the order for which no penalty is provided by this Act for the imposition of penalties not exceeding those provided by section 52 [12] of this Act for an offence under this Act.

"(4) The Board may make regulations—

"(a) as to the manner in which any container required by any of the provisions of any of the Schedules aforesaid or of any order under subsection (2) of this section to be marked with information as to the quantity of the goods made up therein is to be so marked;

"(b) as to the manner in which any information required by any such provision as aforesaid to be displayed on or in a vending machine is to be so displayed;

"(c) as to the conditions which must be satisfied in marking with information as to the quantity of goods made up therein the container in or on which any goods are made up for sale (whether by way of prepacking or otherwise) where those goods are goods on a sale of which (whether any sale or a sale of any particular description) the quantity of the goods sold is required by any such provision as aforesaid to be made known to the buyer at or before a particular time;

"(d) as to the units of measurement to be used in marking any such container or machine as aforesaid with any information as to quantity;

"(e) for securing, in the case of pre-packed goods, that the container is so marked as to enable the packer to be identified;

"(f) as to the method by which and conditions under which quantity is to be determined in connection with any information with respect thereto required by or under this section;

"(g) permitting in the case of such goods and in such circumstances as may be specified in the regulations the weight of such articles used in making up the goods for sale as may be so specified to be included in the net weight of the goods for the purposes of this Act; and any person who contravenes any regulation made under this subsection otherwise than by virtue of paragraph (f) or (g) thereof shall be guilty of an offence.[13]

"22. (2) Subject to the provisions of this Part of this Act, in the case of any goods required by or under this Act to be pre-packed, or to be otherwise made up in or on a container for sale or for delivery after sale, or to be made for sale, only in particular quantities, or to be pre-packed, or to be otherwise made up as aforesaid, only if the container is marked with particular information, any person shall be guilty of an offence who—

"(a) whether on his own behalf or on behalf of another person, has in his possession for sale, sells or agrees to sell, or

"(b) except in the course of carriage of the goods for reward has in his possession for delivery after sale, or

"(c) causes or suffers any other person to have in his possession for sale or for delivery after sale, seel or agree to sell on behalf of the first-mentioned person, any such goods pre-packed, otherwise made up as aforesaid or made otherwise than in that quantity or otherwise than in or on a container so marked, as the case may be, whether the sale is, or is to be, by retail or otherwise.

"24. (2) Subject to the provisions of this Part of this Act, any person who, on or in connection with the sale or purchase of any goods, or in exposing or offer-

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[12] See p. 22.
[13] See p. 22, Schedule 4, Part VI, Sec. 52 (1), (2).

ing any goods for sale, or in purporting to make known to the buyer thereof the quantity of any goods sold, or in offering to purchase any goods, makes any misrepresentation either by word of mouth or otherwise as to the quantity of the goods, or does any other act calculated to mislead a person buying or selling the goods as to the quantity thereof, shall be guilty of an offence.

"Part VI. Miscellaneous and general

"48. (2) Subject to the production if so requested of his credentials, an inspector may at any time within the area aforesaid seize and detain any article which he has reasonable cause to believe is liable to be forfeited under this Act.

"52. (1) Any person guilty of an offense under any of the following provisions of this Act, that is to say, sections 10(5), 11(2), 11(6), 12(2), 12(3), 13(3), 13(4), 14(1), 14(3), 18(3), 20(2), 20(4), 20(5), 31 and 49(1), paragraphs 4 and 5 of Schedule 5 and paragraph 20(2) of Schedule 6, shall be liable on summary conviction to a fine not exceeding twenty pounds.

"(2) Any person guilty of an offence under any provision of this Act other than those mentioned in the foregoing subsection shall be liable on summary conviction to a fine not exceeding one hundred pounds (or, in the case of a second or any subsequent offence under the same provision, two hundred and fifty pounds), or to imprisonment for a term not exceeding three months, or to both.

"SCHEDULE 4

"Part VIII. Miscellaneous foods to be sold by or marked with net weight and to be pre-packed only in fixed quantities

"1. This Part of this Schedule applies to the following foods, that is to say—

"(a) cereal breakfast foods in flake form, other than cereal biscuit breakfast foods;

"(b) tea, cocoa (including cocoa powder and chocolate powder) and coffee (including coffee beans, coffee powders of all kinds, ground coffee and mixtures of coffee and chicory other than such mixtures in the form of liquid essences);

"(c) honey, other than chunk honey;

"(d) jam and marmalade, other than diabetic jam or marmalade;

"(e) jelly preserves;

"(f) molasses, syrup and treacle;

"(g) salt, other than cut lump salt;

"(h) sugar of the following prescriptions, that is to say, caster, granulated, cube and icing;

"(i) dried vegetables of any of the following descriptions, that is to say, beans, lentils and peas (including split peas);

"(j) barley kernels, pearl barley, rice (including ground rice and rice flakes), sago, semolina and tapioca;

"(k) flour of bean, maize, oats, pea, rice, ryes, soya bean or wheat;

"(l) flour products of any of the following descriptions, that is to say—

"(i) cake flour, other than cake mixtures and sponge mixtures;

"(ii) cornflour, other than blancmange powders and custard powders;

"(iii) macaroni and similar products;

"(iv) self-raising flour.

"3. Subject to paragraph 4 of this Part of this Schedule, goods to which this Part of this Schedule applies shall be pre-packed only if—

"(a) they are made up in one of the following quantities by net weight, that is to say, one, two, four, eight or twelve ounces, one pound, one and a half pounds, or a multiple of one pound; and

"(b) the container is marked with an indication of quantity by net weight.

"4. There shall be exempted from all requirements of paragraphs 2 and 3 of this Part of this Schedule—

"(a) honey in comb;

"(b) any other goods in a quantity of less than half an ounce;

"and there shall be exempted from the requirements of sub-paragraph (a) of the said paragraph 3 cereal breakfast foods pre-packed in a quantity not exceeding one and a quarter ounces, and dried vegetables pre-packed in a quantity not exceeding three ounces.

"*Part IX. Miscellaneous foods to be pre-packed only when marked with net weight and in fixed quantities and to be otherwise sold by net weight or gross weight*

"1. This part of this Schedule applies to the following foods, that is to say—

"(a) butter, compound cooking fat, dripping, lard, margarine, shredded suet and any mixture of butter and margarine;

"(b) dried fruits of any one or more of the following descriptions, that is to say, apples (including dried apple rings), apricots, currants, dates, figs, muscatels, nectarines, peaches, pears (including dried pear rings), prunes, raisins and sultanas;

"(c) dried fruit salad;

"(d) oatflakes, oatmeal and rolled oats;

"(e) sugar, other than caster, granulated, cube or icing sugar.

"2. Subject to paragraph 4 of this Part of this Schedule, goods to which this Part of this Schedule applies which are not pre-packed shall be sold by retail only—

"(a) by net weight; or

"(b) if sold in a container which does not exceed the appropriate permitted weight specified, in the case of any of the foods mentioned in subparagraph (a) of the foregoing paragraph, in Table A or, in any other case, in Table B of Part XII of this Schedule, either by net weight or by gross weight.[14]

"3. Subject to pargaraph 4 of this Part of this Schedule, goods to which this Part of this Schedule applies shall be pre-packed only if—

"(a) they are made up in one of the following quantities, that is to say, two, four, eight or twelve ounces, one pound, one and a half pounds, or a multiple of one pound; and

"(b) the container is marked with an indication of quantity, being in each case quantity by net weight.

"4. There shall be exempted from all requirements of this Part of this Schedule any goods in a quantity of less than one ounce.

"*Part X. Miscellaneous foods to be marked when pre-packed with quantity by number*

"1. This Part of this Schedule applies to foods of any of the following descriptions, that is to say—

"(a) cereal biscuit breakfast foods, other than foods in the case of which none of the biscuits weighs more than one-third of an ounce;

"(b) fruit preservaive tablets, rennet tablets, saccharin tablets, soft drink tablets and sweetening tablets;

(c) shell eggs;

(d) vanilla pods.

"2. Goods to which this Part of this Schedule applies shall be pre-packed only if the container is marked with an indication of quantity by number:

"Provided that there shall be exempted from the requirements of this paragraph—

"(a) shell eggs pre-packed in a quantity of not more than six, if the container is such that all the eggs can be clearly seen by a prospective purchaser;

"(b) any goods in a quantity by number of one.

"*Part XI. Other pre-packed foods*

"1. This Part of this Schedule applies to foods of any description which are not goods—

"(a) required by or under any other provision of this Act to be pre-packed only if the container is marked with an indication of quantity; or

"(b) in the case of which when sold pre-packed (whether on any sale or on a sale of any particular description) the quantity of the goods sold expressed in a particular manner is required by or under any other provision of this Act to be made known to the buyer at or before a particular time; or

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[14] Table A permits 2½ drams container weight for each pound gross weight. Table B is graduated, permitting 4½ drams container weight for the first pound of gross weight, 4 drams per pound (of gross weight) for a gross weight between 1 and 2 pounds, 3 drams per pound for a gross weight between 2 and 4 pounds, and 2½ drams per pound for a gross weight exceeding 4 pounds.

"(c) expressly exempted by any such provision from all such requirements which would otherwise apply thereto.

"2. Subject to paragraph 3 of this Part of this Schedule, goods to which this Part of this Schedule applies shall be pre-packed only if the container is marked with an indication of quantity either by net weight or by capacity measurement.

"3. The following shall be exempted from the requirements of this Part of this Schedule, that is to say—

"(3) condensed milk (including evaporated milk) and dried milk;

"(11) soft drinks of any description in a syphon or in a quantity of less than five fluid ounces;

"(12) sugar and chocolate confectionery of any of the following descriptions, that is to say—

"(a) Easter eggs;

"(b) figurines of chocolate or of sugar;

"(c) rock or barley sugar in sticks or novelty shapes;

"(d) single articles weighing less than three ounces;

"(e) a collection of articles each of which is either an article such as is mentioned in paragraph (a), (b), (c) or (d) of this sub-paragraph or an article in a container marked with an indication of quantity by net weight;

"(13) goods of any other description in a quantity of less than one ounce or of less than one fluid ounce.

"SCHEDULE 7

"Part V. Perfumery and toilet preparations

"1. This Part of this Schedule applies to goods of any of the following descriptions, that is to say—

"(a) perfumes and toilet waters;

"(b) other toilet preparations for use on the hair or scalp of human beings;

"(c) other toilet preparations for external use on any other part of the human body; and

"(d) dentifrices,

"whether in liquid, solid or any other form, including any such goods which are medicated but are not pharmaceutical preparations, but excluding soap in any form.

"2. Goods to which this Part of this Schedule applies shall be pre-packed only if the container is marked with an indication of quantity either by net weight or by volume:

"Provided that there shall be exempted from the requirements of this paragraph—

"(a) any goods such as are mentioned in sub-paragraph (a) of the foregoing paragraph in a quantity not exceeding twelve grammes or not exceeding twenty cubic centimetres;

"(b) any goods such as are mentioned in sub-paragraph (b) of the foregoing paragraph in a quantity not exceeding twenty grammes or not exceeding twenty cubic centimetres;

"(c) any goods such as are mentioned in sub-paragraph (c) or (d) of the foregoing paragraph in a quantity not exceeding twelve grammes or not exceeding twelve cubic centimetres.

"Part VI. Soap

"1. Subject to paragraph 2 of this Part of this Schedule—

"(a) soap in the form of a cake, tablet or bar shall be pre-packed only if the container is marked with an indication of quantity by net weight;

"(b) liquid soap shall be pre-packed only if the container is marked with an indication of quantity by capacity measurement;

"(c) soap in any other form—

"(i) unless pre-packed, shall be sold by retail only by net weight;

"(ii) shall be pre-packed only if the container is marked with an indication of quantity by net weight.

"2. There shall be exempted from the requirements of this Part of this Schedule—

"(a) liquid soap in a quantity of less than five fluid ounces;

"(b) soap in any other form in a quantity of less than one ounce."

C. Italy

A. SURVEY OF LEGAL SOURCES

No specific statute on packaging and labeling practices could be found in the Italian law collections. Many scattered regulations on the subject are incorporated into different laws primarily dealing with fraud in the manufacture and sale of goods, and particularly in those governing the production and sale of foodstuffs.

The basic law still remains the Royal Decree No. 2033 of October 15, 1924, as amended, and the Regulation No. 1361 of July 1, 1926, enforcing this Law. Subsequently, numerous laws and decrees dealing with a variety of products, not previously regulated, were adopted.

The translation of some pertinent provisions is given in the following:

B. TRANSLATION OF PERTINENT PROVISIONS

1. Royal Decree Law No. 2033 of October 15, 1925. Suppression of Fraud in the Manufacture and Sale of Goods for Farm Use and Farm Products as Amended (*Repressione delle frodi nella preparazione e nel commercio di sostanze di uso agrario e di prodotti agrari*). Off. Gaz. No. 281, 1925.

"*Section 13.* * * * *par. 5.* In stores selling wine to consumers, notices must be placed in a visible manner with clear leters easily legible, showing the alcoholic content of the wine for sale.

"Similar information must be placed on all containers from which wine is served on the spot as well as on all other containers on the selling premises or on the containers of wine prepared for retail sale.

* * * * * * *

"*Section 32.* * * * *par. 3.* Cheese manufactured from milk other than from sheep, or only partly from sheep's milk, manufactured in shapes not exceeding 3 kilograms in weight and showing some exterior characteristics similar to those of sheep's-milk cheese, shall be called cow's cheese (*formaggio vacchino*).

"A cheese defined as cow's cheese pursuant to the foregoing paragraph, even if imported or intended for export, cannot be put on sale unless furnished with a stamp carrying the legend 'cow' (*vacchino*).

"Such a legend, which must have dimensions of 4 centimeters in height, 15 centimeters in length, and 0.5 centimeters in depth, shall be pressed on the bottom of the shapes and repeated so as to cover the entire length of the bottom.

"*Section 33.* Whoever manufactures, sells, offers for sale, or in any other way places cheese on the market, must specify its fat content in the manner established by the Regulation.

"*Section 47.* Whoever sells, offers for sale, or in any other way places on the market or, based upon contractual obligation, furnishes his business associates with substances and products specified in the present Decree without making statements and giving information or [acts] contrary to the prohibitions and limitations stated in the present Decree and the Regulation enforcing it, shall be punished by a fine of not less than 50,000 nor more than one million liras."

* * * * * * *

2. Royal Decree No. 1361 of July 1, 1926. Regulation Concerning the Enforcement of the Royal Decree No. 2033 of October 15, 1925 on the Suppression of Fraud in the Manufacture and Sale of Goods for Farm Use and Farm Products, as Amended (*Regolamento per l'esecuzione del R.D. 15 ottobre 1925, no. 2033, concernente la repressione delle frodi nella preparazione e nel commercio di sostanze di uso agrario e di prodotti agrari*). Off. Gaz. No. 189, 1926.

"*Section 5.* The information prescribed for goods and products placed on the market in casks, barrels, cans and other containers or in bags, linen and paper bags, or in other wrappings, must be repeated on the containers, bags and wrappings, as follows:

"(a) on casks, barrels, boxes and any other containers or wooden packing, the information must be burned or marked by some other indelible means;

"(b) on cans or in general on metal containers the information must be painted on with oil paints or stamped on in some other indelible way;

"(c) on bags or other similar wrappings the information must be stamped in an obvious way and clearly legible.

"(d) on glass containers the information must be given on strong labels firmly attached to the container;

"(e) on bags, paper bags, and on paper wrappings in general, the information must be printed on the paper itself. However, information stamped on with aniline ink or handwritten, provided it is clear and indelible, shall also be allowed.

"When different goods, contained in separate containers, are packaged together, it is not necessary to repeat on such package the diverse information given on the individual containers.

"*Section 6.* The directions specified in the foregoing section must be written in clearly visible letters and in any case it may not be less obvious than any other directions placed on the containers, bags, wrappings and the like.

"As a rule, along with the directions already prescribed, no others shall be allowed except for those relating to the first and last name or firm of the manufacturer, the importer, or the seller, his residence, the net and gross weight of each bag or container or relating to a trademark or warranty, when such exists, and should not tend to lead the buyer into error as to the nature of the merchandise. However, products sold in cans or other closed containers or wrappings shall be allowed to bear also particular illustrations relating to the contents of the cans themselves.

"Insecticides, seed and mixed fertilizers may also bear on their containers or wrappings instructions pertaining to the use of the product contained therein.

"*Section 7.* The directions placed directly on the merchandise must be affixed by means of stamps, with deeply incised letters and not be less visible than any other directions on the same merchandise. No other directions shall be allowed except those specified in the foregoing section.

"*Section 8.* Whoever keeps merchandise specified in the Decree-Law for sales purposes, is obliged to see to it that the statements and the directions prescribed by the same Decree-Law and the present Regulation are always clearly legible.

"*Section 9.* When portions of goods contained in a bag, container, wrapping or in an original form are placed on sale, it is not necessary to repeat the directions on the portion sold; but in the store a sign with the description of the merchandise, the pertinent statements and the price of all the merchandise must be displayed.

"*Section 10.* The directions to be affixed outside and inside the production or sales premises of some products pursuant to the Decree-Law, must be shown on suitable signs solidly attached to the wall or the door of the premises, with letters at least ten centimeters high in black on a white background.

"No other specifications except those prescribed for each sales item should appear on the sign. However, on sales premises also the words 'for sale' and the price are allowed.

"*Section 12.* Imported wine, oil, butter and syrups shall be sold in the Republic under their original name.

"*Section 34.* When an antiparsite product is put on the market with a particular name other than that specified in the Decree-Law and the present Regulation, such name may always be added to the information provided it does not tend to lead the buyer into error as to the nature of the product.

"*Section 37.* The information specified in the foregoing sections concerning seed sold on the public market must be repeated on clearly visible labels to be placed on goods for sale. On the same label must also be indicated the origin of the seed.

"*Section 83.* Margarine cheese must be colored on the outside and over the entire surface with victory-red coloring matter (*rosso-Vittoria*).

"Such coloring must be aplied before the cheese leaves the manufacturer's storehouse and is delivered or displayed to the public. If ensuing conditions should obliterate, alter or lighten the coloring, the holder of the margarine cheese shall be obliged to restore it promptly."

3. Royal Decree No. 45 of February 3, 1901. General Health Regulation (*Regolamento generale sanitario*). Off. Gaz. No. 44, 1901.

"*Section 108.* Alimentary products and beverages which do not correspond in their nature, substance and quality to the description by which they are designated or requested as well as alimentary products and beverages which are partly deprived of their own nutritious contents or mixed with material of an inferior quality or in any other way treated in such a manner as to alter their natural composition shall be considered altered.

"The sale of food or beverages shall be permitted when they are clearly supplied with written information concerning the changes they have undergone."

4. Royal Decree No. 1548 of July 7, 1927. Provisions Concerning the Manufacture, Import and Trade of Products of the Fishing Indsutry, Preserved in Containers (*Norme per la fabbricazione, l'importazione e il commercio dei prodotti alimentari della pesca conservati in recipienti*). Off Gaz. No. 204, 1927.

"*Section 4.* It is forbidden to put on the market or in any other way to use for consumption products of the fishing industry, in cans or other containers unless the same bear the following specific statements concerning:

"(a) the contents;

"(b) the quality of oil and other substances used for preservation;

"(c) the net weight of the contents;

"(d) the name of the producer;

"(e) the place of manufacture.

"The above statements shall be made in raised letters or lithography in an indelible manner on metal containers, burned on those of wood, and in raised letters on those of glass.

"The labels, signs and information or marks placed on the containers shall not cover or hide obilgatory statements as specified in the above letters (a–e), or be inconsistent therewith.

"All obligatory statements prescribed in the present section must also appear on wrappings of any kind, in which the same containers are eventually wrapped.

"*Section 6.* Pursuant to the present Decree containers of preserved fish may not bear the name 'sardine' except for the '*Clupea Pilchardus*' and the name 'anchovy' except for the '*engraulis enchrasicolus.*'

"The appellation tuna fish shall appear only on the species '*orcynus tynnus.*'

"For the species '*tynnus alelonga*' (*germon*) and for the species '*pelamys*' (*bonito*) the appellation white tuna fish (*tonno bianco*) and *tonnetto* must be employed, respectively."

5. Royal Decree No. 904 of June 23, 1932. Approval of the Regulation on the Application of Law No. 368 of March 17, 1932, Governing the Types of Flour and Bread (*Approvazione del regolamento per l'applicazione della legge 17 marzo 1932 no. 368 che disciplina i tipi di farina e di pane*). Off. Gaz. No. 182, 1932.

"*Sec. 6.* The labels which must be placed on bags of flour, in accordance with the provision of Section 5 of the Law, must bear, in addition to the name of the mill producer firm, the legend:

"flour type 00

"flour type 0

"flour type 1

"flour type 2

according to the quality of the product contained in the bags. The seals attached in order to guarantee that the bags are properly closed must bear the name of the mill firm pressed on in [clearly] decipherable manner."

D. France

INTRODUCTION

The bulk of the French regulatory provisions concerning packaging and containers forms a part of the general regulation on food products as contained in the law of August 1, 1905.

This basic law, which also deals with the repression of fraud, deception, and misrepresentation in the sale of goods, underwent several changes in the course of the years by the laws of August 5, 1908, July 28, 1912, by the decrees of April 15, 1912, and of June 28, 1912, by the laws of May 6, 1919, July 29, 1929, the decree of June 14, 1938, the law of February 11, 1951, and finally by the law on finance of April 14, 1952, which have been followed by numerous decisions and administrative orders up to very recent times. These scattered enactments and issuances have been compiled or surveyed in systematic collections and extensive studies.[35]

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[35] R. Lefaux. *Emballage et conditionnement modernes*, Paris, 1960; also R. Dehove (Inspector General of the Services for the Repression of Fraud at the French Ministry of Agriculture). *Le reglementation des produits alimentaires et non alimentaires et la repression des fraudes*, Paris, 1955.

Briefly stated according to the 1905 law deceit occurs whenever one party fails to fulfill what has been agreed upon in trade transactions. And, misrepresentation occurs whenever, to the detriment of the buyer, a process or an operation tends to deteriorate the advertised contents of an item, or it is manufactured or introduced with the appearance of an already known and determined item although it does not have the same elements and form.

LEGAL PROTECTION

Although in Europe advertising is not as highly developed and the packaging industry is not so advanced as in this country, yet, in France the courts and administrative organs are provided with sufficient legislation to counteract misleading information and misrepresentation and, consequently, civil and penal sanctions may be enforced against those who commit abuses.

In France, as elsewhere, it is felt that the packaging contributes greatly to the sale of a product and, therefore, every manufacturer and merchant has a legitimate desire to see that his unique packaging is not used by his competitors to mislead the public.

A. Protection of manufacturer

Under French legislation a manufacturer is provided with the means to protect himself against such competitors and third persons who try to steal his ideas. The law on trademarks protects his product; the characteristics of packaging and labeling, although not a part of the trademark, are protected from imitation by third persons by the provisions dealing with unfair practices and competition. This protection covers packaging insofar as the imitation of its characteristics is concerned. In fact, whoever copies such characteristic features from a competitor acts in contravention of good faith and becomes guilty of unfair competition.[16] However, the elements of any packaging which do not fall within these protected areas[17] may be copied provided this is not done for the purpose of confusing or deceiving the consumers or damaging the interests of a given person or enterprise.[18]

Another means of protection is the law on designs and industrial models which applies also to packaging and its new esthetic effects for a certain length of time.[19]

The owner of certain original packaging must, to a certain extent, tolerate the danger of confusion deriving from imitations especially when the imitation has become necessary due to the use made of certain products. In other words, as long as the different elements of packaging are determined by the nature of the product, by its use or by its manner of manufacture, these elements may be utilized by others. But, the more the creator of a certain packaging has characterized it by original elements, the more others should beware of imitating it in order to avoid the danger of confusion.

And according to most recent case law packaging, in many cases, may be protected from imitation even when its composing elements are not original provided that the packaging, although lacking in originality, has become so distinct that the public considers that the product comes from a certain manufacturer.

French statutes and regulations are very detailed in prescribing the type of labeling, color, and paper, etc. For instance, for alcoholic beverages a label of yellow gold paper is reserved for brandies of a certain type and region, whenever it is kept in separate storehouses. However, such brandies lose the right to this type of labeling when put together with other alcoholic beverages. Labels of other colors are reserved for other types of brandies.[20]

In the field of food, the following example is illustrative of the type of control exercised by the French statutes. Articles 5 and 7 of the law of December 19, 1910, provide that the word "honey" may not be used for any product except that made by bees. Even during a normal period of production, if the bees are fed with sugar or sugar substances other than honey, the product obtained must

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[16] Dalloz. *Répertoire de droit commercial*, v. I, Paris, 1957, pp. 554–568.

[17] To claim protection for packaging, one must prove that when used for the first time it was absolutely new. (See M. Quetard. *Étude générale sur les emballages*, Paris, 1949, p. 277.)

[18] Law of Aug. 1, 1905, as amended, Code de Commerce.

[19] Lois Dessins et Modeles, Institut National de la Proprieté Industriale, Paris, 1958.

[20] R. Dehove. *La reglementation des produits alimentaires et non alimentaires et la repression des fraudes*, Paris, 1955, pp. 322–405.

be named sugar honey; also, the word "honey" may not be use when this product has been used for caramels if it has been diluted by 25 percent, nor may it be used in any other manner if the product has been adulterated. The law expressly forbids such abuses and punishes them as a fraud. To make the use of this term even clearer, decision No. 56 of the Council of Ministers of July 25, 1921, ordered that even the term "mieliné" (honeyed) may not be used under these circumstances.

French legislation in this field goes so far as to provide precise regulations for livestock fodder, and article 3 of the law of February 3, 1949, requires the approval of the Ministry of Agriculture for all labeling, cataloging, prospectuses, and other advertising forms before they can be used on products.

B. Protection of consumers

As in the case of the legal protection given by French legislation to manufacturers and merchants for their own ideas in the field of packaging, labeling, advertising, etc., this legislation also provides specific provisions aiming exclusively at the protection of consumers. As was seen supra, and will be seen in the summaries and translated statutes, courts and administrative organs are provided with general legal provisions and regulations to strike at fraudulent and unfair practices against manufacturers and merchants for the misleading and deceptive labeling of items in packaging and advertising. According to French legal writers, the law of 1930, which provides the basic principle, gives the courts the power to pass judgment on misleading information in the presenting, introducing, packaging, and labeling of goods.[21]

The law of August 1, 1905, provides the public administration in the executive branch of the Government and the local organs with the power to issue regulations concerning the measures to be taken for the enforcement of the law [22] while the law of April 5, 1884, grants them regulatory powers in fields not covered by the general rules laid down by the laws and decrees or any other statutes dealing with the subject.[23]

TRANSLATION OF PERTINENT LEGAL TEXTS AND SUMMARIES OF STATUTES

Deception and attempt to deceive [24]

"*Art. 1.* Whoever deceives or attempts to deceive, be it in regard to the nature, primary qualities, composition and care of all goods, their type and origin, and attributes false designations to goods * * * or to the quantity of items to be delivered, or delivers goods other than those which are subject to a contract, shall be punished by imprisonment for from three months to one year or by a fine of from 100 to 5,000 francs or both.

"*Art. 2.* The prison penalty for the offenses provided for in the preceding article [Art. 1] shall be increased to two years if the offense or the attempt to commit such an offense concerns weights and measures or other false or inexact means involved, and practices tending to falsify an analysis or the components of it, or the weight, measurements, or volume of any item, or whenever fraudulent indications are given tending to indicate previous exact operations were made, or falsely claiming that official supervision existed."

Regulations of the public administration and their regulatory powers

"*Art. 11.* In regard to the proper measures to be taken in enforcing this law, regulations shall be issued by the administrative bodies (organs) concerning: (1) the sale and putting on sale, displaying and holding of all goods covered by this law; (2) the inscription or marks indicating either the composition or origin of goods which, in the interest of consumers and as a warranty from vendors, shall appear on the packaging of the goods or on the goods themselves, on the outward indicia, the manner of presentation necessary to assure a fair sale or putting on sale, as well as the special marks which may be attached or which it is obligatory to attach to French goods for export. The definition and denomination of beverages, commodities and products shall be made in accordance with trade practices, on the basis of the permissible characteristics which they may possess because of their manufacture and methods of pre-

[21] R. Dehove. *La réglementation des produits alimentaires et non alimentaires et la repression des fraudes*, Paris, 1955, p. 52; also Dalloz. *Répertoire de droit commercial*, v. I, pp. 555–568.

[22] Art. 11 of the law of Aug. 1, 1905, as amended by the law of June 29, 1907.

[23] Arts. 94, 97, and 99 of the law of Apr. 5, 1884.

[24] Law of Aug. 1, 1905, as amended and implemented; also Dehove, R., op. cit., pp. 1–19; also Lefaux, R., op. cit., pp. 210–249.

serving the features which render them suitable for consumption * * * [irrelevant]." [25]

Texts of general statutes completing the law of August 1, 1905

Mayors as well as prefects are empowered to supervise the proper sale of goods, i.e., in regard to their weight or volume, size, and condition. Moreover, mayors are empowered to issue orders applicable only to certain objects subject to their authority and supervision, in addition to the general rules.[26]

The law of July 22, 1948, provides for the creation of organs for any branch of activity whenever the public need so requires, the so-called Technical-Industrial Centers (*Centres Techniques Industrielles*) which, within the frame of the existing legislation, participate in the establishment of rules for the control of quality (arts. 1 and 2).

In the absence of regulations issued by the public administrative organs as provided for in the law of August 1, 1905, the practices of a specific trade generally supply the norms in that field.[27]

Price marking

Article 33 of the Government order of June 30, 1945, requires that the prices of goods of any kind be clearly marked by means of labeling, ticketing, and similar displays.[28]

In principle, imported goods must also conform to the regulations in force by making any false marking or advertising punishable.[29] Exported French goods must generally meet the requirements prescribed for domestic sale, although, exceptions are sometimes made to preserve the French trade from inferior conditions provided the products meet the requirements of the countries to which they are exported.[30]

Labeling of goods [31]

(1) Regulations of a general nature:

(a) Generic denomination.

According to French law the name applied to all goods and products having common features and character, regardless of the manufacturer or vendor, is called a generic denomination, and is designed essentially to inform the buyer of the nature, kind, and use of the goods.

The labeling and description containing this denomination should be in visible characters, not abbreviated, and the size of the typographical characters is to be specified in regulations issued for the purpose.

(b) Fancy advertising.

Fancy advertising and commercial marks which, contrary to the generic naming and labeling, are particular to each manufacturer or vendor, may be put on the packaging, but it is essential that they should not be confused with the general and regular labeling, and, above all, they should not lead to confusion regarding the real nature of the product to which they are applied.

(c) Name and address of the manufacturer or vendor.

The affixing of the manufacturer's name and address is generally made obligatory by special regulations. However, the name may be replaced sometimes by the name of the firm, and, in rare instances, by code indications. In general, the manufacturer or the vendor is held, out of honesty and self-respect, to make the information on the labels of products clear even when this is not obligatory.

Weight indications [32]

Article 5 of the decree of April 15, 1912, stipulates that in commercial establishments the net and gross weight and the tare of merchandise should be clearly indicated on the packages and containers:

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[25] Law on the Repression of Fraud and Falsifications of Aug. 1, 1905, as amended. According to art. 13 of this law, certain violations of the regulations, where the good faith of the violator has been proved, shall not be considered crimes but culpable negligence and shall be punished as petty offenses by the police. But in case of recidivism the court of petty sessions (*tribunal correctionelle*) shall have jurisdiction.

[26] Arts. 94, 97, and 99 of the law of Apr. 5, 1884.

[27] R. Dehove. *La réglementation des produits alimentaires et non alimentaires at la repression des fraudes*, Paris, 1955, p. 8.

[28] This order was amended by another order issued on the basis of arts. 15–17 of the decree of Nov. 22, 1938, which is even more explicit in regard to the exactness of price marking of goods of any kind.

[29] Law of Mar. 26, 1930, and law of Apr. 20, 1932; see also R. Dehove, op. cit., p. 12.

[30] Decree of May 14, 1938.

[31] R. Dehove, op. cit., pp. 49–51.

[32] R. Dehove, op. cit., pp. 50–51.

"Whenever the net weight of products is known by the manufacturer or merchant who packaged them or may be easily ascertained by him, regulations require that an indication of the net weight and this weight alone shall be given. Exceptions are made when this is impossible and, in such cases, the manufacturer or merchant shall indicate the net weight, the gross weight, and the tare.[33]"

Thus, whenever only one weight is shown without specification, it is considered to be the real weight of the item, i.e., the net weight. Under French law, whenever a buyer has good reason to believe that the indication stands for the net weight of the merchandise and it is false, this shall constitute an attempt to deceive, and may be prosecuted as fraud.[34] On the other hand, the indication of the gross weight only without the tare is also insufficient.

The indication of the weight is obligatory only for the permanent packages containing items for further retail or wholesale trade, and is unnecessary for temporary packages.

Products in de luxe packages should be considered as sold separately for it seems that the buyer in such cases gives less importance to the quantity delivered than to the manner in which they are presented. Also, it should be added that weight is irrelevant in packages of small dimensions which are given away or sold as samples.[35]

In addition to permanent, de luxe, and temporary packaging, French legislation provides also for another type of packaging called *Emballages perdus* (disposable packaging). This refers to the kind of packaging, technically designed to be used once only, such as the containers for fruits and vegetables wihch are sufficiently resistant to reach the sale's destination in good condition (art. 1 of the decision of Mar. 8, 1951). This statute provides that the reuse of this type of packaging is forbidden and this must be clearly stated on the label by the letters E.P. (standing for "Reuse Forbidden") in indelible red together with the name of the shipper and the place of origin.

Information and advertising leading to confusion

"Art. 6. The use of all information, advertising, or any other form or sign likely to create confusion in the mind of the buyer regarding weight, volume, size, nature and origin of foodstuffs, beverages, etc., shall be forbidden under all circumstances and forms especially in regard to:

"(1) packaging;

"(2) labeling, capsules, seals, signs and any other wrappings;

"(3) all commercial papers, invoices, catalogs, prospectuses, prices, signs, placards, boards and any other form of advertising.[36]"

E. Sweden

The problem of advertising, labeling, and packaging of goods so as to give consumers correct and full information as to their quality and price has been under discussion many times by various Government agencies and committees as well as by organizations of merchants and consumers. The measures actually taken in this matter, which is considered of primary importance in Sweden, may be divided into two groups:

(1) statutory provisions and regulations of Government agencies; and

(2) steps taken pursuant to agreements between central organizations of merchants and consumers (trade unions and other organizations of wage earners) or by organizations of businessmen on their own initiative or on the initiative of the Government, or special agencies acting on a voluntary basis and consisting of representatives appointed by organizations of businessmen and consumers.

A. STATUTORY PROVISIONS

A general law applicable in this field is the Law for the Prevention of Unfair Competition (*Lag med vissa bestämmelser mot illojal konkurrens*) of May 29, 1931,[37] sections 1 and 9, as amended by the law of May 22, 1942, which reads as follows:

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[33] Order No. 25 of Apr. 15, 1912.
[34] Order No. 9 of Sept. 5, 1908.
[35] Order No. 21 of Nov. 1, 1912.
[36] Decree of Apr. 15, 1912, as amended by the law of Mar. 26, 1930.
[37] *Sveriges Rikes Lag* (The Law of Sweden) S 21, Stockholm, Norstedt & Söner, 1961: 892–894.

"*Sec. 1.* Whoever, in carrying on his business, supplies false information about his merchandise by means of a placard, an advertisement, circular letter, prospectus or price list or in any other communication intended to reach a large number of people, and if this information is clearly contrary to fair business principles concerning the business itself or the goods offered for sale, or if the false information is calculated to give the impression of a good bargain, provided he was aware or should have been aware of the misrepresentation in his communication, shall be punished by a fine for unfair advertising, or in particularly grave circumstances, by confinement for a period not to exceed one year; he shall furthermore be liable for the damage caused.

"The same punishment shall be inflicted upon a person who, while employed in or working for the business of another person, independently carries out the advertising mentioned in paragraph 1.

"In the meaning of this section communication shall likewise be understood to include representation in illustrations or through other special arrangements.

"*Sec. 9.* Whoever, in carrying on business activities, uses a name, firm, trademark, makeup, or other mark which may be easily confused with a mark previously used for some other business enterprise or goods or production of this enterprise, provided he does so with the intention of causing such confusion, shall be punished by a fine, or, in particularly grave circumstances, by confinement for a period not to exceed one year if the offense committed by him is not subject to severer punishment according to other laws; he shall furthermore be liable for the damage caused.

Special laws on the labeling and packaging of food and drugs are in force.

The Law on Comestibles (*Livsmedelstadga*) of December 21, 1951,[38] contains the following provisions:

"*Sec. 27.* If according to the present law, comestibles or jars, bottles and containers or cartons in which comestibles are sold, are to be marked with some information or inscription, the information or inscription shall be placed on the food or package or label in a clear, conspicuous and durable manner.

"*Sec. 28.* If the packaged comestibles are sold in retail shops the packages shall be marked with the following information:

"1. name of contents;

"2. name, firm, and residence of manufacturer, packager, and seller;

"3. weight of contents at time of packing.

"If the contests are liquid, the volume shall be marked.

"The gross weight shall not be given on the package.

"*Sec. 29.* If comestibles are packed abroad, instead of the information stipulated in Section 28, point 2, the name, firm, and residence of the exporter and importer may be marked.

"*Sec. 30.* The provisions of Sections 28 and 29 do not apply to liquor, wine and soft drinks.

"Information according to section 28 is not required:

"1. if the contents weigh less than 100 grams or more than 10 kilograms;

"2. if the comestibles are packed at the place of sale or in a special packing room in the same shop;

"3. as to bread, sandwiches, fresh fruit, vegetables and other fresh food in solid shape, if the articles are packed in transparent paper or some other transparent material.

"Instead of the information required in Section 28, point 2, butter and margarine may be marked with the mark of origin according to instructions of the State Agricultural Agency.

"*Sec. 31.* If saccharine or other artificial sweetening is used in preparing or presenting comestibles, the package shall be marked "includes saccharine" or "includes artifical sweetening." This provision shall not apply to the goods mentioned in Section 30, paragraph 2, point 3, or to bread and other bakery products.

"*Sec. 32.* The packages or labels on packages of food especially adapted for children or persons requiring special food due to illness, weakness or other reasons shall list all the ingredients used in preparing the food.

"*Sec. 33.* Packages, labels, or advertisements of food articles which are not under special stricter control by Swedish government agencies but only under usual control, shall not be marked as being under the control of government agencies."

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[38] Ibid., B 1217–1239.

According to chapter 8 of the present law some special requirements in addition to the general provisions are enforced for the following packaged foods: Milk, cream, butter, cheese, margarine, ice cream, meat, seafood, eggs and powdered eggs, grain, sugar, honey, juices, jams and preserves, fruit, vegetables, mushrooms, and vinegar.

According to section 109, point 9, "* * * any person who sells packaged food, if the package is not of the prescribed quality or is not marked in the manner prescribed by this law" shall be punished by a fine.

B. EXPORT GOODS

According to the Law on the Prohibition to Import Goods with any False Marking of Origin (*Lag ang. förbud mot införsel till riket varor med oriktig ursprungsbeteckning*) of June 4, 1913,[39] it is prohibited to import into Sweden goods the marking of which gives the impression that they are manufactured in Sweden. The imported goods must be marked "imported" or in some other way show that they are not Swedish, and have other information prescribed by law on their labels.

C. DRUGS

Many laws and royal decrees are enforced in regard to drugstores and the sale of drugs therein. The general law in force is the Law on Drugs (*Apoteksvarustadga*) of November 14, 1913.[40] According to section 10 of this Law:

"Drugs (*apoteksvara*) on sale must be clearly and correctly marked with information concerning the nature of the drugs and its composition, on an inscription or declaration attached to the commodity."

Drugs are under the supervision of the Royal Medical Board.

D. MEASURES OF PRIVATE ORGANIZATIONS [41]

There is no Government control over the advertising of goods and no special laws are enforced in this field. The Swedish Advertising League (*Svenska Reklamförbundet*) is a private organization generally recognized by businessmen. This organization has established general advertising principles, keeping in mind the interests of businessmen as well as of consumers. The organization has successfully fought against the misuse of advertising. Advertising of goods in Sweden has developed "informational advertising" through which consumers receive reliable information on goods, their qualities, prices, etc.

As mentioned above, no legal provisions were found on packaging and labeling except for food and drugs. Various governmental committees, as well as organizations of businessmen and consumers, consider it extremely desirable for other commodities to have on their labels and packages all the information necessary for customers. The commodities should be furnished with trademarks, the name of producer and dealer, and a special declaration about the quality, etc. On the other hand it is considered impractical to enact special laws or royal decrees in this field, and that it is preferable to have such measures taken voluntarily in order to satisfy the interests of both merchant and consumer.

A special agency (*Varudeklarationsnämnd*) was established in 1951 by central organizations of merchants and consumers consiting of members appointed by these organizations, under the chairmanship of a person appointed by the King. The task of this agency is to see that other commodities besides food and drugs are voluntarily furnished with all requisite information on their lebels, packages, or containers.

F. SWITZERLAND

Scattered provisions in a number of Swiss federal statutes safeguard the consumer's interests from being adversely affected by deceptive, misleading, fraudulent, and unfair trade practices in packaging and labeling, as well as in branding and advertising goods and services to consumers. The bulk of the legislation con-

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[39] Ibid., p. B 180–183.

[40] *Svensk Författningssamling* (Swedish Official Gazette), 1913, Law No. 308.

[41] *Kavalitetsforkning och Konsumentupplysning* (Exploration of Quality and Information for Consumers). Ch. 3. *Staten Offentliga Untredningar* (Government Investigations) No. 18, Handelsdeparemtentet. Stockholm, 1949: 70–128. *Pris och prestation i handeln* (Price and Performance in Trade), ch. 3, SUO 1955: 68–79.

cerning packaging, containers, branding, and labeling forms a part of the laws and regulations pertaining to the marketing of foodstuffs, drugs, and other commodities.

The basic legislative act is the Federal Law Concerning the Trade in Foodstuffs and Articles for Everyday Use of December 8, 1905, as amended.[42] Its provisions are further implemented by the Regulation on the Trade in Foodstuffs and Articles for Everyday Use of May 26, 1936, as amended,[43] containing, in addition to general provisions (secs. 1–38), also detailed regulations concerning a large number of individual foodstuffs and other commodities (secs. 39–486).

The law of December 8, 1905, provides for the means of supervising the trade in all foodstuffs as well as in articles for daily use and consumption "to the extent that they may endanger life or health."[44]

Although the main purpose of the Foodstuffs Law of 1905 is the protection of public health, it is also directed against deceptive practices in the trade in the above-mentioned articles. This follows from paragraphs 1, 2, and 5 of section 54 of the law which have the following wording:

"*Sec. 54.* (1) The Federal Council shall issue the necessary regulations for the protection of health and the prevention of deception in the trade in merchandise and objects which are subject to the provisions of the present Law.

"(2) It shall decree the marketing of the foodstuffs in such a manner as to make impossible deception concerning their nature and their origin.

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"(5) It may prohibit the manufacturing and the sale of natural foodstuffs mixed with food substitutes, by means of which a deception of the buyer takes place, insofar as such deception cannot be prevented by any other method."

The Regulation on the Trade in Foodstuffs and Articles of Everyday Use of May 26, 1936, includes several general provisions directed against deceptive trade practices. These provisions are broad enough to cover also deceptive packaging and labeling. The basic requirement for the marking of foodstuffs is stated in section 13, paragraph 1, of this regulation which reads: "Foodstuffs must be marked according to their generic character or their raw products (generic marking)." As a general rule this generic marking has to appear in clearly discernible and legible letters on merchandise samples, as well as on ready packagings (wrappings, containers, etc.) destined for the retail trade.[45]

Where fancy advertising names are used together with the generic marking on packages destined for the retail trade the inscriptions must be of such a nature that the generic marking appears simultaneously on the packaging along with the fancy name and in a clearly visible and legible form.[46]

According to section 320(3) of the *Lebensmittelverordnung* the provision of section 13, paragraph 3, does not apply to fancy packagings and confectionery boxes. But another special provision (sec. 320(4)), which regulates the trade in chocolate bars, was included in the regulation with the express purpose of protecting the buyer from deception. This provision reads:

"Chocolate bars or blocks with a net weight of over 40 grams, if offered for sale separately or in several combined pieces, may be sold or offered for sale only in bars or blocks with the net weight of 50, 100, 125, 150, 200, 250, and 300 grams or more. In-between weights are prohibited (as amended according to the Decision of the Federal Council of April 19, 1940)."

Furthermore, the regulation provides in its section 320(6) that the weight indication must appear on the package in figures at least 0.5 cm. high.

In a Swiss Federal Court case[47] the provision of section 320(4) was challenged by the owner of a Swiss chocolate factory, which had been fined for a violation of this provision. The factory had manufactured and offered for sale packages consisting of two chocolate bars weighing 37 and 40 grams respectively. The following inscription appeared on the wrapping of these packages: "Two bars at 37–40 g=77 g 50 cts including paper filler (100 g=65 cts)." The court

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[42] *Bundesgesetz betreffend den Verkehr mit Lebensmitteln und Gebrauchsgegenständen vom 8. Dezember 1905—Bereinigte Sammlung der Bundesgesetze und Verordnungen 1848–1947*, vol. 4 (Bern, 1950), pp. 459–468. Quoted hereafter *Lebensmittelgesetz*.

[43] *Verordnung über den Verkehr mit Lebensmitteln und Gebrauchsgegenständen vom 26. Mai 1936—ibidem*, vol 4, pp. 469–607.

[44] Section 1 of the *Lebensmittelgesetz*.

[45] Sec. 13, par. 2 of the *Lebensmittelverordnung*.

[46] Sec. 13, par. 3, op. cit.

[47] Decision of the Appeals Division of Cassation of the Federal Supreme Court of Apr. 7, 1949, *Health Agency Meilen* v. *Ellenberger—Entscheidungen des Schweizerischen Bundesgerichtes*, vol. 75, pt. 4, 1949, pp. 76–82.

of first instance acquitted the owner and held that the Federal Council had no jurisdiction to enact the provision of section 320(4) because its purpose was not an economic police measure but rather a measure of economic policy.

The Federal Supreme Court reversed the decision of the lower instance and ordered the lower instance to impose a fine on the owner. It held that the provision was legally passed in the exercise of the police power, because its purpose was to protect the buyer from deception. Weight differences of 25 or 50 grams, said the court, are easier to discern from the size of the bar or block of chocolate than are smaller differences. A dealer is not prohibited to sell together two pieces of chocolate weighting 37 and 40 grams respectively for 50 [Swiss] cents; however, he may not offer them combined in one package which could create the impression in the buyer that he is buying a single bar of the usual size of a bar of 100 grams. A buyer is deceived at the moment when he considers one bar to be of the same size or weight as another, although one weighs several grams less than the other.

Misleading information on the nature, origin, amount, or weight of packaged goods is expressly prohibited by section 15, paragraph 1, of the Regulations which reads:

"Markings, data, illustrations, packagings, and inscriptions on packagings as well as types of display used for foodstuffs must not lend themselves to deception concerning the nature, origin, amount, weight, etc. of the respective foodstuffs."

PENAL PROVISIONS

The original version of the Foodstuffs Law of December 8, 1905, provided in its sections 36 and 37 for penalties for the falsification of foodstuffs and the marketing of falsified foodstuffs. These two sections were later repealed and at the present time section 153 (Falsification of Merchandise) and section 154 (Marketing of Falsified Merchandise) are applicable to any merchandise, including foodstuffs.[48] The penalties range from a fine to imprisonment in the case of an intentional offense. The negligent marketing of falsified merchandise is punished only by a fine, but if such marketing or falsification is done as a trade, the penalty may not be less than 1 month's imprisonment coupled with a fine.

The intentional violation of regulations implementing the Foodstuff Law of 1905 imposes a penalty of custody for not more than 3 months or a fine of up to 1,000 Swiss francs; unintentionally committed offenses are punished only by a fine.[49]

Prior to the adoption of the Swiss Federal Criminal Code of 1937 (effective January 1, 1942), a number of criminal codes of the individual cantons included sections penalizing the use of deceptive markings on merchandise, or the deceptive packaging of merchandise. This offense was considered a minor one and entailed punishment by a fine. An example of these provisions is section 232(4) of the Criminal Code of Bern, which reads as follows:

"SECTION 232(4) OF THE CRIMINAL CODE, CANTON OF BERN[50]

"Whoever, for the purpose of deception in the trade or in commerce falsely or equivocally indicates the nature of a foodstuff on a label or inscription, or in a public notice, or by the type of packaging or in any other manner, shall be punished by a fine of from 5 to 500 francs."

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[48] Dr. Karl Dürr. *Kommentar zum eidgenössischen Lebensmittelgesetz nebst Verordnungen.* Bern, Aretusa-Verlag, 1953, p. 22.

[49] Sec. 41 of the *Lebensmittelgesetz* reads as follows:

"(1) Whoever contravenes the regulations issued in implementation of Sec. 54 shall, unless the provisons of Secs. 36, 37, and 38 are applicable against him, be punished by custody for not more than three months or by a fine of up to 1,000 francs.

"(2) If the contravention is committed by negligence he shall be punished by a fine of up to 500 francs."

Secs. 36 and 37 have been repealed. Sec. 38 punishes the manufacturing, offering for sale, or marketing of articles for consumption or daily use, the consumption or use of which endangers health or life, by imprisonment for not more than 2 years and a fine of up to 3,000 francs if the offense is committed intentionally; these offenses committed by negligence entail imprisonment for not more than 6 months and a fine or only imprisonment.

[50] *Strafgesetzbuch für den Kanton Bern vom 30. Januar 1866.* Commented 2d edition by Carl Stooss. Bern, 1896, p. 94. Similar provisions were known to the cantonal legislation of Appenzell, Basel-Stadt, Zürich, and Thurgau. See Esser, Gottfried. *Die Vergehen des eidg. Lebensmittelgeseszes von S. Dezember 1905* (Diss.) Zürich, Muri Steinmann, 1927, pp. 9–10; Capaul, Duri. (*Strafrechtliche Fragen zur Weinfälschung* (Diss.).

A special case of deception in the trade-in products is the forging or counterfeiting of a trademark. The Swiss Trademark Protection Law provides that the deceived buyer or the owner of the mark (sec. 27(1)) may sue in civil or criminal court "anyone who counterfeits or imitates the trademark of another in such a manner that the public is misled" (sec. 24(2)).[51] The punishment inflicted upon the offender is a fine of from 30 to 2,000 francs or imprisonment for from 3 days to 1 year or both. In case of recidivism these penalties may be doubled. Proof of negligence exculpates the offender (sec. 25).

Another provision of Swiss law which could apply to deceptive information on labels or packages is section 2(b) of the Federal Law against Unfair Competition of September 30, 1943, which states that a violation of the principles of good faith may be committed by "making incorrect or misleading statements concerning oneself, one's own products, performances or business circumstances." The Swiss Federal Supreme Court has held that this applies also to misleading information on the packagings of merchandise.[52] An offender may be prosecuted on request of persons or associations entitled to file a civil suit against him, and the punishment is a fine or imprisonment.[53]

G. The German Federal Republic

Safeguarding the consumer's interests adversely affected by deceptive, misleading, fraudulent, and unfair trade practices in packaging and labeling, as well as in branding and advertising goods and services to consumers, has been effected in the German Federal Republic by provisions in several statutes, some of which date back to the time prior to World War II.

Generally speaking, there are no special statutes directed against unfair labeling and packaging practices as such. However, regulations pertaining to the marketing of specific commodities contain provisions concerning misleading, deceptive, and fraudulent, as well as unfair, trade practices. This is especially true with respect to the marketing of foodstuffs. General provisions prohibiting deceptive, fraudulent, misleading, and unfair trade practices in the trade in foodstuffs and consumer commodities are contained in the Foodstuffs Act of 1936, as amended.[54] The pertinent provision directed against fraudulent trade practices, and prohibiting falsification and adulteration, as well as misleading and deceptive marking, reads as follows:

"*Section 4.* It shall be prohibited—

"1. to falsify or adulterate foodstuffs for the purpose of deception in trade and commerce;

"2. without sufficient identification to tender, offer for sale, to sell or otherwise place on to the market spoiled, falsified or adulterated foodstuffs; even in case of such identification this prohibition shall apply to the extent inherent in the established regulations adopted pursuant to Sect. 5 No. 5 [of this Law];

"3. to tender, keep in stock for sale, offer for sale, to sell, or otherwise place on the market foodstuffs with a misleading marking [*Bezeichnung*], designation [*Angabe*] or packing [*Aufmachung*]. This shall apply also [to cases] where the misleading identification, designation or packaging refers to the origin [*Herkunft*] of the foodstuffs, the time of their manufacture [*Herstellung*], their quantity, their weight or other circumstances which are contributing factors to their evaluation.[55]

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[51] *Bundesgesetz betreffend den Schultz del Fabrik- und Handelsmarken, der Herkunftsbezeichnungen von Waren und der gewerblichen Auszeichnungen von 26. September 1890—Bereinigte Sammlung*, vol. 2. Bern, 1949, pp. 845–856; David Heinrich. *Kommentar zum schweizerischen Markenschutzgesetz*. Basel, Helbing & Lichtenhahn, 1940, pp. 251–260. See also Giezendanner, P. *Streitfzug durch das Reklamerecht*. Zürich, 1953, pp. 51–52. ment or a fine.

[52] Decision of Oct. 19, 1912. *Riegler* v. *Zuban, Entscheidungen des Schweizerischen Bundesgerichtes*, vol. 38, pt. 2, pp. 566–572. This decision was quoted in a reecnt Swiss commented edition of the Unfair Competition Law—Büren, Bruno von. *Kommentar zum Rundesgestz über den unlautern Wettbewerb vom 30. September 1943*. Zürich Schulthess, 1957, p. 75.

[53] Sec. 13 of the Law on Unfair Competition.

[54] *Gesetz über den Verkehr mit Lebensmitteln und Bedarfsgegenständen (Lebensmittelgesetz)* [Law Concerning the Trade in Foodstuffs and Consumer Commodities (Foodstuffs Act)] of Jan. 17, 1936 (*Reichegesetzblatt*, 1936, I, p. 17), as amended Aug. 14, 1943 (*ibidem*, 1943, I, p. 488) and Dec. 21, 1958 (*Bundesgesetzblatt*, 1958, I, p. 950).

[55] Translated from the most recent compilation of the food laws of the German Federal Republic: *Lebensmittelrecht. Bundesgesetze und -verordnungen über Nahrungs- und Genussmittel*. 3d ed. München und Berlin, Beck, 1961 566 pp., at pp. 1–24. (Quoted hereafter: *Lebensmittelrecht.* 1961.)

Section 5 of the same law authorized the Minister of the Interior to issue jointly with the Minister for Food and Agriculture implementing regulations concerning specific kinds of food products and commodities. Numerous regulations were issued in the years following.[56]

Sections 11 and 12 of the Foodstuffs Act of 1936 provide for penalties ranging from a fine to imprisonment and in serious cases even to confinement in a penitentiary up to 10 years. The federal ministers concerned[57] shall establish which markings, designations, or packagings, being misleading, shall come within the purview of the prohibitions specified in section 4(3) of the Foodstuffs Act of 1936.[58] The Ordinance Concerning the Exterior Marking of Foodstuffs of May 8, 1935, as amended,[59] makes it mandatory for the manufacturer or the person importing certain food products from abroad (*Zoll-Ausland*) to place external markings on the packages and containers intended to be offered for sale, sold, or otherwise placed on the market.[60] Whoever wishes to place on the market a foodstuff under his name or the name of his firm, has the duty to supply the markings, and the manufacturer as well as the importer have no duty to do so. The ordinance enumerates the food products which are subject to the mandatory requirement of external marking (*Kennzeichnungspflicht*) to the extent they are delivered to the consumer in packages or container (sec. 1). It furthermore provides that certain data[61] must appear on the packages or containers at a conspicuous place, in German and in clearly discernible and easily legible writing.[62] These provisions are enforced also with respect to food products imported from abroad.[63] The Ordinance Concerning Price Marking of November 16, 1940, as amended April 6, 1944, is also pertinent to this study. In the German Federal Republic the interests of the consumer are safeguarded also by means of imposing upon retailers the duty to provide price markings on the articles for sale. A translation of the pertinent provisions of the Ordinance Concerning Price Marking of November 16, 1940, as amended April 6, 1944[64] follows:

"SECTION 1

"(1) Whoever, as a retailer, or in some other manner, sells goods in the retail trade, shall have the duty to provide these goods with the required price markings. The marking has to designate the kind and quality [*Gütebezeichnung*] customary in the trade, as well as the standard sales unit [*Verkaufseinheit*] customary in the trade.

"(2) the provision of Par. 1 applies respectively to all goods which are offered [for sale] by retailers or in some other manner in the retail trade according to pattern books [*Musterbücher*].

"SECTION 10

"(1) Price markings must be clearly legible;

"(2) Price labels (*Preisschilder*) may be written upon only one side, or bear the same text on both sides.

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"The Federal Minister of the Economy of the German Federal Republic has in a recent letter (*Schreiben*) of March 22, 1961,[65] referred to section 1 of the Price

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[56] For a list of these regulations see Ettemeyer, Werner. *Juristischer Wegweiser für Wettbewerb und Werbung.* Nürnberg, K. Böhrer, 1952, p. 91; the most up-to-date collection of the texts of the regulations appears in *Lebensmittelrecht,* 1961, pp. 71–453.

[57] At the present time this authority is exercised by the Federal Minister of the Interior jointly with the Federal Minister for Food, Agriculture and Forests—*Lebensmittelrecht,* 1961. P. 6, note 2.

[58] Sec. 5(5) of the Foodstuffs Act of 1936.

[59] *Verordnung über die äussere Kennzeichnung von Lebensmitteln (Lebensmittel-Kennziechnungsverordnung) vom 8. Mai 1935,* as amended Apr. 16 and December 1937, Mar. 16, 1940, and December 19, 1959—*Lebensmittelrecht,* 1961, pp. 64–68.

[60] *Lebensmittel-Kennzeichnungsverordnung,* sec. 1 (2) and (3).

[61] The name of the firm and the seat of the main industrial establishment of the manufacturer; an indication of the contents according to commercial custom as well as according to German weights or measures at the time of the packaging, or by the piece.

[62] Sec. 2 (1) or the Ordinance of May 8, 1935.

[63] Sec. 4, ibidem.

[64] *Verordnung über Preisauszeichnung vom. 16. November 1940 in der Fassung vom 6. April 1944—Reichsgesetzblatt,* 1944, I, pp. 97–100.

[65] Published in the official gazette of the Ministry of the Economy of the Land Baden-Württemberg—*Amtsblatt des Wirtschaftsministeriums Baden-Württemberg,* 1961, pp. 23 ff.–I B S 1048/61. This information has been obtained from *Rechtsarchiv der Wirtschaft. Steuer- und Rechtsfragen in Kurzberichten.* Richard Boorberg Verlag, Stuttgart-München-Hannover, vol. 14, issue No. 11 (June 10, 1961), item 267, pp. 353–354.

Marking Ordinance and has ruled that in all cases of the sale of packages with a filling weight that is not even (*ungerades Füllgewicht*), *e.g.*, 315, 430, 460, etc., grams, the markings on the package must include also the price for the weight unit customary in the trade. For items sold by weight, as a rule one-half kilogram or 500 grams shall be the basic weight unit customary in the trade. Consequently, markings of 100 grams, 125 grams, or 250 grams shall be considered units customary in trade. However, this general rule applies only to articles for daily use. In the case of branded goods—mainly delicastessen or cosmetic articles—under certain circumstances the uneven weight (*krummes Gewicht*) would be also considered customary in the trade. Furthermore, it was ruled that all weight markings shall refer to net, rather than gross, weight because in the opposite case the consumer would be at a disadvantage. But in the case where the weight of the packing material is substantial with respect to the weight and the price of the merchandise, a double marking indicating the net and gross weight shall be required.[66]"

H. Soviet Union

The Soviet Union enacted several decrees dealing with the labeling of goods for the purpose of safeguarding the consumer's interests. In general, all enterprises producing spices or goods for mass consumption must obtain in advance the approval for their labels, naming of goods, etc., from the proper authorities.

The new Criminal Code of October 27, 1960, in force since January 1, 1961, provides severe penalties for the deception of customers.

The translation of the pertinent decrees and provisions follows.

TRANSLATION FROM RUSSIAN

"Approval of Labels on Goods

"Decree No. 1233 of the People's Commissar of Internal Commerce of November 16, 1935

"The Government Commerce Inspectorate attached to the People's Commissariat of Internal Commerce of the U.S.S.R. has found cases in which industrial enterprises, when putting their products on the market for consumers at large, have put on their goods labels of other enterprises or labels which are, in appearance, identical with or similar to labels of other enterprises, or have included false information in the inscriptions on their labels.

"For instance, in the Western Province, the *artel* of Roslav, of the Food Industry Union "Ob'edinennoi konditer," purchased a large number of labels of other enterprises (Mossel'prom, Lensel'prom. etc.) in the city of Gomel and used them as wrappers for their own candy products; and a Moscow *artel* used labels with the inscription "Export Vinegar" on their vinegar bottles, although their product was not of this kind. Pointing out that the above-mentioned and similar cases which deceive the consumer are intolerable under the conditions of Soviet trade and should be stopped immediately, the People's Commissar of Internal Commerce of the U.S.S.R. establishes the following:

"1. All enterprises are absolutely prohibited to market goods packaged with labels which could deceive the consumer either in regard to the producer or quality of the goods by using labels of other entreprises or labels identical or similar to those of other enterprises, or by including on the labels false information regarding the quality, origin or purpose of the goods.

"2. It is the duty of all enterprises which put out goods with labels, to obtain in advance approval of such labels from the higher organization under which they operate.

"3. In cases in which the labels used by enterprises either belong to other enterprises or, in appearance, are identical or similar to the labels of other enterprises, or contain information which could deceive the consumer, the local organs of the Inspectorate of Government Commerce attached to the People's Commissariat for Internal Commerce of the U.S.S.R. shall initiate action for the prosecution of delinquents using such labels. [*Organizatsiia i pravila roznichnoi torgovli* (Organization and Rules of the Retail Trade) comp. by K. Grichik, K. Grave and V. Pirkovski, Moscow, 1936, p. 241.]

[66] Ibidem, p. 354.

"PROCEDURES TO ESTABLISH THE NAMES OF SPICES AND GOODS OF MASS CONSUMPTION

"Decree No. 1403 of the People's Commissar of Internal Commerce of the U.S.S.R. of December 16, 1935

"In order to establish uniform procedures for the naming of spices and goods of mass consumption and to establish control so that the names will correspond with the purpose and requirements of the cultural Soviet trade, the People's Commisar of Internal Commerce of the U.S.S.R. has established:

"1. All enterprises producing spices or goods of mass consumption shall, when they put out new goods or change the names of existing goods, obtain the approval of the proper people's commissariat or of the chairman of the provincial (land) cooperative center before forwarding the new goods or renamed goods for sale.

"*Note 1.* The proceedings for submitting new names for approval shall be established by the proper commissariat or by the center of cooperatives.

"*Note 2.* Putting spices and goods of mass consumption with new names on price lists, prospectuses, announcements, etc. as well as forwarding them for sale before the names have been approved in the above-established way shall be prohibited.

"2. In examining the proposed new names of goods for approval, the following shall be taken into consideration:

"(a) the name shall correspond to the contents of the goods as much as possible;

"(b) the name, in its literal sense, shall not be out of keeping with this period of time (for example, goods should not be given the names of people who are enemies of labor or names which recall the former owners of the enterprise, etc.);

"(c) the name shall not deceive customers as to the quality, period of time of usage, purpose, etc., of the goods.

"3. In all cases in which the names of goods fail to conform to the provisions of Section 2 of the present Decree, the local organ of the People's Commissariat of Internal Commerce shall immediately inform the People's Commissariat of Internal Commerce of the U.S.S.R. (Division of Rules and Norms of Trade) so that these names may be re-examined.

"[Ibid. p. 241–242.]

PROHIBITION TO GIVE THE DESIGNATION TEA TO VARIOUS BEVERAGE SUBSTITUTES

Decree No. 122 of the People's Commissar of Internal Commerce of February 25, 1935

"Due to the fact that various beverage substitutes (having the flavor of red bilberries, raspberries, fruits, etc.) have been put on the market bearing on their wrappings or labels the words 'tea' or 'used as tea,' etc., the word 'tea' being in heavy type, the People's Commissar of Internal Commerce of the U.S.S.R., has established:

"1. It shall be prohibited to sell tea substitutes with labels bearing the words 'tea' or 'used as tea,' and in general inscriptions which are intended to conceal the contents of the substitute beverage.

"The use of the name 'tea beverage' for the substitute if the word tea is not in heavy type shall be permitted.

"2. All commercial enterprises and organizations shall, within two months from the publication of the present Decree, be obliged to take off the market all substitutes with deceiving wrappings or to change erroneous inscriptions, and put on a new one which indicates that the beverage is a substitute.

"3. Two months after the publication of the present Decree, the Government Commerce Inspectorate at the Commissariat of Internal Commerce of the U.S.S.R. shall immediately inform the prosecution bureau of all cases in which tea substitutes have been put on the market in packages which deceive customers.

"[Ibid., p. 242.]

"STATUTE ON TRADE-MARKS AND TRADE-SIGNS OF MARCH 7, 1936

"EXCERPTS

"In order to increase the responsibility of industrial enterprises for the quality of the products they release and to facilitate the customers' selection of the products of enterprises with established reputations, the Central Executive Committee and the Council of Peoples Commissars have resolved:

"1. All enterprises of governmental industries, producers' *artels* (co-operative associations) and cooperatives of invalids, as well as enterprises of public organizations, shall attach to their products trade-marks which indicate:

"(a) the full or abbreviated name of the enterprise;

"(b) its location;

"(c) the full or abbreviated name of the people's commissariat, central bureau, or co-operative center under which the enterprise operates;

"(d) the grade of goods and the number of the standard.

"*Note.* A list of enterprises and goods which do not require trade-marks shall be issued by the Council of Labor and Defence.

"2. The trade-mark may be affixed on the goods themselves, or its wrapping or attached to the label on the goods.

"3. Release of goods without trade-marks makes the director of the industrial enterprise reliable to prosecution in a disciplinary or judicial procedure.

"4. Enterprises, in order to make their produce [d goods] distinctive have the right to provide, in addition to the mandatory affixture of the trade-mark, a permanent original distinctive sign (trade signs) such as: a graphic design, an original name, a particular combination of numbers or words, original packaging, etc.

"Individual large enterprises may be granted the right by the people's commissariat under which they operate to affix on products a trade-sign instead of a trade-mark consisting in its original design of only the name or initial (monogram) of the enterprise, the kind of goods and the number of the standard.

"A list of goods which shall be provided with trade-signs shall be established by the People's Commissar of Internal Commerce for products of mass consumption designated for the internal market and by the People's Commissar of Heavy Industry for machines and equipment.

"5. The registration and usage as trade-signs of the following shall be prohibited:

"(a) signs which are insufficiently distinct from the signs of the other enterprises registered with the U.S.S.R.;

"(b) signs which contain certain false or deceiving information;

"(c) signs which contain a red cross or a red half moon.

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"10. Trade-marks for all kinds of goods shall be registered with the U.S.S.R. Ministry of Commerce (as amended on March 4, 1940).

"(*Sobraine Zakonov i Rasporiazhenii*, 1936, No. 13, item 113.)

"ARTICLE 156. DECEPTION OF CUSTOMERS

"Fraud in measures, weights, increase of established prices in the retail trade, fraud in counting or any other deception of customers in stores or other commercial enterprises or enterprises of public refreshment shall be punished by confinement for up to two years, or by correctional labor for up to one year, or by deprivation of the right to be an employee in commercial enterprises or public refreshment enterprises.

"The same acts committed on a large scale or by persons who have been previously sentenced for the same crime shall be punished by confinement for from two to seven years with or without confiscation of property, or with deprivation of the right to be an employee in commercial enterprises or public refreshment enterprises.

"(*Ugolovnyi Kodeks RSFSR* (Criminal Code of the RSFSR). Moscow, 1960, p. 78.)"

I. AUSTRIA

A survey of Austrian legislation did not disclose any specific statutes aimed at unfair labeling and packaging practices. In extreme cases, of course, the provi-

sions governing fraud as contained in the Austrian Criminal Code[67] would be applicable. On the other hand, a number of provisions are scattered throughout various laws and decrees, which may be used, under certain conditions, to combat misleading, deceptive, and fraudulent trade practices in the marketing of food products and the sale of goods.

For many decades the basic legislation and most of the decrees issued thereunder were enacted on the basis of a law which was passed over 60 years ago primarily in the interest of the protection of the population's health and to introduce provisions making misleading, deceptive, and fraudulent trade practices punishable as petty offenses or minor crimes depending on their gravity. This basic law is the Law on Foodstuffs (*Lebensmittelgesetz*) of January 16, 1896 (*Reichsgesetzblatt* (Collection of Laws), hereafter abbreviated RGB1, No. 89 of 1897). Though the question of amendments was brought up on several occasions, no changes occurred during the following decades until 1938 when the Austrian Republic, established in 1918, ceased to exist. During the Nazi regime, German laws replaced the Austrian legislation previously in force on the subject. After the collapse of the Nazi Reich, the text of the law of 1896 was published anew, with some modifications, by the Proclamation of the Federal Government of October 2, 1951,[68] as the Law on Foodstuffs (*Lebensmittelgesetz*). Amended slightly in 1960 by the Federal law of November 28, 1960, No. 245,[69] this law is concerned not only with the trade in foodstuffs but also, among other things, with the trade in cosmetics, toys, tapestries, clothing, implements for cooking or storing foodstuffs or using the same, as well as scales, measures, and other instruments employed in the measurement of foodstuffs. Section 6 of the law authorizes the ministries concerned to issue regulations in the interest of health protection while section 7 is designed to protect the consumer from monetary loss and misleading trade practices.[70]

Under these sections the ministries concerned may prohibit or restrict the following activities engaged in as a trade: The manufacture, sale, or offer for sale of objects which are designed for the imitation or adulteration of foodstuffs as well as the sale as a trade and the offering for sale of foodstuffs under a marking not corresponding to their true quality.

Pursuant to this law (primarily based on sec. 7) a number of decrees were issued for the purpose of protecting the consumer from deceptive practices. In almost all instances the common feature was to make certain that a product whose ingredients were known to the public came into the trade and was offered for sale under the known name of the product only when it contained all the ingredients normally expected in the product. Any substitutions or mixtures used in the preparation of the product had to be disclosed.

Such decrees were, for instance, the decree of September 5, 1899 (RGB1 No. 182), concerning malt wines (*Maltone*) issued by the Ministers of the Interior, Justice, Commerce, and Agriculture.

The decree of April 2, 1900 (RGB1 1900, No. 69, p. 106), made unlawful the sale and offering for sale, both as a trade, of beverages similar to beer in the production of which hops or hop extracts were used under any name than the one which distinctly showed the use of these ingredients.

A similar decree of April 12, 1906 (RGB1 No. 83, p. 714), issued by the Ministers of the Interior, Justice, Finance, Commerce, and Agriculture, dealt with the trade in sugar and stipulated that whenever mixtures of sirup derived from sugarbeets or starch were used, these products could be sold only under this express marking.

The decree of January 30, 1908 (RGB1 No. 28, p. 44), issued by the Ministers of the Interior, Agriculture, Commerce, and Justice, protected the designation of pure cooking oil (such as olive oil).

Another decree intended for the protection of the consumer against fraud was the decree of December 16, 1922 (RGB1 1922, No. 925, p. 1946), issued by the Federal Minister for Social Administration in consultation with the other Ministers concerned prohibiting the manufacture, trade, and offering for sale as a business of substances designed for the adulteration of foodstuffs.

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[67] *Das österreichische Strafgesetzbuch* (1945) * * * herausgegeben von Gustav Kaniak. 5th ed., Vienna, Manz, 1960. Secs. 197 et seq.

[68] *Bundesgesetzblatt* (hereafter abbreviated BGB1), 1951, No. 239, pp. 913 et seq.

[69] BGB1 1960, p. 2177.

[70] See H. Frenzel. *Das novellierte österreichische Lebensmittelgesetz 1950.* Vienna, Osterr. Stattsdruckerei, 1951.

Furthermore, under the new section 7a the Ministry of Social Welfare may, in consultation with the other Ministries concerned, after certain institutions based on public law have been heard, issue regulations setting forth certain conditions which for reasons of public health must be met when selling or offering for sale, producing, manufacturing, processing, marking, packaging, storing, and shipping foodstuffs designated for the trade and commodities subject to the present law.

Sections 9 to 22 deal with violations of the law. Fines of up to 150,000 Austrian schillings [71] or imprisonment, or both, are provided as penalties. In the most serious cases referred to in section 19 even confinement in a penitentiary for up to 5 years may be imposed. However, it should be stressed again that the primary purpose of this law it the protection of the population's health and that noncompliance with the provisions of sections 7 and 7a referred to above constitutes merely a petty offense punishable by imprisonment for up to 1 month or a fine of up to 3,000 schillings, or both. Minor violations of the provisions of the law are now removed from the jurisdiction of the courts and are assigned to the jurisdiction of the local administrative authorities (sec. 22).

The Law of September 26, 1923, BGB1 No. 531, against Unfair Competition [72] in the version of Federal laws No. 461 of 1924, No. 192 of 1926, No. 111 of 1936, No. 145 of 1947, and No. 160 of 1952, also contains provisions pertaining to the protection of consumers against deceptive practices.

Section 32 is of special interest in that respect. It reads as follows:

"*Sec. 32* (1) It may be ordered by decree that certain commodities can only be sold in the trade, offered for sale, or otherwise placed on the market in prescribed quantity units or with visible marking [*Ersichtlichmachung*] of the quantity (weight, measure, number), quantity or geographic origin.

"(2) These decrees shall prescribe the manner of affixing as well as the text of the prescribed designation and may also contain regulations as to the date of the affixing and the packaging as well as provisions permitting the deviation or exemption from these provisions [in cases] when the quality of the commodities or special conditions so require [such deviations or exemptions]; finally these provisions may also contain the measures necessary for their inspection and enforcement.

"Whenever the affixing of the designation of the quality on the commodity itself or on its packaging or wrappings is not feasible, it may be decreed that the quality must be indicated in a document accompanying the delivery of the commodity. For the trade in articles of consumption connected with agriculture and forestry it may be prescribed that the name or firm and the place of business of the manufacturer of the commodity must be stated.

"(3) Whenever decrees concerning the use of prescribed quantity units or the visible marking of the quantity are issued with regard to such commodities which, as a rule, due to their natural qualities, suffer losses as to weight or measure, then the limits of deficiencies which may be allowed shall be especially established.

"(4) Furthermore, certain designations may be prescribed, admitted or prohibited by decree in regard to commodities which may as a trade be sold, offered for sale or otherwise placed on the market [only] with the visible marking of the quantity, quality or place of origin.

"The provisions of Subsections 2 and 3 shall, to the extent that they are applicable, also apply to decrees which prescribe a certain designation [or] admit or prohibit the same."

Section 33 in particular provides for penalties incurred for the violations of decrees enacted pursuant to the foregoing section. Fines of up to 500 Austrian schillings and imprisonment for up to 3 months may be imposed. In addition, any designation not included in violation of that section must be added, or misleading designations eliminated; if this is not feasible, confiscation of the commodities may be prononunced. Even if the prosecution or sentencing of definite persons is impossible, confiscation of the commodities involved may be pronounced independently.

Pursuant to the Law against Unfair Competition, particularly as based on section 32 of that law, a number of implementation decrees were issued. The

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[71] Increased to this amount by an amendment introduced by the Federal law of July 16, 1952 (BGB1 No. 160, pp. 476–477).

[72] *Wettbewerbsrecht* herausgegeben von Fritz Schönherr, E. Saxl und Karl Wahle. Vienna, Manz, 1959.

Decree Concerning Bottles of July 11, 1953,[73] issued by the Federal Ministry for Commerce and Reconstruction, is of special interest for the protection of the consumer from deceptive practices. This decree, referring to sections 19 and 24 to 26 of the Federal Law of July 5, 1950, on Gauging,[74] prescribes that bottles designed to be filled with liquid foodstuffs may be used only when they meet certain designated standards of measurements as to their rated contents [*Flaschennenninhalt*]. As a rule, liquid foodstuffs may be bottled only in bottles having the following measurements: 2 litres, 1.5 litres, 1 itre, 0.75 litre, 0.7 litre, 0.5 litre, 0.35 litre, 0.25 litre, 0.2 litre, 0.175 litre, 0.125 litre, 0.1 litre. There are a few exceptions admitted, for instance beer may also be bottled in bottles with a rated volume of 0.33 litre.

Detailed regulations pertain to the proper filling of the bottles. Bottles and bottlelike containers subject to the provisions of this decree must be made of glass, porcelain, stoneware, or other material capable of holding its shape. The contents must be expressed in litres. The designation of the rated contents and the sign of the manufacturer, as required by the Law on Gauging, must be placed on the outside of the bottom or the body of the bottle in a distinct and unseverable manner.

A decree of the Federal Ministry for Agriculture and Forestry of November 18, 1954,[75] is designed to combat unfair trade practices in trading in honey and artificial honey.

A decree of January 25, 1955,[76] based on section 32 of the Law on Unfair Competition, was issued by the Federal Ministry for Commerce and Reconstruction for the protection of the consumer buying soap for household use. The decree reads as follows:

"*Par. 1.* Curd soap [*Kernseife*] within the meaning of this Decree shall be understood to be a household soap only, which, in solid form, contains at least 62 per cent of soap-making sebatic acids of which not more than one fourth may be resin acid.

"*Par. 2.* Curd soap may be sold, offered for sale, or otherwise placed on the market as a trade in retail commerce only in bars of 100 grams, 200 grams, 250 grams, 400 grams, 500 grams freshweight [*Frischgewicht*]. Loss of weight of not more than 25 per cent of the total weight, which occurred during storage, shall be disregarded.

"*Par. 3.* The freshweight must be clearly marked in letters of at least 5 mm. in height on the Curd soap or its packaging if it is not transparent. The word 'Freshweight' [*Frischgewicht*] shall precede the statement indicating the weight.

"*Par. 4.* The present Decree shall take effect as of July 1, 1955."

Another regulation safeguarding the consumer's interest against deceptive and unfair practices is the Decree of September 21, 1953,[77] issued by the Federal Ministry for Commerce and Reconstruction concerning the designation of the place of origin of distilled alcoholic beverages. Under this decree distilled alcoholic beverages, whether sweetened or unsweetened, may be sold in the trade, offered for sale or otherwise placed on the market only in sealed containers, on which the place of origin is designated and the ingredients are stated. The designation [*Bezeichnung*] must be written in German, clearly and ineffaceably, and permanently affixed to the side of the container bearing the label. In addition, in the case of containers having a volume capacity of from 35 centilitres to 1 litre, inclusive, the minimum lettering [size] must be 2 millimeters while on containers of a volume capacity of more than 1 litre the lettering must be at least 5 millimeters in height.

The recently enacted Federal Law of July 6, 1961,[78] governing the Trade in [Grape] Wine and Wine made from other Fruits (referred to as the Law on Wines of 1961) is also designed to protect the public against deceptive, misleading, and unfair trade practices. Section 13 of the law contains provisions pertaining to the designation. It reads as follows:

"SECTION 13

"General Provisions Pertaining to the Designation:

"(1) Wine may not be kept ready for sale, be sold or otherwise placed on the market under a designation or form (such as a pictoral representation, shape of a bottle and others) which may be misleading.

[73] BGBl 1953, No. 123, p. 532.
[74] BGBl 1950, No. 152, p. 667.
[75] BGBl 1954, No. 262, p. 1135.
[76] BGBl 1955, No. 28, p. 295.
[77] BGBl 1953, No. 152, p. 572.
[78] BGBl 1961, No. 187, p. 967.

"(2) Whenever, under the provisions of the present law, the use of a designation in written form is prescribed, the lettering shall be clearly legible and of appropriate size. It shall be affixed at a place of the container conspicuous to the purchaser.

"(3) Insofar as the use of a designation is inadmissible, the following shall also be prohibited:

(a) to affix the designation on the containers, the packaging or wrappers in which the wine is being placed on the market or is to be placed on the market." [Remainder of Section irrelevant.]

The law also contains detailed provisions pertaining to the designation of the geographic regions of the various domestic wines and the designation of origin in the case of imported wines.

Austria is also a party to the International Convention for the Use of Designations of Geographic Provenience [*Appellations d'origine*] and Denominations of Cheeses originally signed at Stresa on June 1, 1951, and the supplementary Protocol signed at the Hague on July 18, 1951. Austria acceded to this Convention in 1953.[79] Austria also signed agreements with several countries concerning the protection of designations of geographic provenience and the origin of certain products. An agreement of this type was concluded with Italy on February 1, 1952, protecting the use of Vermouth and other Italian wines on the one hand, and, for instance, several well-known Austrian beers on the other hand (*Gösser* Beer, etc.).

J. Belgium

The normal conditions of competition in industry and the trades are well established and protected by law. The producers, merchants, and consumers have a right of action in the courts against any dishonest practices or acts of their competitors and misrepresentation to the consumer. (Decree No. 55 of December 23, 1934, *Moniteur Belge* (hereinfater M. B.) of December 30, 1934). The only enactments found which bear most closely on deceptive labeling or packaging practices are the following:

A degree of March 30, 1936 (M. B., April 7, 1936), empowers the King to issue new regulations for their protection in case of need. Within this scope, the Council of Ministers may:

1. establish the composition and the quality of products permitted on the market under a special trade name;

2. prohibit from the market products bearing a particular trademark;

3. impose restrictions and obligations to the effect that certain products must be sold under a particular name;

4. or, in order to establish a better understanding on the part of the consumers, impose a grouping of trademarks under which a particular product may be permitted on the market; special labeling or signs; special words or phrases.

Certain products of everyday use have to comply with the specific composition as stated in the law, before they can be placed on the market. Other products must be described and identified by special words to prevent a misrepresentation to the public of the product.

Examples:

A. Use of names

A circular letter of September 1, 1952 (M. B. of September 1, 1952), regulates the names of some of these products as stated in the decree of January 13, 1935:

"*Art. 1.* The name 'cloth' or 'genuine thread' cannot be used except when it is followed by a designation of the raw material used for the fabric.

"*Art. 2.* The words 'linen cloth,' 'genuine thread linen,' 'fine liner,' 'batiste' are specially reserved for textile fabrics which are entirely composed of linen."

B. Use of phrases

"Made by hand" in the shoe industry is regulated by the decree of March 6, 1935 (M. B., March 22, 1935); "natural cement," "Roman cement," etc., is regulated by the decree of April 14, 1935 (M. B., March 20, 1935); "wool" by the decree No. 332 of May 7, 1936 (M. B., May 22, 1936); "slik" by the decree of March 22, 1937 (M. B., August 1, 1937); etc.

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[79] BGBI 1955, No. 135 of 1955, p. 647, and No. 136 of 1955, p. 662. BGBI 1954, No. 235, p. 1057.

Mr. JARMAN. I have other questions, Mr. Chairman, but I will hold them for a moment.

The CHAIRMAN. Mr. Devine?

Mr. DEVINE. Mr. Chairman, I would like to direct my first question to Secretary Connor.

For the small manufacturer who sells his product solely within a State, engaged solely in intrastate business, would he be affected by this act, in your opinion?

Secretary CONNOR. The definition of commerce, Congressman, is given in the bill, and it is my understanding that purely intrastate transactions are not covered. I would like to check that.

Yes, that is correct.

Mr. DEVINE. Suppose he sells bakery goods. Would his sales affect the national bakery products and thereby have an impact on the interstate commerce transaction of those goods?

Secretary CONNOR. It would have some impact on the sales of competitive products that move in interstate commerce, but the bill as now drafted would not intend to cover that kind of transaction.

Mr. DEVINE. I believe the Supreme Court is making broader and broader interpretations of the commerce clause, even as it relates to the title IV housing provision of the Civil Rights Act before the House today. I think they have suggested a private home is in interstate commerce because the building materials, such as nails, crossed the State lines.

Don't you think this would be subject to a broad interpretation, too?

Secretary CONNOR. Mr. Devine, it is always possible, of course, for the Court to expand the definition of commerce. But as used in this bill, we would not anticipate that a transaction comparable to what you describe would be covered.

Mr. DEVINE. Just for the purpose of argument, let's assume this does affect my bread and bakery manufacturer in my district. The cost of complying with the bill would seriously affect him.

Is there any relief provided under the terms of this bill?

Secretary CONNOR. The relief would be that there would be no attempt to enforce the provisions of this bill by the Federal authorities against such a local manufacturer.

Mr. DEVINE. Thank you, Mr. Secretary.

Now, Mrs. Peterson; in prior appearances on this legislation before the Senate committee, you cited instances where the industry has made its own changes with regard to practices. However, you said that legislation is still necessary to do a complete job to correct the practices.

I think you also were in favor of earlier versions which prohibited all cents-off promotions. Then I think you modified your position to allow some cents-off promotions, depending upon whether they were deceptive or not.

My question is whether or not it would be better to tighten up the existing laws on deceptive practices rather than saddle the industry with a whole new set of laws which would raise manufacturing costs?

Mrs. PETERSON. I think the question as to whether or not the law should be tightened would be something that Mr. Dixon and Mr. Cohen should answer. But the fact, as far as consumers are concerned, is that the laws evidently are not adequate.

Again, all we would have to do is take the trip along the supermarket shelves to see that this is the case. I certainly feel that the laws on the books should be used to the fullest, but I feel that they are not adequate because they generally require action on a case-by-case basis.

I do want to say, as I said before, that a great deal has been done to improve packaging and labeling practices. I am so pleased when I walk along the supermarket aisles and people say, "Look at this package. It is full and labeled clearly on the front." I do compliment the industries that have made voluntarily many, many changes, and I am fully aware of them.

But nevertheless, to have the authority to make regulations to correct misleading and confusing practices—because there are still plenty of abuses on the shelves—is important. I think the bill is necessary in order to do that.

Relative to the "cents off," I feel very strongly, after I have talked with a number of the industry people, that very often there are cases where there were legitimate reasons given to show that the manufacturer's reduction had been passed on by the retailer to the consumer. Therefore, I did agree that it would be better to move the "cents off" provision into the discretionary part of the bill.

This change reflects a real effort to assure that everything is done to be positive that legitimate cost reductions are possible. The difficulty with "cents-off" is, of course, as I tried to point out yesterday, that it does promise something from the manufacturer that he cannot guarantee will be delivered.

Studies show that people generally think that "cents-off" means a bargain. In one of the polls in which consumers were asked, "When you pick up a 'cents off,' do you think you are getting a bargain?", most people said they thought they did. But, you know, we are believers in this country—and I think that it is good—that we should be able to feel that if the label says it is a bargain, it is a bargain. But the disillusionment comes when we find that it is not so.

It is unfortunate when people must say, "This is not a bargain. I am paying a lot more for this implied bargain." Therefore, what we were trying to do was to be sure that we let good bargain practices go ahead, but to be sure that the abuses are eliminated.

Mr. DEVINE. You testified that you received literally thousands of letters in your office, but do you have any surveys that you have conducted that would reveal that companies, to compete, indulge in questionable practices?

Mrs. PETERSON. I think there have been many surveys made by many marketing groups. On the "cents off," there is one survey reported in *Sales Management, The Magazine of Marketing*. It asks the opinion: "When I read on a label that a product is selling for so many cents off, I usually believe it is a bargain? Agree: 56 percent. Disagree: 41 percent."

But the interesting point is that the lower the income the larger the percentage who thought it was a bargain.

Mr. DEVINE. You mentioned that in your formal statement.

Mrs. PETERSON. This, I think, is a matter of real concern. However, I did not cite this survey in my prepared statements.

Mr. DEVINE. You didn't answer the specific question. Do you have actual surveys to show that these companies do engage in questionable practices?

Mrs. PETERSON. I have no surveys. However, one sees certain practices which would affect price and quality competition.

Secretary CONNOR. If I may supplement that, we don't have actual surveys, but while this bill was before the Senate, we did talk with quite a few manufacturers and other people in trade, and we now support the provision as it stands in the Senate bill and the bill before your committee because we have been made aware of many, many cases in which the actual "cents-off" offer is to the advantage to the consumer.

In situations where a product is established in the market, and has a retail price in certain supermarkets that are well known to the housewives, if, because of a seasonal situation or an overstocking situation in inventory, or because the product hasn't moved as rapidly as the manufacturer had hoped, the manufacturer does make a "cents-off" offer and sees to it that this moves through the retail store to the benefit of the consumer, quite obviously, if such an action on the manufacturer's part were absolutely prohibited by law, then the consumer would be prejudiced.

We do not want that kind of prejudice to the consumer to result. That is why we are strongly in favor of the compromise position that emerged which does not make "cents-off" offers illegal, per se, but only in situations where there have been abuses, such as those that have been described, where, in fact, there has been no established price in a particular store from which the "cents-off" offer is applicable.

Therefore, we think that it is proper to leave this to the discretion of the administrative agencies, as is done in the present bill.

Mr. FRIEDEL (presiding). The time of the gentleman has expired. Mr. Moss?

Mr. Moss. Mr. Chairman, I undoubtedly would have had some questions had I had the opportunity to read their statements. I found it necessary to appear before the Committee on Agriculture in behalf of my constituents. I will read the statements and reserve my questioning until later.

Mr. FRIEDEL. Mr. Nelsen?

Mr. NELSEN. I would like to direct a question or two to Mr. Cohen.

The Food, Drug, and Cosmetic Act authorizes standards for containers of food. Could you explain these standards to us? Just what do your standards provide, and what specific authority do you have to prescribe these standards?

Mr. COHEN. I will ask Mr. Rankin, the Deputy Commissioner of the Food and Drug Administration, to answer that, Mr. Nelsen.

Mr. RANKIN. The authority you refer to is that conveyed in section 401 of the Food, Drug, and Cosmetic Act. It authorizes the Secretary of Health, Education, and Welfare, when he finds that it will promote honesty and fair dealing in the interest of consumers, to promulgate regulations establishing, among other things, standards of fill of containers for foodstuffs.

Mr. NELSEN. It seems to me that the authority that you do have is the professed authority that is asked for in this legislation, is it not? It seems to me there is a duplication. You have this authority now regarding these standards of fill, do you not?

Mr. RANKIN. There are many authorities, Mr. Nelsen, in the bill which are not conveyed in the Food, Drug, and Cosmetic Act. The bill goes beyond the present law.

Mr. NELSEN. How many rules and regulations for the establishment of the fill of a package has the Food and Drug Administration previously outlined?

Mr. RANKIN. The standards of fill of containers that have been issued relate primarily to canned fruits and vegetables, and certain canned seafoods, and the number would be perhaps 35 or 40, Mr. Nelsen.

Mr. NELSEN. What do the standards provide? I am curious. We are getting into that in this bill. What can you say about the provision that gives you the authority to indicate what is in a package? For example, how would you state it?

Mr. RANKIN. The standard for a canned vegetable would provide, for example, that a No. 2 can of beans should contain no less than a stated weight of beans in order to meet the established standard.

Mr. NELSEN. Have there been any new standards recently put into effect or asked of the industry Have there been any new ones in the past year?

Mr. RANKIN. I am sorry, Mr. Nelsen; I didn't understand the first part of your question.

Mr. NELSEN. Within the last year or so have you required any new standards that had not previously existed? I am referring to new standards of requirements on packaging.

Mr. RANKIN. I do not recall any within the past year.

Mr. YOUNGER. Would the gentleman yield?

Mr. NELSEN. Yes, I will yield.

Mr. YOUNGER. Yesterday, Mrs. Peterson gave the example of the canned peaches. Is that not a violation of your present existing law which she cited? It is a violation of section 402(b)(1), isn't it?

Mr. RANKIN. As I recall the illustration that Mrs. Peterson gave, it referred to a declaration on the label of the can of peaches that the can would provide a certain number of servings. Present law does not authorize us to establish what constitutes a serving, so it would not be a violation.

Mr. YOUNGER. But it was swimming in juice. You have a regulation about adulterated foods in canned foods. If that was swimming, it is an adulterated article. I think the canning industry would so state. I think they would all hold that that was a violation.

You didn't report it to the Pure Food and Drug, did you?

Mrs. PETERSON. No, I did not, but I am not sure there was a violation.

Mr. NELSEN. Have I time for another question, Mr. Chairman?

Mr. FRIEDEL. Yes.

Mr. NELSEN. There is one other question I would like to direct to whomever can answer it.

Since Minnesota is a milling State, I am aware of one problem that has always existed in the milling industry, having to do with a bag

of flour taking on or losing weight, depending on the humidity that exists. In the law presently, there is a provision that permits a variation due to these causes.

Under the terms of this bill, I am not sure that there is any permissive language that would take into account these things that cannot be completely regulated. Maybe Mr. Dixon would have an answer to that.

Mr. DIXON. I would understand that it would be taken care of, sir, because I think the regulating authority, in determining the need for the procedure, would have to develop a record that would stand up under anyone's review.

In other words, if it could be shown to any reasonable group of people that this was a technical result, quite obviously the regulating authority would not have any business in the field.

Mr. COHEN. Mr. Nelsen, I think section 5(b) is expressly intended to take care of situations like that. I will be glad to read it into the hearing record.

Mr. NELSEN. I think the record should be clear on that point.

There is also provision in existing law that recognize the fact that in, for example, the milling industry or in the feed business, mechanical weighing methods are used where you may have thousands of packages going through. There may be slight variations in weight because mechanical equipment is involved. There is also under the present law some provision to take into account this type of variation.

Will this be taken care of?

Mr. COHEN. I think 5(b) is intended to take care of such similar situations, too, Mr. Nelsen.

Mr. NELSEN. I want to be sure that the record is clear on it.

Mr. FRIEDEL. Will the gentleman yield?

Mr. DIXON. Section 5(b) even requires the promulgating agency to issue regulations exempting them; this should clarify the problem.

Mr. NELSEN. Mr. Chairman, I guess my time has expired, but I would like to develop this a little more at a later period, if you don't mind.

Mr. FRIEDEL. Certainly.

Mr. Cohen said he thinks section 5(b) will take care of that.

Mr. COHEN. It is clear in my opinion that it takes care of the situation.

Mr. FRIEDEL. Mr. Kornegay?

Mr. KORNEGAY. In view of the prior colloquy with reference to peaches, permit me to cite, Mr. Chairman, that it is my information that there is a standard which has been promulgated by the FDA on peaches. It is found in 21 CFR, section 27.4, 1965.

In looking over this bill, I have several questions which I would like to propound to the panel generally.

The first question that I raise is in connection with section 7, page 12, which provides for the enforcement of this act. It refers to any consumer product, and so forth, and then it says "shall be misbranded within the meaning of chapter III of the Federal Food, Drug, and Cosmetic Act."

But the provisions of section 303 of that act, however, shall have no application to any violations of section 3 of this act.

As I understand it, section 303 of the Food and Drug Act is the criminal section, which provides for, I think, up to a maximum of 3 years' imprisonment, and perhaps a substantial fine, up to $10,000, although I don't recall the exact figure.

Mr. COHEN. It is 1 year in jail and $1,000 for the first offense.

Mr. KORNEGAY. What about the second one?

Mr. COHEN. I think it is up to 3 years and $3,000.

No, it is 3 years and $10,000.

Mr. KORNEGAY. Maybe I had the second offense in mind rather than the first.

Each separate act is a separate violation under this act, isn't it?

Mr. COHEN. That is correct.

Mr. KORNEGAY. If a man were found guilty of putting out two containers in violation of the rules and regulations, he would be subject to the stepped-up time.

You exempt that criminal provision from section 3 of the act. Does that, in effect, exempt the whole act from the criminal penalties in the present law, or does it just exempt section 3, as it says?

Mr. COHEN. The criminal penalties do not apply with regard to this act; namely, the Fair Packaging and Labeling Act.

Mr. KORNEGAY. In other words, the whole act which we have here?

Mr. COHEN. Yes, sir.

Mr. KORNEGAY. Wouldn't it be better to say that it shall not have application to any violations of this act, rather than making it a little more complicated by inserting that section 3? I thought that was the answer, because I think section 3 is the opposite section.

Mr. COHEN. Yes, sir.

Mr. KORNEGAY. It is the meat of the act, so to speak, in proving the violations which you have to prove, violations of rules and regulations promulgated pursuant thereto.

Mr. COHEN. I think either way would be appropriate.

Mr. FRIEDEL. The time of the gentleman has expired.

Mr. Curtin?

Mr. CURTIN. Thank you, Mr. Chairman.

I find no fault with the proposal requiring labels that clearly and precisely state the contents, or the weight of the contents of a container, and I favor eliminating, or at least clarifying, adjectives such as "jumbo," "economy size," or "large size." There are, however, parts of section 5 with which I have same concern.

Do I understand that under this section it is the intention to standardize all containers?

Secretary CONNER. No, Mr. Curtin, that is not the intention.

Mr. CURTIN. Let us assume, for example, we have a certain type of container—I am groping for an example. I remember once seeing a sirup called Log Cabin Syrup. It was in a container shaped like a little cabin. What are you going to do with that specific type of specialized container? What do you intend to do in situations where a certain company has built up a reputation and its product is known by a specific kind, or shape, of container? What will you do with that?

Mrs. PETERSON. There is nothing in S. 985 which provides for regulation of shape of container and in addition there is a safeguard in 5(b).

Mr. CURTIN. Where?

Mrs. PETERSON. In 5(b), on page 10. All of those factors have to be taken into account in promulgating regulations. However, S. 985 contains no provisions to standardize shapes of containers.

If I may speak for the consumer, in section 5(d) the purpose is, again, for us to be able to make the price per unit comparisons among competing products.

Mr. DIXON. May I interrupt for a moment?

You may have in mind the bill H.R. 15440 which, on page 7, has a section 5(c)(5) which deals with sizes, shapes, and dimensions. That is not in the Senate bill.

Mr. CURTIN. I am talking about the House bill.

Mr. DIXON. That is correct, sir.

Mr. CURTIN. I will confine my questions to the provisions in the House bill.

Mr. DIXON. I came here and said if the House wished to put that in, we would not object. But if you put it in, I would say to you that it would be an unreasonable act, it would be an arbitrary and a capricious act, just because Log Cabin Syrup was put in a package that looked like a log cabin, to take it off the shelf.

There is nothing deceptive or confusing about that.

Mr. CURTIN. We can't assume generally that everything is going to be all right. I would call your attention to section 5(c)(1) on page 6, where it says that it is the duty of the person administering this act to establish and define standards for characterizing the size of packages.

This definitely gives the person administering this act the right to make standards in the type of container, I would think.

Mrs. PETERSON. May I speak on this a little bit?

Of course, this is something that will have to be decided by the administrators, but it is my feeling that what was intended was to give the authority to define small, medium, and large, and this provision specifically states that "this paragraph shall not be construed as authorizing any limitation on the size, shape, weight, dimensions, or number of packages which may be used to enclose any commodity." It only refers to the designation for characterizing the size of a package.

Mr. CURTIN. That isn't what the act says.

Secretary CONNOR. Mr. Curtin, I think if you read the qualifying phrase at the end of that, it covers it, because it does say, "But this paragraph shall not be construed as authorizing any limitation on the shape of packages which may be used to enclose any product or commodity."

So I think that takes care of the Log Cabin situation.

Mr. CURTIN. Let's go to subsection (f)(3) of section 5, which would be found on page 9. I presume in reading this bill that this is intended to be the exemption section.

It says that no regulation promulgated pursuant to subsection (d)(2) with respect to any commodity "may preclude the use of any package of particular dimension or capacity customarily used for the distribution of related products," and so forth.

Secretary CONNOR. But, Mr. Curtin, that applies specifically to the density problem, which is, I think, a little different than the shape

problem that you referred to in connection with Log Cabin. The density problem is a complicated one. It is different than that.

There is an exception for it because that same size package often takes care of products of differing densities, and this is customary, and there is no deception involved because of the physical properties of the products. This particular exception is designed to take care of that problem.

Mr. CURTIN. That is correct and I have certain questions on that feature of this problem.

Mr. FRIEDEL. The time of the gentleman has expired.

Mr. Van Deerlin?

Mr. VAN DEERLIN. I yield to the gentleman from North Carolina, Mr. Kornegay.

Mr. KORNEGAY. Referring to the last section of the bill, it provides that the Secretary or the Commission can postpone the effective date of this legislation with respect to any class or type of consumer commodity upon the passage of a rule.

Has any other piece of legislation that the Congress has ever passed given to the Secretary or any department or agency of the Government the authority to suspend or delay the effective date of an act?

Secretary CONNOR. This refers to the Secretary of HEW. I will ask Mr. Cohen.

Mr. COHEN. Yes, there is some precedent for that, Mr. Kornegay, in the various acts passed. I will ask Mr. Rankin to summarize that for you.

Mr. RANKIN. Mr. Kornegay, the Pesticide Chemicals Amendment of 1954, the Food Additives Amendment of 1958, and the Color Additives Amendment of 1960, all to the Food, Drug and Cosmetic Act, contained authority to defer the effective date of the law upon a finding by the Secretary that this was proper.

Mr. KORNEGAY. You would have considerable control over it by reason of your enforcement powers and the authority to promulgate regulations. That gives you considerable leeway. Why would you rather proceed that way than to postpone the effective date of the act itself?

Mr. RANKIN. The reasoning, as I understand it, behind the granting of authority to postpone the effective date of the law was that the Congress wished to be sure that citizens did not run the risk of being even technically in violation of the law if, for good reason, they had not been able to bring their actions into full compliance by the end of the period first specified.

Mr. KORNEGAY. Mr. Dixon, let me ask you a question about your authority in this matter.

In 1914, the Congress gave the Federal Trade Commission the power to stop unfair methods of competition in commerce; is that correct?

Mr. DIXON. That is correct.

Mr. KORNEGAY. Then in 1938 the Congress came along and created additional power to stop unfair or deceptive acts or practices in commerce.

Mr. DIXON. That is correct.

Mr. KORNEGAY. In 1938 the Congress also empowered the Department of Agriculture to stop the distribution of containers of foods,

drugs, and cosmetics in commerce which were "so made or formed as to be misleading"; is that correct?

Mr. DIXON. Yes, sir.

Mr. KORNEGAY. Of course, in 1953, with the creation of the Department of Health, Education, and Welfare, that authority was given to that Department, with authority in the FDA to carry out its provisions; is that right, Mr. Cohen?

Mr. COHEN. Yes.

Mr. KORNEGAY. Mr. Dixon, you recall our legislation last year on the cigarette hearings in which you and I got into a discussion over the jurisdiction of the Commission. At that time I was contending that the authority of the Commission under the laws concerning unfair or deceptive acts or practices was not quite so broad as you were contending it was at that time. Is that right?

Mr. DIXON. That was our difference, as I understand it.

Mr. KORNEGAY. In fact, pursuant to some of the questions that I asked you at that time, I believe you made the statement that your authority in this area to prevent those things was as broad as your imagination.

Mr. DIXON. As broad as our imagination which we could prove. There is always that point.

Mr. KORNEGAY. But you contended at that time that you had very broad powers, and not only the power to stop an act which, in your opinion, was deceptive, but also to affirmatively require that certain products carry warnings, and things of that type if, in your opinion, the failure to so warn the public was deceptive.

Mr. DIXON. As I pointed out to you, it was my opinion, sustained by the Supreme Court of the United States.

Mr. KORNEGAY. I remember we disagreed on the law, too, in several respects, and on what the Court had to say and had done in that connection.

The question is, if you have that power we are talking about contained under section 5(a) of the Federal Trade Act, to require the statement we are talking about to be placed on cigarettes, to inform the smoking public that cigarettes are hazardous to health, and in your opinion the failure to so advise the public would be deceptive, then why can't you under the present law control and regulate, even to the point of placing specific statements on packages, the deceptive practices in this area which is the concern of this bill?

Mr. DIXON. On a case-by-case method, the approach of case by case, I think our powers are very broad, as I have indicated to you.

Mr. KORNEGAY. You didn't approach the cigarette folks on a case-by-case basis.

Mr. DIXON. I said to you we had moved from case by case to the trade regulation movement, the rule procedure which we had proposed on cigarettes, so that we could at least across the board advise the industry as a whole.

Of course, if the industry would have paid no attention to the rule which we would have promulgated, then we would have had to resort to case by case and go back. We would have had the benefit, then, I think, of a faster trial than we would have had had we singled them out one at a time.

Mr. KORNEGAY. As I recall your testimony last year——

Mr. FRIEDEL. The time of the gentleman has expired.

Mr. KORNEGAY. There was a change in procedures at that time, was there not?

Mr. DIXON. We added that to our announced procedures; yes, sir.

Mr. KORNEGAY. And you proceeded on an industrywide basis. Do you know of any reason why you can't proceed on an industrywide basis in any case in food, drugs, or cosmetics, or any other commodity being deceptively marketed in American interstate commerce?

Mr. DIXON. I think the most difficult question is raised there. I have faced it before indirectly in one of the earlier questions.

I interpret this piece of legislation as an adjunct or a supplement to the statute which we enforce. Obviously, if it is passed with the legislative history and with the language in the bill, I think we have a little bit more of a mandate or a direction from the Congress.

I think this is what this bill will give to us. I think we can use the tool which we have with the tool which is here.

Mr. KORNEGAY. Mr. Dixon, aren't you, in fact, trying to go beyond the point of deception? Wouldn't this bill give you the authority to go beyond the question of deception, into the area of marketing practices?

Mr. DIXON. This bill, on page 5, early in the bill, section 5(c) says when it is necessary to prevent the deception of consumers or to facilitate price comparisons as to any consumer commodity, deception is one of the legs that this bill is standing upon, and it does, in a sense, obviously stand upon the deception which is in section 5(a) of the Federal Trade Commission Act.

And I think it is interlaced in the misbranding and mislabeling section of the Food and Drug Act.

Mr. KORNEGAY. Let us go back to my question. Wouldn't it put you in an area beyond the area of deception?

Mr. DIXON. If it can be shown. I have constantly felt that the main trouble at some point in this bill, and the main underlying purpose of this bill, is in section 5(d), weights and quantities.

If you will notice in the bill that passed the Senate, they provided a different procedure, even, for approaching the problem, and safeguards. I believe it is here that the second part, about preventing or facilitating price comparisons, has been provided.

Yesterday I overstated myself on section 7 of the Administrative Procedure Act. I had in mind that it was this section that section 7 applies to. There is a safeguard. First, we must have a hearing under section 7 of the Administrative Procedure Act, and then, if the determination is made that there is a need, then the next procedure is the procedure of the Food and Drug Act.

That, basically, is a rulemaking procedure with the safeguard of judicial review written in there. But at least the Senate bill, and there is similarity in this bill on this portion of it, in Mr. Staggers' bill, is identical in this respect. The safeguards are here.

Mr. FRIEDEL. Mr. Cunningham.

Mr. CUNNINGHAM. Mrs. Peterson, you will recall yesterday we made mention of the 18-month study Congressman Rosenthal and I had as members of the National Commission on Food Marketing, having submitted our report to the President in the latter part of June.

I wonder if you had a chance to review that.

Mrs. PETERSON. Yes, I have.

Mr. CUNNINGHAM. In there, we recommend the establishment of the Department of Consumer Affairs. We had in mind that this is a complicated subject and one that should be of concern to the Government.

This Department would be, for the purpose of upgrading and making permanent, an agency to deal with consumer affairs. I presume you would favor that, would you?

Mrs. PETERSON. The method of handling consumer interests and whether a Department of Consumers should be adopted or not, I am not prepared to answer. I think that is something that Congress will decide after hearings on the subject.

I do feel very strongly that the voice of the consumer must be heard.

Mr. CUNNINGHAM. You have done a god job of speaking for the consumer. I have seen you on television. But we want to upgrade that position.

Mrs. PETERSON. I am all for anything that will assist the consumer.

Mr. CUNNINGHAM. I don't know whether our recommendation could be included in this particular bill. That might have to come out of another committee.

Mr. Moss, you are on Government Operations, are you not?

Mr. Moss. Yes, I am.

Mr. CUNNINGHAM. If we attempted to establish a Department of Consumer Affairs, would that come out of your committee?

Mr. Moss. The establishment of a new department would, I think, under the rules of the House, have to be referred to the Committee on Government Operations.

Mr. CUNNINGHAM. I believe that is correct.

That is all I have. I will yield to Mr. Curtin.

Mr. CURTIN. Thank you.

Getting back to this section 5 that we were discussing when my time ran out, I would like to direct this question to Secretary Connor, if I may.

I have some problem with subsection (f)(3), appearing on page 9, which says that no regulation promulgated pursuant to subsection (d)(2) may do certain things.

What are you going to do with the innovator? It seems to me that the innovator is the spark plug of competition. How is he going to put something new on the market, because it isn't customarily used, because it is new, and by the time he comes to your people and gets approval—and, unfortunately, Government agencies are not the speediest in the world in making these decisions—by the time you make a decision, it will not be new any more, and his competitive position will be harmed.

Secretary CONNOR. Mr. Curtin, looking at subsection (f) in its entirety, starting at the beginning, line 19, on page 8, it says "No regulation promulgated pursuant to subsection (d)(2) with respect to any consumer commodity may" and then you pick up 3 on page 9, and it says, "preclude the use of any package".

This doesn't indicate that point. In other words, no question could be raised in this situation, but it certainty doesn't state that the situation you described would be considered a violation.

Mr. CURTIN. But on line 19, page 9, it has the words "customarily used." In a new product, it is not customarily used yet as it is new. Therefore, you would have the power to regulate.

Secretary CONNOR. Only in a situation where there was a finding that the commodity in the new package had been distributed in weights or quantities likely to impair the ability of the consumer to make price per unit comparisons. That is the basic test before any action could be taken under this section.

Mr. CURTIN. Where is that in the bill?

Secretary CONNOR. I think the case that you are mentioning is not covered on all fours by subsection (f) (3). Therefore, you would have to look back to the basic violation provision, 5(d), to see what the test is. There the test is the deception or the question of reasonable price comparisons.

Mr. CURTIN. It seems to me that this particular section very clearly sets forth that the administrative authority set up in this legislation would have the right to regulate except in any package customarily used for distribution. I am speaking of an innovation, something that is completely new, therefore, up to that time it is not "customarily used." Therefore, you would have complete jurisdiction.

Secretary CONNOR. I wouldn't think that, Mr. Curtin, because it would have to be a situation that violates the basic provision, failure to give the consumer adequate price comparison information.

Mr. CURTIN. Because of the time problem, I would appreciate it, Mr. Secretary, if you could supply me further information as to just where the act says that at some later time.

Secretary CONNOR. We will put together a memorandum which will spell this out, Mr. Curtin.

Mr. CURTIN. Thank you. I have one other question.

Mr. FRIEDEL. The time of Mr. Cunningham has expired.

Mr. CURTIN. Thank you.

Mr. FRIEDEL. Mr. Pickle.

Mr. PICKLE. Thank you, Mr. Chairman. I appreciate the chance to question such a distinguished group of able panelists here this morning.

I want to ask Chairman Dixon this question.

When you gave your testimony yesterday that the FTC should be the regulatory agency under this act, were you saying that under section 5(a) you would eliminate reference to the HEW?

Mr. DIXON. I said historically the Federal Trade Commission has spent its life or its experience in developing expertise in what I consider economic deceptions. I think the Food and Drug Administration has primarily been engaged in the work of protecting the health and safety.

Mr. PICKLE. Mr. Chairman, if you will pardon me, I am limited by time and I would like to get a direct answer to my question.

If you will, look at 5(a). Are you saying that it should be made clear that reference to HEW should be eliminated, modified, or what?

Mr. DIXON. I suggested that to the Senate and I suggested it to the House, that it should be considered.

Mr. PICKLE. Thank you.

Now I want to ask you or the Secretary of Commerce this question: With respect to 5(d)(2), which seems to go to the heart of the matter involved, or 5(d), if your intent is not to standardize. You point out that on page 7, lines 10 to 13, that you add "but this paragraph shall not be construed as authorizing any limitations on weight, size, dimension, and so forth."

Would you be willing to add under 5(d)(2) that same phraseology that would follow on page 8, appearing on line 4?

Secretary CONNOR. I am not prepared at the moment to answer yes or no to that. It would have to be given some consideration. It is a very key question.

Mr. PICKLE. Let me ask the Chairman of the FTC if he would be willing to add that specific language. We are just saying the same thing you were saying before. I want to put over in this section, also.

Would you gentlemen want to come back to that?

Secretary CONNOR. I think we better be given time to caucus on that.

Mr. PICKLE. When you give us an answer on that question, I also want to ask you this: Also on page 7, line 21, it uses the words "for retail sale are likely to impair the ability of the consumers," et cetera.

It seems to me that that would trigger a great many questions or such about whether something was deceptive or not. That is, what we are trying to get at, price labeling that might be deceptive.

Would you be willing to have the words "would clearly" placed there instead of the words "likely to"?

Secretary CONNOR. Mr. Pickle, I can't agree with your interpretation that this provision (d) on page 7 has to do just with deception. It is really aimed at a different objective, namely to give the consumer information so that the consumer can make price comparisons.

Mr. PICKLE. Then you are in agreement with the FTC that this bill goes beyond deception?

Secretary CONNOR. Yes, there is no question about that. Actually, the guts of this bill is to give the consumer more information and not just to cover the deception situation.

Mr. PICKLE. Would you disagree, then, that sections 3 and 4, which clearly state that there has to be proper labeling and proper weighting, shown on the package, with no qualifying statement, is not enough? Is this not what we are trying to cure?

Mrs. PETERSON. I would like to say that is not enough because the thing that we want is to be able to make price comparisons.

Mr. PICKLE. I had the feeling from your testimony yesterday that you were saying, though you didn't intend it, I'm sure, that the American manufacturer has been attempting to deceive the American public in all his packaging. I don't believe this at all.

I don't know of any case of outright fraud. If there had been, the FTC would have moved against them.

Is that your intent?

Mrs. PETERSON. I am not interpreting deception in what the manufacturers are trying to do. I think it is a competitive market. I think it is because there are no ground rules that there has been such a proliferation in some product lines that it is impossible for the consumer to make these valid price comparisons.

Mr. PICKLE. Every example, Mrs. Peterson, that you gave yesterday indicated to me that it was an indication that the manufacturer actually had mislabeled or misshaped his package to deceive the public.

If that is the case, what we are trying to say is that there ought not to be qualifying phrases, such a "giant," "jumbo," "family," that type of thing. I would agree with you in that respect. But if that is not your purpose, and you say you don't want to standardize, then you get into a big, broad, gray area that might trigger many suits, an endless number of suits by the FTC, if they are the promulgating agency, or some agency, which would result in an endless number of suits, and which I think would hamper the American manufacturer rather than help him.

Mrs. PETERSON. I just disagree with you on this, I must say. I think the point is to give the consumer this information that she needs, which we do not have.

Mr. PICKLE. Mr. Chairman, I hope I have reserved the right to return to the question further.

Mr. FRIEDEL. Mr. Broyhill.

Mr. BROYHILL. I would like to ask the Chairman of the Federal Trade Commission this question.

On page 5, the bill says that the Secretary of Health, Education, and Welfare will have authority over those commodities which are listed there as defined in the Federal Food, Drug, and Cosmetic Act.

The Federal Trade Commission will have jurisdiction over other commodities.

What are some of those other commodities?

Mr. DIXON. Very quickly, soap, detergents, paper products. These things do not fall within the definition of food, drug, or cosmetics.

Mr. BROYHILL. And I would like to ask the Secretary of Commerce a question.

Your authority in this bill comes into play in the procedures for promulgation of regulations, is that correct?

Secretary CONNOR. The procedure for the setting of voluntary standards with the advice of the manufacturers, consumers, and other groups enumerated. Yes, that is one place that would give the Secretary of Commerce authority, and another place would set the Secretary of Commerce as the conduit of information concerning this to the States.

Mr. BROYHILL. I yield to the gentleman from Pennsylvania.

Mr. CURTIN. Thank you.

Mr. Secretary, I hope you do not mind my coming back with questions, but I do appreciate the gentleman yielding.

Has your department made any type of study in reference to the cost of standardizing the packages under this act?

Secretary CONNOR. We have looked to the cost to the Department of Commerce of the additional authority that would be given to us, and our estimate is that it would take an additional 35 to 40 people, and that the combined responsibilities that I have just mentioned, having to do with voluntary standard making and conduit to the States would involve an additional cost in appropriations of about three-quarters of a million dollars.

Mr. CURTIN. It runs in my mind that somewhere in the Congressional Record I read, either regarding the Senate hearings, or men-

tion on the Senate floor, that your department had made a study, or caused a study to be made, as to the cost to the manufacturer, or the processor, on the changes contemplated by this act.

Do you have any information on that?

Secretary CONNOR. We attempted to pull together some information as to what this would cost all the manufacturers in the country who would be subject to the act. Quite frankly, the facts are not too conclusive. It depends upon whether the manufacturer can make machine adjustments on his packaging line or would require a completely new machine.

Until the provisions of the bill are finalized, I don't think any accurate estimate of the cost is possible. But our opinion is that most of the changes that would be required by the bill can be effected by the manufacturer through making of machine adjustments.

Therefore, with certain exceptions, which probably will be mentioned in these hearings, we do not think that the additional cost to the manufacturers will be substantial.

Mr. CURTIN. But such processor, or producer, will have to make machine changes in their cans, their bottles, or their cardboard cartons, as well as in their labeling?

Secretary CONNOR. The labeling provisions, of course, will require some additional information not now on the labels. The packaging provisions in some cases will require changes in the packaging sizes and so forth in order to comply with the provision.

But this becomes a question for each manufacturer, case by case. Without making a survey of American industry, I think it is impossible to estimate just what would be involved.

Mr. CURTIN. Do you not think that it is fair to say that there will be some cost involved?

Secretary CONNOR. Yes. There is no question about it.

Mr. CURTIN. Who will pay that cost?

Secretary CONNOR. The manufacturer in the first instance, and I assume it being a part of the cost of operation, it ultimately would show up in the price.

Mr. CURTIN. So that the cost to the consumer is going to be increased, if this bill is enacted into law?

Secretary CONNOR. In certain cases. As I indicated, the effect of this will fall unevenly in the sense that some manufacturers will be able to make simple machine adjustments probably at nominal cost at most.

Others may very well have to purchase some additional equipment.

Mr. DIXON. I wish to point out to Secretary Connor that I believe that on page 8, if you will read on page 8, line 19, it says no regulation promulgated pursuant to subsection (d)(2) with respect to any consumer commodity may vary from any voluntary product standard in effect with respect to that consumer commodity which was published before publication, and so and so.

I think this is grandfathering the product you are talking about right out of this bill. They already have these standards promulgated, and it wouldn't affect it.

Your question was to cans. That is what I am talking about.

Mr. CURTIN. That raises another interesting angle. Let us go, for example, to liquids in cans. I am speaking on a subject on which I am

definitely not an authority, so I am sort of groping. But I assume that different kinds of liquids, such as soups, weigh different amounts because of the different ingredients.

I would assume that a consomme would not be as heavy as something heavily filled with vegetables. Is that correct?

Secretary CONNOR. Yes, sir, that is correct. That is the density problem.

Mr. CURTIN. That raises an interesting question. Are you going to make all cans vary in size so that the product will always be, we will say, 8 ounces, regardless of the kind of soup? That is, all cans of soup having 8 ounces will be in an 8-ounce can. Or will you use a standard size can and say on the label that it contains either 7½ ounces in one, 8 ounces in another, 6½ in another, depending on the kind of soup?

Secretary CONNOR. Mr. Curtin, I again call your attention to subsection 3 on page 9, beginning on line 18.

Mr. CURTIN. That is the one we spoke about before.

Secretary CONNOR. Yes. That would enable the continuance of customary practices, such as in soups, where there is a uniform appearance to the soup products of one manufacturer on the shelves, because the density does vary from the type of soup to type of soup. Unless there is an intent to deceive as mentioned in that subsection, there would be no authority to make changes.

With respect to the cost, I do want to point out that in the situations that I introduced into the record as part of my testimony, where the number of sizes has been brought down as a result of these voluntary standards that have been adopted in some industries, the effect has been, in many cases, to reduce the cost to the manufacturer and thus enable the manufacturer to pass on cost savings to the consumer.

Quite obviously, if a manufacturer customarily, in order to meet competition, has been making the product available in 20 sizes, and cuts that down to 5, there are going to be some cost reductions.

That has been the experience in some of the cases of voluntary standard making already in effect.

Mr. FRIEDEL. The time of the gentleman has expired.

Mr. ROONEY. Thank you, Mr. Chairman.

I will direct my question to Chairman Dixon.

Last week, Mr. Dixon, I met with the officials of a company in Allentown, Pa., and they wrote to me concerning this bill. In their opinion, section 5 of the FTC Act, section 48(A), prohibits all unfair deceptive acts or practices.

This section of the FTC Act, in their opinion, along with the various sections of the Federal Food, Drug, and Cosmetic Act, if applied, could accomplish, in an efficient manner, what the Hart-Staggers' proposal desires to accomplish.

Would you like to comment on that?

Mr. DIXON. I will say again, Mr. Rooney, that this does supplement the existing law, as I understand it. It doesn't detract. It supplements it, together with the mandate or instructions that would come to the enforcing agencies through the passage of a bill similar to one of these two bills before you.

When an industry member comes to you and says that, what he is saying is "I think we should let well enough alone on a case-by-case method." But I point out to you that we have difficulties.

Since I have gone to the Commission, I have persuaded my other commissioners to take a broader overview of our problems instead of case by case, just from pure, simple fairness, if nothing else.

Mrs. Peterson has told you, and I would support it, that many of these unfair practices or confusions that are dealt with in this legislation are many times defensively engaged in. Someone starts it and then no one can afford not to do it.

The case-by-case method is not the best whenever one is doing it. Some method across the board is best.

Mr. ROONEY. If the law is already on the books, why do you need another law to supplement the existing law?

Mr. DIXON. This certainly fills without a doubt that what is on the books is intended by Congress to be dealt with across the board in these respects and in the manner dealt with in this legislation.

Mr. ROONEY. They are concerned about section 4(a) which would require a separate label statement of the quantity of contents in terms of ounces. In their opinion, this directly conflicts with the requirements of the Federal and State laws that contents be declared in terms of largest whole units and would tend to increase the cost of labeling, and thus passed on to the consumer.

Mr. DIXON. I could understand why they would want to keep on doing what they are doing if their sales curve is way up. But if the consumer is having difficulty comparing their product with somebody else's product as to which is a better buy, not having any reference to the quality of the product—I am talking about just price comparison—then I think they would be a little bit disturbed about their being exposed to this new type of comparison.

I think this is really the seat of their objection. I frankly belong to that school of thought that says that truth is the best way to do business, and I think that businessmen will find that out themselves if they work at it a little harder.

Mr. ROONEY. I have no further questions.

Mr. FRIEDEL. Mr. Harvey.

Mr. HARVEY. Thank you, Mr. Chairman.

Mr. Secretary, what you have been saying here, it seems to me, boils down to two problems, first of all, labeling and, secondly, packaging. There are ample sections in the bill with regard to labeling, but the only section I see in H.R. 15440 relating to packaging is section 5(c)(5).

Let me ask you again where you would derive your authority from to determine the size of the package.

Secretary CONNOR. Mr. Harvey, I think section 5 could be called the packaging part of the bill. There are several places in section 5 where authority is given to establish regulations with respect to package labeling and with respect to other aspects of packaging.

Mr. HARVEY. Where, Mr. Secretary, other than in section 5?

Secretary CONNOR. Look above section 5 to section 4. That ends up talking about information that is placed upon packages containing that commodity. Section 3 above that, also.

Mr. HARVEY. Let us take section 4. Would you conclude that that gives you the authority to set the sizes of packages?

Secretary CONNOR. Is your question directed just at the size of packaging or about packaging authority generally?

Mr. HARVEY. I am concerned about setting the size of the packages. Where do you get that authority from other than section 5(c)(5)?

Secretary CONNOR. With respect to sizes and shapes, section 5(c)(5) is the only section.

Mr. HARVEY. That is the only section in the Staggers' bill where you would derive that authority, is that correct?

Secretary CONNOR. That is correct.

Mr. HARVEY. Am I correct in saying that that authority is not included in the Senate bill? Is that correct?

Secretary CONNOR. That is correct.

Mr. HARVEY. Then what you are asking this committee to do is to insert that section in the Staggers' bill and to give you, the Secretary of Commerce, that authority?

Secretary CONNOR. Not quite. Our position is that the administration supports the bill as it emerged from the Senate, and it did not contain this provision. If this committee so desires, of course, it can go ahead and add subsection 5(c)(5).

But we are not advocating that.

Mr. HARVEY. So we are clear, then, you are not recommending that you be given the authority to set the size of packages, is that correct?

Secretary CONNOR. That is correct.

Mr. HARVEY. Is there any other agency recommending contrary to that? Mr. Dixon?

Mr. DIXON. I agree fully with what Secretary Connor said. We came here supporting the Senate version.

Mr. COHEN. I speak the same, Mr. Harvey.

Mr. HARVEY. A few minutes ago Mr. Curtin was asking questions relative to the cost involved in the administering of this bill. I understood you to say, I think, that you have determined what that would be or have made estimates. Is that correct?

Secretary CONNOR. We made estimates with respect to the added cost to the Department of Commerce. I think the FTC and HEW will have to speak for themselves.

Mr. HARVEY. Let me ask you, Is your estimate of that cost included in the budget?

Secretary CONNOR. No, sir.

Mr. HARVEY. That would be over and above the budget, is that correct?

Secretary CONNOR. That is correct.

Mr. HARVEY. How about you, Mr. Dixon? Have you made any cost estimate that may be included in the budget?

Mr. DIXON. No, sir, it was not. Our estimate was predicated upon the division of authority as in the bill now. If it were to be changed, if we had the whole responsibility for enforcement, it would be more.

We estimated $250,000 for that portion of the enforcement that would fall upon the Federal Trade Commission.

Mr. HARVEY. Mr. Cohen, in your case, what is the answer?

Mr. COHEN. I think as the bill stands we would probably require in the neighborhood, for the first year, of about $1 million more to

administer this bill, and probably in the second year and thereafter in the neighborhood of $1.5 to $2 million more.

Mr. HARVEY. Mrs. Peterson, if I could direct a question to you, some products are designed to sell for a price. I have in mind particularly candy bars, for example. They are designed to sell for a nickel, or in times of inflation such as we have now maybe a dime.

How would a regulation such as this affect the candy bar? Are you going to tell the manufacturer that he has to have that candy bar at so many ounces so that when it comes to inflation he has to sell it for 11 or 12 cents instead of 10, or can he reduce the size of the candy bar?

Mrs. PETERSON. There is a provision in the bill that small amounts, 2 ounces, for example, are exempt.

Mr. HARVEY. What provision would that be? Can you tell me?

Mrs. PETERSON. It is page 9 in section 5(f)(2).

Mr. HARVEY. That concerns the weight or measure in any amount less than 2 ounces?

Mrs. PETERSON. Yes.

Mr. HARVEY. I have no further questions. I will yield my remaining time.

Mr. NELSEN. I am a little surprised that the budget does not contain the cost of administering this bill. The reason I make that observation is that obviously if we pass this legislation and add this cost, we again will be charged with raising the President's budget.

It seems to me that in fairness to Members of Congress if the administration wishes to pass this bill, the cost of administering it should be included in the budget.

Mr. COHEN. Mr. Nelsen, may I say it is my understanding that the amounts for the administration of this are included in the budget but not in a specific line item. That is, there is a general provision.

I don't remember the section. But the contingency fund for new legislation would take care of all of the administrative expenses that are envisaged for this bill.

Mr. NELSEN. I hope you are right.

Mr. FRIEDEL. Mr. Murphy.

Mr. MURPHY. Thank you, Mr. Chairman.

I was interested in the comment by Fred Rooney, of Pennsylvania, that he had met with a food processing manufacturer, and that manufacturer had said to him something which I had said to me from a large manufacturer in my district.

That was that existing laws, properly administered, can certainly safeguard the consumer without enactment of this legislation.

Mr. Dixon, would you comment on that, please?

Mr. DIXON. Congressman Rosenthal said we were the sorriest agency in town yesterday, and I disagreed with him heartily. I might say that your constituent has said if we properly administered our law you wouldn't need it here.

I could come back and say if you gave us enough money maybe we could do it, but that would not be a good solution. I think the best solution is this approach. This very clearly is an mandate, and an expression of legislative intent of how Congress wants it done.

There would be no mystery left if Congress passes this law that this is the across-the-board approach that you have in mind, not singling

out your constituent, which we may very well have authority to proceed against if what he does is deceptive.

But if it is just confusion, we would have a better society if the consumer were better informed, with less confusion. Then you would have another drive in this bill that is not so clear in present existing law.

Mr. MURPHY. Some of the points brought up about this legislation I think has had mislabeling on the legislation. Many of the manufacturers feel that they are going to be saddled with regulations as far as the shape of their package, the size of their package, and the size of the content.

I think it has probably been some people in the country, particularly, some chambers of commerce, that have mislabeled the labeling bill.

Mr. DIXON. I have great faith in the American manufacturing process. I believe if this bill were passed, voluntarily the changes will be made 75 percent of the way. I think 25 percent are going to wait because there may be some gray areas, and they will wait until clarification comes. Then I think a certain few will wait until they are prosecuted.

Mr. MURPHY. Do you have any idea of what additional staff you will need to implement the intent of this legislation?

Mr. DIXON. As I said, with the division of authority, the great mass of the products in the chain grocery store, are within the connotation of food, drug, and cosmetics, and of those left I gave examples of. I think we would have less of a burden than the Food and Drug Administration would have.

Under that burden, I estimated $250,000 additional money for staff to proceed. If I am short, I would just be short but I am trying to be as realistic as I can in the climate of asking for money today.

Mr. MURPHY. No further questions.

Mr. FRIEDEL. Dr. Carter.

Mr. CARTER. Mr. Cohen, how much would it cost the HEW to administer this bill for a year?

Mr. COHEN. I would say on a full-year basis, it would be in the neighborhood of about a million and a half to $2 million additional.

Mr. CARTER. Mrs. Peterson, under the standardization of sizes and so on, do you envision standardization of packaging on bottles of catsup?

Mrs. PETERSON. I think the important thing is that the bill is not directed mainly at the container. It is directed at giving the consumer the information to know how much he is getting so that he can make valid price comparisons.

There, again, it would be a matter of how much is in it. Brand A gives 5 ounces for a certain price and brand B gives 5 ounces for another price. It is the comparability that is important.

Mr. CARTER. The main thing is to label the package with weight and so on?

Mrs. PETERSON. Yes.

May I take a minute on that? The confusion that the consumer meets is on this question of comparability. I pulled out of my file this morning these examples that different consumers have sent me saying: "Mrs. Peterson, can't you devise some calculator to figure the

price per unit so that we can carry it through the market and be able to make a comparison?" I have samples of such devices here.

This one item you wear on your wrist. These are forms of simplified slide rules, I suppose.

This need for computers indicates the confusion. We do not want to standardize anything, but we want to be able to know what is in the package, and to give the consumer the proper information to permit her to make rational price comparisons.

Mr. CARTER. So that the consumer will know just what is in the container.

Mrs. PETERSON. That is correct.

Mr. CARTER. About how many different items are there in an average grocery?

Mrs. PETERSON. I checked with the grocer where I grew up as a kid, and he told me there were around 200 items. I checked with my supermarket the other day and he said between 7,000 and 8,000. Then I asked one of the merchants in this area and he said there would be 20,000 before long.

I think the important thing to remember is that we are just trying to update the weights and measures laws. If we want the package to be the salesman, we want that salesman to be honest and tell the facts, so that we can judge as consumers what we are getting. I don't think it is a matter at all of trying to change. We love the marketplace, the innovation. But let's modernize and bring up to date the weights and measures.

Mr. CARTER. About how many different categories of food groups would be in a grocery, would you say?

Mrs. PETERSON. I would have to look this up. I am not good at numbers.

Mr. CARTER. I believe I have read there are approximately 2,000.

Mrs. PETERSON. It is something like that.

Mr. CARTER. Mr. Connor, in the past I think you have had some standardization proceedings; is that not true?

Secretary CONNOR. We have had these voluntary standardization proceedings; yes, sir.

Mr. CARTER. About how much has it cost you per item for these standardization proceedings?

Secretary CONNOR. The average case, about a year from beginning to end, and it takes the activities of three or four people.

Mr. CARTER. What about the cost of that?

Secretary CONNOR. I would estimate the cost of the average one is in the neighborhood of $50,000.

Mr. CARTER. It is a little higher than I thought.

Secretary CONNOR. I would like the opportunity to check that. I didn't get figures for that.

Mr. CARTER. Then if we have 2,000 such categories, and the cost standardization procedure for each of these costs $50,000, that would run to how much money?

Secretary CONNOR. I would like to correct that. The statistics show that the average cost, based on what has happened, is $20,000.

Mr. CARTER. That is the figure that I had. I agree with you.

Secretary CONNOR. You are well prepared, Dr. Carter.

Mr. CARTER. Then with 2,000 different categories, at a cost of $20,000 each, I believe your figures would come to an administrative cost of about $40 million per year; is that true?

Secretary CONNOR. No, that is not true, because it is highly unlikely we would have these voluntary standardization procedures except in the situations where there are some complaints. It is possible that a particular class of manufacturers or a particular category, after this bill is passed, might want to move ahead and ask us to have standard-making procedures even before questions are raised.

But we think it is more likely that these would be held only in situations where there is some question as to deception or as to confusion for the consumer.

We think, therefore, that the kind of proceedings we would have under the voluntary standard-making procedure would be in the exceptional case rather than in the usual case.

Mr. CARTER. Those based on the figures that you have just given would require a different approach with regard to cost.

Secretary CONNOR. We estimate our total added cost for administering this procedure at about $700,000 to $750,000 a year.

Mr. FRIEDEL. The time of the gentleman has expired.

Mr. PICKLE. Would the chairman yield to me to see if the panel can answer a couple of questions I asked previously, or if they will not be here tomorrow?

Mr. FRIEDEL. They will be here tomorrow.

Mr. Satterfield?

Mr. SATTERFIELD. I was interested in a statement you had made yesterday, Mr. Dixon, that if FTC made a finding of need and published it in the Federal Register, if a single citizen was affected, he would have the right to request the voluntary standards procedure of the Commerce Department, and you said one person and one only.

I agree with this, frankly. I know, however, that the bill provides only that the producer or distributor affected has the right to raise this question.

I wonder whether you would support an amendment that would broaden it to include a single citizen?

Mr. DIXON. No; I think the bill is proper. When I said if there was a single one in that group, this would be a rather large group that you are talking about.

Also, I failed, I think, to delineate carefully enough because I was addressing my remarks to section 5(d). This is the section that deals with weights and quantities. This is a different procedure from the other procedures.

But I do believe this is the most troublesome part of the bill. I think as the the two bills have been revised, they recognize it and they have built in more safeguards.

Mr. SATTERFIELD. I find another difficulty in the bill that I would like to deal with now.

I can go along with the question of honesty and deception that we have been talking about, but I notice that throughout this bill, we go back to the question of the test "to facilitate price comparisons."

In line with Mr. Pickle's question a few minutes ago, we talk about the promulgating authority determining, after a hearing, et cetera,

that the consumer commodity being distributed for retail sale is likely to impair the ability of consumers to make price per unit comparisons. It seems to me that one of the keys to this entire bill is just what is meant by "price comparison."

Mrs. Peterson, in answer to a question that Mr. Pickle posed, you stated that you did not feel that requirements insofar as labeling is concerned, putting the weight clearly discernible on the package, and deleting certain misleading information, is sufficient.

I would like for you, if you will, to tell us what you do believe is sufficient in order tho make price comparisons.

Mrs. Peterson. I think what would be sufficient for the consumer is to be able to tell clearly what the per unit price is. Let me take the simplest thing. Let's take butter, milk, or something like these.

You have butter in a pound and you have it in a half pound and you have it in a quarter pound. You know brand A is good, but another brand B costs a little bit more, and maybe you will be willing to pay a little bit more. But you know what price you are getting a pound for.

The difficulty comes if it were, say, 8¾ ounces in brand B for a certain price, and some other quantity for another brand. You would have to be a mathematical wizard to calculate the per unit price. All these devices which the consumers have sent to me are to help find out what is the best buy.

Mr. Satterfield. It seems to me what you are really saying is that the people in this country can add two and two, but they can't work fractions. Is that what you are saying?

Mrs. Peterson. They can't convert from liquid, either. I wonder, should we have to be a walking digital computer to be able to figure out the best buy?

I can give you case after case. I can bring you examples if you want me to bring them. Can I read you a couple of them?

Mr. Satterfield. If they are not very long.

Mrs. Peterson. For example, "What is the best buy, a 3¾ ounce for 57, or a 6¾ ounce for 69?"

What we want to be able to do—and really I think this is important for our free enterprise system, because we have always been raised to expect that you reward the person that gives you the best quality and the most—is to be able to reward the person who provides the best buy but you have to be able to determine it is. It is a bit of a disillusionment when you find out you can't make a rational buying decision.

Mr. Friedel. The time of the gentleman has expired.

Mr. Watson?

Mr. Watson. First, let me commend all of you for the selection of the title of this legislation, the so-called truth in packaging, or fair packaging. It makes it rather difficult for any of us to ask any questions against it because we might be immediately determined to be against truth in packaging. I am sure that is rather ridiculous.

I might say further that I think the public has been misled in this regard, and the Congress has been done an injustice, inasmuch as many people believe there is no legislation presently in effect to guarantee truth in packaging. That is absolutely untrue.

Second, I think you have a blanket indictment of all industry and you are burning down the barn to get rid of a few rats.

Third, I think there has been a blanket indictment against the intelligence of the average American buyer.

Having made my speech, I will get back to the point propounded by Mr. Satterfield.

Is it your idea to eliminate confusion to the consumer that we have just weights in even ounces? What is your idea?

Mrs. PETERSON. What has to be determined is what is the best way to do this.

Mr. WATSON. What is your impression now since you are strongly supporting this legislation?

Mrs. PETERSON. I think the Senate bill has this in a very good way. It has it that you go to the largest unit, or ounces under a pound, or below a gallon it would be in ounces.

I think this is important, to express the quantities this way, so you can compare products more readily. Of course there are difficulties when we have fractions. I think the American people just don't like fractions. The simple units are the best.

Mr. WATSON. Frankly, the purpose of this legislation is not to eliminate deception, but to eliminate confusion to the buyer. Is that the basic purpose?

Mrs. PETERSON. That is correct.

Mr. WATSON. So the matter of truth in packaging is rather a misnomer, and I am afraid it has created quite a furor among the buying public.

I believe the Chairman of the FTC stated earlier, or Mr. Connor, that "We believe most industry is responsible." There have been very few violations of existing law. That leads me to my next question.

Secretary CONNOR. Mr. Watson, you know, of course, that the proposed title to this bill is Fair Packaging and Labeling Act.

Mr. WATSON. Of course, even in that name is the implication that the industry has been unfair in the past.

It isn't pointed out by the facts, or at least I can't find them.

How many cases have you brought under existing law to try to protect the American consumer against unfair trade practices?

Mr. DIXON. Mr. Watson, I would have to run the record. There have been many.

Mr. WATSON. What is "many," Mr. Chairman?

Mr. DIXON. This law has been on the books since 1938.

Mr. WATSON. Let's narrow it down. How many have you brought in the past year?

Mr. DIXON. I will have to furnish that for the record.

Mr. WATSON. You do not know how many you have brought in the past year?

Mr. DIXON. I would have to furnish it for the record.

Mr. WATSON. I am very apprehensive of the fact that we have not utilized existing law enough and now, instead of approaching it on an individual case basis, we are approaching it on a shotgun basis. If we don't mind shooting at everybody, we will hit the culprit.

Mr. DIXON. I think you have been approaching it on a squirrel gun basis.

Mr. WATSON. And you don't kill the squirrel by shooting the tree, do you?

Mr. DIXON. If there is a whole group of squirrels up in the tree misbehaving, and you only shoot one, if you did kill him he might ask why you chose him.

Mr. WATSON. But if you aim at one in a group, or in a covey, you better aim at one rather than the group.

Mr. DIXON. And some of them will get away. I say to you we are not perfect in the enforcement of the laws that you have passed. We can enforce the law so far as we are afforded the tools to enforce it with.

Mr. WATSON. Have you asked the Congress for additional funds in order to enforce the existing law?

Mr. DIXON. Every year since I have been Chairman.

Mr. WATSON. Then you apparently have not made the case strongly enough for the Congress to give you additional funds.

Mr. DIXON. Apparently I haven't. This last year I didn't ask for any appropriation increase because I took to heart the message that we had a pretty big job, and we would tighten our belt and do the best we could with what we had.

Mr. WATSON. May I ask one final question of you, Mrs. Peterson?

I notice on page 6 of your testimony that you cite the experiment that you ran with the group of ladies out in Michigan, I believe. Am I to conclude simply because those ladies didn't all come up with the same item purchased that there was something wrong with the advertising and the labeling?

Do you mean to tell me there is no difference in choices, in ideas of the American buying public, and simply because they didn't come up with the same item, it was unfair labeling?

Mrs. PETERSON. But the point was, they wanted the information necessary to get the most for their money. Nothing in the bill will stop the innovation and the fine ways of presenting packaged goods. But this was a study which required housewives to go through the market to get the most for their money on specified items.

Mr. WATSON. Not looking at value at all, but just at price and volume?

Mrs. PETERSON. You see, price is the first consideration. Then after that you decide on additional factors. You want to know how much more to pay for the extra quality. But you start with price. That is the basis, certainly, on which I make my marketing decisions, and that was the way this study was designed. It was a study to try to limit the decisions to price and quantity.

I think it might be interesting for you to have that study. I would like to insert that, if you like, or give it to you.

(The information referred to follows:)

TRUTH IN PACKAGING IN AN AMERICAN SUPERMARKET[1, 2] (MONROE PETER FRIEDMAN, EASTERN MICHIGAN UNIVERSITY)

The matter of truth in the packaging and pricing of products in the American marketplace has been a subject of public controversy in recent years. Much of the current attention stems from the introduction in the 87th Congress of the so-called Truth-in-Packaging Bill by Senator Philip A. Hart of Michigan. The

[1] This research was supported in part by a grant from the College of Arts and Science of Eastern Michigan University. Volunteers from The Ypsilanti, Michigan Chapter of the American Association of University Women, together with two students, Alice Gretzler and Margaret Keck, assisted in the data collection phase of the research.

[2] A briefer version of this paper was presented at the 1965 annual meeting of the American Psychological Association.

Senate hearings associated with this proposed legislation have stimulated nationwide interest, which has found expression in the mass media in the form of numerous newspaper and popular magazine articles.

Three basic assumptions of the Truth-in-Packaging Bill are as follows:

(1) A state of consumer confusion exists in the United States with regard to the true contents and prices of many common retail products.

(2) This confusion has resulted from improper packaging and labeling practices by American manufacturers and packagers of consumer products.

(3) The remedy for these improper practices is a change to the federal law by which greater authority would be given to the Food and Drug Administration and the Federal Trade Commission in the regulation of packaging and labeling practices.

These assumptions are supported by the testimony of many witnesses in the Senate hearings concerned with packaging practices. As might be expected the hearings also produced testimony of witnesses who challenged one or more of the basic assumptions of the bill.

In large measure the testimony relating to the bill's assumptions was based not on empirical studies of consumer behavior in the American marketplace, but rather on the individual experiences of the witnesses or their organizations with packaging and labeling practices. A notable exception was an attempt to examine the first assumption of the bill, dealing with consumer confusion, by Nelson (1962), the Consumer Counsel for the state of California. In her study, Nelson instructed five college educated housewives to purchase the most economical package (largest quantity for the price) for each of 14 common supermarket products. All purchases were made in a Sacramento, California supermarket. The principal result of this study was that the housewives succeeded in selecting the most economical package in only 36 of the 70 purchasing decisions.

As a scientific endeavor the Nelson study has serious shortcomings, e.g., an extremely small number of subjects and the absence of experimental controls for important variables such as product and store familiarity. However, when the study is considered in light of Nelson's background and intentions, namely as an attempt by a concerned non-scientist to seek empirical evidence for a perceived problem for which scientific evidence did not exist, a more tolerant view is surely in order. In any case the Nelson study appears to be the only attempt, by scientist or non-scientist, to deal directly with the empirical problem of consumer confusion in today's marketplace.

The current study attempts to objectively define the issues in the truth-in-packaging controversy by treating consumer confusion as a psychological variable capable of measurement. It is believed that this approach to the problem will permit an empirical evaluation of the first two of the three stated assumptions of the Truth-in-Packaging Bill.

METHOD

Subjects

Thirty-three young married women who were either students or the wives of students at Eastern Michigan University served as subjects (*S*s). All *S*s had attended college for at least one year and in addition had been married for one or more years. The *S*s were tested in a local supermarket with which they were familiar through previous shopping; indeed most *S*s were regular customers of the store. Recruitment of *S*s took the form of personal requests of the *S*s through visits to their homes (mostly apartments in the married student complex of Eastern Michigan University). The *S*s were paid for their time.

Procedure

The *S*s were instructed to select the most economical (largest quantity for the price) package for each of 20 products on sale at the selected supermarket. A time limit was enforced for each product decision, a limit based on the number of packages on display for the product. More specifically, 10 seconds was allowed for each of the packages in the product category, unless either (1) there were less than six packages to a product class, in which case a one-minute time limit was used, or (2) there were more than 24 packages to a product class, in which case a four-minute time limit was employed.

In addition to stating which package she believed to be the most economical for each of the 20 products, each *S* reported to the experimenter (*E*) accompanying her, the information which she used in making her decision.

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Each of the 20 products employed in the study had the following characteristics:

(1) Two or more different size packages of the product were on sale at the supermarket.

(2) Two or more different brands of the product were on sale at the supermarket.

(3) The two or more brands for each product appeared to be comparable with regard to the nature of their contents. Thus dry cereals were not selected as a product since corn flakes and raisin bran do not appear to be comparable; on the other hand the different brands and varieties of family flour were considered comparable.

(4) The products appeared to be widely used by American families.

(5) The products were significant contributors to total supermarket sales. Thus table salt, which qualifies on the basis of the first four criteria was not used in the study since it represents only about .1% of total supermarket sales.

Finally, a characteristic not of any one product, but of the whole group of 20, was that the set of products appeared to be a balanced representation of the packaged products available at American supermarkets.

The testing of the 33 *S*s took place over a two-day period. To aid in the testing a map of the supermarket was constructed with a specified route which touched upon the location of each of the 20 products. *S*s were then tested in groups of five to ten. Each member of a group was randomly paired with an *E* and the two were randomly assigned to one of the 20 product locations as their starting point in the test sequence. After *S* had responded to *E*'s questions at the first location, the two proceeded along the route to the next product location, and continued in this manner until *S* had been tested at all 20 product locations. This experimental design not only permitted the testing of many *S*s simultanously but also allowed the effect of a variety of product sequences (20 in all), to be reflected in the results of the study.

Thirteen of the 33 *S*s were retested two days after their original testing, thus permitting the determination of test-retest reliability coefficients for the experimental measures employed in the study. Concurrent validity coefficients for the measures were ascertained from correlations with the *S*s' pretest ratings of the 20 products. The pretest consisted of a brief story about a housewife who is undecided which of two packages of a particular product to purchase. The two packages are equally appealing to her on a number of grounds, such as appearance and quality of contents. She finally decided to purchase the package which gives her more of the product for the price. It was pointed out to the *S*s that the housewife's task of determining which of the two packages is more economical would vary in difficulty for the 20 products. The *S*s were instructed to rank the 20 products, using an alternation ranking procedure, with respect to the estimated difficulty the housewife would have in determining the more economical of two packages containing the product.

As the time the pretest was administered the *S*s were asked to indicate which of the 20 products were not usually found in their household.

Measures

Three behaviorally based, quantitative measures of confusion in unit price information are used in the analysis of the data. The first, Confusion Measure 1, simply indicates the number of *S*s who made incorrect choices for each of the 20 products. Confusion Measure 2 calculates for each product the mean percentage increase in unit price for the *S*s' selected packages compared with the most economical package. Confusion Measure 3, which employs data from a supermarket trade magazine study dealing with the total sales for each of the 20 products provides an estimate of the increase in price which an economy-minded household unit with a specified budget would pay over a constant time period, say a year, if its purchases reflected the values found for Confusion Measure 2.

The rationale behind Confusion Measure 1 is reasonably clear. We want to know whether *S*s are able to select the most economical package for each of the 20 common products; indeed, the number of *S*s who fail in this task should be an indication of the degree of confusion associated with consumer attempts to purchase supermarket products on the basis of economy. The second measure of confusion simply reflects the magnitude of the selection errors expressed for each product as a percentage of the unit price of the most economical package.

It is assumed that the larger the value found for a particular product, the greater the error which an economy-minded consumer would be expected to make when purchasing the product.

The last measure to be considered, Confusion Measure 3, represents an interaction of the estimated consumer expenditures for a supermarket product and the percentage error given by Confusion Measure 2. This third measure of confusion provides for each product a dollar-and-cents estimate of the additional expenses which an economy-minded shopper would bear due to errors in package selection. To give substance to this measure it is necessary that the actual records of consumer expenditures or estimates of such expenditures be available for processing. A search by the writer for a detailed product-by-product breakdown of the supermarket expenditures for some statistically average, or otherwise well-specified household unit, proved to be unsuccessful. Indirectly relevant data were found, however, in the *Progressive Grocer Colonial Study* (1963), which reports the percentage contribution to total sales made by each of several hundred products for six supermarkets in the southeastern United States. The six markets were members of a larger chain called the Colonial Stores.

It seems clear that the results of the Colonial Study do not reflect American supermarkets or consumers as a whole. The study was conducted over an eight-week winter period within a single chain of supermarkets in one region of the country. Thus there are seasonal, regional, and probably socio-economic reasons for suspecting differences. However, in the absence of any suitable national data dealing with either supermarket sales or consumer expenditures on an individual product basis, the results of the Colonial Study are employed in the analysis of the *Ss*' responses of the present study. The reader is cautioned that the Colonial Study results serve only as an estimate, with strongly suspected biases, of the corresponding national data.

The percentage contributions to total supermarket sales for the 20 products of the present study are perhaps made more meaningful when applied to a consumer's annual budget of say, $1,000 for supermarket expenditures. Thus the Colonial Study figure of 1.1% for powdered detergents assumes a value of $11.00 for this hypothetical budget. For this budget, Confusion Measure 3 is simply the portion of the individual product expenditure which can be assigned to error in package selection. The actual amount assigned would depend upon the value of Confusion Measure 2. Thus a household unit with economical shopping habits and a $1,000 annual supermarket budget might spend $11.00 for powdered detergents. Given a value of 24% for powdered detergents on Confusion Measure 2, we would find $^{24}/_{124}$ of the $11.00, or $2.13, as the amount over and above the minimal amount of $8.87 which our economy-minded household unit would pay if it always succeeded in purchasing the most economical package of powdered detergent. For this case then the value for powdered detergent on Confusion Measure 3 would be $2.13.

Values for other products were found in a manner similar to that described above. One first constructs a ratio consisting of the value of Confusion Measure 2 over an expression made up of the Confusion Measure 2 value plus 100. The next step is to multiply this ratio by the estimated consumer expenditure for the product. To find the value for a total supermarket expenditure different from the base of $1,000 employed here simply construct a ratio of the new total expenditure over the base of $1,000 and multiply the Confusion Measure 3 value by this fraction.

RESULTS

Of the total of 660 decisions made by the 33 *Ss*, 47 represented products which the *Ss* stated were not usually found in their homes. Since the proportion of errors for these 47 decisions did not differ significantly from the corresponding proportion for decisions involving more familiar products, the two classes of selections (familiar and unfamiliar) were pooled for the purposes of analysis.

The three measures of confusion in unit price information were applied to the 20 products employed in the study and were found to have substantial validity when correlated with the experimental pretest (Spearman rank correlations of .58, .62, and .70 for Confusion Measures 1, 2, and 3 respectively). Likewise substantial reliability coefficients were found (Spearman rank correlations of .91, .93, and .91 for the three numbered measures). These reliability values may be somewhat too high, reflecting the unavoidably short interval of two days

between first and second testings. The complete list of 20 products and their associated values on the three confusion measures are presented in Table 1. Also presented in Table 1 are the estimated consumer expenditures for the 20 products for a hypothetical consumer budget of $1,000.

TABLE 1.—*Confusion values and estimated consumer expenditures for 20 supermarket products*

Product	Confusion measure 1 [1] (total errors)	Confusion measure 2 (percentage error)	Confusion measure 3 [2] (weighted error in dollars)	Estimated annual consumer expenditures [2] (dollars)
Canned peaches	8	2	0.06	3.10
Canned peas	5	5	.20	4.10
Catsup	23	13	.28	2.40
Evaporated milk	2	0	0	6.60
Family flour	6	2	.13	6.70
Frozen orange juice	6	6	.36	6.40
Granulated sugar	0	0	0	10.70
Instant coffee	11	10	.92	10.10
Liquid bleach	32	32	.70	2.90
Liquid detergent	8	4	.24	6.20
Liquid shampoo	14	63	1.01	2.70
Mayonnaise	8	16	.46	3.30
Paper towels	30	12	.48	4.50
Peanut butter	7	2	.06	3.20
Potato chips	22	1	.05	5.30
Powdered detergent	33	24	2.13	11.00
Soft drinks (cola)	27	17	2.01	13.80
Solid shortening	0	0	0	5.50
Toilet tissue	22	5	.37	7.70
Toothpaste	22	16	.69	5.00
Sum			10.15	121.20
Mean	14.3	11.5	.507	6.06

[1] *N*-33.
[2] Based on a total annual supermarket expenditure of $1,000.

Examination of the values for Confusion Measure 1 reveals extremely wide variation for the set of products, with a tendency for food products to have lower values than non-food products. Significant differences were found for the set of 20 products on Confusion Measure 1 (Cochran $Q=283$, $P<.001$). The mean value of 14.3 yields an error rate of 43% for the 33 *Ss*. Siginificant differences were also found for the set of ranked product values on Confusion Measure 2 (Friedman $X^2_r=214$, $P<.001$) and Confusion Measure 3 (Friedman $X^2_r=242$, $P<.001$). It is of interest to note that of the total estimated annual consumer expenditure of $121.20 for the 20 products the sum of $10.15 can be accounted for by errors in consumer selections. Thus, if it were possible for an economy-minded consumer with a $1,000 supermarket budget to always select the package giving her the largest quantity of a supermarket product for the money, she would pay an estimated $121.20 minus $10.15, or $111.05. It is estimated then that a more typical economy-minded shopper, who makes her selections in conformance with the *Ss*' selections in the current study, would spend $10.15 more than the errorless figure of $111.05, or in other words, she would spend 9.15% more than the hypothetical consumer who was always able to select the most economical package.

DISCUSSION

It is important to note that the plan and procedures of this study deal not at all with the day-to-day purchases of American consumers. It may be that economy plays a small role in many of these purchases. However for the purposes of this study the question of what actual criteria are employed by consumers at large in their supermarket shopping is largely an irrelevant one. The question of concern is the following:

Is it possible for consumers to select, within a reasonable period of time and without the aid of paper and pencil or of computing devices, that package of a particular supermarket product which offers the largest quantity of the product for the money?

If large numbers of consumers can not make correct selections when so instructed, and patricularly if their errors are large, it would seem that the task is a confusing one. If in addition their errors are costly, there is real reason for concern.

Of course it does not necessarily follow that a confusing task results from improper packaging practices. However for the present study significant differences were found for the set of 20 products on all three measures of confusion, and it seems unlikely that these differences can be attributed in any large part to factors other than the differenes in package charactertistics. For example the possible influences of warm-up or fatigue effects were off-set by the experimental variations in order of product presentation. Also level of illumination appeared to be fairly constant for the 20 product locations. In addition, in several instances packaging practices were identified which required calculations which could not be performed without great difficulty, if at all, in one's head. For example the quantity of paper towels was presented in terms of number of sheets but the size of a sheet was not standard across brands. Indeed in the current study they ranged from a small of 7.5 by 11 inches to a large of 11 by 11 inches. Furthermore the number of sheets in a roll varied from 75 to 200. And finally, some rolls were packaged singly and others two to a package. Liquid bleach was a second product characterized by difficulties which were apparently influenced by packaging practices. In particular one brand of this product which formerly was made up with the commonly employed 5.25% concentration of sodium hyprochlorite, the active ingredient in bleach, had been reduced in concentration to 3.25% a short time before the data were collected; the selling price of the product however, had not been reduced, nor for that matter had there been a change to the label or package in any manner other than the listing of the new concentration on the back of the bottle. Since most of our *S*s were regular shoppers at the supermarket employed in the study it appears that rather than examining the bottle closely, they assumed the concentration had not been changed. With the original 5.25% concentration of sodium hypochlorite this bottle would have been the most economical selection; however with the change in concentration this was no longer the case.

Since the results of this study were influenced in no small way by the time allotted for each package selection it might be well to explain the basis for selecting the uit of 10 seconds. Since the *S*'s task was considerably more demanding than day-to-day supermarket shopping it was felt that time should be provided above and beyond the normal shopping time. A recent study (Fitzsimmons and Manning, 1962) found that it takes a shopper approximately one minute to select an item in a supermarket. This one minute period includes walking time in the store but not time at the check-out counter. The *S*s of the current study were given an average of 2.35 minutes at each product location; with the addition of walking time they had available about three times as much time as they would be expected to take for their supermarket shopping.

It is of interest to inquire what generalizations might be made from the present findings to other *S*s and other settings. First with regard to the *S*s of the study it seems clear that they represent a combination of qualities that should make for extremely low confusion scores. As a group they are characterized by considerable education and by the financial strains usually associated with young married college couples. These two ingredients suggest not only strong interest in economy as a criterion for supermarket shopping, but also considerable success in meeting this criterion. It would seem then that other individuals in general, and less educated individuals in particular, would not perform as well as the *S*s of the present study.

Although superficially it might appear that the results of this study would transfer readily to other supermarket settings there are differences between markets which should be considered. Although many markets carry the major brands for common products they differ in the extensiveness of sizes available, and in the particular store brands which they carry. Also differences in shelf space and position for a product might well influence the ease with which a shopper could make comparisons. Problems arise too when one attempts to generalize the results for the 20 products employed here to other supermarket products. That sweeping generalizations are clearly inappropriate is indicated by a Colonial Study finding that about 30% of the consumer's supermarket expenditures are allocated to meat and produce, two foods which are not packaged beyond a simple brown bag or cellophane wrapper. With regard to more

typically packaged supermarket products, again problems arise. The selection criteria for the 20 products employed in the present study have provided us with a clearly non-randon sample of packaged products. A particularly strong bias was introduced by selecting products with a record of relatively high total sales, which would imply relatively high familiarity among shoppers.

Two natural next steps of research are suggested by the data. The first would be a systematic study of what factors make for confusion in consumer selection. For example, packaging practices which are frequently claimed by consumer spokesmen to be confusing include the following:

(1) Poorly presented information concerning both the nature of the contents and the quantity of contents. These deficiencies in display may take many forms; e.g., too small print, weak contrast between the printed information and the background, and failure to present the information at a prominent location on the package.

(2) Misleading information concerning both the nature of the contents and the quantity of contents. "Giant quart" is a typical example of the latter practice.

(3) Misleading information concerning price. Often cited here is the so-called cents-off specials. Representatives of consumer groups claim that these "specials" are often not acknowledged by supermarket managers in their pricing policies.

(4) The use of unnatural numbers to indicate quantity. An example here would be the use of fractional or mixed numbers instead of whole numbers.

With a larger number of products than the 20 of the current study, regression analyses could be performed to determine which, if any packaging characteristics serve as good predictors of the confusion measures.

A second potentially valuable research step would involve the development and evaulation of training guidelines for consumers. With a larger and more heterogeneous group of *Ss* than the one employed here one could attempt to identify the distinguishing package information employed by high-scoring (as compared to low-scoring) *Ss* in their performance of the experimental task. A natural application of the results of such a study would be to consumers at lower socio-economic levels.

CONCLUSIONS

Within the confines of the particular experimental setting employed, the following conclusions appear to be in order.

(1) The three measures of confusion in unit-price information have substantial validity and reliability.

(2) The 20 products differ significantly on all three measures of confusion.

(3) There is reason to believe that these differences reflect, at least in part, differences in packaging practices.

REFERENCES

Fitzimmons, Clo, & Manning, Sarah L. *Purchases of Nonfood Items in Selected Retail Stores.* Lafayette, Ind.: Cooperative Extension Department in Agriculture and Home Economics at Purdue University, 1962.

Nelson, Helen: *Packages and Prices.* Sacramento: Consumer Counsel Office, State Capitol), 1962.

Progressive Grocer Colonial Study. New York: Progressive Grocer Publications, (420 Lexington Avenue), 1963.

Mr. WATSON. Thank you, Mrs. Peterson. Since all of the thrust of this is on price comparison, do you think it will result in the manufacturer just putting out the cheapest item because it will be standardized and all of the additives which may improve the item are not there?

Mrs. PETERSON. That is not the point.

Mr. WATSON. You say it is so, that the consumer might be able to make an intelligent comparison of price. These ladies do a much better job than any of us men. Are you going to try to protect us or the ladies?

Mrs. PETERSON. I want to protect the consumer. I want to be very sure that we know the price pursuant so that we know what the best buy, is, and then above price we decide that we like this or that better. But we want to know what we are paying for the additional quality which causes the additional price.

The CHAIRMAN. The time of the gentleman has expired.

Mr. Huot?

Mr. HUOT. Mr. Dixon, in answer to Mr. Rooney, I think you indicated that in setting some standards, the businesses or the industry that had a scale that was high would be reluctant to want to adapt to any standard.

Wouldn't that indicate that that particular industry would be using deceptive means and would be covered under existing laws, and could be prosecuted under existing laws?

Mr. DIXON. We are talking about confusion now, sir. I want to stay away from deception.

On deception, very clearly, if you put a bottle out here and it looks so big and it has a false side to it, with a hole down the middle, and that is all you get, that must have been done for deceptive purposes. But if you are putting out detergents in competition with several other detergent manufacturers, and you may call them "giant," "family," or "economy," but in addition to that you may have one with 1 pound, 1 ounce; 1 pound, 4 ounces; 3 pounds, 2 ounces; the problem here—and it is no reflection on one's intelligence—is, I think, one just doesn't remember from their early education how to convert dry weight into ounces very quickly, and especially if you lay into that a fraction. Then even the college graduate begins to flunk.

Mr. HUOT. But in your example of, say, a container that just had a hole in the center, with very little in it, with reference to what Mrs. Peterson says, if the labeling were proper, that it contained 4 ounces and was 29 cents, this would not be deceptive even if the package was very big, as long as it carried 4 ounces.

Mr. DIXON. Someone might say, "This is a big 6-ounce bottle."

Mr. HUOT. But they couldn't say that.

Mr. Secretary, in talking of voluntary standards, you were indicating voluntary standards were set by industry, I believe.

Secretary CONNOR. No, I think I would like to make it clear. Mr. Rosenthal, when he testified, seemed to think that consumers did not play a part. In fact, under this bill, the consumers will play a part throughout the process of voluntary standardmaking.

The procedures for the development of voluntary product standards now in effect provide for the participation of consumers throughout the development of a voluntary product standard. This participation of consumers is further guaranteed by subsection 5(e) of S. 985, which requires adequate manufacturer, distributor, and consumer representation in the development of a voluntary product standard pursuant to a request under subsection 5(d).

Mr. HUOT. But industry has provided voluntary standards of its own, has it not?

Secretary CONNOR. Yes, sir, in about 500 cases under the current operating procedures.

Mr. HUOT. Also, in answer to Mr. Curtin's question, you talked about density in packaging, and Mr. Curtin mentioned soup. I happen

to have people in my district who make soup. Their soup is not the type where you add three cans of water. It is a whole soup, if that is the terminology.

I think Mrs. Peterson indicated that if the packaging were uniform in the brands, this would be correct. The soup I am referring to is not sold here. But they couldn't put in 6 ounces. They would end up with a can of soup that could be put into a tablespoon.

Mrs. PETERSON. The only part that the consumer is concerned about in soups and puddings is how much will it serve? The part that is important is the definition of a serving. One knows when you read the label that this will make so much soup when you add water to it.

It is a matter of how much there is. Here we come to the definition of serving that is most important. The different densities in containers customarily used is taken care of under the bill. There is no attempt in the bill to change that. It is also protected by the provisions on existing voluntary product standards or containers.

Again, we have to remember what we are here for, and that is just to give the consumer the information that he needs. In this case they are concerned about the servings. However, this bill does not require "servings" to be used but only to be defined where necessary.

The CHAIRMAN. The time of the gentleman has expired.

Mr. Mackay?

Mr. MACKAY. Thank you, Mr. Chairman.

I would like to say, as a lawyer, that Mrs. Peterson is the most able and effective advocate I have ever encountered, so I don't want to ask her any questions.

But, Secretary Connor, man to man, don't you think the philosophy, back of this legislation, looking at it from a man's viewpoint, might lead to the destruction of the foundation garment, cosmetic, and wig businesses?

Well, you don't have to answer that.

What bothers me about this is the fact that the congressional affairs committee of the Atlanta Chamber of Commerce, with which I meet frequently, has studied this bill and is not sold on it. I happen to know that they have real intellectual vitality, and they don't just pass canned resolutions sent down from Washington. They agree with the objective of this bill.

They state, first, that it is their opinion that adequate safeguards already exist for the correction of deceptive packaging and labeling.

It is your opinion, and Mr. Dixon's opinion, that they do exist; is that right?

Secretary CONNOR. That is right. This bill supplements the existing laws in two important respects. First of all, it broadens the scope of activity, particularly by including this requirement for adequate information to the consumers so that they can make reasonable price comparisons.

Secondly, it helps in the administration of the procedures by what Mr. Dixon calls the blanket type of procedure rather than case by case.

Mr. MACKAY. Have there been any real studies in depth made beyond those cited by Mrs. Peterson about the extent of this type of confusion? Can you determine that quantitatively?

Secretary CONNOR. Mrs. Peterson, in addition to what she talked about in her testimony, as I understand it, conducted hearings on a nationwide basis.

Mrs. PETERSON. We had four regional conferences.

Mr. MACKAY. There is a lot of difference between a conference and hard data.

Mrs. PETERSON. But in each one of these conferences there was a definite section of the country where this issue was brought before them. It was overwhelmingly in these conferences a subject of great concern.

It is not only that, but also the list of people and the organizations who have supported this legislation. The thing that is impressive to me is the individual housewives who speak up on this. They write and say that they have never written letters before, but this is something that they have been seething about and then will cite examples.

Mr. MACKAY. But there has not been any compilation of hard data?

Mrs. PETERSON. I don't think there needs to be. All you need to do is go shopping.

Mr. MACKAY. The other thing that this chamber of commerce committee said is that this will result in duplication. As I understand your testimony, it will not. You are not creating a new agency. It might involve the employment of new personnel in existing agencies; is that correct?

Secretary CONNOR. That is correct.

Mr. MACKAY. It would be helpful to me, as a Congressman from a key distribution point in the country, for the case to be stated to a lot of these businessmen because they construe this bill as having far deeper ramifications than has been stated by this panel.

Secretary CONNOR. Mr. Mackay, I think quite a bit of the confusion comes from the fact that some of the earlier proposals were far broader in scope than what has emerged from the Senate after these extensive hearings. I think some of the people who opposed this bill still think it contains provisions which have been changed or deleted.

Mr. MACKAY. Are you satisfied with the Coca-Cola bottle shape now?

Secretary CONNOR. I would never go back to Atlanta if I said anything otherwise.

Mr. MACKAY. I just wanted that in the record.

Mr. WATSON. Would the gentleman yield?

Mr. MACKAY. I yield.

Mr. WATSON. You said a moment ago that you have many organizations supporting this legislation and there is no necessity for any quantitative study on it, Mrs. Peterson.

Could you imagine any organization in the United States, except one which is against motherhood and highway safety, if you presented them with the question, "Do you favor truth in packaging?" that they wouldn't say overwhelmingly, "Yes"?

Mrs. PETERSON. I am certain of that.

Mr. CURTIN. A good deal of reference has been made to "giant size." I hope the people downtown will not interfere with the Green Giant Canning Co.

Secretary CONNOR. That is a real giant.

The CHAIRMAN. Mr. Gilligan?

Mr. GILLIGAN. Thank you, Mr. Chairman.

I will address this generally to the distinguished members of this panel.

The declaration of policy under section 2 says:

> Informed consumers are essential to the fair and efficient functioning of a free market economy. Labels should permit consumers to obtain adequate information and should facilitate price comparison.

As I understand it, present law deals with information as to the quantity of the contents. There is existing law requiring net quantities to be published on the label of any package. So that much has been taken care of.

The second goal stated here, that of facilitating price comparisons, bothers me a bit in that the second part of the question for the consumer, that of quality, is not touched upon at all. It seems to me we may be overemphasizing price as against quality to the ultimate detriment of the consumer.

For instance, Mrs. Peterson, on page 9 of her statement, in the last paragraph, says that:

> In another supermarket I found detergent powder sold by the following designations: "regular," "medium," "king," "giant." Of three different brands, the "giants" contained two pounds, two pounds six ounces, two pounds three ounces.

The question still is: Which was the best buy, and is there a best buy in terms of price and quantity, or doesn't the quality of the detergent or its performance characteristics have the real, final say?

Mrs. PETERSON. Exactly. What we need as consumers is to be able to know that this one, which claims so much cleaning power is for 2 pounds and this price; and this one, that claims so much cleaning power, is this price. Then I will decide which one gets my wash the cleanest and which one doesn't and pay a higher price if necessary to get the extra value.

Mr. GILLIGAN. But if a detergent doesn't clean your clothes, I don't care how much you are getting for a dollar; you will not buy it.

Mrs. PETERSON. No, you won't but the point is we have to start with the price. The price is the thing that the consumer looks at first. Then, above that, we want quality.

But knowing how much the unit price is gives us the basis on which we can determine what we are paying for the extra quality that we want.

Mr. GILLIGAN. Assuming, for a moment, that the concentration is to be on price, the second question occurs: Am I to understand from section 3(b) that the retailer, who for the most part sets the prices, is specifically exempted from this legislation?

Mrs. PETERSON. Yes.

Mr. GILLIGAN. So we are concentrating on price but leaving out the man who, for the most part, sets the prices?

Mrs. PETERSON. From our point of view, what we want to know is the amount that he is charging us for that, so that we can make the comparisons. I come back every time to the point that it is important to give the consumer the information to make the price comparison. This is not a price-fixing bill, you see.

I think also it is important that in this study in *Sales Management, The Magazine of Marketing*, the question was asked, "I make a habit of looking for information about weights and measures on the package I

intend to buy," and 85 percent in this industry-sponsored study said they do.

You see, you start with price. Quality is a subjective thing as to what I like and what someone else likes. You cannot legislate in these things. But you can give the ground rules to manufacturers so that the consumer will be able to make those other qualitative decisions.

Mr. GILLIGAN. We were talking about the difficulty in dealing with fractions before. What about the retailer who advertises one can for 9 cents, two for 17, and maybe three for 26.

Mrs. PETERSON. If they are all the same size can, then you can decide. You can still do that, even without these computers that I had. The difficulty is dividing a can that is a mix, one quart and so many fluid ounces, and another one that is something else, so that you have to get them first down to a common denominator.

Mr. GILLIGAN. Let's go back to the business of soup for a minute. How are you going to compare the soup to which you add water to the soup to which you don't add water?

Mrs. PETERSON. That comes to the question of servings. I want to know how many servings it will make.

Mr. GILLIGAN. How much water will you add?

Mrs. PETERSON. In certain soups they say to add one can of water.

Mr. GILLIGAN. When you are determining a serving, among other things you are judging how hungry your kids are.

Mr. PETERSON. That is why I want to know what a definition of a serving is. I have an amusing time with my own family because there is a certain brand of something they like very much, and I have three husky big boys for this product, and I want to buy enough for four servings for one of the boys. I want to determine how much a serving is, so that I can tell whether it is a serving for a child, a grown person, an older person.

But let's have the definition of serving made in a reasonable way so that the consumer knows how much they are getting.

Mr. GILLIGAN. Let me address this question quickly to Chairman Dixon.

Under the terms in this bill, would sport shirts packaged at the manufacturer's level be included, or any other garments of that type?

Mr. DIXON. No, sir; I would not so understand.

The CHAIRMAN. The time of the gentleman has expired.

Mr. Farnsley?

Mr. FARNSLEY. I appreciate everybody's testimony, particularly yours, when you said that the weights and measures appeared in the Constitution.

I think we agree that weights and measures was one of the first functions of government in most societies. Is that true?

Mrs. PETERSON. It is true, and it goes back to the Bible.

Mr. FARNSLEY. In the old days, everything was in bins and you could see it and you could watch them. The Government was protecting us when we had the pound. Then there were two things that happened. We got packaging and we got self-service. In those days if the grocer cheated you you went to another grocer. My Miss Nancy buys by telephone and always threatens to go to the other place where she can buy by telephone, so they have to protect her much.

But there is no use threatening to go to another supermarket because it is the same brand, except they have their own brand of 4-pound peanut butter and you don't know how many peanuts are in it. That is a big issue.

I am talking when I should let you talk, but isn't this what we are trying to do, to get the customer back where he was 50 years ago, and protect him a little? He is away from the clerk, as you pointed out, and there is nobody to trust. Also, he can't see what he is buying.

Mrs. PETERSON. You are stating it much better than I. Exactly that is the point. The purpose of this legislation is just to bring up to date these procedures because we do not want to go back to the cracker-barrel day. We like it this way. All we want to do is modernize those procedures so we have those advantages of price comparisons that we had.

Mr. FARNSLEY. I would rather go back, but you wouldn't let us. The health people wouldn't let us.

That is about my 5 minutes.

Mr. ADAMS. There is a sharp division between food products and the products which come under the jurisdiction of the FTC. Mr. Cohen, are you familiar with section 341 of title 21, which says:

> Whenever in the judgment of the Secretary such action will promote honesty and fair dealing in the interest of consumers, he shall promulgate regulations fixing and establishing for any food under the common or usual name so far as practicable a reasonable definition and standard of identity, a reasonable standard of quality, and/or reasonable standard of fill of container.

Do you feel that there is anything in this bill that gives you any more than you need in the food area to not only tell them what is in the container, but what the size ought to be, how much ought to be in it, and, in effect, what number of ounces are in it?

You have the *Willapoint Oyster* case in which the FDA said in a No. 10 can there shall be 5 ounces of oysters. I think this was upheld.

I will come in a minute to you, Mr. Dixon, with regard to the nonfood areas.

Is there anything in this bill that you feel specifically you need to assist you further in telling the people, by regulation, what they should do?

Mr. COHEN. If there is anything further in the bill before you? Yes; I think everything that is in this bill is needed to clarify the authority and to extend, as the chairman said, to supplement the authority we have so that we don't have to go on a case-by-case basis.

Mr. ADAMS. I will come to Mr. Dixon's case-by-case basis in a moment. I am talking about regulations. Under section 341, it says you can do these things. I am for the bill, and we will write in here what you need to assist. But I am confused about this.

This bill, frankly, to me is much weaker than what you already have in the food area under section 341. You can even designate quality under that section.

Mr. COHEN. There are two things. It doesn't take away a single bit of authority that already exists.

Mr. ADAMS. I agree.

Mr. COHEN. To the extent that under this bill it provides that the regulations on an across-the-board basis have the effect of law rather than interpretive regulations under the existing Food and Drug Act, it does give us more authority to act effectively for the whole group.

Mr. ADAMS. Do you agree at the present time you can, for example, and I used the oyster industry simply because there is an established ninth circuit case on it, that you can go in there and tell them that they are to place in a No. 10 can five oysters?

Mr. COHEN. Yes.

Mr. ADAMS. You can also require that the quality be such that no oysters shall have sat so many hours before being canned.

Mr. RANKIN. We do have the authority to specify the quantity that shall appear in the can and the quality of the oysters that shall be present.

Mr. ADAMS. And, also, I believe you can standardize on size every can, can you not, No. 1 can, 10 can, and so?

Mr. RANKIN. We may standardize the fill of the container but we do not have authority to prohibit the use of a certain size container.

Mr. ADAMS. And you think this bill would perhaps give you that and, therefore, there is something that you need and want, is that correct?

Mr. RANKIN. That is correct.

Mr. ADAMS. Now, Mr. Dixon, with regard to the powers that you have under title 15, as I understand, you are objecting to the case-by-case system and feel if you can standardize by regulation this will be helpful.

Under the judicial review sections, aren't you still faced with the review of each particular regulation standard that you promulgate on container size or on actual number of ounces to be in a standard?

Mr. DIXON. Yes, sir.

Mr. ADAMS. Now, Mrs. Peterson, you have indicated that you believe that some standardization would be helpful. There are one or two ways you can approach this. Maybe it varies product to product, and on all different kinds. There is only one of two ways you can get standardization or comparison.

You are either going to have x number of ounces and let the container size vary to get that number of ounces, or you are going to have a particular container size and vary the weight of it.

What I want to know is what is the approach that you are advocating? That we go to a standardized series of ounces and make the container size vary, or vary the fills, or to standardized containers and vary the number of ounces within them? Or are you going to go to a whole hog like butter, where you say 1 pound, and 1 pound fits into a standard size, so you can obviously compare prices?

Mrs. PETERSON. This varies so much in each product line. Again, the standardization of weights and quantities would be in the areas where necessary for price comparison so that the consumer could know what the price per unit is. Soup is different, pudding is different, and so on, where these are varying densities or standard containers.

Mr. ADAMS. You mentioned coffee and detergents, I believe. I would like to get down to the practicality of what you want us to give you.

Mrs. PETERSON. Let us take coffee.

Mr. ADAMS. Coffee is not a good one because it is pretty well standardized.

Mrs. PETERSON. It is regularized for the regular coffee, but not for the instant coffee. For example, the regular coffee comes in 1 pound,

half pound, 2 pound, 3 pound units and you know that 3 pounds of one brand cost so much and 3 pounds of another cost more.

I will buy the expensive brand because I happen to like a particular coffee, and I will pay for the difference. On instant coffee it is almost impossible to determine the price per unit.

Mr. ADAMS. I understand there is a distinction in the Senate bill and the House bill. The Senate bill is really directed toward labeling and toward a standardization of number of ounces or pounds, but does not regulate the container size.

It has been testified this morning that the administration witnesses here are not advocating regulation of containers.

Container standardization is possible under the House bill. What I would like to know from you is from your experience and from your studies, do you believe that you need standardization or an ability to put out regulations on container size, or are you willing to say, "We will take the Senate bill which has ounces and labels" and let the containers vary according to the number of ounces?

Mrs. PETERSON. I would have to think in terms of what the products lines would need standardization of weights and quantities to facilitate price comparison.

Mr. ADAMS. We are going to try to make it easy. Which one of these two do you think it should be?

Mrs. PETERSON. These are two different sections of the bill that we are talking about. One is where we have a standard of weights and quantities in a product line established under a voluntary standard, and the other is the provision in the House bill which would permit regulations on a discretionary basis to prevent deceptive sizes, shapes, or dimensional proportions.

Mr. ADAMS. The chairman's bill, the House bill, says that you can attack from a container, and the Senate bill says you can attack from the ounces.

Mrs. PETERSON. I think it would be very helpful to have that particular authority on deceptive packages. If you put that in, I will certainly support it. It does give us that much more.

I think there is authority already, as Mr. Dixon pointed out. But this makes it clearer and does give more authority to make regulations where necessary.

(The following letter was received by the committee:)

EXECUTIVE OFFICE OF THE PRESIDENT,
PRESIDENT'S COMMITTEE ON CONSUMER INTERESTS,
Washington, D.C., September 9, 1966.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: During my testimony before the House Interstate and Foreign Commerce Committee on the Packaging and Labeling legislation, I made reference to a survey by *Sales Management, The Magazine of Marketing.* This survey (fig. 1) appeared in *Sales Management* of June 15, 1966.

Since I made available to the Committee the results of only two questions on the survey, I think it would be helpful to the Committee to have the table of the entire survey included in the record of the hearings.

Sincerely,

Esther Peterson
MRS. ESTHER PETERSON,
Special Assistant to the President for Consumer Affairs.

How important is the package to the sale of the product? What value do consumers assign to packaging in their shopping decisions? To discover such general facts and attitudes, the Sales Management survey presented 14 statements to 1,141 representative housewives and asked them to indicate whether they agreed or disagreed. In Table I, the results are presented by income, age, population density, and geographic area. Percentages are circled when they differ five or more points from the percentage for the country as a whole.

TABLE I

What consumers think of packaging

Please check one box opposite EACH of the following statements—to indicate whether you agree or disagree with that statement.

		Agree / Disagree	Total
1.	When I buy a food or household product for the first time, the package or container has a great influence on my choice of brands	Agree	48
		Disagree	47
2.	Given the choice between similar products, I'd be willing to pay more for the product that came in the more convenient or efficient package	Agree	81
		Disagree	11
3.	I like the packages that are designed to look nice on my shelves, rather than to stand out on a grocery shelf	Agree	28
		Disagree	62
4.	I make a habit of looking for information about weights and measurements on the package I intend to buy	Agree	73
		Disagree	19
5.	I would much prefer to buy products in old-style packages at a lower cost	Agree	32
		Disagree	58
6.	When I read on the label that a product is selling for so many "cents off," I usually assume that it's a bargain	Agree	56
		Disagree	33
7.	The manufacturer who takes the trouble to make a good-looking package probably makes the better product	Agree	87
		Disagree	6
8.	I know the brands I like, and will continue to buy them regardless of the way they are packaged	Agree	62
		Disagree	30
9.	I believe that products in the large "economy size" packages often cost more per unit of weight than they do in smaller packages	Agree	12
		Disagree	72
10.	I sometimes change brands if a competing company comes out with a package I like better	Agree	46
		Disagree	45
11.	I am willing to pay a little more for a package that looks nice enough to leave out on a table or on an open shelf	Agree	34
		Disagree	61

	Income			Age					Population density			Geographic area			
	Under $3,000	$3,000-$ 9,999	$10,000 and up	Under 25	25-34	35-44	45-54	55 & Over	Rural	City 2,500-49,999	Metro area 50,000 up inside city	Metro area 50,000 up outside city	North-east	North Central	South	West
1.							66 30									
2.							68 28									
3.				77 20		79 19								80 17		
4.	47 46															57 38
5.	64 31			63 35										61 37		45 53
6.				22 71				40 56	30 64							
7.	72 26		59 34	55 41			74 21	62 33								
8.				24 72		28 69	30 66	41 53								
9.																42 57
10.																29 68
11.																

FIGURE 1

The CHAIRMAN. The gentleman from Massachusetts?

Mr. MACDONALD. I have no questions.

The CHAIRMAN. The gentleman from Florida?

Mr. ROGERS of Florida. I would like to see what the different provisions would be for a penalty.

Suppose we have a violation if we pass this act under the regulation of Federal Trade. What can you do? Do you issue a cease-and-desist order?

Mr. DIXON. Yes.

Mr. ROGERS of Florida. Do you have any other power?

Mr. DIXON. No, we have no other power other than injunction, cease and desist. Violation of that is a civil penalty, $5,000 per day for each violation. But that is only half you have gone through two steps. One is the regulation, where there would be adequate chance to be heard, and review, plus the fact of the ultimate regulation, and violation.

When it is violated, it is a per se law violation of section 5 of the Federal Trade Commission Act. But that would have to be proven.

Mr. ROGERS of Florida. For food and drug, suppose a drug under the same circumstances or a food, would fall under your jurisdiction. What is your procedure?

Mr. COHEN. The penalties, first, are provided in section 303 of the act, and they provide for not more than 1 year or a fine of not more than $1,000 for a conviction.

Mr. ROGERS of Florida. Not more than 1 year?

Mr. COHEN. Yes, that is right, for the first offense.

Mr. ROGERS of Florida. Is it a criminal penalty?

Mr. COHEN. I am saying what applies under the Food and Drug Act.

Mr. ROGERS of Florida. I am saying what penalty would apply if the package was wrong under this act?

Mr. COHEN. Under this bill, there are no criminal penalties.

Mr. ROGERS of Florida. Aren't you given the right to apply your Food and Drug Act? How will you penalize them?

Mr. COHEN. Well, there is seizure and injunction.

Mr. ROGERS of Florida. To do what?

Mr. COHEN. Restrain the action. Then there would be contempt proceedings in the court case.

Mr. ROGERS of Florida. In other words, in Food and Drug, you could go in and seize the product as you do a food, but in Federal Trade you can't. You just tell them, "Cease and desist. Don't do that."

Mr. COHEN. That is my understanding; yes, sir.

Mr. ROGERS of Florida. Under the Food and Drug Act, the reason we gave you the seizure power was because it could affect the health of people.

Mr. COHEN. That is correct.

Mr. ROGERS of Florida. Do you think we ought to have this same power to go in and seize because food is not packaged right?

Mr. COHEN. We already have that authority.

Mr. ROGERS of Florida. Then do you need it now? That is, if you already have this authority, why do we need to extend it?

Mr. COHEN. You are not extending the authority. We have the procedural authority already under the Food and Drug Act. There is nothing in here that supplants that.

Mr. ROGERS of Florida. In other words, I think what you are saying is basically you have all of this authority if we desire to proceed under present law. Is that basically right? That is, even as to the size of containers.

Mr. COHEN. I will ask Mr. Goodrich, our General Counsel, to answer that question.

Mr. GOODRICH. We have authority to proceed by seizure against a food, drug, or cosmetic that has a false label on it.

Mr. ROGERS of Florida. You can even do more than that, can't you?

Mr. GOODRICH. Yes, but under the bill we do not have authority over the "cents off," the proliferation of weight, sizes, the family size declaration, the serving declaration.

Mr. ROGERS of Florida. Let me ask you, what does this mean under the food and drug law on misbranded food: If the container is so made, formed, or filled as to be misleading.

Mr. GOODRICH. That provision of law would continue as it is. That would not be covered by specific regulation authority as is proposed in one section of the chairman's bill. It would leave it up to us to prevent false bottoms and deceptive packages through proof on an individual basis. You are not giving us rulemaking authority there.

Mr. ROGERS of Florida. It would be on an individual case basis in any instance.

Mr. GOODRICH. No.

Mr. ROGERS of Florida. Do you mean you are going to condemn the whole industry just because one man has done it?

Mr. GOODRICH. No. We are going to provide guidelines in advance regulating "cents off" promotions so that they will be honest. We are going to provide in advance what sizes are family size, what are giant sizes, and so forth.

Mr. ROGERS of Florida. What says you cannot do that under your authority for misbranded food now, if you put out a regulation?

Mr. GOODRICH. Simply because we only have the authority now, Congressman, to provide regulations for the fill of the container, not the container, itself.

Mr. ROGERS of Florida. It doesn't say just the fill. It says is so made. However the container is made to mislead. However it is formed to mislead. Or however it is filled to mislead.

Mr. GOODRICH. And there is no provision under that section of the misbranding provision which tells us that we can, by regulations, specify what product will be deceptive and what not deceptive. That is the part of the chairman's bill that is not included in the Senate bill.

Mr. ROGERS of Florida. The part that is what?

Mr. GOODRICH. The provision to prevent deceptive packages which is in H.R. 15440 is not included in the Senate bill.

Mr. ROGERS of Florida. I am talking about section 403.

Mr. GOODRICH. Section 403 is an objective test that has to be applied in a seizure case by proof by us that the particular package is so made, formed, or filled as to be misleading.

Mr. ROGERS of Florida. You have to show that in any instance where there is a violation, under any regulation.

Mr. GOODRICH. That is correct, unless a rule was provided——

Mr. FARNSLEY. Mr. Chairman, I make a point of order.

The CHAIRMAN. The committee will recess until tomorrow morning at 10 o'clock.

Secretary CONNOR. Mr. Chairman, may I just put in the record an answer to the question that Mr. Pickle raised as to whether the administration would be willing to put the limitation that is now in section 5(c)(1) also into 5(d), and the answer is that we would not be willing. We would be opposed to that. We can expand that answer.

The CHAIRMAN. Very well.

Can you all return tomorrow morning?

Secretary CONNOR. Mr. Chairman, the House Merchant Marine Committee, with Chairman Garmatz in the chair, has a prior lien on my services at 10 o'clock tomorrow, but I will be glad to come here as soon as I get released by them.

Mr. DIXON. We will be here.

Mr. COHEN. If I can't come, I will have somebody here, Mr. Chairman.

The CHAIRMAN. The committee is in recess until tomorrow morning at 10 o'clock.

(Whereupon, at 12:30 p.m., the hearing recessed to reconvene the following day at 10 a.m.)

FAIR PACKAGING AND LABELING

THURSDAY, JULY 28, 1966

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to recess, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order. I see we have a new face on the panel this morning. I welcome Mr. Jensen to the panel. I am certain Mr. Connor has a good substitute. I understand Mr. Cohen has to leave early.

Mr. COHEN. At 10:30, sir.

The CHAIRMAN. That is perfectly all right.

One of our colleagues, the Honorable Arnold Olsen, who has introduced a bill, H.R. 15617, will present a short statement, and then we shall proceed with the panel.

STATEMENT OF HON. ARNOLD OLSEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MONTANA

Mr. OLSEN. When my mother, Anna, or my wife, Margaret, goes into a supermarket, she is confronted with such a baffling array of goods—goods of all kinds—and three or four brands of most, all varying in size—that to choose among these goods on any rational basis becomes impossible.

Yet rational choice among goods—competition for recognition as the "best value"—is vital to the success of the American free enterprise system. When a housewife must choose between potato chips marked 59 cents and 69 cents, she wonders at the discrepancy in prices. She looks for a reason for the difference. One of the reasons is that there are 10 ounces in the 59-cent package and 10½ ounces in the 69-cent package. It takes some mental gyration to figure which is the better buy with respect to ounces per cents. It takes physical gyrations to find a statement of the weight of the contents in the first place.

Consequently, I have introduced my bill, H.R. 15617, in support of my colleague, Mr. Staggers, of West Virginia, the chairman of this honorable committee.

It should be noted that the purpose of this bill is not to unduly burden the retail merchant or to stifle free enterprise. The purpose is not to stifle initiative, that product of which Americans are so proud. Rather, our purpose is to lay fundamental ground rules for competition which have sanctions insuring performance, so that initiative

will not be discredited by deception. We ask that net weights, or similar descriptions of quantity be placed on the label in such a way as to be plainly visible and easily comparable. We ask that the use of deceptive descriptions be prohibited such as "giant half quart." We ask that the legitimate labeler and packager be given protection from those who initiate the use of deceptive slogans.

We do not seek to curb imagination in size and design of container; we do not want monotonous conformity. Creativity, as long as it is truthful, is a necessity in our society. I do not believe that this bill provides oppressive controls which would break the backs of businessmen. There is no effect that would be unduly costly—manufacturers are constantly designing new labels.

For years the sugar, flour, salt and other condiments industries have had standardized containers—as well as the liquor industry. And in this area of containers, provisions for voluntary control have been safeguarded—there are no mandatory provisions relating to other than labeling practices. But to deal adequately with the problems of—

Misleading adjectives;

Fractional variations in weight which are designed to confuse: and

Illustrations which have no relationship to the contents of the package, clear-cut rules are necessary to protect the manufacturer and purchasing public alike.

To this end, I ask for the support of this Truth in Packaging Act.

The CHAIRMAN. Thank you for your concise statement Mr. Olsen.

Mr. OLSEN. Thank you for the opportunity Mr. Chairman.

The CHAIRMAN. If there are no questions, we shall continue with the panel. We left off with questioning yesterday and I will start with Mr. Springer.

FURTHER STATEMENTS OF HON. PAUL RAND DIXON, CHAIRMAN, FEDERAL TRADE COMMISSION; HON. WILBUR J. COHEN; UNDER SECRETARY OF HEALTH, EDUCATION, AND WELFARE; WINTON B. RANKIN, DEPUTY COMMISSIONER OF FOOD AND DRUGS, DEPARTMENT OF HEW; MRS. ESTHER PETERSON, ASSISTANT SECRETARY FOR LABOR STANDARDS; MALCOLM W. JENSEN, MANAGER, ENGINEERING STANDARDS, AND CHIEF, OFFICE OF WEIGHTS AND MEASURES, NATIONAL BUREAU OF STANDARDS, DEPARTMENT OF COMMERCE; GERALD E. GILBERT, OFFICE OF GENERAL COUNSEL, DEPARTMENT OF COMMERCE; WILLIAM W. GOODRICH, ASSISTANT GENERAL COUNSEL FOR FOOD AND DRUGS, DEPARTMENT OF HEW; THEODORE ELLENBOGEN, ASSISTANT GENERAL COUNSEL FOR LEGISLATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. SPRINGER. Mrs. Peterson, in your testimony 2 days ago, I believe you said you had no cost estimates of any study per unit of what this legislation would cost. That part is true.

Mrs. PETERSON. That is right.

Mr. SPRINGER. You cited a study at Eastern Michigan University which suggests that shoppers in this experiment spend 9 percent more

money than if they had chosen the best buy. Soft drinks were in that survey, weren't they?

Mrs. PETERSON. I will have to look at the list to see if that was on it or not. Yes, soft drinks were in it.

Mr. SPRINGER. Soft drinks are not covered by this bill anyway are they?

Mrs. PETERSON. Yes, they are covered.

Mr. SPRINGER. By this bill?

Mr. GOODRICH. There is a provision authorizing the continued use of bottles in inventory or in the trade.

Mr. SPRINGER. Would you repeat that?

Mr. GOODRICH. There is a provision in the bill to allow returnable bottles that are in inventory or in the trade to continue to be used through their normal life period. This is where the bottles go out with the drinks, come back and are refilled. The bill provides that they may continue to be used.

Mr. SPRINGER. Otherwise you are covered by this bill?

Mr. GOODRICH. Yes, sir.

Mrs. PETERSON. It is on page 14 under definitions, section 10.

Mr. SPRINGER. Any beverage subject to or combined with packaging and label requirements required under the Federal Alcohol Administration.

Mr. GOODRICH. That has to do with alcoholic drinks.

Mr. JENSEN. Mr. Springer at the top of page 10, section 5(f)(4).

Mrs. PETERSON. That is one of the exemptions for returnable or reusable glass containers in use; the other is 6(d) on page 11.

Mr. SPRINGER. If that is true, do you know how this was conducted?

Mrs. PETERSON. Yesterday when I was asked this question, I had a copy of the study and proposed that this be put as part of the record.

Mr. SPRINGER. Let's tell the committee so we know how it was conducted.

Mrs. PETERSON. The study was conducted with the aid of 33 Michigan homemakers. They were required by Prof. Monroe Friedman, of the Eastern Michigan University, to select the largest quantity for the price. Quality was not considered as part of this study. If I read from it directly I think you will get a much better understanding. I think in the summary the conditions were stated well: to select each of the 20 products. The shoppers had so many minutes depending on the number of packages on display. I think you would have to go into the study itself to get more detail. I would prefer to read you the description of the process if I may. I am not a statistician.

This is the technical part of the study—to measure consumer confusion as a psychological variable and it is a complicated process to determine how you would measure consumer confusion. We have made many spot surveys. I have made them and housewives have made them. We were not sure how we could measure consumer confusion, although we were well aware that there is considerable confusion.

In this study Professor Friedman developed a statistical measurement of confusion.

The S's (housewives) were instructed to select the most economical—largest quantity for the price—package for each of 20 products on sale at the selected supermarket. A time limit was enforced for each

product decision, a limit based on the number of packages on display for the product.

Mr. SPRINGER. What was the time?

Mrs. PETERSON. More specifically 10 seconds were allowed for each of the packages in the product category unless either (1) there were less than 6 packages to a product category in which case a 1-minute time limit was used or (2) there were more than 24 packages to a product class, in which case a 4-minute time limit was employed.

In addition to stating which package she believed to be the most economical for each of the 20 products, each housewife reported to the experimenter accompanying her the information which she used in making her decision.

Each of the 20 products employed by the study had the following characteristics. Then the study detailed exactly how it was conducted.

A principal finding of the study is that the 33 women failed to select the most economical package in 43 percent of the 660 shopping decisions. Furthermore the number of errors made by the shoppers varied signifiantly by product category. Indeed not one of the 33 women committed errors in her choice of graulated sugar, evaporated milk, and solid shortening, where in general the commodities are sold in comparable units. On the other hand every one of the 33 women failed to select the most economical package of powdered detergents, where there was an extraordinarily large variation in quantity designations.

Mr. SPRINGER. Two Government studies had 8-ounce packages——

Mrs. PETERSON. This study shows the very complications we are trying to resolve.

Mr. SPRINGER. You are trying to show that is a complication.

Mrs. PETERSON. Yes.

Mr. SPRINGER. This is what the Senate report shows would be done under the bill. That is exactly what we are talking about.

Mrs. PETERSON. What is the question?

Mr. SPRINGER. I asked you, wherein two Government studies had 8-ounce packages of potato chips, the retailer can price two of them at two for 23 and for 25. Can you tell me within 10 seconds which is the better buy and what the percentage is?

Mrs. PETERSON. I would have to take my paper and pencil and figure these things out. It would make it easier if all of these things were comparable. That is the point we are trying to make in this study.

Mr. SPRINGER. You are not going to make them all 8 ounces?

Mrs. PETERSON. Not at all.

Mr. SPRINGER. Isn't this the very thing you are talking about? You are an educated woman. What about the high school educated woman? You would not take away all of these complications. If you are talking about standardizing a half pound, a pound, 2-pound packages and say all 8 producers of potato chips are going to sell in those categories, you can't do that under this legislation.

Mrs. PETERSON. Let's back up a bit. There are three things which are important to this legislation and I think that we should start from the premise that this is really an information bill.

This is the key to this bill. It is an information bill. The first part is information largely about the label and that is the biggest part of the

bill, the information on the label. We have always required information about the amount, the quantity, and so again, this is a usual thing.

We have had this requirement for a long, long time in our procedures. Again all we are doing is clarifying the ground rules for the labeling information we have always had. That is the first biggest part of the bill.

The second part of the bill is, if possible, to give us a common terminology. Again this is information.

Mr. SPRINGER. Are you studying the packages?

Mrs. PETERSON. I am just trying to outline these provisions of the bill as we see them. The second part of the bill is really, in a way, to try to eliminate the confusion in words so we have a common terminology, so we all speak the same language.

It is like establishing an alphabet, if I may say so, in size designations, such as, small, medium, and large.

Mr. SPRINGER. You are speaking in generalities. I don't think you have pinned this down. You are going into generalities.

I am trying to pin down whether you can do this under a situation which I quote you which can come under a bill. Can a manufacturer do what I talked to you about a moment ago?

You are talking about simply figures and this is what I understood this bill is going to do. The more I study this the more I am not so sure. When I asked you the direct question, "Can you do this under the bill?" very obviously you cannot without taking your pencil and paper.

What I want to get away from is just putting a label on it and saying this is truth in packaging when you are not getting truth in packaging. I am not going to support a bill unless there is truth in packaging.

Thus far none of this panel have gotten down to the basic things of what is going to happen when this bill goes into effect.

Mrs. PETERSON. This is what I am trying to do. I can divide the different quantities into the price to get a unit value but it is much easier if I can divide it by a standard amount.

Let me say, these first two functions of the bill I was talking about want to get common ground rules for labeling. The only other part of the bill—the one which you are talking about—the first part is not new since we have always had to give information and the second part is an attachment to get a common terminology—now where you come to setting a reasonable range of quantities is the part where there is a new approach.

Remember, that under the bill we do that only if there is confusion, only if it is difficult for the consumer to be able to make price per unit comparison. That would apply in a small part of the marketplace. I went out to a store last night to bring some samples to show you where this section might have effect. And that would be only after industry has had every opportunity to set standards itself and then only after industry does it, after a need has been shown and after they have been shown there has been confusion.

Then and then only does the Government come in on your potato chips or whatever item, for example, after all of those procedures have been followed. Potato chips do not bother me as much as other items but there is still some confusion there.

Then as we say when the industry gets together to establish voluntary standards, the regulations must take into account in this bill the cost of the packaging and the cost to consumers, the availability of the commodity in a reasonable range of packages, the materials used, the way people are accustomed to buying it, et cetera, there are five very strong conditions that have to be considered before the regulations. After that then you agree to the weights will be maybe in a 2-ounce, 8 ounces, or something of this kind. When 8 ounces of this brand and 8 ounces of the other brand are available and if it is two for 17 cents and 3 for 25 cents, then you can more easily divide them to compare the unit price.

Mr. SPRINGER. There are two things involved which you are not discussing except the chairman discussed it very lightly the other day. This is what the Senate minority points out to me when I read it. There are two other factors involved—price and quality.

Nowhere in this bill are you doing anything about either one of those two which are the two big factors. There is nothing here—I don't care whether you make it a pound, a pound and a half, or a pound and four ounces, there is nothing to regulate, if the man says two for 17 cents or 3 for 24—25 and you could not calculate it and I could not calculate it.

It tells me one-sixth of a cent is a difference in price so 3 for 25 is better than 2 for 17 for one-sixth of a cent. There is nothing to keep this from happening.

You filed this report yesterday but you did not read the important parts of the report of the Michigan study. Let me say what it says. It is important to know the plan and procedures of this study do not at all deal with the day-to-day purchases of the American consumer. It may be that economy plays a small role in many of these purchases. However, for the purpose of this study the question of what criteria are actually employed for consumers and this study does not purport to do at all what you said 2 days ago because nowhere in this study is anything said about quality because nobody knew what quality was; and then the price is the third item.

I have the container, the price, and the quality. The part that I am concerned about is are we going to make this more confusing than we are doing at the present time?

First I was somewhat impressed with this idea that maybe you had standard packaging. If you do, where does quality come into this?

In other words do you want to buy Lever Bros. for $99^{44}/_{100}$ percent, or buy something which is much cheaper, all in a standard brand and one of them costing 9 cents and one costing 11 cents and one costing 15 cents?

Nowhere are we getting down to the brass tacks of this and adding the important two extra essentials of price and quality. Now I will give you the floor, Mrs. Peterson.

Mrs. PETERSON. The first thing we consider is the price. I think Mr. Cohen said this is not the last time or the first time that we will be dealing with these questions. In this piece of legislation it should be stressed that it is important that price comparison be possible first.

We said very definitely that quality very often is a matter of taste but we are dealing with only quantity in this piece of legislation but it does not mean that additional information would not help.

I went out and tried to get some examples of some of these problems we are discussing. Here is a commodity where you may say the quality comes into the decision and granted this was not quality because quality is subjective.

We were trying to measure one part—at least I think this is what the study was trying to do. What I wanted to say was, price comes first and then you base your decision from that point on whether you want to pay more for the additional quality. Here are two packages of napkins. I don't think that the packaging bill would even affect these.

What I am trying to say, there are large, large areas of the marketplace. Here we have 70 napkins and 2 packages for 19 cents. It is marked clearly right there on the wrapper. Here is another where it is 60 napkins and that is 2 for 25. This one is 140 for 19. It is clearly marked. Maybe the quality of one is a little bit better than the other but I can make reasonable price comparisons from this information and I know it.

This is one of the examples but it would be very—it would be very difficult to figure what this difference is and that the difference affects the price area.

You see, we don't want to regulate prices. This is another matter. But from the standpoint of the consumer it is important to have the information to be able to determine price per unit.

One shopper sent this in. She said: "This is the figuring I had to do for three articles in order to try to calculate the best buy," and she was college educated.

It is this confusion in quantities and weights that I am talking about. Remember, that this part would only go into effect relative to the weights and quantities when under the bill there is evidence to show that it is difficult to make price comparisons. It is not a matter of moving into the marketplace and standardizing. It is not a standardization bill. It is an information bill.

Mr. SPRINGER. My question was back on the Eastern Michigan study which you have not answered at all. This had nothing to do with the ordinary consumer who was buying every day. This is the worst of the report. Yet you bring this report in here and as I understood it and I am not saying you said this but you gave the committee and me the impression that this was a study in consumer buying that showed that the average housewife as I got it was going to pay 9 percent more than she would and you were going to clear up this 9 percent.

I have not seen any testimony yet to show how she is going to clear up this 9 percent so that she can get 9 percent more for her purchase.

This is the part that is bothering me because I think this question of price plus quality are two factors which certainly are as important as the questions of studying ounces and pounds.

Mrs. PETERSON. Price is not part of this bill.

Mr. SPRINGER. I am not saying that it is a part. It is not a part. What I am trying to find out is how you are going to, by this bill, clear up the confusion when these are two important elements that have to be taken into consideration. Everybody on this panel has left it out as if it were a hot potato then to the same extent the Senate did when

they sent the automobile safety bill over here and left out 98 percent of the automobiles of the country.

This is a particular committee, we read it line by line. We don't let the staff write the bill for us. You are going to have to convince us on this. After thinking about this for 2 days we are certainly not touching the important elements of the bill which will remove the confusion that you are talking about.

Mrs. PETERSON. It will be a big help for people to be able to tell what the price per unit is.

Mr. FRIEDEL. Will the gentleman yield?

Mr. SPRINGER. Briefly.

Mr. FRIEDEL. Do you have a package of napkins there? How would this bill apply to those?

Mrs. PETERSON. It would not affect it. I think another point that is important is that this bill now is quite different from the original bill that was introduced.

I think we have to recognize that we are dealing with another bill. There are many factors in the original bill that do not appear in this legislation. That is true. I wanted to use these examples to show that I am pleased, as I told you yesterday, with how many industries are in fact complying already with the provisions of the bill.

I want to show how the bill is really aimed at information and to take care of the instances where we do not have clear or sufficient information. Will you excuse me if I give you a few more examples? May I, Mr. Chairman?

Mr. SPRINGER. Just a moment, Mrs. Peterson. On this thing, last night—we are great outdoor picnic people—here are three standard napkins. Very obviously two of these are alike but a third one was certainly a good one. My wife said she used the better ones on special occasions.

But how do you clear up this thing I am talking about where you have in my drawer two napkins of the same size as the other one but the third one was certainly a much better napkin?

There are three napkins, two alike and one different. I don't understand yet where, in this bill, you are going to clear up this confusion. I am willing to listen to that.

Mrs. PETERSON. This bill does not touch that. It does not intend to move as I see it in areas where it is not needed, as I tried to point out.

Here is another very good example. Here is a good soda cracker package. It is good, it is fine, there is no problem at all—1 pound net weight—it tells where the producer is located, there are no misleading things on it. There are four brands that package in this same size of one pound—no problem. It would not be touched.

Here is one—3 cents off. Under the original bill, that would have been banned, but now to have regulations on "cents off" is discretionary. This is where again some of the confusion may come up.

Under this bill you could have regulations in a product line on "cents off." Is that a legitimate 3 cents off? Was it passed on to the consumer? Has it been a standard gimmick or was it genuine? Under the bill as it is now, under your bill, the promulgating authorities are given this discretion to regulate "cents off" based on whether or not it is legitimate.

It is not a matter of banning bargains. They may be perfectly legitimate if it is shown they were passed on to the consumer.

Here are two cans of juice—really nothing evil about this. It states what it is; it states where the producer is located; it shows 1 quart 14 fluid ounces. (Under this bill you would have to say 46 fluid ounces.) Then farther down the label it says "approximately 6 cups, 7 to 9 servings." Here is another one exactly the same, all of the same information on it and the exact same quantity—and then you come to "approximately 6 cups, 11 to 12 servings." It is exactly the same size.

What I am saying, we are trying to get a common terminology in the bill. A woman picks up the one can of juice and thinks she is going to get 12 servings—12 of what? What kind of cup—a teacup, a demitasse? A cup to me means 8 ounces.

Mr. SPRINGER. Let's ask the Chairman of the Federal Trade Commission. Is that a violation of the law?

Mr. DIXON. If we could determine by a group of witnesses or by the God-given brains we are supposed to have that that is deceptive and confusing we could say stop that.

Mr. SPRINGER. This is what I am getting at further, Mrs. Peterson. I am trying to get along with that—what the Chairman has not said positively. He only said if you can do so and so, but what are you doing over and above this bill?

One thing as I understood the Chairman to say the other day he could do it for an industry. Maybe that is an improvement, I don't know, but actually you have a thing here complained about that you can enforce the law today.

Mrs. PETERSON. I leave this to Chairman Dixon.

Mr. DIXON. This bill, if I may interject myself, would be rather an instruction or mandate from the Congress that if it is necessary you can proceed under this procedure over and above the case-by-case procedures that you have now in this manner.

Mr. SPRINGER. That is what I understood and I said maybe we are talking about an improvement. When we are talking about removing the confusion, I do not have this straight yet what she is talking about here, that she is going to remove the confusion. This is the part that bothers me a little bit.

Mrs. PETERSON. I would love to give you one more example of confusion in the marketplace.

Mr. SPRINGER. You have not cleared up anything for me by this kind of testimony because I can see if you take price and quality, the confusion is just as great as it was before.

Mr. COHEN. May I say something because I do have to leave.

Mr. SPRINGER. Don't leave, I have some questions.

Mr. COHEN. Mr. Rankin, the Deputy Commissioner of Food and Drug will stay here for me.

I do want to say this before I leave. I think you are absolutely correct when you talk about eliminating or removing the confusion that this bill does not do that in 100 percent fashion.

I think you are absolutely correct that that cannot be completely done unless in addition to this bill you were to have price regulations per ounce or per unit and unless you had quality determination. I agree completely with you on that so I think rather than saying that

this bill is going to eliminate or remove completely all of the confusions that exist in the marketplace, that would be incorrect.

I think this takes a step, a large step, not a complete step in that direction, but to take the ultimate step, I think you would have to absolutely regulate price per unit. You would have to determine what, and I think that at this time would be undesirable, so I hope that the point that you made would not mean that something that is good and in the right direction could not be achieved unless we reach the millennium all at once and I don't see that we can do that.

Mr. SPRINGER. Mr. Cohen, that is a pretty general statement, too. Are you going to have just as much confusion as you had before? I cannot see how you can do anything in this field when this man can regulate prices and there is nothing to prohibit him from offering 2, 3, or 4 for a price.

There is nothing to prohibit him from having double sizes but when you put the quality thing and the price on it, this is a thing that adds just as much confusion. This is what the Senate minority report pointed out that you did not take away.

I pointed out this one example that worked perfectly on Mrs. Peterson who is a very educated and sophisticated woman in this whole field of consumer goods. If she can't solve one little problem which I read from the Senate report which I thought she might have read to give me the answer right off, but she apparently did not see the Senate minority report.

I am just wondering, Mr. Secretary, as to just what the accomplishments of this bill are going to be. I have been listening carefully to the Chairman because I think a large part of the enforcement is going to be in the Chairman's hands.

I can see that he is getting his mind working a bit and the wheels are going around a little bit as to what he can do with this bill but when I start these asking questions—these are practical ones.

You are going to enforce the pure food and drug portion of the bill.

Mr. COHEN. Yes, sir, as far as it relates to foods, drugs, and cosmetics, yes, sir.

Mr. SPRINGER. What I am wondering in this is why didn't you come in and ask us to amend the pure food and drug law because the enforcement is in your hands rather than come in here with a bill like this which is mixed up with two other authorities and say put it on packaging and truth in labeling.

Mr. COHEN. Of course, this bill is the product of a lot of consideration. I think amendments to the Food and Drug Act are desirable and we have been stressing them, but I don't see any reason why the language in this bill, which does give increased procedural and other authority, is inconsistent.

It is not inconsistent with anything in the Food and Drug Act.

Mr. SPRINGER. There is nothing inconsistent but what you are doing is taking the bill and giving three authorities when all you had to do would be to ask for amendment to the Food and Drug Act.

The Chairman could have asked for an amendment on the acts he covered which would have been taken care of the same way.

What I am afraid of, Mr. Secretary, by taking a bill like this on which there has been a great deal of dramatization and you come in

here and put a big name on it and call it truth in packaging and labeling when in fact we are going to deceive the public that we are going to accomplish what they think we will accomplish.

I can tell you what the housewife thinks this bill will accomplish. I am not convinced it is going to do all this. What they think it is going to do is going to have very small pickings unless the Commissioner can find a way of getting at this when he has no control over quality or price and it is no intention of the Congress to give price control.

Mr. COHEN. It is called the Fair Packaging and Labeling Act.

I have gone through other pieces of legislation, like the medicare legislation. When it was called medicare, people said that was the wrong name but that was the name given in popular usage. But the actual name of the present bill if enacted would be the Fair Packing and Labeling Act, and I think that is a fair description of this piece of legislation.

If you think that another title of this act would be more descriptive, I would say change the name in lines 3 and 4 of the bill to make it what you think is descriptive.

Mr. SPRINGER. Where existing regulations exist concerning some products, and with variations in weight would they continue to be appraised under the legislation?

Mr. COHEN. Would you say that again? We could not hear you.

Mr. SPRINGER. Where existing regulations exist concerning some products, such a root and moisture loss in variation, would they continue to be appraised under this regulation?

Mr. GOODRICH. Yes, they would continue to be in effect. The weight loss in the flour problem, which is what I assume you have in mind, would continue to be authorized by regulations under section 403(e) of the Federal Food, Drug, and Cosmetic Act, and by this bill, itself, which authorizes exemptions to be made where necessary for carrying out the purposes of the law.

You are going to have, naturally, losses in moisture when you ship flour to Arizona where it loses moisture and that would continue to be authorized by this law as well as the existing law.

Mr. SPRINGER. In addition to the packaging?

Mr. GOODRICH. Yes, sir.

Mr. SPRINGER. Is it your intention, Mr. Commissioner, to have hearings as a basis for regulations?

Mr. RANKIN. The bill requires hearings, Mr. Springer, as a basis for the regulations to be issued under it.

Mr. SPRINGER. This is before?

Mr. RANKIN. That is right.

Mr. DIXON. This bill would require, as I understand it, two types of hearings—a special type when you get to section 5(d) which deals with weights or quantities. In that special category, either of the so-called enforcing agency, the Federal Trade Commission or the Food and Drug Administration, would have to announce a hearing that would satisfy section 7 of the Administrative Procedures Act.

This is the first hearing. This is one category—the only category I am talking about—and roughly section 7, as I tried to say the other day requires a type of hearing tantamount to an adversary type of

proceeding and it gives everyone the right to cross-examine and present witnesses.

If the enforcing agencies after that hearing determined on the record that there was confusion or it would be desirable in order to help the ability of the consumer to make a price comparison per unit, that finding would have to be again made on that record.

Then the announcement would be made and then the second hearing would be announced. The second hearing would be a hearing with which you are familiar—a rulemaking hearing, under the procedures, under the Food and Drug Act as it is so devised today.

Then, when that hearing is over with or even before that hearing starts, when it is announced, if an affected party should make the request of the Secretary of Commerce, then he must impose the voluntary standards which are in effect, then.

Mr. SPRINGER. Will those same procedures be applicable to you?

Mr. DIXON. Yes, sir; just as much.

Mr. SPRINGER. If I understood your testimony, Mr. Chairman, you indicated that you should regulate market prices where neither unfairness nor deception exists. I thought this bill was to prevent your unfair deceptive practices, at least that is what it purports to say in the title. Do you think it goes beyond that?

Mr. DIXON. Yes, I think that the section of the bill—on page 5, for instance, of S. 985, and I think about the same place in H.R. 15440 under 5(c), it is clear that the bill has as its purposes the invocation of these procedures where it is necessary to prevent the deception of consumers.

It is not in the conjunctive, it is the disjunctive here, or——

Mr. SPRINGER. You are talking about section 5(c)?

Mr. DIXON. Or to facilitate price comparison.

Under the present law it could be argued that because, for instance, the Federal Trade Commission has, since at least 1938, had the responsibility to proceed against unfair or deceptive practices that that authority is there in the law.

Well, I have tried to explain that it is there, and we have proceeded, perhaps not as perfectly as the consuming public is entitled to, because I don't think we have enough personnel sometimes to do it, but we have tried to do this on a case-by-case method.

Now the Congress, when it created the Federal Trade Commission, gave it very little so-called regulatory power. In the consumer acts——

Mr. SPRINGER. I understand what you are talking about.

Mr. DIXON. We must challenge people, carry the burden to prove it on a record in a judicial proceeding subject to a review.

This type of legislation within the wisdom of Congress sets up a procedure that is reviewable, but the regulations or the rules come in a rulemaking proceeding rather than in an adversary proceeding. There is a difference here.

Mr. SPRINGER. Describe section 4 to prevent deception to consumers. That should have been set out as one. The second is not so positive. As you say, there is an inference to facilitate price comparisons as to any consumer commodities and the pursuant to either one of those, necessary to prevent deception or facilitate price comparisons.

Then you go ahead under 1, 2, 3, 4, and 5 and (d) and on through as to how you should go about it.

Mr. DIXON. That is right.

Mr. SPRINGER. Then you say to the committee that this does go beyond the deception.

Mr. DIXON. I would say it does. I would say it does go beyond the present statutory language dealing with deception, because you have brought in here in this bill the language that the purpose also is to facilitate price comparisons as to an consumer commodity.

Now, I would say if we took the example right there perhaps it would be a very good example to take a case and litigate that one case, but if you are dealing with competitors that are all engaged in practically the same thing, and confusion comes from it, these bills set up a procedure to deal with it across the board.

That is one way to say it.

Mr. SPRINGER. Pursuant to that, and that is really the guts of the bill—

to facilitate price comparisons as to any consumer commodity, such authority shall promulgate with respect to that commodity regulations effective to—

1. Establish and define standards for characterizing the size of a package enclosing any consumer commodity which may be used to supplement the label statement of net quantity of contents of packages containing such product, but this paragraph shall not be construed as authorizing any limitation on the size, shape, weight, dimensions, or number of packages which may be used to enclose any product or commodity;

2. Establish and define the net quantity of any product in terms of weight, measure, or count, which shall constitute a serving, if that product is distributed to retail purchasers in a package or with a label which bears a representation as to the number of servings provided by the net quantity of contents contained in that package or to which that label is affixed;

3. Regulate the placement upon any package containing any product, or upon any label affixed to such product, of any printed matter stating of representing by implication that such product is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail sale price advantage is accorded to purchasers thereof by reasons of the size of that package or the quantity of its contents;

Mr. DIXON. This is commonly referred to as the cents-off section. The fourth one, Mr. Springer, comes nearer to the questions you were putting to Mrs. Peterson on quality than anything else in this bill. Yesterday when I first read my statement I had used the word "quality" and again my attention was called to why did I use quality. I think I said maybe it was inadvisable that I used it.

Mr. SPRINGER. I think those were your exact words.

Mr. DIXON. As I reviewed my preparation for this thing, I was reminded that this section 5(c)(4) is there. If I understand that section this has a purpose, as Mrs. Peterson told you earlier in her statement that there are some products that have various ingredients in them.

I think she used maple sirup as one thing which you could mix with cane sugar or corn sirup and come out with a sirup product. But I think it is commonly known that maple sirup is considerably more expensive than cane sirup or corn sirup, so if you have a mixture here and you just put on here that this product contains a mixture of maple sirup and corn sirup, it might be quite important to make a comparison to know how much maple sirup and how much corn sirup is in this mix.

That bears on quality. Ingredients are quality, so what makes up this product? It comes closer to it than anything else that I can think of on quality.

Mr. SPRINGER (reading):

Require (consistent with requirements imposed by or pursuant to the Federal Food, Drug, and Cosmetic Act, as amended) that information with respect to the ingredients and composition of any consumer commodity (other than information concerning propriety trade secrets) be placed upon packages containing that commodity.

That is what you are talking about here last?

Mr. DIXON. That is right.

Mr. SPRINGER. The chairman has said to me on several occasions this does not cover any questions of quality.

Is that true or not true?

Mr. DIXON. I said that to you. When the question was put to me I said I thought perhaps it was an ill-advised selection of words. I don't believe that it was the intention of the sponsors of this bill—and when you say the title of this bill—I think the sponsor of this bill, Senator Hart, gave it its title and I would believe Chairman Staggers gave his bill its title.

This was the selection. As far as I am concerned I am here supporting the selection of the sponsors of this bill. I did not think up this title. I think it is a very good title, though.

Mr. SPRINGER. Those are the four principal parts of what is going to be done.

Mr. DIXON. If you add 5(d) to it which to me is the most troublesome section in the bill——

Mr. SPRINGER. Read it.

Mr. DIXON. That has to do with weights and quantities.

Mr. SPRINGER (reading):

Whenever the promulgating authority determines, after a hearing conducted in compliance with section 7 of the Administrative Procedure Act, that the weights or quantities in which any consumer commodity is being distributed for retail sale are likely to impair the ability of consumers to make price per unit comparisons such authority shall—

(1) publish such determination in the Federal Register; and

(2) promulgate, subject to the provisions of subsections (e), (f), and (g), regulations effective to establish reasonable weights or quantities, or fractions or multiples thereof, in which any such consumer commodity shall be distributed for retail sale.

There is where you are going to regulate the number of ounces or pounds or whatever is going to go into it.

Mr. DIXON. I followed the hearings that took place 2 years or more ago perhaps in the Senate Judiciary Committee. I have followed them by reading the records and the reports as they took place in the Commerce Committee of the Senate. If I sensed one thing, it seems to me that as an individual that this was the most troublesome thing confronting the consumer.

It was the inability to quickly or reasonably translate perhaps pounds and ounces into ounces or down to the common denominator where price comparisons in the mind of the purchaser could be made. I think from the very beginning that has been one of the most troublesome things that has been dealt with here because it must have been known by the sponsors of the legislation that we did have a law against deception.

But let it be said that the label tells the truth as to quantity if I understand it. Truth can be deceiving. It can be confusing. If you

remember that there are 32 ounces in a liquid quart, you can very quickly say one quart, 2 ounces equals 34, but if you have forgotten that fact and you might get it mixed up with a dry quart, you might have a little bit of trouble.

If you don't know how many ounces are in a pound, you might have that trouble. Surprisingly enough, this is not unusual for people to get so educated they can't make these simple computations.

Mr. SPRINGER. Does this bill allow a half a pound?

Mr. DIXON. I think you could, sir, on reading section 5(d)(2). It does include half a pound.

Mr. SPRINGER. What does 5(d)(2) say?

Mr. DIXON. It says where it is necessary to make a rule because there is an impairment of the ability to make these comparisons, the authority shall, among other things, promulgate subject to the provisions of the subsections (e), (f), and (g) regulations effective to establish reasonable weights or quantities and fractions or multiples thereof in which any consumer commodity shall be distributed for retail sale.

So a fraction of a pound is half a pound so I say if you made the determination that that kind of a standard should be used for a comparison, it would be within the bill.

Mrs. PETERSON. There is confusion there. We are talking about two things which are important. The first is the designations on the label that tell the story: it would be in ounces and that is in the mandatory part of the bill. That is in 4(a)(3). The part that is under discussion is the quantity sizes in which a commodity could be marketed and certainly that could be half a pound.

But it would be labeled 8 ounces, so there are two factors there that have to be clarified.

Mr. ADAMS. You couldn't label it half a pound? I don't think you can under the bill?

Mrs. PETERSON. I think there is no provision that says that if the label properly carries the net weight of 8 ounces, it might not elsewhere describe the weight as a half pound.

There would have to be the common denominator of ounces but I do not see anything here which says you could not include half a pound as well. Sometimes you may have it in even three ways on a package.

Mr. SPRINGER. I am advised by my counsel that he does not think you can have half a pound. Is that correct or not?

Mr. JENSEN. It think it is clear that the label must be in terms of ounces unless it is in even pounds, pints, or quarts—that is, the primary quantity statement.

However, there my be supplementary quantity statements. This package of which you speak would have to be labeled under this bill, net weight 8 ounces, and it could have a supplementary statement of one-half pound.

Mr. FRIEDEL. Would the gentleman yield for one brief question?

Mr. SPRINGER. Yes.

Mr. FRIEDEL. I heard the other day where anything under 2 ounces was exempt and then I heard anything under 4 ounces was exempt. Which is correct?

Mr. JENSEN. The former is correct; the latter is incorrect. Anything under 2 ounces is exempt from section 5(d) but there is no exemption for anything under 4 ounces.

Mr. PICKLE. Would the gentleman yield?

Mr. SPRINGER. Yes, I yield.

Mr. PICKLE. Does the gentleman have any reaction to the question I asked yesterday on section 5 (d), first on line 21, page 7 instead of the words used now say "are likely to impair" if he thinks it would be an improvement to say "would clearly impair."

Mr. DIXON. I think you would add an additional burden upon the enforcing agency here. It is like saying what constitutes an unfair method or an unfair competition under section 5(a) of the Federal Trade Commission Act and what proof is necessary to carry that burden or if Congress would change that to say the only type of unfair methods of competition are those that are very clear and would satisfy everybody alive.

Mr. PICKLE. Then why don't you use the word "clearly"? All through the testimony of the last few days every member of this panel has said that the label ought to show clearly what is in the package. Yet if we use the word, you object to it. You say you think it would be an undue burden, but shouldn't the test be what is fair to the American consumer?

Mr. DIXON. Mr. Pickle, whatever burden the Congress thinks we should carry, I suggest you put it in here. Under section 5(d), the enforcement agency has to have a hearing and a record of proof, if you call it that, or a record of the testimony and there must be sufficient evidence to have a reasonable basis for a finding of violation of the law. The finding under the present law would be based upon what we have heard.

If the subject bills are enacted, we would find that the consumer's ability has been impaired to make competent price-per-unit comparisons.

If you want to say "has clearly been impaired" put it in there, sir.

Mr. PICKLE. Would you also comment on the question I asked at the end of that same section 5(d)(2) where you said previously that you do not intend to standardize and you have said on page 6, lines 10 to 13 that this paragraph shall not be construed as authorizing any limitation on the size, shape, weight, and so forth.

At the end of that 5(d)(2) on page 8, line 4, do you think it would be reasonable to also add that same language?

Mr. DIXON. I think it would be confusing. Yesterday as we left we all agreed and passed up to the chairman the answers as to why we thought that this should not be done. It would be quite a bit of confusion.

Mr. PICKLE. I stayed until 12 noon.

Mr. DIXON. Just before we left here, Secretary Connor passed up the statement, and it is still here. It is now prepared and is ready to be read and I would suggest——

Mr. PICKLE. Mr. Chairman, I would like to be furnished a copy now, and then we can pursue that later.

Mr. SPRINGER. Mr. Chairman, I have no further questions but there is just one thing still bothering me. There is this question as to ex-

actly what you intend to do, Mr. Chairman. I think we have it on the record as to what your power is, Mr. Chairman. I don't think this committee understood that from the testimony thus far. You have given us your opinion on how far you can go. That is pretty important.

There is just this second thing. I still can't believe that you come here with no cost estimates as to what it is going to cost the public in terms of unit costs.

Nobody has any opinion as to what this is going to do on unit cost, and if we are going to recommend legislation we certainly ought to have some evidence on what this is going to do to the unit costs. I can give opinions all over the place. I have been trying to get some and I am not satisfied yet that I have all of the information, but I certainly have more than this panel has.

Mr. DIXON. Mr. Springer, I think you may be asking of the panel or of the Commerce Department an impossible thing to determine.

Let us take those two cans of juice there. Those cans have to be made and that wrapping around it has to be printed. Now it does not cost any more to print that wrapper in the form that might be determined as necessary than it does to print it as it is today. It is not going to cost them one dime to do that other than at a reasonable time when they run out a mat or something it is going to have to be changed.

Now how much that cost will be, I don't know, but I would think it would be——

Mr. SPRINGER. You surely do not show very much knowledge because that is the simplest thing in the world. I am talking about some of these packages which have to fit certain small sizes, per ounce and so on. When you get into that you are getting into a startlingly different situation, especially in the drug industry and what those people are going to have to do.

This is not a question of printing something on a label. It is a question of doing their whole bottling all over again. I don't want to get into an argument with you but if you have some independent information I would be glad to have it. I have not come to any conclusion myself on costs yet but I am trying to get those because I think the committee should have the benefit of them.

Mr. FARNSLEY. You pointed out that this bill does not cover quality and quantity. Do you not advocate that we should do that? I will help you if you do.

Mr. SPRINGER. The thing I am trying to say is whether or not you can remove the confusion when the other two basic factors of price and quality are just as important as the question of labeling and packaging, so in this, really, you only have 33⅓ percent if you assume all of these are equal.

I am not sure but that the question of price is even more important than this one. I believe quality is also as important as the thing you are talking about.

Mr. FARNSLEY. Do you believe it is possible to cover one-third of the question?

Mr. SPRINGER. I think it is. You are talking about confusion. I think we have gotten down to basic facts. The Acting Secretary of

Health, Education, and Welfare said he thought it was a step in the right direction. Now I think you are talking about that, then you may be getting at the truth but this is not what the American public is expecting out of this bill, from what I have seen in my mail and in the press.

Mr. DIXON. Mr. Springer, Mr. Chairman, I think all of our combined knowledge on general economics and competition leads one to one inescapable conclusion that competition really starts with price. This is at the very guts or level of how competition comes about.

Now, over and above that, sir, is certainly quality. There is another thing if you sell a produce. I am not talking about this but generally, it may involve service, too.

But I agree with what Mrs. Peterson was trying to say to you, sir, that the consuming public if you start along the road at least to give them a measure enabling them to compare prices, they may buy a soap or a detergent or a food product and then after they try it out if it doesn't taste very good, if they don't like what they determine in quality, they will change.

But up to this moment they will never know which one of those products may or may not be the cheapest. That is all this bill is aimed at. I think it is very good to leave quality to selection.

Mr. SPRINGER. I agree with you, Mr. Chairman, but I raised one question with the distinguished lady a moment ago. She could not compute the fractions herself. In fact I couldn't compute them. I am not saying Mrs. Peterson lacks anything. I could not compute them until I took my pencil. Nothing of this bill would be touched by the problem I raised with her a moment ago. My detailed question here is actually what it will cover.

Mr. ROGERS of Florida. Quite a few companies are doing a good job, I agree.

Mr. FARNSLEY. Would the gentleman yield?

Mr. ROGERS of Florida. Yes, I yield.

Mr. FARNSLEY. Meat products are governed by the Government.

Mr. ROGERS of Florida. Mrs. Peterson, is it true, and maybe you do not know and we might have to ask the Department of Agriculture, but it is my understanding to have the Government grading, U.S. Choice, Prime grade and so on, is a voluntary thing and that some companies actually grade the meat themselves. Is this true?

Mrs. PETERSON. That is correct.

Mr. ROGERS of Florida. And those standards do not always necessarily meet the same standards that the Government standard would meet. Is that true?

Mrs. PETERSON. That is true.

Mr. ROGERS of Florida. This bill does not cover that problem.

Mrs. PETERSON. That is right, it does not cover it.

Mr. ROGERS of Florida. I think it would be helpful if it is not a burden for Food and Drug and Federal Trade, and I know it would be helpful to me to let us have wordage that would amend your present acts that would give you sufficient authority in this field.

As I understand it, the main change for food and drug is in section 5(d). That is the main change, main new authority that would be given under this bill. Is that basically true?

Mr. GOODRICH. There is some new authority in 5(c); the principal reach of the authority is in 5(d) but I would want it clearly understood that there is some additional authority in 4 and in 5(c).

Mr. ELLENBOGEN. Do you want the language to translate into the Food and Drug Act all of the authority in the bill?

Mr. ROGERS of Florida. Yes; where you have to amend the present act, give us the wording and authority and I think it would be helpful to give the Federal Trade the language that would give you jurisdiction over the whole field as you have suggested here, Mr. Chairman.

I know I personally would like to see what wordage this would require and what would have to be done.

I would also wonder if the Food and Drug and Federal Trade could give us a rundown in simple memorandum form on your procedure on cease and desist and what procedures take forth, yours on your seizures and injunctions, and may I ask does the Administrative Procedure Act apply in all degrees in this bill or is it just applying to section 5(d).

Mr. GOODRICH. It would apply all the way across the board. Section 701 (e), (f), and (g) of the Food and Drug Act, according to the finding of the Court of Appeals in the *Willapoint* case that has been mentioned, ties in with the hearing provisions of the Administrative Procedure Act itself. And the bill incorporates, by reference, section 701 (e), (f), and (g) of the Food and Drug Act.

Mr. ROGERS of Florida. So all of your hearings to promulgate any regulations would be under the Administrative Procedure Act?

Mr. GOODRICH. Section 7 of the Administrative Procedure Act provides where a rulemaking hearing is required to be based on the record that it be conducted in accordance with sections 7 and 8 and decision be reached in accordance with that.

Mr. ROGERS of Florida. I notice in 5(d) you specifically mention section 7 of the Administrative Procedure Act. I did not see it mentioned elsewhere.

Mr. DIXON. Mr. Rogers, I think that section 7 procedure is limited to section 5(d) in this bill. There may be a different thought.

Mr. ROGERS of Florida. If you could put your views in writing on that it would be very helpful.

Mr. DIXON. When you were proceeding in the other sections up to (d) here, I think what would have to be dealt with would be as the bill reads would be the general procedures that are followed in the Food and Drug Administration today.

Mr. ROGERS of Florida. If you could give us a memo on that it would be helpful.

(The information requested follows:)

FEDERAL TRADE COMMISSION,
Washington, D.C., August 10, 1966.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: During the course of the hearings before your Committee on July 28, 1966, on H.R. 15440 and S. 985, both of the 89th Congress, Congressman Paul G. Rogers of Florida requested that I express my views in writing as to the applicability of the Administrative Procedure Act to the regulation-making procedures specified in the bills.

Under Section 5(d) of both bills, the promulgating authority's determination that "the weights or quantities in which any consumer commodity is being dis-

tributed for retail sale are likely to impair the ability of consumers to make price per unit comparisons," must be made pursuant to a hearing conducted in compliance with Section 7 of the Administrative Procedure Act.

When either the Department of Health, Education, and Welfare or the Commission promulgates any regulation under Sections 4 or 5 of the bills, then as provided in Section 6, such regulation shall be promulgated and shall be subject to judicial review pursuant to subsections (e), (f), and (g) of Section 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(e), (f) and (g)). Since under subsection (e)(3) of Section 701 of the Federal Food, Drug, and Cosmetic Act the regulations must be made on a record after opportunity for a public hearing, the requirements of Sections 7 and 8 of the Administrative Procedure Act would likewise apply to this procedure.

Congressman Rogers also requested that I submit a memorandum showing the extent to which the Federal Trade Commission Act would require amendment in order for the Commission to have the authority necessary to administer the subject bills.

The best way to accomplish the result envisioned by Congressman Rogers would be the enactment of a separate statute, similar in all respects to H.R. 15440 and S. 985, with the authority to promulgate the regulations vested exclusively in the Federal Trade Commission. I am submitting a possible redraft of S. 985, with the changes necessary to accomplish this purpose. (See attachment A.) Such a statute, if enacted in this form, would follow the general pattern used in the Wool Products Labeling Act, the Fur Products Labeling Act and the Textile Fiber Products Indentification Act, all of which are now administered by the Federal Trade Commission.

You understand, of course, that this draft is being forwarded in compliance with Congressman Rogers' request, and that the Commission's endorsement of S. 985 as passed by the Senate remains unchanged.

Sincerely yours,

PAUL RAND DIXON, *Chairman.*

(ATTACHMENT A)

AN ACT To regulate interstate and foreign commerce by preventing the use of unfair or deceptive methods of packaging or labeling of certain consumer commodities distributed in such commerce, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Packaging and Labeling Act."

DECLARATION OF POLICY

SEC. 2. Informed consumers are essential to the fair and efficient functioning of a free market economy. Packages and their labels should enable consumers to obtain accurate information as to the quantity of the contents and should facilitate price comparisons. Therefore, it is hereby declared to be the policy of the Congress to assist consumers and manufacturers in reaching these goals in the marketing of consumer goods.

PROHIBITION OF UNFAIR AND DECEPTIVE PACKAGING AND LABELING

SEC. 3. (a) It shall be unlawful for any person engaged in the packaging or labeling of any consumer commodity (as defined in this Act) for distribution in commerce, or for any person (other than a common carrier for hire, a contract carrier for hire, or a freight forwarded for hire) engaged in the distribution in commerce of any packaged or labeled consumer commodity, to distribute or to cause to be distributed in commerce any such commodity if such commodity is contained in a package, or if there is affixed to that commodity a label, which does not conform to the provisions of this Act and of regulations promulgated under the authority of this Act.

(b) The prohibition contained in subsection (a) shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons (1) are engaged in the packaging or labeling of such commodities, or (2) prescribe or specify by any means the manner in which such commodities are packaged or labeled.

REQUIREMENTS AND PROHIBITIONS

SEC. 4. (a) No person subject to the prohibition contained in section 3 shall distribute or cause to be distributed in commerce any packaged consumer commodity unless in conformity with regulations which shall be established by the promulgating authority pursuant to section 6 of this Act and which shall provide that:

(1) The commodity shall bear a label specifying the identity of the commodity and the name and place of business of the manufacturer, packer, or distributor; and

(2) The net quantity of contents (in terms of weight, measure, or numerical count) shall be separately and accurately stated in a uniform location upon the principal display panel of that label; and

(3) The separate label statement of net quantity of contents appearing upon or affixed to any package—

(A) if expressed in terms of weight or fluid volume, on any package of a consumer commodity containing less than four pounds or one gallon, shall be expressed in ounces or in whole units of pounds, pints, or quarts (avoirdupois or liquid, whichever may be appropriate);

(B) shall appear in conspicuous and easily legible type of in distinct contrast (by typography, layout, color, embossing, or molding) with other matter on the package;

(C) shall contain letters or numerals in a type size which shall be (i) established in relationship to the area of the principal display panel of the package, and (ii) uniform for all packages of substantially the same size; and

(D) shall be so placed that the lines of printed matter included in that statement are generally parallel to the base on which the package rests as it is designed to be displayed.

(b) No person subject to the prohibition contained in section 3 shall distribute or cause to be distributed in commerce any packaged consumer commodity if any qualifying words or phrases appear in conjunction with the separate statement of the net quantity of contents required by subsection (a), but nothing in this subsection or in paragraph (2) of subsection (a) shall prohibit supplemental statements, at other places on the package, describing in nondeceptive terms the net quantity of contents: *Provided*, That such supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the commodity contained in the package.

ADDITIONAL REGULATIONS

SEC. 5. (a) The authority to promulgate regulations under this Act is vested in the Federal Trade Commission (referred to hereinafter as the "Commission").

(b) If the Commission finds that, because of the nature, form, or quantity of a particular consumer commodity, or for other good and sufficient reasons, full compliance with all the requirements otherwise applicable under section 4 of this Act is impracticable or is not necessary for the adequate protection of consumers, the Commission shall promulgate regulations exempting such commodity from those requirements to the extent and under such conditions as the Commission determines to be consistent with section 2 of this Act.

(c) Whenever the Commission determines that regulations containing prohibitions or requirements other than those prescribed by section 4 are necessary to prevent the deception of consumers or to facilitate price comparisons as to any consumer commodity, it shall promulgate with respect to that commodity regulations effective to—

(1) establish and define standards for characterizing the size of a package enclosing any consumer commodity, which may be used to supplement the label statement of net quantity of contents of packages containing such commodity, but this paragraph shall not be construed as authorizing any limitation on the size, shape, weight, dimensions, or number of packages which may be used to enclose any commodity;

(2) establish and define the net quantity of any commodity (in terms of weight, measure, or count) which shall constitute a serving, if that commodity is distributed to retail purchasers in a package or with a label which bears a representation as to the number of servings provided by the net quantity of contents contained in that package or to which that label is affixed;

(3) regulate the placement upon any package containing any commodity, or upon any label affixed to such commodity, of any printed matter stating or representing by implication that such commodity is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail sale price advantage is accorded to purchasers thereof by reason of the size of that package or the quantity of its contents; and

(4) require that information with respect to the ingredients and composition of any consumer commodity be placed upon packages containing that commodity, except that (A) each such regulation shall be consistent with requirements imposed by or pursuant to the Federal, Food, Drug, and Cosmetic Act, as amended, (B) no such regulation shall apply to any consumer commodity for which a definition or standard of identity has been established and is in effect pursuant to a regulation promulgated under that Act, and (C) no such regulation promulgated under this paragraph may require the disclosure of information concerning proprietary trade secrets.

(d) Whenever the Commission determines, after a hearing conducted in compliance with section 7 of the Administrative Procedure Act, that the weights or quantities in which any consumer commodity is being distributed for retail sale are likely to impair the ability of consumers to make price per unit comparisons the Commission shall—

(1) publish such determination in the Federal Register; and

(2) promulgate, subject to the provisions of subsections (e), (f), and (g), regulations effective to establish reasonable weights or quantities, and fractions or multiples thereof, in which any such consumer commodity shall be distributed for retail sale.

(e) At any time within sixty days after the publication of any determination pursuant to subsection (d)(1) as to any consumer commodity, any producer or distributor affected may request the Secretary of Commerce to participate in the development of a voluntary product standard for such commodity under the procedures for the development of voluntary product standards established by the Secretary pursuant to section 2 of the Act of March 3, 1901 (31 Stat. 1449, as amended; 15 U.S.C. 272). Such procedures shall provide adequate manufacturer, distributor, and consumer representation. Upon the filing of any such request, the Secretary of Commerce shall transmit notice thereof to the Commission.

(f) No regulation promulgated pursuant to subsection (d)(2) with respect to any consumer commodity may—

(1) vary from any voluntary product standard in effect with respect to that consumer commodity which was published—

(A) before the publication of any determination with respect to that consumer commodity pursuant to subsection (d)(1);

(B) within one year after the filing pursuant to this section of a request for the development of a voluntary product standard with respect to that consumer commodity; or

(C) within such period of time (not exceeding eighteen months after the filing of such request) as the Commission may deem proper upon a certification by the Secretary of Commerce that such a voluntary product standard with respect to that consumer commodity is under active consideration and that there are presently grounds for belief that such a standard for that commodity will be published within a reasonable period of time;

(2) establish any weight or measure in any amount less than two ounces;

(3) preclude the use of any package of particular dimensions or capacity customarily used for the distribution of related commodities of varying densities, except to the extent that it is determined that the continued use of such package for such purpose is likely to deceive consumers; or

(4) preclude the continued use of particular dimensions or capacities of returnable or reusable glass containers for beverages in use as of the effective date of the Act.

(g) In the promulgation of regulations under subsection (d)(2) of this section, due regard shall be given to the probable effect of such regulations upon—

(1) the cost of the packaging and the cost to consumers of the commodities affected;

(2) the availability of any commodity in a reasonable range of package sizes to serve consumer convenience;

(3) the materials used for the packaging of the affected commodities;
(4) the weights and measures customarily used in the packaging of the affected commodities;
(5) competition between containers made of different types of packaging material.

PROCEDURE FOR PROMULGATION OF REGULATIONS

SEC. 6. (a) Regulations promulgated by the Commission under section 4 or section 5 of this Act shall be promulgated by proceedings taken in conformity with the provisions of section 4 of the Administrative Procedure Act and shall be subject to judicial review in conformity with the provisions of section 10 of the Administrative Procedure Act. Hearings authorized or required for the promulgation of any such regulations by the Commission shall be conducted by the Commission or by such officer or employee of the Commission as the Commission may designate for that purpose.

(b) In carrying into effect the provisions of this Act, the Commission is authorized to cooperate with any department or agency of the United States, with any State, Commonwealth, or possession of the United States, and with any department, agency, or political subdivision of any such State, Commonwealth, or possession.

(c) No regulation adopted under this Act shall preclude the continued use of returnable or reusable glass containers for beverages in inventory or with the trade as of the effective date of this Act, or the orderly disposal of packages in inventory or with the trade as of the effective date of the regulation.

ENFORCEMENT

SEC. 7. (a) Any violation of any of the provisions of this Act, or the regulations issued pursuant to this Act, shall constitute an unfair or deceptive act or practice in commerce in violation of section 5(a) of the Federal Trade Commission Act and shall be subject to enforcement under section 5(b) of the Federal Trade Commission Act.

(b) In the case of any imports into the United States of any consumer commodity covered by this Act, the provisions of sections 4 and 5 of this Act shall be enforced by the Secretary of the Treasury pursuant to section 801 (a) and (b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381).

REPORTS TO THE CONGRESS

SEC. 8. Each officer or agency required or authorized by this Act to promulgate regulations for the packaging or labeling of any consumer commodity, or to participate in the development of voluntary product standards with respect to any consumer commodity under procedures referred to in section 5(e) of this Act, shall transmit to the Congress in January of each year a report containing a full and complete description of the activities of that officer or agency for the administration and enforcement of this Act duirng the preceding fiscal year.

COOPERATION WITH STATE AUTHORITIES

SEC. 9. (a) A copy of each regulation promulgated under this Act shall be transmitted promptly to the Secretary of Commerce, who shall (1) transmit copies thereof to all appropriate State officers and agencies, and (2) furnish to such State officers and agencies information and assistance to promote to the greatest practicable extent uniformity in State and Federal regulation of the labeling of consumer commodities.

(b) Nothing contained in this section shall be construed to impair or otherwise interfere with any program carried into effect by the Secretary of Health, Education, and Welfare under other provisions of law in cooperation with State governments or agencies, instrumentalities, or political subdivisions thereof.

DEFINITIONS

SEC. 10. For the purposes of this Act—

(a) The term "consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic (as those terms are defined by the Federal Food, Drug, and Cosmetic Act), and any other article, product, or commodity of any kind or class which is customarily produced

or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use. Such term does not include—

(1) any meat or meat product, poultry or poultry product, tobacco or tobacco product;

(2) any commodity subject to packaging or labeling requirements imposed by the Secretary of Agriculture pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the Act of March 4, 1913 (37 Stat. 832–833; 21 U.S.C. 151–157), commonly known as the Virus-Serum-Toxin Act;

(a) any drug subject to the provisions of sections 503(b)(1) or 506 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)(1), 355, 356, 357);

(4) any beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act, (27 U.S.C. 201 et seq.); or

(5) any commodity subject to the provisions of the Federal Seed Act (7 U.S.C. 1551–1610).

(b) The term "package" means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers, but does not include—

(1) shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof;

(2) shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity; or

(3) containers subject to the provisions of the Act of August 3, 1912 (37 Stat. 250, as amended; 15 U.S.C. 231–233), the Act of March 4, 1915 (38 Stat. 1186, as amended; 15 U.S.C. 234–236), the Act of August 31, 1916 (39 Stat. 673, as amended; 15 U.S.C. 251–256), or the Act of May 21, 1928 (45 Stat. 685, as amended; 15 U.S.C. 257–257i).

(c) The term "label" means any written, printed, or graphic matter affixed to any consumer commodity or affixed to or appearing upon a package containing any consumer commodity;

(d) The term "person" includes any firm, corporation, or association;

(e) The term "commerce" means (1) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, or territory and any place outside thereof, and (2) commerce within the District of Columbia or within any territory or possession of the United States not organized with a legislative body, but shall not include exports to foreign countries; and

(f) The term "principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

SAVING PROVISION

SEC. 11. Nothing contained in this Act shall be construed to repeal, invalidate, or supersede—

(a) the Federal Trade Commission Act or any statute defined therein as an antitrust Act;

(b) the Federal Food, Drug, and Cosmetic Act; or

(c) the Hazardous Substances Labeling Act.

EFFECT UPON STATE LAW

SEC. 12. It is hereby expressly declared that it is the intent of the Congress to supersede any and all laws of the States and political subdivisions thereof insofar as they may now or hereafter provide for the labeling of the net quantity of contents of the package of any consumer commodity covered by this Act which differs from the requirements of section 4 of this Act or regulations promulgated pursuant thereto.

EFFECTIVE DATE

SEC. 13. This Act shall take effect on the first day of the sixth month beginning after the date of its enactment: *Provided*, That the Commission may by regulation postpone, for an additional twelve-month period, the effective date of this Act with respect to any class or type of consumer commodity on the basis of a finding that such a postponement would be in the public interest.

Mr. ROGERS of Florida. Let me ask this of Food and Drug. Do you have subpena power to enforce the cents of provision?

Mr. GOODRICH. We do not.

Mr. ROGERS of Florida. What would your subpena power go to?

Mr. GOODRICH. We have no subpena power.

Mr. ROGERS of Florida. How about Federal Trade?

Mr. DIXON. We have all the power the Congress has. You gave it to us.

Mr. ROGERS of Florida. So you would have the necessary power?

Mr. DIXON. We certainly do.

Mr. ROGERS of Florida. Does this 2 ounces and other apply to candy and so on?

Mrs. PETERSON. Yes. The regulations would be promulgated only in product lines where there is confusion in making price comparisons, but commodities under 2 ounces, such as candy and spices, would be exempt.

Mr. ROGERS of Florida. I would like to get your views, giving us just a memo, after you talk to your counsel and inform the Department of Agriculture where you think there is sufficient authority of the Department of Agriculture to do that.

Mrs. PETERSON. Thank you, I appreciate that because we do have points there.

The CHAIRMAN. Mr. Curtin?

Mr. CURTIN. Mrs. Peterson, the other morning in answer to a question by our colleague, Congressman Friedel, you said "standardization of packaging will reduce costs." Would you elaborate on what you mean by "standardization of packaging."

Mrs. PETERSON. I think it is unfortunate to use the word because this is not a standardization bill. It is an information bill—a fact which I think we have to emphasize. What I mean by that is you have enough sizes of weights and quantities standards so you have comparability within a reasonable range but you do have not so much of proliferation. This container is standardized under the voluntary products standards procedures. It comes in 46 fluid ounces. That is already done. Maybe there should be regulations in relation to napkins but it would be up to the industry to determine whether they would have to be packaged in 100 napkins and any other series of numbers.

All we are concerned about is that the consumer have the information. I think it is wrong to call it a standardization bill because it is not that. This is only in this one section of the bill where it is possible to establish a range of weights and quantities.

Mr. CURTIN. I am using your words. You said standardization of packaging would be a good thing. I am just curious what you mean by standardization of package.

Mrs. PETERSON. That is what I mean. Coffee is in one pound, 2 pounds, 3 pounds and it is easy for us to get the price per unit comparisons so it would not be necessary to have regulations in that area.

In the matter of some of these other areas, such as instant tea and coffee where there is much proliferation and it is difficult to compare the different brands with different weights and quantities, such regulations would be a help, so you would again have a regular basis for making price comparisons.

Mr. CURTIN. Mr. Dixon, I am just a little curious about one matter that I touched on before.

Mr. WILLIAMS. Would the gentleman yield?

Mr. CURTIN. I yield.

Mr. WILLIAMS. It is my understanding that all say in the case of corn flakes, several different manufacturers of the same product, that the regular size of corn flakes shall be the same size for one manufacturer as it is for the other, that the giant size will be the same for one as for the other and so on up the line.

Mrs. PETERSON. On the question of the terminology of, the "giant" size, size designations might be decided if the terms were used. The term does not have to be used. In the other case of establishing a reasonable range of weights and quantities it would only be done if first there was a hearing and it was shown that there was such a proliferation of sizes in corn flakes that there would be a recommendation to have corn flakes regulated. I see no such proliferation of these in this area.

Mr. WILLIAMS. Let's assume each one puts out a "giant" size and each one puts out a "giant economy" size and they may even put out a "super economy" size. Is there anything in this bill that would prohibit a manufacturer from putting out another size, such as a "super giant economy family" size?

To what extent does this bill tie the hands of business with respect to meeting competition?

Mrs. PETERSON. It doesn't. In this part of the bill it is a matter of how those words are used. The bill gives the promulgating authority the descretionary power to define standards for characterizing the size of a commodity. If the qualifying words are used under defined terms on the label they would all have the same meaning. It is again the terminology feature of the bill.

Mr. WILLIAMS. In other words, putting out this "super giant family economy" size would amount to grandfather rights, and someone putting out something in the same size would have to use the same name? I am confused as to how far you want this bill to go.

Mrs. PETERSON. I think we want it to go far enough that we do have standard terminology for size designations for supplementary information, where necessary. This is a discretionary provision. We do have to put on the label the weight or quantity. This is where an additional advantage would be given to the consumer in certain product lines.

Mr. WILLIAMS. Is there any way of having that without making them all use the same terminology?

Mrs. PETERSON. I think the regulatory authorities could say how that would be done.

Mr. WILLIAMS. The enforcement authorities are going to tell business that they can or cannot label their sizes in a particular way. Is that correct?

Mrs. PETERSON. It would only be again where the size designations makes purchasing confusing. For example, here are two sizes, one is

called large and one is called medium and both are the same size. There is another package here by the same manufacturer, where one is called regular and one is called economy—it is the same size. This happens to be the same manufacturer. Under the bill there would be the authority, after hearings, to set what these definitions would be.

Mr. WILLIAMS. The only way that could be done would be to require all of them to label their packages in a certain way, and all packages labeled in that way would have to contain the same amount, regardless of the brand?

Mrs. PETERSON. One man's jumbo would weigh the same as the other man's jumbo. They both give the weight clearly. Here is one that says jumbo, "all new, easier to handle". If another manufacturer put it out and there were established size designations, the size nomenclature would have to say the same thing. Here is another one completely fine. This gives the weight. The bill does not require a size designation.

Mr. CURTIN. Let's assume a situation of something like corn flakes. I would presume that the quantity of corn flakes which would fill a quart jar would be different in weight than a quantity of grape nuts that would fill a quart jar. What do you recommend in reference to that?

Would you recommend standard-sized boxes for corn flakes and grape nuts with different ounce contents noted on the label or would it have to be two different sizes in the boxes?

Mrs. PETERSON. I don't think that would be bothered by this at all. There isn't any confusion in that part.

Mr. CURTIN. Which are you going to ask for, two sizes in boxes or just simply the label saying there is a different quantity in the two similar sized boxes?

Mrs. PETERSON. The standard size box would come into effect if there were such a proliferation. I cannot see where there would be confusion in this area. This bill is not directed toward standardizing sizes or shapes at all and where related products of different densities are packaged in a standard size, the bill provides an exemption from weights and quantities regulations.

Mr. CURTIN. Are you saying that you would support a bigger box for grape nuts than for corn flakes, if they were to contain the same weight?

Mrs. PETERSON. It would be just all right so that it shows how much so the consumer knows how much is in the package.

Mr. GILLIGAN. To press the point I made earlier, so long as authority were granted to require the weight, the net contents, whether in weight or fluid measure, to be inscribed on the package in whole ounces, you have what you need. You are not really concerned about the standardization of sizes, if I understood your testimony.

Mrs. PETERSON. This information and a reasonable range of weights and quantities will help a great deal.

The CHAIRMAN. Mr. Friedel.

Mr. FRIEDEL. I have just read Mrs. Peterson's statement. On page 7 in the third paragraph you say:

> To simplify quantity comparisons which are obscured by different units of weights and measures, the bill requires that when the contents are less than four pounds or one gallon they shall be expressed in ounces or in whole units of pounds, pints or quarts.

They would have to say 1 pound so many ounces, would they not?

Mr. JENSEN. As I understand it, the bill would require on any package less than 4 pounds in weight, or 1 gallon in liquid measure, a label in ounces only; thus mixed units in pounds and ounces below 4 pounds would not be permitted. Whole units of pounds, pints, or quarts would be permitted, but between those ounces and ounces only would be required, so the mixed units would be prohibited.

Mr. FRIEDEL. Up to 4 pounds.

Mr. JENSEN. Up to 4 ounces or 1 gallon.

Mr. FRIEDEL. To keep with the pounds, it would have to be so many ounces, 64 ounces, 86 ounces, then.

Mr. JENSEN. You have too many but that is the idea. Yes, sir.

Mr. FRIEDEL. That is all, Mr. Chairman.

Mr. ADAMS. Following on that, are you stating then that you could not have in liquid measures, half pints? I understand under your required label that you then could not.

Mr. JENSEN. The primary quantity statement would have to be 8 fluid ounces for half pints. They could additionally have half pints.

Mr. ADAMS. One other question is to compare on pages 6 and 7 of the bill under 5(c)(1) or 5(c)(5). Section 5(c)(1) says—

effective to establish and defend standards for characterizing the size of a package.

Section 5(c)(5) says—

prevent the distribution of that commodity for retail sale in packages of size, shape or dimensional proportions that are likely to deceive.

Would you explain to me why 5(c)(5) is necessary if you have 5(c)(1)? If you can define standards for characterizing size, don't you at that point define and characterize your package without the further language of 5?

Mr. JENSEN. I will start and then Mrs. Peterson would like to speak to this point. I think the committee will find there is no real conflict between 5(c)(1) and 5(c)(5) in the House bill.

Section 5(c)(5) adds authority to regulate shapes and dimensional proportions.

Mr. ADAMS. To characterize size does it not carry with it shape and dimensions?

Mr. JENSEN. I think you could be led to that but as I read this, 5(c)(1) is a vocabulary provision and 5(c)(5) is the standardization provision of sizes and shapes. Then in 5(d) we are talking about the standardization of the quantity of the contents in the package, not the standardization of the dimensions of the package itself.

Mr. ADAMS. Do you agree with that, Mrs. Peterson?

Mrs. PETERSON. In the first part, section 5 in (c)(1), there is the authority to establish and define standards for characterizing the size of the package.

The important part to remember is that it is used to supplement quantity information on the label. This provision refers to words—to supplement the label. Here it is a matter of getting at the definition of the small, medium, and large. Here are two size designations: one says "large" and the other says "medium" and both are the same size. This provision only serves to assure that we all speak the same language.

That is the heart of that part. The other, 5(c)(5), which is the part Mr. Jensen is explaining, is directed at slack fill and deceptive shapes, sizes, and dimensional proportions.

Mr. ADAMS. If you can tell them between medium and large or whatever other designations you might establish then by regulation you say tubes shall be called medium, it follows you have regulated, have you not, your size actually, shape and dimensions?

Mrs. PETERSON. This only establishes standards *defining* the size of a package but it does not authorize any limitation on size, shape, weight dimensions, or number of packages. This is quantity. It is important to remember that a manufacturer is not required to use a size designation.

Mr. GILLIGAN. Just to pursue this point for one moment, Mrs. Peterson, you made reference in your original testimony and in several comments yesterday to the confusion stemming from these additional terms of small, medium, large, jumbo, and so forth.

How many categories would you permit, three; small, medium, and large?

Mrs. PETERSON. As it is now, there are as many as each manufacturer chooses to use.

Mr. GILLIGAN. Suppose he chooses to use it. How many categories would you permit?

Mrs. PETERSON. I think this would be up to the authorities that would sit down and decide how this would be, but this provision is not meant to limit sizes, although it could conceivably arrive at a limited number of designations.

Mr. DIXON. This is called the discretionary section of the bill. When you hold a hearing and it is determined that one of these two tests has been met on the record, then you would announce a procedure where you would go forward and everyone of interest would be notified they could come and speak their piece, pro and con, and if that record, which could be reviewed, did sustain that type of a finding, then you could promulgate a rule.

If you could not, you would do nothing. You could not do anything.

Mr. GILLIGAN. Is it true, Mr. Chairman, that presently, under the Federal Trade Commission Act and the Federal Food and Drug Act, it permits designating packages small, medium, or large, which are deceptive and unfair?

Mr. DIXON. I said it is very clear that the Federal Trade Commission could proceed against such a practice or even under our extended procedures toward what we call a trade rule today but we would still come back to the case-by-case enforcement and if somebody violated the rule we could do that.

This bill merely gives us, I think, additional information or an adjunct or supplemental methods or instructions to solve this problem subject to the checks and balances of judicial review.

Mr. GILLIGAN. To go backward for just a moment again to Mrs. Peterson's original proposal, the difficulty on the part of the consumer is that of determining prices for purposes of price comparison.

If the Food and Drug Act and the Federal Trade Commission Act were amended to provide that all net contents on any packaged product be expressed in terms of ounces as for instance as provided in

section 4(3) (a) on page 3, we would then have the ability or the information available to the consumer to permit him or her to make these rapid price comparisons.

If that were done, what else is necessary to achieve the objectives of this bill? Have we not then done everything that this bill involves?

Is there anything else here that does not already exist in law today which is available to the regulatory agencies?

Mr. DIXON. There are very clearly other sections besides that but when you get to section 5 (a), (b), (c), and (d)—5(d) does deal with what you are talking about, sir, and it would certainly have some bearing on the problem if you approach it that way.

Mr. GILLIGAN. Is the purpose of those sections to facilitate price comparison?

Mr. DIXON. Agreed.

Mr. GILLIGAN. Is it?

Mr. DIXON. To facilitate price comparison and eliminate deception.

Mr. GILLIGAN. But we already have the laws to eliminate deception.

Mr. DIXON. We do not have a law today which very clearly says once and for all you can proceed toward what would be called a rule proceeding. Each time Congress passes a law and says a given functionary down in the establishment has rulemaking power you have delegated a bit of your legislative functions.

This is where the word comes, "quasi-legislative" but mind you Congress never gives you that authority without a very narrow, limited procedure to follow and it is here.

This is all you can do. You do it this way. It can be said Food and Drug today has rulemaking power in the field. We have and we have insisted we have certain types of rulemaking, if you want to characterize it.

I would rather characterize it more as procedural because if it is violated, we still have to come back and go on case by case but you pass this bill and you have passed something very similar so far as the Federal Trade Commission is concerned as the Wool Act, the Fur Act, the Flammable Fabrics Act, and the Texile Products Identification Act.

Here you told us under a preamble that we hold certain public hearings and promulgate for instance, a register of furs. Once we do that, all furs—we have done this—have to be so designated. If anyone does not do this, according to the law, they have per se violated section 5.

We do not have to prove that it is deceptive. Once we did this under mandate, then it becomes ipso facto per se law violation.

Mr. GILLIGAN. In effect you would be asking that this broad authority be extended to every packaged product put on the consumer's shelf—this very broad authority which is now restricted to certain fields where deception even to the expert is a real problem—and carte blanche authority be given to the regulatory commissions to regulate virtually every consumer product that is put on the shelf.

Mr. DIXON. Under the definitions of the terms in the bill this is where the authority would extend. There are limitations on it. I am talking about page 14, section 10. The term "consumer commodity," except as otherwise specifically provided by this subsection means any food, drug, device, or cosmetic as the terms are defined in the food

and drug act and any other article, product or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies—retail sales agencies.

It is clear what this bill means. The hearings have all dealt with what is on the shelf in a store. You don't go to a store. Like my mommy used to say: "Boy, go up to the store and get me 10 cents worth of cheese."

I went up there and said to the man I wanted 10 cents worth of cheese. If he did not weigh his thumb, I got it. Today, I have to pick it out myself. Nobody is going to help me, and this bill is aimed toward that one thing.

Mr. YOUNGER. The thing that has interested me about this bill is that you are committing the same fault that you are trying to cure in that you are drafting an idea or a word that is deceptive.

In all of our legislation, I think the chairman will bear this out, in all of those acts that were mentioned we used the words "public interest."

Is that not true? You work under the public interest.

Mr. DIXON. We have no right in the private interest, only in the public's interest.

Mr. YOUNGER. Now, Mrs. Peterson, do you know of any of the public who are not consumers?

Mrs. PETERSON. We are all consumers.

Mr. YOUNGER. Then why do you change the terminology of all of the legislation that we have been in? All of these acts that the chairman has mentioned and in which we gave regulatory authority, it is all in the public interest. Now you say it is a catch phrase, the consumer, instead of using "the public."

To me that is purely deceptive. You are giving them an entirely wrong impression that you are segregating the public. Is that not true?

Mrs. PETERSON. I am against segregation of consumers. I think if you heard what I said, it includes all of us. We can use public just as well, or maybe we should say the buyer of consumer goods in this case. Maybe that would help.

Mr. YOUNGER. Just use the terminology we have used in all of our legislation.

Mrs. PETERSON. I am not the drafter of this legislation.

Mr. YOUNGER. To me you are trying to deceive the public in saying there are two classes of public, consumer and nonconsumer. I think every member of the public is a consumer. That is one thing. The other is, Mr. Chairman, in legislating in this way, why do we not approach this problem in the same way that this committee approaches these other acts that we passed and have given to your Commission to administer.

As I get it, there are certain things that can be done. In other words, we could enlarge your authority to cover not only deception but confusion, for instance; we could give you authority to proceed on an industry basis rather than a case-by-case basis.

In other words, we could make an amendment to the Fair Trade Act giving those authorities to the Fair Trade Commission.

Mr. DIXON. To the Federal Trade Commission. The words "fair trade" gets us both in trouble—Federal trade.

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I am not an expert certainly in food and drug but I am reminded that Congress has used the word "consumer" in its basic legislation so the words have been used interchangeably at times, I think.

Mr. RANKIN. Section 401 of the Food, Drug, and Cosmetic Act uses those expressions.

Mr. YOUNGER. There is no question about the expressions being used but all of the acts provide that you act in the public interest. Is that not true?

Mr. RANKIN. In this particular case that I referred to, the provision is that our regulations shall be published in the interest of honesty and fair dealing.

Section 401 says that whenever in the judgment of the Secretary such action will promote honesty and fair dealing in the interest of consumers, it goes on to say the Secretary shall publish regulations to establish standards of identity or quality, or fill of container.

Mr. YOUNGER. My point is if we gave this by amendment to your act and amendment to the Food, Drug, and Cosmetic Act as amendments, it would be the normal way to legislation in this field. I am convinced that this legislation is a forerunner primarily to create a Consumer's Department.

That is the ultimate objective of this legislation; otherwise it would have been approached in the idea of amendments to those two acts and I think we could get the same results and not duplicate in this act what you already have authority in the other acts.

Mr. PICKLE. Would the gentleman yield?

Mr. YOUNGER. I yield.

Mr. PICKLE. If I recall your testimony on Monday correctly, you said in your opinion that the primary field this legislation should cover was in the area of economic deception, and it really did not attempt to pertain to health or safety or insurance, and in effect saying that you ought to correct labeling with respect to the Federal Trade Commission and leave the Pure Food and Drug to another time and place. Is that a fair statement?

Mr. DIXON. The thought I was trying to make there, Mr. Pickle, was that historically, although the Federal Trade Commission Act and the Food and Drug Act as such have some overlapping features in them, I think the primary expertise in this Government is in HEW when we are dealing with the health and safety.

Even though we have some responsibility, we clearly recognize this at the Federal Trade Commission. On the other hand, I think the Food and Drug Administration through our relationship with them, we have recognized the fact they have enough to do in health and safety and we have enough to do in our general realm of economic deception.

I suggested to the Senate and to this committee here you may want to change the bill to say something in this regard; this bill now states that what comes within the definition of "food, drugs, and cosmetics" under their law shall be enforced by the Secretary of HEW and all other products by the Federal Trade Commission.

We hear of 7,000, 8,000 products on a shelf and the vast majority of those products are going to fall within the characterization of food, drugs, or cosmetics.

It is not going to be in all other products that are on the shelf and the primary job if it is passed in this form is going to be placed upon Food and Drug to use their procedures.

We must follow their procedures if we promulgate a rule but we would enforce our violations of the rule under our basic act and of course the way we would do it obviously is the traditional way of a cease-and-desist order and then if the order is violated, then a certification for civil penalties.

As I understand Food and Drug, and I would rather for them to explain it rather than I, but I understand they would have to go the seizure method and then at the same time seek from a court an injunction and then if it were violated, go back to that same court and ask for contempt of the order and then the court within its judgment could assess whatever penalties it believed necessary.

Congress has taken care of that for the Federal Trade Commission. In 1948 you amended the Federal Trade Commission Act so that if an order has become final by virtue of not seeking review, a violation of that act on certification could result in a penalty of $5,000 per day per each violation.

Mr. RANKIN. May I add a comment, Mr. Staggers?

The CHAIRMAN. Yes; you may.

Mr. RANKIN. For the record I should point out, Mr. Pickle, that under the Food, Drug, and Cosmetic Act, the Food and Drug Administration does deal with many economic factors today and we do not joint Chairman Dixon in his recommendation that the sole administration of the bill before you go to his agency.

Mr. PICKLE. Do you all recommend the Senate bill, with modification?

Mr. DIXON. I did not come here suggesting any changes in the Senate bill.

Mr. HARVEY. Would you use the microphone, please?

Mr. DIXON. The Federal Trade Commission came here endorsing the Senate bill. I agreed with the others here at the table if it is the desire to put in, for instance, paragraph 5 on page 7 of your bill, Mr. Chairman, if that is the desire—to straighten out the confusion that might happen, and if you do that with respect to 5(c)(1), if that is the will of the Congress, we will certainly enforce the law that way.

I have said that I think that you don't need to go to that problem. I believe that it is not so bad that we can't handle it under the present procedures, case by case.

Mr. YOUNGER. You would have no objection, Mr. Chairman, if Congress in its wisdom decided to offer the amendments to the Federal Trade Commission?

Mr. DIXON. No, sir; I would not.

Mr. YOUNGER. Would the Food and Drug Administration have any objection in that direction?

Mr. RANKIN. No objection.

The CHAIRMAN. Mr. Macdonald.

Mr. MACDONALD. Mr. Dixon, in your opinion, does the bill before us, which is not the Senate bill but the House bill, cover any offenses that retailers might make?

Mr. DIXON. On page 2 of the House bill, of Chairman Staggers' bill, section 3(b) says:

> The prohibition contained in subsection (a) shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons are engaged in packaging or labeling of such commodities.

Now the ordinary wholesaler and retailer just does not do that, but, if they do, it would apply.

Mr. MACDONALD. I had two problems, No. 1, where the manufacturer has this thing that Mrs. Peterson was talking about with cents off, without saying what the cents are off. Obviously, the bill would cover it, but how would the FTC with its limited manpower try to enforce this bill against a retailer who did exactly the same thing, just had a section where he had a product and he says 14 cents off?

Mr. DIXON. The bill, of course, says that it would not apply unless he did engage in labeling, we might say deceptively.

Mr. MACDONALD. Mrs. Peterson indicated, and I sort of agreed, that it is deceptive to say 14 cents off and the manufacturer would be covered, but it would seem to me to be even equally deceptive if a retailer—and you say you do have just jurisdiction over the retail in the section—I now ask you the question, do you have the manpower to stop this sort of thing?

Mr. DIXON. I am thinking also of the limitations of jurisdiction. It must be in commerce. That is first. There are some retailers who are in commerce but not many, but there are some.

Mr. MACDONALD. As you know very well the commerce clause has been stretched to fantastic lengths. For the purposes of the Taft-Hartley Act for example it has been held that a window washer in an office that has business that has interstate complications that he affects interstate commerce.

Mr. DIXON. The word "affect" is usually in the statutes that "affect" commerce but this follows the language of the Clayton Act, and uses the words "in commerce" which provides a narrow test. As broad as "in commerce" has been taken, I still say to you that that has to be carried—we recently lost a case under the Clayton Act, just exactly on this point.

Mr. MACDONALD. Although you seemed a little puzzled, and I know I am, your answer is that you would not have any control over the retailer who engaged in deceptive practices.

Mr. DIXON. Unless they packaged it, unless they engaged in this deceptive or confusing label——

Mr. MACDONALD. Aren't they in interstate commerce when they sell stuff from another State?

Mr. RANKIN. Mr. Macdonald, on that point there is a distinction in this bill for the provisions of the Food, Drug, and Cosmetic Act. The Food, Drug, and Cosmetic Act gives us jurisdiction over merchandise as it moves in commerce or at any time thereafter.

But on page 12 of the House bill before you, under "enforcement"—this is section 7, line 7—there is a specific limitation, in that a food, drug, device, or cosmetic is to be deemed misbranded if "introduced or delivered for introduction into commerce in violation of any of the provisions of this act."

In other words, the violation must exist at the time of introduction or shipment in interstate commerce and, as we read the bill, we do not have authority going on at any time thereafter under this language.

Mr. MACDONALD. That is the original question I asked Mr. Dixon. Don't you believe then if the public is entitled to this cents-off type of thing from the manufacturer then it is equally entitled to protection from an unscrupulous retailer?

Mr. RANKIN. I have not regarded the thrust of this legislation being designed to keep a retailer from advertising to me in his store—I am giving 2 cents off on this can or package.

Mr. MACDONALD. Why not?

Mr. RANKIN. Mr. Macdonald, the retailer is able to give a truthful advertisement. He controls the price at which he sells his merchandise and if he has been selling a can of juice at 30 cents and decides to give 2 cents off, he can tell you honestly that he is giving 2 cents off.

Mr. MACDONALD. That is self-obvious.

Mr. RANKIN. The manufacturer on the other hand does not control the price at which the product is sold at retail.

Mr. MACDONALD. To use your illustration, say the product is 30 cents and they put up a big sign 4 cents off and you still pay 30 cents.

Don't you think that should be illegal? Don't you think that is deceptive? Don't you think that is the entire thrust of what this bill is supposed to stop?

Mr. RANKIN. There is no question in the illustration you have cited that there is a deception. I have some doubt as to whether the retailer could get by with it.

If my wife has been buying cans at 30 cents and she goes down and sees a big sign 4 cents off, she knows that is not true. She will go to another store.

Mr. MACDONALD. Mrs. Peterson said that the only test that was run was conducted by the college students—and I do not agree with Mrs. Peterson that they are necessarily the best shoppers in the world—but at least those people were fooled. I will not belabor the point but I think someone on the panel ought to take the stand, yes, we do include deceptive advertising to protect the public or there is no need to.

I don't see where—why you pick on the manufacturer and let the retailer get away with it.

Mr. KORNEGAY. The retailer has the final authority to say what the price will be.

Mr. DIXON. Speaking individually for my agency, the Commerce Department can extend the commerce clause all the way down to the shelf and there would be no question of doubt in my mind that perhaps it would be helpful because if a retailer does this they can be as confusing as anybody else.

This is self-evident.

Mr. MACDONALD. If we do put that in, how are you ever going to enforce it with all of these retailers all over the country with your limited manpower?

Mr. DIXON. The retailers we are talking about, about 20 of the largest chains are selling 70 percent, so we could get them real quick. If you proceeded against them they will tell on the other fellows real quick, too, so we would hear about it.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. In the discussion yesterday, I mentioned provisions in existing law in the case of the milling industry where a product will pick up weight or lose weight, depending on atmospheric conditions. I also made reference to the possibility of a variation in weight because of mechanical equipment which could, to some degree, be inaccurate at times.

I would like the record to clearly show where, in the bill, these variations will be permitted and so that it is a matter of history so that we are sure to be protected. I am sure it is not the intent of the author of the bill to deny this variation. I do think it is important that the record indicate where the variations are permitted, and how.

Mr. RANKIN. Mr. Nelsen, on page 5 of the House bill, section 5(b), there is a provision that allows the promulgating authority to take account of the particular situations that you mention. Under the Food, Drug, and Cosmetic Act, we are also allowed to take account of such variations, and we have done so in regulations, section 1.8 of Title 21 of the Code of Federal regulations. We allow variations from the stated weight or measure when caused by ordinary and customary exposure after the food is introduced into interstate commerce under conditions which normally occur in good distribution practice and which unavoidably result in change in weight of measure.

Also, variations are permitted from stated weight or measure or numerical count when caused by unavoidable deviations in weighing, measuring, or counting individual packages which occur in good packing practice.

One more point that should be brought out. Section 11 of the bill provides—

that nothing contained in this Act before you shall be construed to repeal, invalidate, or supersede the Federal Trade Commission Act, the Federal Food, Drug, and Cosmetic Act, or the Hazardous Substances Labeling Act.

So the provisions of regulation I have read would remain in effect with regard to flour and other food commodities.

Mr. NELSEN. In order that the record may show the need of this, I might point out that many packaged products in flour must be so packaged that they can breathe. If they were sealed completely, rancidity would develop, and I want this to be clearly in the discussion here so that our intent is fully understood.

One more question. Yesterday in the discussion of the can of peaches that was declared to have a number of servings and obviously a great amount of sirup in the can rather than really having peaches in it, it was my understanding that—in answer to the question—that under the Food and Drug Act something could be done about it if there were a complete misrepresentation. Is that true?

Mr. RANKIN. I will ask Mr. Goodrich, our General Counsel, if he will comment on that point.

Mr. NELSEN. I think there was a case relative to oysters or something that had been in the courts before. Would you refer to that?

Mr. GOODRICH. This was the *Willapoint Oyster* case mentioned by your colleague, where we had established a requirement that an 11-ounce can have 6½ ounces of oysters.

The Court of Appeals for the Ninth Circuit has sustained. We have standards for fill-of-container for peaches, and if the peaches fell below the standard and fill, they would be misbranded. If, indeed, the label represented that there were an excessive number of servings and we could prove that there were not—say, they said they could serve seven and there were only six halves there, there would not be seven servings. We could probably make a case there.

Under this bill, we would be authorized to be more positive and to specify what would constitute a serving, so that if one company represented on its can that this served seven, you could be assured that the other representations of servings would be uniform. That is the new feature here.

Mr. NELSEN. How would you arrive at a definition of a serving? I like peaches, and I like the whole peach instead of a half. How would you proceed with this tremendous problem that you have? I am wondering about the administrative procedure and how you would handle it.

Mr. GOODRICH. Under this bill, first we would be required to give notice of proposed rulemaking, and invite all interested persons to present their views, and then adopt a regulation. And any person adversely affected would be authorized to object, to precipitate a formal hearing on the record, where we would have the burden of proof, and then to take the matter to the court of appeals, if they disagree. So there are plenty of safeguards.

Mr. NELSEN. Do I understand that under the proceedings that you would follow under the terms of this bill, you could proceed on a rulemaking basis rather than a case-by-case basis, so that you would then have the authority to say on an across-the-board industrywide basis that this is our rule? Is that right?

Mr. GOODRICH. Within the limited authorities within this bill, we would be authorized to specify what was a serving, after a public hearing. We would be authorized to specify what was the large, medium, and other sizes in trade. We would be authorized to control "cents off" promotions. We would be authorized to require a designation of composition where that was especially important. We would be authorized under section 5 to bring some order out of the chaos of proliferating package sizes.

These are the new authorities.

Mr. NELSEN. I just doubt that the contingency fund that has been referred to as being in the budget would be adequate to take care of all of the duties that you will have that you cite under this bill.

I might point out that there is some relevancy to this. When I was back home and rented an automobile, on the dash of the car there was a little sticker stuck on with scotch tape made in Hutchinson, Minn., and on it reads: "Post in a conspicuous place in car. Warning"—in big, heavy letters—"this vehicle has a serious defect. It does not have the brains of Nader, Mondale, or Ribicoff." When we go shopping I think of the statement they used to make, that the old Indian said: "Fool me once, shame on you; fool me twice, shame on me."

I just question whether the general buying public, if they are fooled by some trick on a package, will go back for a second helping of it. I wonder how we are going to administer all of this.

I might cite that the many things we are loading on the Government and the tremendous costs involved, also contributes to our deficit spending and devaluation of the dollar. Maybe we should put a sticker on the dollar bill, "Worth 44 cents." Because the public is being fooled pretty much about the value of the dollar.

Mr. ROGERS of Florida. I am concerned about the various enforcement procedures that would be applied under the bill that appear to me to be drawn. For instance, with Food and Drug they would secure an injunction. I understand criminal procedures would not apply.

Mr. GOODRICH. That is correct.

Mr. ROGERS of Florida. With Federal Trade, we have there provision of cease-and-desist orders. I notice now you would have to have some hearings, if you promulgated any regulations which would follow the Federal Food and Drug Act. It is not provided in your law.

Mr. DIXON. Generally, the Administrative Procedure Act we would have to follow. But Food and Drug has already promulgated into law the rulemaking authority and procedure, and this act provides that in that part of the bill which applies to the Federal Trade, that we shall follow this procedure.

Mr. ROGERS of Florida. Would it not be better to amend your law and set that forth, rather than having to refer to some other agency's law for you to abide by?

It is not very good drafting; is it?

Mr. DIXON. It may not be the best, but Congress has done it many times.

Mr. ROGERS of Florida. I don't know if we have done it too many times.

Let me ask you this, Mrs. Peterson. Why are meats and poultry products excluded? Is this not a rather large part——

Mrs. PETERSON. They are now covered by legislation administered by the Department of Agriculture.

Mr. ROGERS of Florida. What sort of remedies do they have? What remedy does the Department of Agriculture have to move against deception or misleading or confusion in the packaging and selling of meats?

Mrs. PETERSON. I think they already have it, I believe it would be well to ask that of the Department of Agriculture. I do know they have some authority, and they do regulate labels in many of these areas.

(The following letter, with attachment, was subsequently submitted by Mrs. Peterson:)

EXECUTIVE OFFICE OF THE PRESIDENT,
PRESIDENT'S COMMITTEE ON CONSUMER INTERESTS,
Washington, D.C., August 1, 1966.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR CONGESSMAN STAGGERS: During the question period following the Administration's testimony on the Fair Packaging and Labeling Bill, Congressman Rogers of Florida asked that we submit more information on the USDA label review program. In compliance with that request, the following summary, prepared by the USDA, is submitted. (See attachment A.)

Sincerely,

ESTHER PETERSON
Mrs. Esther Peterson,
Special Assistant to the President for Consumer Affairs.

(ATTACHMENT A)

USDA LABEL REVIEW ACTIVITIES

The U.S. Department of Agriculture conducts label review programs for meat and poultry products as part of its program of consumer protection.

Authority for conducting the label review and approval program for meat is contained in Section 5 of the Meat Inspection Act, and Sections 316, 317, 318, and 328 of the Regulations Governing the Meat Inspection of the United States Department of Agriculture.

Authority for the label review program for poultry is contained in the Poultry Products Inspection Act, Public Law 85–172. The Regulations Governing the Inspection of Poultry and Poultry Products further detail the labeling requirements for poultry and poultry products.

The basic label requirements are the same for both the Meat and Poultry Inspection Programs. Products which are inspected and passed must be marked or labeled when they leave the official establishment. USDA labeling requirements also are comparable and consistent with the requirements of the Food and Drug Administration applicable to foods other than meat and poultry.

USDA has five basic requirements for proper labeling:

1. The true product designation.
2. An ingredient statement, listing ingredients in order of their usage if the product consists of two or more ingredients.
3. A net weight statement.
4. The name and address of the packer or distributor.
5. The inspection legend and establishment number.

All labeling information must be factual and not misleading to the consumer. For example, net weights must be shown on the principal display panel in the smallest unit, such as 1 pound, 2 ounces, rather than 18 ounces. A vignette cannot picture 10 frankfurters when only 8 are in the package.

Restrictions also may be on the colors used on packaging materials. For example, red lines and scatter print on frankfurter or certain sausage items are limited to 50 percent of the package, to assure that the consumer can see the product contained therein.

Standards of identity and minimum requirements for particular components are developed from formulas established by marketing experience, recipes from cook books, consultations with home economists and consumer organizations, as well as industry meetings. Many of these requirements are printed in the Regulations.

Industry is constantly introducing new products. These are reviewed in the kitchens and laboratories of the Meat Inspection and Poultry Inspection Programs.

During Fiscal Year 1966 the Meat Labels Group approved 52,662 new domestic labels and sketches and 2,568 labels and sketches for imported products. Approval was withheld from 1,602 labels and sketches which did not comply with requirements. There are an estimated total of 250,000 approved labels on file.

The Poultry Labeling Group approved 9,329 labels and commented on or rejected 3,629 labels totaling 12,958 labels during Fiscal Year 1966. It is estimated that there are approximately 40,000 approved labels on file.

Mr. ROGERS of Florida. They have criminal or civil authorities. Is there anyone here from Agriculture?

Mr. ADAMS. Would the gentleman yield? Under the Stockyards Act, they have both civil and criminal penalties for improper chickens, poultry, and so on. I don't know about the size and quantity designations.

Mr. ROGERS of Florida. This is what I was wondering about.

The CHAIRMAN. Do we have a representative of the Department of Agriculture here?

Mr. GOODRICH. I can answer the question.

The USDA has continuous inspection of both of these commodity groups.

Mr. ROGERS of Florida. Where?

Mr. GOODRICH. In the packing establishments. And they require, as a part of that inspection authority, the advance approval of the packages and the labeling, and for that reason it was felt by the executive branch they have adequate authority.

Mr. ROGERS of Florida. Would they have the broad authority given by this law?

Mr. GOODRICH. They would have broader, Mr. Rogers, because they would approve each individual package.

Mr. ROGERS of Florida. On a case-by-case basis?

Mr. GOODRICH. When the packer first starts using the package, before he can use it in an inspected establishment, he has to submit it to the inspection authorities here in Washington and obtain advance approval for it.

Mr. ROGERS of Florida. Then that is a case-by-case basis, which is what you are trying to get away from. That is the very intent of this law, is it not?

Mr. GOODRICH. It would be advance approval for pattern of packages for all products to be approved in the future, so it is similar to what we have here.

Mr. ROGERS of Florida. You are saying it is similar to what you are asking for?

Mr. GOODRICH. Yes, except they do it through an administrative examination of the package itself, and we are required to act through public hearing.

Mr. ROGERS of Florida. Do they set any regulation that—as a manufacturer comes in and submits it, do they have a regulation that applies to the whole industry?

Mr. GOODRICH. They have specific regulations and specific regulations on a product-by-product basis.

Mr. ROGERS of Florida. I understood you were trying to get away from this and did not want to have to do it in that way. I understand they look at it ahead of time, and you look at it after it is done. Is that the difference?

Mr. GOODRICH. The difference is we would have to prove the violation in court. They have the advance look at the package itself, with final say-so whether it is OK or not. There is a substantial difference.

Mr. ROGERS of Florida. Do they go to deception or confusion, or must it be false or misleading?

Mr. GOODRICH. I would rather leave the details of that to them.

Mr. ROGERS of Florida. It is my understanding that their law goes to false and misleading, which is what your law presently states you have. But you say that is not sufficient. I think this is rather an important point, Mr. Chairman, that the Department of Agriculture probably should be called in so we can straighten this point out. Because, Mrs. Peterson, isn't this one of the major cost items to the consumer for their grocery bills, meat and meat products, and poultry?

Mrs. PETERSON. It is a big item, but it is covered. The way the meat is packaged today by the individual stores, for example, where you have a unit price, you can figure out the differences. The practice is very helpful to us.

Mr. ROGERS of Florida. I thought I read some of your remarks where you were not pleased with the way some of the meats were packaged.

Mrs. PETERSON. I was talking just now about the way it was priced. When you have the unit price on the meat, that is helpful. The subject you are talking about is another complaint, and that is when you cannot see if you are buying meat or bone or fat.

Mr. ROGERS of Florida. Evidently you are not handling this problem.

For the benefit of the consumer, I understand in bacon sometimes they package it and some of the bacon stops right after the window of the package, and some of it goes the length of the packaging. Are you excluding all of this?

Mrs. PETERSON. It is excluded from this bill.

Mr. ROGERS of Florida. Do you think this is a good idea?

Mrs. PETERSON. I do not know if it should come in this bill, because I do not know the legal jurisdictions.

Mr. ROGERS of Florida. I don't want to embarrass you.

Mrs. PETERSON. I don't know the legal aspects of where the authority for regulating such practices should reside.

Mr. ROGERS of Florida. Don't you think, if we are going to do it for all of the others, should we not get to this problem too?

Mrs. PETERSON. I think this is a good first step in this bill.

Mr. ROGERS of Florida. Would you not recommend that meats or poultry be covered?

Mrs. PETERSON. I think they are covered.

Mr. ROGERS of Florida. If the consumer is——

Mr. CARTER. Would the gentleman yield?

Mr. ROGERS of Florida. I yield.

Mr. CARTER. I doubt if the gentleman from Florida has been to the meat market lately. On each package the type of meat is labeled, the number of pounds and ounces, and also the price per pound, and the total price per package. I really think they are doing quite a good job.

Thank you for yielding.

Mr. GILLIGAN. Isn't that all you are driving at?

Mrs. PETERSON. No, there still is more authority needed as in the section 5(d) where, in certain product lines, there is a great proliferation.

Mr. GILLIGAN. If we get into the elimination of proliferation you are going to standardization, which is what Mr. Curtin was talking about.

Mrs. PETERSON. Let's go back to section 5(d) of the bill. You are only going to use this on weights and quantities when, first, there is a finding and a showing that there is so much proliferation that one cannot make reasonable price comparisons.

Mr. GILLIGAN. Are the reasonable price comparisons made by having available to you the net contents so you can divide that into the price and come up with a unit price——

Mrs. PETERSON. That does help.

Mr. GILLIGAN. Or is it made in terms of the sizes of the packages?

Mrs. PETERSON. If there is a great proliferation you may have to look at 20 different weights or quantities. It would be difficult for the consumer. However, this bill S. 985 does not regulate sizes or shapes of packages.

Mr. GILLIGAN. Then we are no longer talking about price comparison. We are not talking about so much per ounce but we are talking about the proliferation of sizes which means standardization. You are either aiming at that or you are not.

Mrs. PETERSON. In some of those areas it does come to cutting down the number of weights and quantities to a reasonable range.

Mr. GILLIGAN. Then I think the answer on this to Mr. Curtin is "Yes, we are looking for standardization in some areas."

Mr. RANKIN. With safeguards.

May I add that there are safeguards set forth in the bill?

On pages 8 and 9 of H.R. 15440, line 19 on page 8:

No regulation promulgated pursuant to subsection d(2) with respect to any consumer commodity may—

And then if we go to line 18 on page 9:

preclude the use of any package of particular dimensions or capacity customarily used for the distribution of related products of varying densities except to the extent that it is determined that the continued use of such packages for such purposes is likely to deceive consumers.

That determination would have to be through the hearing process, so while the bill does provide for——

Mr. GILLIGAN. Who would make the final decision?

Mr. RANKIN. Either the Federal Trade Commission or the Food and Drug Administration, depending on the commodity.

Mr. GILLIGAN. We already have the statement from Mrs. Peterson that this proliferation of packaging sizes is deceptive and misleading. It makes it more difficult for the housewife or householder to determine what they are buying, so the case has already been decided.

Mr. RANKIN. The bill requires that the determination be made following a hearing on the record.

Mr. DIXON. On that point, Mr. Curtin and Mr. Gilligan, we have pretty well endorsed the Senate bill. We have come here and we have said we would support certainly the Senate version of the bill.

Now what did the Senate pass and what did they mean? We are supporting what they passed and what they mean. It is very simple and they say right here in the report, it says with respect to subsection 5(c)(1) that you are talking about authorizing the establishment of standards for label characterizations of size such as small, medium, and large, for example, where the promulgating authority found that there was significant variation in the use of such characterizations among competing products, the authority could establish uniform standards for small, medium, and large packages in that commodity line.

Now that is the answer to it.

Mr. CURTIN. With all due respect, Mr. Dixon, I am interested in knowing whether you are supporting the provisions of the House bill.

Mr. DIXON. Yes, sir, and you have the identical language in the House bill on this point.

Mr. CURTIN. I will seek to pursue that further in a minute, but I would like to ask Mrs. Peterson another question first as a result of her answer to a previous question.

Mrs. Peterson, if as I understand it your main purpose is to see that the housewife or the ultimate consumer of the product is not deceived

as to the quantity or ingredients that is in a container, why do we need this bill, because we already have laws to cover that situation.

Mrs. PETERSON. I think Chairman Dixon again has answered that pretty adequately.

Mr. CURTIN. I would appreciate it if you would answer it.

Mrs. PETERSON. I think, as he has pointed out, one has to go in on a case-by-case basis. If it were possible to do this on product lines on a quantity basis only where necessary and set rules for the industry, it would be much better for all, both producer and consumer.

Mr. CURTIN. Chairman Dixon, what is your understanding of the situation where a large producer, or a small producer, puts a new product on the market in a new and distinct type of package and perhaps also for a whole new product.

Does he have to come to your Commission or to the pure food and drug agency, depending on the type of product, before he can put that new package and/or new product on the market for you to determine whether or not that is a package or a product that does not deceive the public?

Mr. DIXON. He does not have to but if he wishes to come under our announced policy of seeking an opinion, he can do so.

Mr. CURTIN. How long would it take him to get such a decision?

Mr. DIXON. Depending on what we are asked, I think he could get it very quickly.

Mr. CURTIN. What is very quickly?

Mr. DIXON. In this respect I don't think it would take very long for someone to give him advice.

Mr. CURTIN. How long is very long?

Mr. DIXON. I would say we ought to be able to do it if he would do his part and be above board within a week or 2 weeks.

Mr. CURTIN. You referred, Mr. Chairman, to section 5(c) (3) of the House bill. As I mentioned before, it seems to me that the joker in that section are the words "customarily used." If we have a new package or product, it would not be "customarily used" until it had been on the market for some time.

Isn't that a section where the so-called exemption from restrictive features of the bill does not mean anything?

Mr. DIXON. I think so. The cents off problem—I cannot let it pass. I know this committee, as well advised as you are on antitrust, that we have a law that says it is against the law for you to enforce or enter into an agreement vertically as to what you are going to charge for a price.

So if the manufacturer then puts on that can "6 cents off," he has no authority, except by violating the law, to guarantee that. So, he is going to get caught one way or the other and he is playing with dynamite.

Mr. WATSON. If you believe that strongly, why have you not filed suit against them? You have that authority now. Why have you not filed in the interest of protecting the public?

Mr. DIXON. I am glad you asked me that. We are right in the middle of a suit on cents off on coffee. We have had a public hearing and we are trying to make a determination right now either by guide or by rule to give some guidance in this to this industry.

Now when this bill was first conceived in the Judiciary Committee and I believe originally in the Commerce Committee of the Senate, cents off was in the mandatory part of the bill.

In addressing myself to that, I suggested to the committee that it might be better to put it in the discretionary part of the bill because it was conceivable that this could be done without violating antitrust and it could be competitive and not confusing.

For instance, if I was the first and only producer of a product and I had put it on the market and had established the usual and customary price, even through suggestion, and that could be established by testimony, then if I started a campaign of promotion and said now on this I will give you 6 cents off and he puts it on here and it is suggested and the retailer also follows that down to the letter of the law, then this could be a competitive tool.

But if there are 10 or 12 products on the market and then immediately as a defensive measure, his competitor adopts the same thing and then all 12 do it and then during the year there are 6 price changes but that 6 cents off may stay there all the time, what does it mean?

We are wrestling with that problem right now.

Mr. WATSON. When did you institute that proceeding?

Mr. DIXON. We addressed ourselves to cents off in coffee.

Mr. WATSON. Get back to my question, Mr. Chairman. When was it instituted?

Mr. DIXON. About February or March and that record was——

Mr. WATSON. I do not want to presume too much on my colleague's time, but this has been in effect for many years; has it not?

Mrs. PETERSON. Yes.

Mr. CURTIN. One other question, if I may ask it before we adjourn, and I will be very brief.

We all seem to be agreed, Mr. Chairman, that we presently have laws against deceptive advertising. We presently have laws against not putting on a label what is in the package. We currently have laws requiring that the package indicate somewhere on it the contents of that package, so it would seem that pretty nearly everything that you seek in this bill is already covered by existing legislation.

Now, do I understand it, your only reason for this bill is you want to remove these problems from a case-by-case category?

Mr. DIXON. No; just for the sake of legislation, if I were legislating, I would not come up here and say this is an exercise in futility. I say this does give the enforcement agency a mandate, a direction, a clear expression by the Congress that this is an additional approach that you should take on these specific points enumerated in this bill.

It is very clear that this neither superseded nor does it do any more than supplement in this saving section of the two bills we are talking about, the present jurisdiction of the Federal Trade Commission.

So we are still left with the arsenal of remedies that Congress promulgated but this would be an additional expression by the Congress and it has addressed itself to problems that heretofore we at the Federal Trade Commission have not been too active in.

Mr. CURTIN. What problem have you had in which you have not been too active? And is that inactivity because you have not enforced existing law or because there has been no law for you to enforce?

Mr. DIXON. I read in my statement the other day several cases in this area where we have proceeded case by case. It could be said that we have proceeded many times.

For instance, in the past, we have 3 and 2 for 1 and 3 for 1—all kinds of promotions—that we have found deceptive in certain cases, but we have not proceeded generally across the board nor attempted to do so on just a cents-off basis as such.

Mr. CURTIN. Getting back to my quesion, is it that you want this legislation—although there would seem to be existing legislation to cover practically everything in the bill—so that you can take the enforcement of violations out of the case-by-case category?

Mr. DIXON. This legislation also has a different statutory basis which we don't have because, as I read to you, in addition to deception, it also has to facilitate price comparisons.

This may not be deceptive to anyone if you could quickly transmit these mixtures of pounds and ounces and make the comparison.

It may not if you are that smart. Still even if it is true, it can be confusing.

Mr. CURTIN. Is that the only new concept in the bill then?

Mr. DIXON. It is fundamentally one thing different laced through the act.

Mr. CURTIN. Except for that we have existing law?

Mr. RANKIN. Not in the food and drug law.

Mr. CURTIN. What is not in the food and drug law?

Mr. RANKIN. The new authority that would be provided to the Food and Drug Administration not provided in existing law would be authority to control the proliferation of different package sizes, subject to procedural safeguards which permit resort to voluntary standards.

Mr. CURTIN. Now, we are getting back to standardization of packaging again.

Mr. RANKIN. Also authority to bring order into package labels for large, jumbo, and so on and the authority to define what constitutes a serving and to control cents-off promotion——

Mr. CURTIN. If I can interrupt you at that point—do you mean we don't have any law about what constitutes a serving?

Don't you think that if a package says on the outside that it is a serving for 10 people and if there are only 3 peaches in the can that that is deceptive?

Mr. RANKIN. No question about that but if there are 13 or 14 or 15 peaches in that 10-serving package, we have no authority to say which constitutes a serving.

Mr. CURTIN. If there are only 3 peaches and it says 10 servings you can take care of that under existing law. If there are 13 peaches in the container and it says 10 servings, then someone downtown will determine what constitutes a serving rather than the person who manufactures the product; aren't we always going to have problems with that question?

Mr. RANKIN. Again there are procedural safeguards. Where the consumer is liable to be deceived and the promulgating authority concludes that in order to avoid deception it is necessary to establish what constitutes a serving, then by the hearing process and based on the evidence of record, we may determine what constitutes a serving.

Mr. CURTIN. Someone is going to have to determine the size of a serving and that depends on how big the appetite is and the likes of the fellow making the decision.

Mr. RANKIN. I have not had time to cover additional authorities but I will stop in view of the time.

The CHAIRMAN. Mr. Jarman.

Mr. JARMAN. Because of the lateness of the hour, I will reserve questions until the return of the panel.

Mr. FARNSLEY. The chairman ruled the other day it was all right for me to make a 5-minute speech unless you object that is what I will do.

I apologize first to Mr. Rogers of Florida for assuming that I knew more about meat grading than he did. It turned out he knew a lot more than I knew about it.

It shows how ignorant a consumer can be. I had been walking around on cloud 7 assuming the Government had been grading all my meat.

Getting back to weights and measures, as we talked about them yesterday, the Government has tried to set up weights and measures and the common law says caveat emptor, let the buyer beware.

I can beware of what I can see or pinch or smell but I cannot beware when it is inside a can or a box. I am sure you are helping me penetrate that can or box. It is very important to poor people that they know about the things inside of cans and boxes.

As I pointed out yesterday they used to have a friendly clerk to help them. If they did not trust him they would not go back. There is no use changing supermarkets—you cannot tell the difference. All I can say is thank you, God bless you, and good afternoon.

The CHAIRMAN. I might say to the panel, we will not require you to come back tomorrow. If you all can come back at a later date we shall appreciate it.

We will proceed with other witness tomorrow.

The committee stands adjourned until tomorrow morning at 10 o'clock.

(The following letter was subsequently submitted by the Federal Trade Commission in response to Congressman Paul Rogers' request:)

FEDERAL TRADE COMMISSION,
Washington, D.C., September 6, 1966.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: During the course of my testimony at the hearings before your committee on H.R. 15440 and S. 985, both of the 89th Congress, Congressman Paul G. Rogers of Florida requested that I summarize the procedures followed by the Commission in prosecuting the laws which it administers.

These procedures are set forth in detail in the Federal Trade Commission's Organization, Rules of Practice, and Statutes, copies of which are being sent to you under separate cover for distribution, if you so desire, to members of the committee. However, I shall attempt, as succinctly and briefly as possible, to comply with Congressman Rogers' request.

The basic or principal authority which Congress has granted to the Commission is enforcement of section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)). As you know, this section merely states: "Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful."

Investigations and inquiries by the Commission to determine whether there are violations of this section, or of any other law administered by the Commission, may be originated upon the request of the President, Congress, governmental agencies, the Attorney General, upon complaints by members of the public or by the Commission upon its own initiative. No particular forms or procedures are required to request such investigations. The only limitation as to investigations, other than those imposed by statute (i.e., the Commission has no jurisdiction over banks), is that the Commission does not initiate investigations, or take actions, upon alleged violations which relate to a private controversy and which do not tend to affect the public adversely.

The Commission encourages voluntary cooperation in its investigations, but where the public interest requires, the Commission may, in any matter investigated, invoke any or all the compulsory processes it is legally authorized to use. Any person under investigation, who is compelled or requested to furnish information or documentary evidence, is advised with respect to the purpose and scope of the investigation.

The Commission may issue subpoenas directing any party to appear before a designated representative of the Commission at a particular time and place to testify or produce documentary evidence or both, relating to any matter under investigation. The Commission also is authorized to conduct investigational hearings (which are to be distinguished from hearings in adjudicative proceedings). Any person compelled to testify in an investigational hearing may be accompanied and represented by counsel in the manner prescribed in the Commission's Rules of Practice.

Under section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)) the Commission, whenever it has reason to believe that any party is violating section 5(a) of the act and it appears to the Commission that a proceeding by it in respect thereto would be in the interest of the public, is authorized to issue a complaint against the party.

However, where time, the nature of the proceeding and the public interest permit, the Commission serves a notice upon the party of the Commission's determination to institute a formal proceeding against him and with such notice, it sends a form of the complaint which the Commission intends to issue, together with a proposed form of order to cease and desist. Within ten days after the service of the notice, the party may file with the Secretary of the Commission a reply stating whether or not he is interested in having the proceedings disposed of by the entry of a consent order. If the reply is in the negative, or if no reply is filed within the specified time, the complaint will issue and be served in accordance with the rules of the Commission. If, on the other hand, the reply is in the affirmative, the party will be offered an opportunity to execute an appropriate agreement for consideration by the Commission. The party may appear personally or be represented by proper counsel.

The adjudicative proceedings of the Commission are commenced by the issuance and service of a complaint. The rules of the Commission set forth what must be contained in the complaint, including a requirement that it give notice of the time and place of hearing, which time shall be at least thirty days after service of the complaint.

Where the respondent can make a reasonable showing that he cannot file a responsive answer to a complaint based on the allegations contained therein, he may move for a more definite statement of the charges against him before filing his answer; such motion must be filed within ten days after service of the complaint and shall point out the alleged defects in the complaint.

The respondent named in the complaint has thirty days after service of the complaint to file an answer to the charges contained therein; the Commission's rules set forth what is to be contained in the answer. Should the respondent elect not to contest the allegations of fact set forth in the complaint, he files, in effect, an admission answer, which constitutes a waiver of hearings as to the allegations of the complaint and it, together with the complaint, provides the record on the basis on which the hearing examiner shall file an initial decision.

If the answer is a denial of the allegations of fact contained in the complaint, the "case" then is heard by a hearing examiner of the Commission.

The hearing examiner acts, in a sense, as a trial judge; generally speaking, all motions concerning the case are addressed to him and he makes a ruling thereon. Under certain circumstances, as set forth in the rules of the Commission, interlocutory appeals may be made to the Commission from such rulings.

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During the hearings, counsel supporting the complaint has the burden of proving the allegations contained in the complaint.

Within ninety days after completion of the reception of evidence in a proceeding or within such further time as the Commission may allow by order entered in the record, the hearing examiner files an initial decision which includes a statement of (1) findings (with specific page references to principal supporting items of evidence in the record) and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, and (2) an appropriate order.

Any party to a proceeding may appeal an initial decision to the Commission, or the Commission itself on its own initiative may place the case on its own docket for review.

Upon appeal from, or review of, an initial decision, the Commission will consider such parts of the record as are cited or as may be necessary to resolve the issues presented; and in addition will, "to the extent necessary or desirable, exercise all the powers which it could have exercised if it had made the initial decision." In rendering its decision, the Commission adopts, modifies or sets aside the findings, conclusions and order contained in the initial decision, and includes in its decision a statement of the reasons for its action.

Any party required by an order of the Commission to cease and desist, may obtain a review of such order in a circuit court of appeals of the United States, within any circuit where the method of competition or the act or practice in question was used or where such person, partnership, or corporation resides or carries on business, by filing in the court, within sixty days from the date of the service of such order, a written petition praying that the order of the Commission be set aside. Upon the filing of the petition, the Commission files with the court a record of the proceeding.

The appellate court has the power to enter a decree, affirming, modifying or setting aside the Commission's order and enforcing the same to the extent that it affirms the Commission's order.

The statute (15 U.S.C. 45(c)) provides that "The findings of the Commission as to the facts, if supported by evidence, shall be conclusive."

The judgment and decree of the appellate court is final except that it shall be subject to review by the Supreme Court upon certiorari, as provided in section 240 of the Judicial Code.

When an order to cease and desist of the Commission becomes final, either by failure to appeal within the time prescribed by the statute or through affirmance by court action, and it is violated, the respondent is subjected to a fine of $5,000 per day for each violation (15 U.S.C. 45(1)) which is recovered by a civil action brought by the United States. Furthermore, if an order of the Commission is affirmed and adopted by an appellate court, so that the order of the Commission becomes the order of the court, a violation thereof would constitute "contempt of court."

In addition to the "consent" and "adjudicative" procedures which I have attempted to outline, the Commission, when it has information indicating that the party is engaging in a practice violative of a law administered by the Commission, may, if it deems the public interest will be fully safeguarded thereby, afford such party the opportunity to have the matter disposed of on an informal nonadjudicatory basis. In making this determination the Commission considers (1) the nature and gravity of the alleged violation; (2) the prior record and good faith of the parties involved; and (3) other factors, including, where appropriate, adequate assurance that the practice has been discontinued and will not be resumed.

Also the Commission seeks, wherever possible, by various methods to prevent being required to employ its formal procedures in order to prevent the continuation of acts or practices which may violate any of the laws it administers.

One of the methods is to permit any party to request advice from the Commission as to whether a proposed course of action may violate any of such laws. It is the Commission's policy to consider such requests, and, where practicable, to inform the requesting party of the Commission's views, which will bind the Commission, so that if it changes these views, it will notify the inquiring party and give him an opportunity to conform with the new views. However, a request is considered inappropriate (1) where the course of action is already being followed by the requesting party, (2) where the same or substantially the same course of action is under investigation or is the subject of a current proceeding

by the Commission against the requesting party, (3) where the same or substantially the same course of action is under investigation by another governmental agency against the requesting party, or (4) where the proposed course of action is such that an informed decision could be made only after an extensive investigation.

Another method is that the Commission issues "Guides" which "are administrative interpretations of laws administered by the Commission" and have as their purpose guidance of not only the Commission's staff, but also of businessmen in evaluating certain types of practices which may be violative of laws administered by the Commission.

Still another method is the issuance by the Commission of "Trade Practice Rules" which are designed to eliminate and prevent, on a voluntary and industrywide basis, trade practices which are violative of such laws. They seek to interpret and inform businessmen of legal requirements applicable to practices of a particular industry, and thus provide the basis for voluntary and simultaneous abandonment of unlawful practices by industry members.

The rules of the Commission (Sec. 1.63 of the Commission's Rules of Practice) state that for the purpose of carrying out the provisions of the statutes administered by it the Commission "is empowered to promulgate rules and regulations applicable to unlawful trade practices" (Trade Regulation Rules).

These trade regulation rules "express the experience and judgment of the Commission, based on facts of which it has knowledge derived from studies, reports, investigations, hearings, and other proceedings, or within official notice, concerning the substantive requirements of the statutes which it administers."

They "may cover all applications of a particular statutory provision and may be nationwide in effect, or they may be limited to particular areas or industries or to particular product or geographic markets, as may be appropriate."

"Where a trade regulation rule is relevant to any issue involved in an adjudicative proceeding thereafter instituted, the Commission may rely upon the rule to resolve such issue, provided that the respondent shall have been given a fair hearing on the legality and propriety of applying the rule to the particular case."

We have merely attempted to "sketch" various procedures of the Commission.

If there are any inquiries which you or any member of your committee may wish to make concerning this letter or with reference to the Federal Trade Commission's Organization, Procedures, Rules of Practice, and Statutes, we will be pleased to attempt to answer them.

Sincerely yours,

PAUL RAND DIXON, *Chairman.*

(Whereupon, at 12:30 p.m., the committee recessed, to reconvene at 10 a.m., Friday, July 29, 1966.)

FAIR PACKAGING AND LABELING

FRIDAY, JULY 29, 1966

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to recess, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

We are continuing the hearings of fair packaging and labeling bills. As is our custom, we shall hear first from Members of Congress in order to facilitate their participation in other meetings.

Our first witness therefore will be our colleague from Pennsylvania, the Honorable John Dent. Mr. Dent, you may proceed.

STATEMENT OF HON. JOHN DENT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. DENT. Mr. Chairman and colleagues, I appear in support of H.R. 15440, the fair packaging and labeling bill, which is identical with S. 985, as rewritten by the Senate Commerce Committee, and my bill, H.R. 16163.

Agitation for consumer protection in the area of packaging has been going on for some years. Both the Kennedy and the Johnson administrations have made strong statements in favor of fair labeling and packaging legislation.

On March 21, of this year, President Johnson sent a special message on consumer protection to the Congress. He said:

> The consumer's interest is the American interest.
>
> In guarding it, in promoting it, we improve the lives of every man, woman and child in our nation.
>
> Consumers are all people—the worker, farmer, the businessman, and their families * * *.

President Johnson then urged Congress to enact fair labeling and packaging legislation. He elaborated on his position as follows:

> American industry has made enormous strides in providing attractive and informative packaging. American manufacturers maintain one of the highest standards of quality in the world. They know that packages which accurately and fully describe their wares are the best salesmen.
>
> Nevertheless there are instance of deception in labeling and packaging. Practices have arisen that cause confusion and conceal information even when there is no deliberate intention to deceive. The housewife often needs a scale, a yardstick and a slide rule to make a rational choice. She has enough to do without performing complicated mathematics in the stores.

In addition, the distinguished Committee on Commerce of the U.S. Senate explained the background and need for such legislation as follows:

> More than 8,000 promotionally designed packages now compete for the consumer's dollar, where 20 years ago only 1,500 confronted him. In the interim the package on the supermarket shelf has acquired, by default, the informational functions formerly performed by the friendly—or at least familiar—retail clerk. But this informational function has come into increasing conflict with the package's role as its own most enthusiastic advertisement and promotional device. And information has too often suffered at the expense of promotion.
>
> If the consumer is to be capable of making informed choices in today's supermarket, then it is necessary not only to protect him from deliberate frauds and deceits but to require affirmatively that the relevant information be presented on the package in a coherent and meaningful form and with reasonable uniformity. Moreover, if the consumer is to be able to perform his primary market function of rewarding the efficient producer, then competing commodities must be packaged in such a way as to facilitate clear and easily computed price comparisons.

Briefly, H.R. 15440, would require that:

(1) The labeling of a product contain the name of the product and its producer.

(2) The label contain a separate statement of net quantity of contents, expressed in ounces if less than 4 pounds or 1 gallon. Even pounds, pints and quarts also may be so designated.

(3) No qualifying words or phrases may be used in conjunction with statement of contents.

(4) The statement of contents must be in conspicuous and legible type, uniform in type size and location.

Administering agencies would be given discretionary power to issue regulations on a commodity-by-commodity basis in the following areas:

(1) Definitions of servings.

(2) Use of qualifying adjectives, such as small, family, medium, large, etc.

(3) "Cents off" statements.

(4) Ingredients and composition of consumer commodities.

And finally, when the regulating agencies find that so many weights and quantities in retail distribution of a particular commodity make price-per-unit comparisons difficult, then action would be started to establish standards.

However, such standards are to be determined through voluntary procedures, based upon industry-consumer cooperation. A product-standards committee, composed of representatives of manufacturers, distributors and consumers, and appointed by the Secretary of Commerce, would have 18 months to devise voluntary standards. If agreement could not be reached by such a committee, then a larger representative group, the FDA or FTC, as the case may be, could issue mandatory regulations.

Mr. Chairman, I believe that H.R. 15440 is a good bill, worthy of your considered attention.

Furthermore, in the interests of the vast consuming American public, I urge prompt approval of H.R. 15440 by this committee and subsequently by the House.

The CHAIRMAN. Thank you for your testimony, Mr. Dent.

Mr. DENT. Thank you for the opportunity, Mr. Chairman.

The CHAIRMAN. If there are no questions we shall continue by hearing our colleague from the State of Michigan, the Honorable Billie Farnum. You may proceed Mr. Farnum.

STATEMENT OF HON. BILLIE S. FARNUM, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. FARNUM. Mr. Chairman, on June 9, 1966, the Senate, by an overwhelming majority, passed the Fair Packaging and Labeling Act (S. 985). The President has praised this bill as one of the most important pieces of legislation before the Congress this year and one that will benefit every housewife and consumer in this Nation.

Mr. Chairman, a companion bill, H.R. 15440, introduced by our distinguished colleague, the gentleman from West Virginia, Mr. Staggers, is now before the Interstate and Foreign Commerce Committee. It differs in a number of important respects from H.R. 12759, the Fair Packaging and Labeling Act, which I introduced in February of this year. In general, it is not as strong a bill in that it has fewer mandatory provisions, which I will detail later in my testimony. In certain respects, however, I must agree that it is more definitive. Notwithstanding my preference for my original proposal, I wish to say that I support H.R. 15440. It accomplishes most of my objectives in the consumer's interest and it had such unanimous acceptance in the other Chamber that it should have a good chance of passage. I do not want to see another year go by without a packaging and labeling bill, and I hope that all possible steps will be taken to expedite action on it so that, as the President has requested, it will become law in this session of the Congress.

I want to take this opportunity to express my admiration for the outstanding leadership and the diligence of my good friend, the senior Senator from Michigan, Hon. Philip A. Hart, who first introduced this legislation almost 5 years ago. His patience and his untiring efforts—despite many discouragements—have finally borne fruit in this big step toward improvements in the packaging and labeling of consumer goods.

All of us are consumers. All of us shop for hundreds of different articles in a year, and we select from among thousands. Most times, we must select them on our own, off a supermarket shelf, with only a printed label to guide us.

American industry has been ingenious in developing attractive and useful packages for these necessities. Most of these packages are clearly labeled as to their contents and their weight and there is no intent to deceive or mislead the consumer. But there are exceptions. The laws on the statute books—the Federal Food, Drug and Cosmetic Act, for example—punish outright fraud and deception and lay down certain requirements for accurate information. But as we all know, there are many improvements that can and should be made in labeling and packaging to facilitate easy and efficient comparison shopping. Accurate consumer judgment between competing brands can only be made if the consumer has easy access to all the essential facts. But we often have to hunt to find the pertinent facts on a label. We must

turn the package or the bottle over and around to discover how much it weighs and, once we do find that line on the label, the print is often so small that we cannot read it.

Where every penny counts it is most important that we get the best value for our money. For families with very small incomes, like those on the welfare rolls, and for those whose incomes are fixed, like many of our senior citizens, these margins make a real difference. They cannot afford waste. Yet waste is what results today when the shopper is unable to compare to get the maximum value. A careful shopper must be able to compare prices between containers of different sizes and weights, some stated in fractions of pounds, others in fractions of pints and others in odd ounces. As the busy housewife pushes her cart up the supermarket aisle, she does not have the time to do the elaborate calculations which are necessary to convert prices into cost per ounce as per pound. Moreover, she can easily be confused by various come-ons which at best are often semideceptive. I refer to offers of cents off or the implied economies of bigness labeled "jumbo," "giant," and "economy." If she took time to calculate all the costs per ounce, she might find that the "giant economy size" costs more per ounce than the "large" size.

H.R. 15440, the fair packaging and labeling bill would eliminate much of this unnecessary confusion. It would require that every package have a label that clearly states the contents of the container and the name of the manufacturer or distributor, and, in a separate location on the principal panel, the net weight, without any adjectives or qualifying phrases like "big gallon." Moreover, it must be in type sufficiently large and distinct to be easily read. This is a good, strong, clear provision. It makes the statement of net weight mandatory, which my proposal did not. I think this is definitely an improvement. It is a clear, strong "weights and measures" bill.

And the mandatory provision would help with what I call consumers' arithmetic. It requires that if a package weighs less than 4 pounds or contains less than 1 gallon, its net weight must be stated in ounces, unless it is in whole units. For example, if a bottle contains 1 pint 8 ounces, the statement of net weight would read 24 ounces, and another with 1 quart 4 ounces would say 36 ounces, and the shopper would know that she was getting one-third more for her money in the larger bottle.

As I said, all of the provisions of section 4 are mandatory for packaged foods, household supplies, cosmetics, and other articles which are covered by this bill.

In addition, the FDA and the FTC, the agencies which would administer this act, are given discretionary authority to issue other regulations for certain commodities on a commodity-by-commodity basis. Included in this authority is the right to regulate the placement of "cents off" labels and other similar devices indicating that the price is lower than the customary price. This would have been mandatory under my proposal. Frankly, I preferred the outright prohibition of such "come-ons" because they are so confusing.

The agencies are also given authority to define descriptive sizes such as "large", "medium" and "small", to assure that they are not deceptive; to define "servings" so that the word will have some real meaning for the buyers and to require that the ingredients and composition be

stated on the label. Regulations may also be issued to prevent the distribution of any commodity in packages of sizes or shapes or dimensions which are likely to deceive customers. This is aimed at odd shapes, "slack fill" and so forth which makes it very hard to judge contents.

Mr. Chairman, this particular provision is not contained in S. 985, as enacted by the Senate, but I regard it as very useful and very important. I commend Chairman Staggers for reinserting this provision in his bill, and I hope it is retained.

I want to emphasize that in all of these matters of labeling, regulations would only be issued where it was determined to be necessary to prevent the deception of consumers or to facilitate price comparisons.

This legislation also tackles the problem of confusion brought about by a proliferation of packages in so many varying sizes. You have only to look at the arrays of instant coffee, powered soaps and detergents or potato chips, for instance, to understand this problem. Yet it is clear that this multitude of package sizes is not essential to competition or to good marketing. For canned fruits and vegetables, for example, there have long been standard-size cans which make it possible for a shopper to compare the price of a No. 2 can of tomatoes of one brand with another and easily see which is cheaper. She may decide to pay more for her favorite brand, but at least she has a clear basis for choice. However, there are product lines where it is extremely difficult for a shopper to make a clear price comparison. In such cases, for a particular commodity, the administering agencies may move to set up a standard range of container sizes.

The bill provides a procedure for this action to insure that all considerations are weighed carefully and that there are no arbitrary actions. First, the agencies must publish their findings of need and their proposals for container sizes. The industry then has an opportunity to formulate and adopt voluntary products standards under procedures now in use at the Department of Commerce. Producers, distributors, and consumers would be represented on a working party to develop a consensus on a suitable range of sizes. Thus the industry, with others concerned, could develop its own standards, with all the advantages of their own technical know-how.

This bill does not say that bottles or packages must all be alike. They can be different shapes and sizes, as long as they are not deceptive. But it does say that, if the industry so decides, potato chips will be marketed in packages weighing, for example, 6 ounces, 12 ounces, 1 pound, and 2 pounds, or whatever else is reasonable.

Mr. Chairman, this seems to me to be a very ingenious and useful proposal. It permits the industry on its own initiative to help the shopper by making it easier to compare the cost of different brands of the same article. Yet it does not infringe in any way upon the ability to compete. The administering agencies would have to set standards only in cases where industry failed to act on size standards within a period of a year or a year and a half.

Mr. Chairman, I believe that H.R. 15440, if enacted, would represent a great gain for American consumers. It would recognize the great importance of packaging in this self-service era of American marketing, and facilitate the task of the housewife in her daily shopping. It would not alter existing authority under the Federal Food, Drug,

and Cosmetic Act, or the other acts under which the Food and Drug Administration, the Department of Agriculture and the FTC now operate. It represents an improvement and an extension of existing legislation. It would, however, set certain uniform ground rules for all packages and containers for the goods covered by the act, rather than to force these administering agencies to continue to act on a slow case-by-case basis to remedy abuses of the basic tenets of existing law.

Our laws which prevent fraud and deception are invaluable safeguards against unfair competition by a small minority in business. These laws must be strong and well enforced, and so worded that the enforcing agencies have a clear basis to attend to the deceptive practices of that minority. With uniform ground rules established by law for clear labeling, the majority of producers and distributors would know where they stand and would be protected from unfair competition by exaggerated claims on labels.

Mr. Chairman, I hope that this House will shortly have an opportunity to consider this valuable piece of legislation on behalf of consumers.

The CHAIRMAN. Thank you for your views Mr. Farnum. We appreciate your interest in this legislation.

We have one more Member to hear this morning, the Honorable William Moorhead, sponsor of H.R. 16014. You may proceed Mr. Moorhead.

STATEMENT OF HON. WILLIAM S. MOORHEAD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. MOORHEAD. Mr. Chairman, I want to express my appreciation to you and to the other distinguished members of this committee for providing me an opportunity to testify on H.R. 15440 and on my own bill, H.R. 16014, which is identical to the chairman's bill.

The fair and efficient functioning of a free market economy is based on the assumption that the consumer is informed.

It is true that the individual consumer has a responsibility to himself and to the free market economy to inform himself as fully as possible about the products he buys. It is also true that the manufacturer and distributor of those products has a responsibility to the consumer and to the free market economy not to deliberately mislead the consumer to make his task of informing himself more difficult or impossible.

There is abundant evidence that there have been labeling and packaging practices deliberately designed to mislead the consumer. This legislation would prevent such deliberately misleading practices.

Contrary to some of the horror stories written about the effect of this legislation, all it would do would be to make sure that labels of packaged consumer commodities provide adequate information to the consumer about the quantity and composition of the packages and to promote packaging techniques which make it possible for consumers to make intelligent price comparisons.

This legislation would not interfere with the fair and efficient functioning of a free marketing economy. Quite the contrary it could be a true fulfillment of the philosophy of the free marketing economy

by making all products more trully competitive for the consumer's dollar.

I urge you to give your prompt approval to this legislation.

The CHAIRMAN. Thank you for your concise testimony Mr. Moorhead.

Mr. MOORHEAD. I appreciate the opportunity Mr. Chairman.

The CHAIRMAN. As our next witness this morning we will have Mrs. Helen Nelson, consumer counsel, State of California.

Mrs. Nelson, would you come forward?

Mr. KORNEGAY. May I interrupt at this stage of the proceedings? I understand the administration witnesses will be back this morning. I conferred with you after 12 o'clock yesterday.

The CHAIRMAN. They will be called back later.

Mr. KORNEGAY. I have a number of questions in a number of areas that have not been covered.

The CHAIRMAN. You will be given an opportunity to ask them.

Mr. WATSON. I would like to say, Mr. Chairman, I have a number of questions, too.

The CHAIRMAN. Mrs. Nelson, you may proceed.

STATEMENT OF MRS. HELEN NELSON, CALIFORNIA STATE CONSUMER COUNSEL

Mrs. NELSON. Thank you, Mr. Chairman. For about 7 years I have served as California State Consumer Counsel by appointment by Gov. Edmund G. Brown.

As part of my responsibility I am charged with making recommendations on legislation on behalf of the consumer and it is in that capacity that I appear before your committee.

Also in that capacity I would like to take a second, Mr. Chairman, to thank you and the members of your committee for what you have done for consumers in the automotive safety bill.

I think this will make a considerable improvement to Californians. As you know we are great users of automobiles and we are grateful for the time that you gave to this difficult problem.

The CHAIRMAN. Thank you, you are very kind. I see that Mr. Younger, one of our gentlemen from California, has just come in.

Mr. YOUNGER. We are always glad to welcome Californians to this committee and they always discharge their duties in a manner which brings honor to and credit to our great State. You are no exception.

Mrs. NELSON. Thank you, Mr. Chairman. I shall try to carry on that tradition.

The CHAIRMAN. You may either put your complete statement in the record and summarize it if you care to.

Mrs. NELSON. I will try to summarize it and put in the full statement. I do now urge favorable action on H.R. 15440. I hope we will see it enacted in this session of the Congress.

(Mrs. Nelson's complete statement follows:)

STATEMENT OF HELEN EWING NELSON, CALIFORNIA STATE CONSUMER COUNSEL

My name is Helen Nelson. For about seven years I have served as California State Consumer Counsel, by appointment of Governor Edmund G. Brown.

This office was created at the request of Governor Brown by an act of the 1959 Session of the California Legislature.

One of the responsibilities I am charged with by that law is to make recommendations on legislation affecting the interests of the people of California as consumers.

I appear before you, Mr. Chairman, to urge that the Committee on Interstate and Foreign Commerce recommend to the House of Representatives passage of legislation that will serve to restore the family's right to buy their food and household needs in a business-like way. I urge your favorable action on H.R. 15440 (Staggers).

Enactment of this measure would signal that the Congress intends to reverse the decline in consumers' ability to make clear, intelligent and informed choices in the supermarkets of this country.

Adoption of this bill for fair and just packaging and labeling will be an act supporting a fundamental principle that has made our economy thrive. That principle is open and fair competition.

During my service as California's Consumer Counsel, consumers have increasingly insisted they cannot afford to lose the authority to compare products and prices in the supermarket.

It is estimated that California consumers last year spent $5,000,000,000 at the supermarket.

If because of our inability to compare prices due to packaging confusion, California shoppers made errors totalling as little as ½ of one percent of our supermarket purchases, our loss would amount to $25 million.

Chances for error due to packaging confusion are great in a typical supermarket with 6–8,000 items to choose from, many of them packaged in a jumble of odd weights and fractional quantities. As my office has already demonstrated, even experienced, university-trained housewives, when pitted against the task of choosing among 14 categories of packaged commodities, can fail dismally in their attempts to compare prices.

Our society is described as affluent—but are we so affluent that we can afford to let go, unabated, practices which may result in $25 million worth of poor choices by families in one state alone?

I do not think we are. The majority of families in our country have less than $500 a month take-home pay—out of which they are trying to pay for a house and car, feed and clothe themselves, buy medical care and insurance of all kinds, and pay for their children's education. For these families the management of their dollars at the supermarket is of consequence.

Reading the trade literature and the statements of industry representatives at legislative hearings on packaging and marketing of supermarket items, it is possible to get the impression that the purchasing of food and daily necessities has come to be regarded as a form of recreation for the consumer—fun and games for the family, rather than a business transaction to obtain some of the basic necessaries of life.

This is tantamount to arguing that the purpose of taking an airplane trip is to see a movie. If the airlines ever get to the place where their major effort is directed toward making movies instead of getting you safely across country, I am sure that Congress will lose no time in correcting their perspective.

I think the time has come to remind the manufacturers and marketers of food, household needs, drugs and other commodities with which this hearing is concerned that for us consumers the package is less important than the commodity inside it. What we want from the package is less dazzle and more data—information to enable us to know what we are buying, to compare prices before we buy, to recognize a price change when it occurs on our favorite product.

The right to know what we are buying, the right to compare products and compare prices, is fundamental in a free competitive economy. It is basic to every transaction between buyer and seller, whether they be a wholesaler and a retailer trading together, a retailer and consumer doing business with each other, or a farmer doing business with a processor. This right is generally upheld by laws and regulations throughout the channels of trade—up to the point where the consumer is the buyer in the transaction. And the breakdown has become almost complete where the consumer is the buyer and the seller is a packager.

On behalf of California consumers, I would gladly stipulate that it is just and proper that laws and regulations have made it possible for the food processor to buy from the farmer, not only by standards of quality but also by standard units of quantity: tons, hundred weight, bushels, gallons, pounds, etc.

I must also assert that it is just and proper for the consumer to have the same legal rights to necessary information and orderly marketing practices as the food processor has when he buys from the farmer.

In California, for example, State law or regulation has specified standards of quantity which farmers are required to observe in shipment to food processors for 19 fruits and vegetables. For the record, I have brought a report by the California Department of Agriculture summarizing what agricultural products in California are required to be packaged in specified quantities.

The number of standard containers for one commodity ranges from two for lettuce to nine for grapes.

Apparently food processors, too, can get confused by odd sizes and an unlimited number of different sizes of containers. In California at any rate, they felt strongly enough about the undesirability of unlimited container sizes to work for legislation to limit the number and sizes of different containers of products they buy.

We consumers are now following their sensible lead in coming to you and asking you to extend that orderliness on through the distributive channels down to the supermarket so we, too, may do our buying in a marketplace of orderliness.

Traditionally, we have depended on the consumer to choose wisely and effectively. It is important to our economy that he be able to do so, if he is to reward with his purchases that manufacturer who serves him best, not that one who deceives him most cleverly.

I want to express my thank to you, Mr. Chairman, and to all the Committee members and the Committee staff for holding these hearings.

While we consumers feel our cause is just and perhaps our day has been too long in coming, we are mindful and deeply appreciative that the full Committee is giving more than a week's time and sitting into the month of August to hear this subject and to act on it.

AN EROSION OF RIGHTS

Our present weights and measures laws are derived from the assumption, true for centuries but true no longer, that the amount the consumer buys will be separated from a bulk of that item. They assume that the seller reaches in the bin and measures out a pound of rice, for instance. This is why our laws carefully and explicitly identify the weight, count or measure—the pound, the quart, the yard, etc.

Implicit in this basic assumption was recognition also of the consumer's right to examine the product and compare it with other similar products, his right to name the quantity he chooses to buy, and his right to compare prices. The consumer could exercise these rights when he bought from bulk.

Packaging has eroded the consumer's right to examine the product

Most packages today prevent the buyer from examining or even seeing the product. The time-honored right of comparing commodities for quality, size and type threatens to be lost forever unless packages are required to display enough information to let the buyer choose by comparing honest and sufficient facts.

If we cannot see the product, we need to find on packages clear, readable, accurate statements of ingredients and quantity. In many cases we may need to find a declaration of government grade of quality and a recognized standard of size. It is the package that serves as invoice on a sales transaction setting forth how much of what commodity is being sold by whom and for how much.

Packaging has eroded the consumer's right to name the quantity he chooses to buy

Today it is the packager, not the consumer, who determines the quantity. And what we are offered now in our markets are such quantities as 14-oz. packages of rice and 1 lb. 10 oz. packages of salt.

The economic bargaining power of unorganized consumers is too weak to stem the practice. Our economic bargaining power is no match for that of the highly concentrated grocery manufacturing industry. In its report on the grocery manufacturing industry, the recently released Food Marketing Commission report states:

"High concentration is found almost everywhere. The four firms achieving the largest sales volume in each dry grocery product category usually account

for more than 50 percent of total domestic sales. For example, it is estimated that the four largest manufacturers in 1965 sold 95 percent of the baby food, more than 90 percent of the soup, more than 55 percent of the coffee, 75 percent of the cake mixes, and 65 percent of the shortening. Among the exceptions are pickles, jams and jellies, and confectionery products, but the tendency toward high concentration generally prevails."

Poor packaging practices erode the consumer's right to compare prices

I want to make clear that it is not my position that price alone is the factor determining consumer choice in the supermarket. Many factors enter into the consumer's choice of one product over another. But price is one of the important factors.

I do not think it necessary to dwell upon the fact that it is difficult today to compare prices of packaged products. Testimony from previous witnesses and your own shopping experience (or that of your families and constituents) should establish the difficulty of comparing prices between one package weighing 5.2 ounces, for example, and another of 7¾ ounces.

This difficulty occurs on different package sizes of the same brand, as well as between competing brands.

The consumer, unable to discern the differences before buying, is unable to act as the "arbiter of the marketplace" and drive out the practice that is unfair to the businessman and to herself.

New! Painless price increase—the common practice, engaged in by packagers, of reducing the quantity while maintaining the same price, has proved an effective way of disguising from the public the rise in prices of certain commodities, primarily foods.

I would like to present to this committee two exhibits documented by my office. The product in both cases happens to be instant mashed potatoes.

In one instance, a national food manufacturer helped to conceal a price increase to consumers of 36.6% over a period of less than four years. Four changes in the package in which his product is sold have been documented by my office.

Date	Package price paid by Sacramento consumer	Quantity (ounces)	Price per pound
Prior to January 1962	$0.37	7.2	$0.82
In January 1962	.37	7.0	.84
In May 1964	.37	6.5	.91
In January 1965	.31	5.25	.94
In June 1965	.35	5.0	1.12

Though the quantity was less in each new package, each of these changed packages continued to announce on the label "8 servings."

Needed—a definition of "serving"

The conscientious housewife, trying to do a good job of managing her money in the supermarket, and faced with the frustration of comparing fractional quantities by the pound or ounce, may try to use the number of servings per package as a basis for comparing prices.

An example found during our survey of instant mashed potato offerings will illustrate the unreliability of "number of servings" on a package as a guide to comparing prices. It clearly points up the need for establishing and defining what is meant by a "serving" of a commodity.

Shopping in different communities, some of our consumer helpers reported they found two different 1-pound packages of a brand of Instant Mashed Potatoes. Both packages displayed a net content of 1 pound, both were priced the same—79¢—but one claimed to yield 20 servings, the other 25 servings.

Our home economist consultant compared cooking directions on the two different 1-pound packages and we discovered what we suspect is a kind of "Parkinson's Law" for the packaging industry: The number of servings a manufacturer can promise consumers in his package may be increased by the simple device of reducing the size of the serving.

What an easy way to gain a competitive advantage over one's business rivals!

A further example of this kind of hocus pocus can be seen by examining the 12 packages of instant mashed potatoes found in the Los Angeles supermarket:

Three of the packages claim to yield 8 servings each:

One promises 8 servings from its 7 ounces.

One promises 8 servings from its 6¼ ounces.

One promises 8 servings from its 5 ounces.

We asked our home economist consultant to calculate the amount of mashed potatoes we would actually get to eat from each of the 12 packages if we followed cooking directions on all labels. She figures the size of serving ranges from 3 ounces to 4.7 ounces. This is a spread of more than 50 percent.

When one manufacturer calculates the size of a serving 50 percent smaller than does his business rival, he takes an unfair advantage of his competitor—and of the consumer.

Needed—legally specified quantities in which common consumer products are sold

I urge this committee to recommend legislation to enable the establishment of legally specified quantities in which common consumer commodities may be sold. There is precedent for such authority to be allocated to government. I have already cited some from California's experience. There is evidence of need. I trust I have added to that evidence.

Why government?—the packaging industry has done much to improve its package labels. The cereal manufacturers particularly are to be commended. Yet experience is proving that the economic forces at work are such that industry cannot be sure their voluntary efforts will produce the needed solution.

Let me give you two final examples—illustrating why industry, no matter how well-meaning, can not guarantee orderliness in the marketing of packaged products by self-regulation alone.

A review of the quantities in which vegetable oil has been sold over the last five years illustrates how bad packaging, unrestrained, drives out the good.

A home economist who assisted us in a study of packaging recently was able to obtain 1961 and 1964 wholesale order books from a grocer to compare them with his 1966 order book.

As listed in the 1961 order book, vegetable oil five years ago was comparatively well packaged in standard quantities—pints, quarts, half-gallons and gallons. Of the 17 items available, only one was packaged in a non-standard quantity; but that one exception, left unrestrained, seems to have started a trend.

Three years later vegetable oil was caught up in the packaging explosion. Of 39 available items, 21—more than half—were being packaged in odd sizes. By 1964 oil was being packaged in such unheard-of-before quantities as 12 ounces, 14 ounces, 24 ounces, 38 ounces, 48 ounces and 96 ounces.

Today the proliferation of non-standard sizes for vegetable oil has reached a new high (new low, perhaps, is an apter term). Of the items listed in the grocer's 1966 order book, less than a third are being packaged in standard sizes. 25 of the 36 items available today are packaged in non-standard quantities. Vegetable oil today comes packaged in *seven* different non-standard sizes and only three familiar standard sizes.

In 1962, while making a test of how well consumers could compare prices, one of the 14 products we took observation on was canned dog food. At that time in the Sacramento store we shopped we found the following quantities of canned dog food:

	Number
1 lb	5
15 oz	4
15½ oz	3
1 lb. 10 oz	1
15¼ oz	1
Total	14

Last week we went back to this same store. Of one-pound cans we found *none!* Of those brands which were 15½ ounces four years ago, none are that much today. They are 15 or 14½.

The brand that was featured as on special weighed the least, 14½ ounces. To me, they all looked the same size.

What was particularly sad to me was that the last manufacturer to abandon the one-pound can (at least so far as observation of Sacramento store shelves reveals) was one of our great nationally respected meat-packing companies.

Neither tradition, nor honor, nor the power of a national name were enough to enable this company to buck the tide and "remain competitive".

Some basic traffic laws to govern commerce in the marketplace, applying equally to all participants, are necessary if we are going to restore and uphold order and fair dealing in the marketplace.

Mrs. NELSON. I feel very strongly that the enactment of this legislation will be a clear signal to the people, that the Congress intends to reverse the decline in the consumers' ability to compare prices and to make clear and intelligent choices in the marketplace.

I think the consumers are looking to the Congress to establish some traffic rules in the marketplace, so to speak.

The CHAIRMAN. I might say that we have another Californian on this committee. It seems we are sort of overloaded with Californians.

Mrs. NELSON. California has quite a lot of citizens.

The CHAIRMAN. I am sure they do but I am not sure about proportions.

Mr. VAN DEERLIN. Mr. Chairman, may I express my embarrassment? I expected to be here in time to present Mrs. Nelson to the committee. She has at least had the effect of starting the committee's meeting more promptly than has been the custom in the past. I have fallen into evil ways, and got here too late to introduce one of the brightest faces in our State government. But I am very happy to do so even tardily.

Mrs. Nelson, as I am sure she has explained, has been in her job since 1959, and I think will bring a fresh viewpoint—which I gather from the first 3 days of the discussions will be very welcome by the committee.

Mrs. NELSON. Thank you, Congressman.

I think that the adoption of H.R. 15440 would support in a way now very necessary the fundamental principle that has made our economy thrive. That is open and fair competition.

Since I have been serving in this job consumers have increasingly brought problems in this area to me as their spokesman and they are insisting that they can't afford to lose the authority to compare products and prices in the supermarket.

Statistics in the State government estimate that consumers spend about $5 billion a year in California in the supermarkets.

I would not attempt to make any estimate of how much they might save or how much they are losing but, as an illustration, if because of the confusion of packaging today they should lose only as much as one-half of 1 percent of what they spend in the supermarket, assume with better procedures, with easier comparisons they could save even one-half of 1 percent of what they are spending now, that in California alone would amount to $25 million a year.

So this is a matter of large amounts of money in our economy that we are considering here. Consumers, too, are becoming—are beginning to feel a little put upon by some of the attitudes expressed by some industry practices that for example the supermarkets are really a form of recreation for the consumers, where they go for fun and games.

This may be more true in California than some other places but we are playing horseraces, bingo, and lotto and all sorts of games in the supermarkets in California now.

Prices are rising to the despair of people who are living on fixed incomes.

I think that the people feel that the time is at hand now when we must try to make some basic rules in the marketplace so that we can enjoy the advantage, the many advantages of packages, because there are many, and still thread through this new innovation, this new technological development, thread through it some of our basic principles of free and open competition and fairness in everyday trade.

I think that is what we are trying to do now. It is not easy. I think you have gone a long way in this bill to lay the groundwork for enabling the responsible agencies in the executive branch to do a great deal to restore order in our daily market transactions.

I would point out that the right for everybody who is participating in a free, competitive economy to know what he is buying, to compare products, and to compare prices is very important.

In most of our transactions along the channels of trade, this is pretty well accomplished. When the retailer buys from the wholesaler, or the processor buys from the farmer, there are established units of measures which are common in the trade. In California, for example, the processors buy from our farmers in standard units in standard weights of tons or bushels (and they can compare and negotiate prices on the basis of these standard units.

I think that certainly this is just—just and proper. What is before you it is pretty much the fact that we consumers want to do our buying in the same business-like way.

As an illustration, in California where we have such a large agricultural industry, the food processors, the packers and the shippers have apparently discovered that it is confusing to work in odd sizes and in unlimited numbers of containers.

They have taken the logical course of coming to Sacramento to the State legislature and achieving legislation to specify the numbers of different sizes of containers in which most of our agricultural products may come to market.

We have established in California by legislation at the behest of food processors specified standards of quantity which farmers are required to observe in shipping to food processors 19 different fruits and vegetables.

I have brought for the record and I submit a statement that our department of agriculture has prepared setting forth the specified quantities which the California Legislature has enacted primarily to assist the food processors in our State to deal in standard units of quantity.

So there is a tradition for this and we consumers are, I think, at this point following their sensible lead and saying "Let's carry this standardization all the way through so that we, too, may buy with a greater ability to compare prices."

It is the standard units of quantity that will enable us to compare prices. That is why we are interested in establishing such standards.

Mostly, we are talking about updating our weights and measures law, as I see it. It has been a good 20 or 25 years since there has been

as thorough a review of our weights and measures law. In that 25 years, of course, a great many innovations have occurred.

Essentially our weights and measures laws are based on the assumption, still, which has been true until very recently, that the amount a consumer buys is separated from a bulk of that item, that the merchant reaches into the bin and measures out an amount and weighs it.

With the consumer saying give me a pound of that, the consumer naming the quantity, the consumer is able to look at it and see what he is buying. Having it priced per unit, because there would be no way or reason to price it any other way. For example rice would be priced by the pound.

This is essentially how our weights and measures laws have been constructed and operated for centuries. Now we have the problem of adapting them to the packaging situation.

As I see it, we are in the circumstance now where the package has to serve as the invoice in the transaction. It is the only document there is that passes from the seller to the buyer and that makes a commitment of what is being transferred.

There is no invoice as there is from the wholesale to the retail level or from the farmer to the processor. The only thing that can serve as an invoice, and I think a business-like buying it must be expected to serve as an invoice, is the package itself.

It says what is in it, how much is in it, how much it costs and who is selling it and that is typically what an invoice provides. I think for the consumer to know who is selling it is very important as is provided in your bill. The name and address of the processor, distributor, or manufacturer should be included because he is the person responsible, he is the person who is holding out the package claims and we should know who he is.

There is a theoretical alternative by which we might in some cases achieve some improvement in the consumer's capacity to compare prices. That is so-called economic bargaining. But I see no hope that the economic bargaining of unorganized consumers with the highly concentrated manufacturing industry can accomplish what needs to be accomplished to make it possible for consumers to compare prices.

As the Food Marketing Commission said in its very fine recent report, in its discussion of the dry grocery manufacturing industry, may I quote this?

> High concentration is found almost everywhere. The four firms achieving the largest sales volume in each dry grocery product category usually account for more than fifty percent of the total domestic sales.

The four firms usually account for the majority of the business in the dry grocery sales. The four largest manufacturers in 1965 sold 95 percent of the baby food. They sold more than 90 percent of the soup, more than 55 percent of the coffee, 75 percent of the cake mixes, and 65 percent of the shortening.

So we have a high concentration here on the seller side and a group of unorganized consumers on the other side. This is not a situation where the economic forces can bring order.

That is all the more reason why we are grateful to your committee for trying to construct order through the democratic processes.

I expect that you will receive a good deal of testimony about the difficulty that we find today in comparing prices. I want to present some myself, but I want to make clear that it is not my position that prices alone is the factor determining consumer choice in the supermarket. There are many factors that enter into a consumer's choice of a product, but price is certainly one of them and we ought to be able to consider price as one of the factors when we make our buying decisions.

Even if we have chosen a product and we like it, use it regularly, we still ought to be able to recognize when price changes occur in that one product.

I would like to demonstrate for you that we have difficulty today even in comparing prices of the identical package which is not really identical but we think it is.

Let me introduce Mrs. Morica Moore, a housewife and mother, who has volunteered to help me with some of these things.

Mrs. Moore is a resident here in Washington.

The important thing about this is not what particular brand they are, but we have been concerned with this problem in California for some little time and without really trying we have developed a chronological exhibit of changes in prices over a period of 4 years in the same product.

This particular manufacturer achieved a price increase of over 36 percent in less than 4 years by successively changing the weight of the package instead of increasing the visible price. These are all the same brand of instant mashed potatoes. We bought them in the same store. Assume they sit in the same place on the self. They are your favorite brand and you go and grab one and that is that.

The first one we bought prior to 1962 contained 7.2 ounces. The package cost 37 cents. This figured out to 82 cents a pound.

We kept on buying them. In January of 1962, the quantity went down to 7 ounces. The price remained the same, achieving a price per pound increase of 2 cents. The price per pound went up to 84 cents.

In May of that same year, the quantity went down to 6.5 ounces, sitting in the same place on the shelf, the same price, 37 cents. The price per pound by that time had gone up to 91 cents.

In January of 1965, they redesigned the package as you can see. It is quite a good bit wider, it is taller, but the quantity in it is now 5.5 ounces, and the price went down on the package, but not by the pound.

It went up again by the pound.

By June, another change in the package, down to 5 ounces, selling for 35 cents, figuring out to a price of $1.12 a pound—for instant mashed potatoes. The packages look very much alike—very much alike during all of these changes, but they have actually achieved a price increase from 82 cents a pound to $1.12 a pound.

Mr. FRIEDEL. Put all of those packages together, particularly the last one and the first one. They are taller. Are they the same width?

Mrs. NELSON. No, the last one is narrower and taller but it would sit this way on the shelf so it would look bigger.

We have been talking some about the cost of package changes. All of these package changes must have cost something and the consumer

paid for them. It might be, I would suggest, that we could save money by developing some standard units for selling some of these common products so that we don't have to pay the cost of all of these changes.

This is the same product, very highly advertised. The housewife decides this is her brand, she is going to buy it every time. While this was going on I was receiving mail from consumers saying, "For heaven's sake, what has happened to the price of potatoes." Potatoes in the produce department are sold by the pound and consumers were very conscious that potato prices were going up at the produce counter.

I was not getting the same kind of mail about the packaged product because it was much more difficult to detect the price rise. Consumers were just frustrated in stretching their money in the budget.

That is one example and it is not one of which we can be proud. It is not a very good example of open competition and good dealing between buyer and seller.

Another illustration of this same product but for a different reason—I should add every one of these packages after it was changed in the ways I have designated still read "serves eight." Every one of these packages claimed to provide eight servings. Although the quantities change markedly and they still carried the legend across the front of them "serves eight," which is another reason why the housewife would relax and continue to buy without questioning.

Mr. FRIEDEL. Was the weight included on each package?

Mrs. NELSON. Yes, and especially earlier it was inconspicuous and not on the principal panel but you could find it if you hunted for it in every one of those. It would have to be there to be on the market in California.

I would like to show you one of the problems that we have had. We have worked with voluntary consumers looking into what is on the market in a particular product once in a while. One day we asked about a dozen or so of our volunteer helpers to go to their markets and give us a record of what they found available in instant mashed potatoes all in 1 day.

So they went and recorded what they found and mailed it in to us. We started reading it. We thought that one or the other of the girls had made a mistake because one of them reported finding both of these packages. This package is a 1-pound package well labeled, serving 20.

This package is identical on the front side except it says 1 pound, 25 servings. It is the same quantity, same packager. He just changed his mind about how many servings.

We think since we do have to make our plans in terms of servings there are some commodities such as this one, perhaps a limited number of them but there are some products such as this one where it is very important that we define what a serving is. These all serve eight. Those two which are identical may serve 20 or 25.

The most recent package we have gotten from this packager now contains 15¾ ounces and serves 24, so we are getting kind of confused.

If we want to uphold the basic principle of our economy of free and open competition, I think it is very important that we address ourselves to this problem, because it begins to appear that there is a kind of Parkinson's law in operation here; that is, that the number

of servings a manufacturer can promise consumers can be increased by simply reducing the size of the serving.

In this little survey which we had our voluntary helpers record, we found with the aid of a home economics consultant that out of the 12 packages that we had, following the cooking directions on the back of them, the size of the servings that they yielded according to the manufacturer's own recipe on them ranged from 3 ounces to 4.7 ounces.

That is a spread of more than 50 percent. So it just depends on the size of the serving.

If one manufacturer calculates a serving 50 percent smaller than his competitor, he takes unfair advantage of his competitor but also of the consumer, so we would like some standards here.

I think it is going to be nearly impossible for consumers to compare prices unless we do achieve what your bill enables—the establishment of some specified quantities in which commodities might be sold.

I have charted for you what has happened in the vegetable oil field. I hope you can see this.

Mr. FRIEDEL. I notice on that package "new recipe." Does it require adding more milk or anything to it that would make more servings?

Mrs. NELSON. The recipe for the 20-ounce servings is exactly the same as for the 25. They have reduced it proportionately.

The difference between the 20 and the 25 servings I have here, and I will be glad to leave them for the record.

For the 20 servings, the recipe calls for 2 cups of the potato flakes; for the 25 servings it calls for a cup and a half.

Mr. FRIEDEL. Any other ingredients besides that?

Mrs. NELSON. Yes, you use less water. They have reduced the size of the serving. You use a cup and a quarter instead of a cup and a half, and you use a third of a cup of milk instead of a half. The recipe I would judge would make equally good mashed potatoes but it would make fewer of them.

Mr. YOUNGER. Would the gentleman yield?

Mr. FRIEDEL. I yield.

Mr. YOUNGER. Could that apply to the people who are dieting and do not eat as many potatoes as they used to?

Mrs. NELSON. I feel those of us who feel we need to diet would like to do it in our own way and not have our favorite potato manufacturer figure it out for us without our knowing it.

Mr. YOUNGER. He is helping you out.

Mrs. NELSON. We don't need that kind of a big brother.

The CHAIRMAN. You may proceed.

Mrs. NELSON. This again is a chronology which was derived by a home economist from a grocer's order book. We found a grocer who kept a very untidy office and he did not throw away his old order books so we were able to document the sizes in which vegetable oil was available to him in the wholesale house in three different years—1961, 1964, and 1966.

I will try to distribute a few copies of these so you can see them.

In 1961, we had 17 brands available to the grocer—17 different sizes of vegetable oil. I retract the word "brand." We had 17 different sizes of vegetable oil, 17 different offerings. These 17 different offer-

ings were packaged in four standard sizes—a pint, a quart, half gallon, and a gallon, with one exception. There was one in a 24-ounce size.

I think that this illustrates the impossibility of industry taking care of this problem by their own self-regulation no matter how badly they may wish to do it and I know many of them do wish to do it.

Here is this one that breaks ranks and he goes to a 24-ounce, possibly to compete with the 32-ounce quart. Here you get one nonstandard size.

By 1964, we had a proliferation not only of the number of offerings but we now have 39 different offerings of vegetable oil and 21 of them, the majority, are now in nonstandard sizes.

We have 12 ounces, 14 ounces, 24 ounces, 38 ounces, 48 ounces, and 60 ounces.

Recently, we checked it again. We have 36 offerings this time and 25 of them, two-thirds of them, are nonstandard sizes. The half-gallon has disappeared completely. Instead, we have 38 ounces, 48 ounces, 69 ounces. We have seven different nonstandard sizes now in addition to three standard sizes. We have proliferation of container sizes for this very simple product, a vegetable cooking oil.

Again I remind you all of these changes meant designing new bottles, new labels, these costs went into the cost of this product. So, I would question whether or not to try to hold the line here would mean additional costs. Had we held the line here in 1961 (apparently the consumer was fairly well served), we might have avoided a lot of unnecessary costs that we have had to pay for now as consumers.

One more point and I shall conclude.

In 1962, before we spoke to the Senate committee which was hearing a similar bill, we reported some offerings of common products in one of the supermarkets in Sacramento. One of the products that we reported at that time was canned dogfood, which is a sizable industry in this country, and it is a product which is bought by many people on fixed incomes, retired people, so it will not be without its interest in this discussion.

At the time when we reported the offerings in 1 fairly typical supermarket in Sacramento we found, I believe, 14 different offerings of dogfood. At that time five of them were 1-pound cans. Four of them were 15-ounce cans; three of them were 15½-ounce cans; one was 15¼ ounces, and one of them was 1 pound 10 ounces.

Before my coming here this week we went back to the same grocery store. If you would turn these booklets, "Packages and Prices," to page 22, I would like to review for you the changes that we found today from 4 years ago.

The Bonnie that we listed there 4 years ago at 15½ ounces is now 15. We did not find the Alert on the shelf. The Skippy remained at 15 ounces. The Vets, which was a pound then, is now 15½ ounces. The Red Heart, which was a pound then, is now 15½ ounces. The Dash was a pound then, is now 15½ ounces. We did not find Friskies economy size.

Dr. Ross is still 15½ ounces. Friskies which was a pound then is now 15½ ounces. Calo remains 15¼ ounces. We found three different offerings of KalKan not exactly identical with what was listed

here. They were in sizes of 15½, 14½, and 15 ounces—all less than they were 4 years ago.

The Ken-L Ration which was a pound is now 15½ ounces. The Holsum still remains 15 ounces.

In other words, there is no longer a 1-pound package of dogfood. The unrestrained competition of shaving fractional ounces off of these cans has eliminated the 1-pound can of dogfood.

I think this is a particularly sorry story. By looking around in Sacramento, I found sitting on the shelf side by side Armour's pound can of Dash, about half a dozen of them left. The last one, at least by Sacramento store observation, to depart from the tradition of the pound dogfood.

This is a company that is accustomed to dealing in meats and weights of pounds, hundred pounds, and so forth. Here, sadly, is their new offering. It weighs 15½ ounces. It has a 2-cent-off label that is a part of the label. It does not come off. If they ever depart from the 2 cents off they will have to print a new label.

The old and the new cans sat side by side on the shelf. I picked up one of each. This one said two for 39 cents and this one said two for 35 cents. I took them to the cashier and laid them down on the counter and let him work on the problem. He did for a little while and then he called out the price "38 cents."

I am sure a company like Armour did not submit to this type of thing until they had no other choice. I think we ought not put them and the consumer of their dogfood in the same situation. We need some floor under this so we can have some fair and honest competition. I am grateful to you for making the effort to do this.

Mr. ROGERS of Florida. As I understood it this would be a meat product? Would this be classified as a meat or meat product?

Mrs. NELSON. It probably would, yes.

Mr. ROGERS of Florida. Under the provisions of this bill it would be excluded from this act. Do you think it should be?

Mrs. NELSON. I think it would be sorry if it were but I would suspect you are right.

Mr. ROGERS of Florida. As I understand it under the provisions proposed any meat or poultry products or tobacco product would be excluded from the act from the assumption that the Department of Agriculture has sufficient present authority to prevent deception, but you feel there is deception going on?

Mrs. NELSON. I would not choose to use the word "deception." I would say this is an undesirable form of competition.

The CHAIRMAN. You had expressed in your testimony that you think that competition has forced other companies, reputable companies, to do this and some keep shaving on their products and after a while it means the others have to come to it. Therefore, there has to be a standard somewhere for the consumer.

Mrs. NELSON. Yes.

The CHAIRMAN. I noticed this thing on your potatoes and I thought that was rather dramatic. How much would 100 pounds of potatoes cost on the market today?

Mrs. NELSON. Do you mean retail or at the farm level?

The CHAIRMAN. I have six children and we buy them by the bushel, not by the pound.

Mrs. NELSON. This would depend on the region, but around 10 cents a pound right now in California.

The CHAIRMAN. If you are talking about 50 pounds, it would not be that much, would it?

Mrs. NELSON. If you are talking about a good baking potato——

Mr. YOUNGER. Idaho potato.

Mrs. NELSON. I took care not to say that.

The CHAIRMAN. I do not think there is that much difference in prices where they come from. I wish someone here could give me what a 50-pound bag of potatoes would cost.

Mrs. NELSON. A telephone call to the Department of Agriculture certainly ought to do that.

Another representative from Mrs. Peterson's office says Safeway is advertising them here this weekend in Washington, 10 pounds for 49 cents. That is this weekend.

The potato that goes to make these instant mashed potatoes is not the potato we buy to bake. One of the reasons this packaged product has done so much for the potato farmer is that it makes a market for culls.

The CHAIRMAN. If you take the rise in cost of that first 1-pound package every potato until the last one, it is actually 30 cents on the packaging.

Mrs. NELSON. Yes.

The CHAIRMAN. They were advertising a pound at 30 cents. If you were going to take 100 pounds, that is $30. That is a pretty good profit to be making.

Mrs. NELSON. We do not object to anyone making an honest profit, but it ought to be possible if there were some rules of competition for them to make a good profit and still sell a plain old-fashioned pound or 8 ounces to the consumer.

The CHAIRMAN. I know you and this committee want fair competition. If they make a good product, they should market it in open, fair competition, but not in any misleading way. That is all this bill is designed to do. There are some who say we should not do anything until we take care of all problems, but we have to make a start somewhere in this world.

Mrs. NELSON. I did not mean to interrupt you, Mr. Chairman, but I think you have started at the most important place and that is to direct the administrative agencies to their responsibility—and this is a new direction that they have—to make it possible to compare prices and to get some floor under the number of sizes of quantities in which products can be packaged.

I think those are the most important points at which to start. If we start there, some of these other things may disappear because they do not work any more.

The CHAIRMAN. I might say to you there are those who say we do not need this bill or anything like it, but I believe we do. I believe the time has come and it is sad that it has, but the Government and the Congress must step in and give some guidelines.

I do not want to regulate industry in any way and I do not think we should make a standardization out of everything, but I do believe

we have to make a start. If we have made a mistake we can amend it, detract from it, or add to it.

Mrs. NELSON. I am very happy to hear you say that.

The CHAIRMAN. Mr. Friedel?

Mr. FRIEDEL. I have no questions, but I believe the title of the bill is very good; if we can keep it to that, it will be a very good bill—to regulate interstate and foreign commerce by eliminating the use of unfair or deceptive methods of packaging or labeling of certain consumer commodities distributed in such commerce, and for other purposes.

If we keep to that, we have a very good bill. We do not want a bill requiring that they have to package differently because the producers will pass the cost on to the consumer. We want the consumer to benefit by clear labeling and packaging and I think if we stick to that, we will have a very good bill.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman.

The question which first comes to mind is how does this bill affect the things that you brought out? In other words, if I understood the panel when they were testifying, if the producer puts a label on the package clearly stating that it had so many ounces that was sufficient, but as far as the servings are concerned, that, of course, is open to correction and the bill probably would correct that.

But so far as labeling that you had so many ounces and weighed so many ounces, where would the bill change this according to your interpretation?

Mrs. NELSON. The bill as I understood it would enable the appropriate executive agency, either the Food and Drug Administration or the Federal Trade Commission—in this case the Food and Drug Administration—to make a definition of "serving."

Mr. YOUNGER. I am not talking about definition. I am talking about the labeling that it contains so many ounces or pounds and that is all.

Mrs. NELSON. It would do that. What would put a stop to some of this unnecessary and confusing proliferation is provided for, as I see it, in section 5(d) on page 7, which says that whenever the authority determines after a hearing that the weights and quantities in any consumer commodity being distributed for retail sale are likely to impair the ability of consumers to make a price per unit comparison.

Mr. FRIEDEL. Are you reading from the Senate bill?

Mrs. NELSON. No, I am reading from H.R. 15440, the Staggers bill.

Mr. YOUNGER. Your interpretation then is under this bill regulations can be issued which would force the manufacturer to use a certain container weighing a certain amount?

Mrs. NELSON. Yes, that is an oversimplified statement, as I understand the bill. But the bill provides in the case of the mashed potatoes, if the Food and Drug Administration after an investigation decided that the circumstances of sale, the weights or quantities in which this product was being sold were such that they impaired the ability of consumers to make price-per-unit comparisons, they would first publish this determination in the Federal Register.

Then they would promulgate a proposed regulation establishing reasonable weights or quantities. Then, within any time after 60 days

of this publication, any producer or distributor affected could request Secretary of Commerce——

Mr. YOUNGER. I know the procedure, but I am talking about the ultimate goal. Having done all of those things, they could say you must use a can or package in a certain way and it must have a pound or so many pounds. We all agree the servings are wrong, but they do have the authority under this bill to make a change.

Now what authority do you have under the model bill in California?

Mrs. NELSON. We have passed legislation which is to go fully into effect in January requiring that the contents statement be on the principal display panel and require the director of agriculture to specify type sizes, contrasting colors, and so forth that will meet the requirement of being clear and legible.

We have also followed the recommendation of the model law and passed legislation eliminating exaggerating descriptive adjectives preceding the statement "net weight." We no longer have the giant quart in California, but we do not have any enabling legislation such as this that would make it possible with the cooperation of industry to establish some rational sizes or a series of rational sizes.

Mr. YOUNGER. I thought you said a while ago that the law and the authority under the California law permitted you to set the standards for sale in California.

Mrs. NELSON. I am sorry I was not clear. What I was referring to is that I was asked whether each of these packages did carry a statement of net weight. I said, "yes, it did," and it is a requirement of our State law that it must. So it does contain a statement of net weight, but still in such a manner and so obscured by the eight servings——

Mr. YOUNGER. We will omit the servings.

Mrs. NELSON. We already have in California, you are correct, legislation requiring the statement of net contents to be clear and legible.

Mr. YOUNGER. Are there not about 14 States that have that model law?

Mrs. NELSON. I do not know for sure, but there are others.

Mr. YOUNGER. Do you think it would be sufficient if the Federal Government promulgated the standard State law that has been adopted?

Mrs. NELSON. No, Mr. Younger, I do not, because I feel that those laws that we have are insufficient to enable consumers to compare prices.

Mr. YOUNGER. Why did you not change the law in California then to accomplish that?

Mrs. NELSON. Because I would not recommend that at this time on behalf of consumers, because in view of the high concentration of processers and packagers in food, and because of the existing Food and Drug Administration and the relationship that they have with the food processers, I think that most of these foods travel in interstate commerce, and it is more appropriate that the matter be handled nationally by one agency.

Mr. YOUNGER. The bill does not provide that it be handled by one agency.

Mrs. NELSON. By 1 government, let's say, and not 50.

Mr. YOUNGER. But your bill does control the sale of these articles in California. In other words, it had nothing to do with interstate com-

merce, but if they want to sell it in California they must live up to the law that California has prescribed.

Mrs. NELSON. That's right.

Mr. YOUNGER. Then why has not the California Legislature put in this other requirement that you advocate?

Mrs. NELSON. The model law which has been recommended to the States does not make any recommendation that the States attempt to go in this direction. I would say they have refrained from doing that in recollection of the wisdom of dealing with this problem at the national level.

Mr. YOUNGER. If we deal with it at the national level, are the States going to repeal their model laws?

Mrs. NELSON. I think that——

Mr. YOUNGER. You would not have any department then?

Mrs. NELSON. No, our weights and measures people at the State and county level have many responsiblities in addition to the labeling of products. They have the whole responsibility for making sure that packages weigh what the label says they weigh.

The CHAIRMAN. Mr. Macdonald?

Mr. MACDONALD. Thank you, Mr. Chairman.

I want to thank you, Mrs. Nelson, for coming here today and traveling this long distance to give us some help and guidance in this perplexing problem and I respect your experience.

You are talking—one thought cross my mind, and I do not want to sound like I am opposed to this legislation, because the idea of the legislation is very good, I think. You were talking about how highly competitive this industry in general is—the food packaging industry. I quite agree with that. It is one of the most highly competitive in the Nation, is it not?

Mrs. NELSON. I do not want to quibble with you, but it depends a little bit on what kind of competition. We consumers would like to have a little bit more price competition and a little bit less promotional competition. But, yes, it is not an easy business to stay in. Yes, that is right.

Mr. MACDONALD. It is my judgment that it is a highly competitive business and, therefore, you made a good deal about the fact that different sized packages or cans came out over a period of years.

My thought, and it is just a thought, is that not because the housewife determines what size she wants to buy to suit her needs and to suit the needs of her family, which might vary from family to family and certainly can even vary in the family from time to time.

As a concrete example, I have four children. When two of them are away at school, the food bills, I hope, go down or certainly they should. Therefore, I would think that my wife, when shopping, would shop differently depending on the time of year. Therefore, I can see a perfectly sound reason for changing the sizes of these things and not to have a standardization where you have a half a pound or a pound or a pound and a half. Some of these odd sizes that you say might just fit the needs of the housewife.

She would have to be awfully stupid to buy something she does not need. I don't think the housewife is that stupid.

Mrs. NELSON. I would agree with your general premises that different families and the same family at different times wish to buy in

different quantities. I hope that nothing I have said here suggests that I believe that everything should be packaged in pound packages. I think that the bill makes it quite possible today to take into consideration what you have in mind, but I cannot stipulate that the housewife decided that she would rather have 7 ounces than 7.2 ounces of instant mashed potatoes, nor that the little old lady who is buying dogfood came to the conclusion that she wanted 14.5 ounces instead of 15 and 16, and telegraphed that to the meatpacking industry.

There is a situation that I saw right in this connection which makes your point. They are coming out with a new smaller can of dogfood. They are coming out with a 6.5-ounce can of dogfood for the toy dog. There is a market; this makes sense, I believe.

They are also coming out with a larger can of tuna than has ever been on the market before. It is sizably larger.

Mr. MACDONALD. Do you not think the main thing in this bill would be the labeling so the housewife herself knows what she is getting and it is up to her to buy what she wants?

Mrs. NELSON. No, Mr. Macdonald; I don't.

Mr. MACDONALD. Would you tell me what you do believe?

Mrs. NELSON. A declaration of policy that it is important for our economy and it is valuable to manufacturers that consumers be able to compare prices. The next most important thing and what makes that public policy function is your provision that with the cooperation of industry, you can——

Mr. MACDONALD. Excuse me for limiting, but my time is limited. How can you compare cost without going on the quality of what you are buying, and what I might like in clam chowder, for instance, you might not like and therefore I would not take the kind you want for anything and you would not take mine for anything.

So, once you go into that, you have to take in the quality of part of it and then it seems to be such a jumble, I don't see how you can legislate that.

Mrs. NELSON. We are not going to the quality in this bill.

Mr. MACDONALD. You have to if you start comparing costs. You have to compare the ingredients of what you are buying. Just because they are both dogfood, one can be a very poor grade and another, if you like the dog very much, maybe you would buy him canned steak. I think once you get into the cost comparison, you have to get into the quality of it, which I think really makes the task of this committee difficult.

Mrs. NELSON. I will not infringe on your time any more.

Mr. SPRINGER. I think this committee is very grateful to you to come all of this way, Mrs. Nelson, to give us the benefit of your thinking. Have you been here the last 2 days?

Mrs. NELSON. I was here only yesterday.

Mr. SPRINGER. The thing which I emphasized during an hour of questioning which Mr. Macdonald has touched on has been the thing that really when you shake this down is what is bothering the committee and we can't understand how you arrive at whether you can or cannot make a decision based on that when it may be a question of choice.

Now, suppose you take Dash, a canned dogfood, which is a good product. About 3 or 4 years ago my wife came home and when I got ready to feed the dog, we put it in the pan and I noticed he only took

a bite or two, I said I just don't understand, the dog is not eating. When I got a smell of this I got an idea of why we changed his food awfully suddenly.

I suppose it would be the same as if you stopped feeding me steak and mashed potatoes and then started feeding me hash. This dog-food situation brought it home to me.

She said she got five cans instead of four cans for the same price. When you are talking about a half percent, I believe I have the figures that the purchase of the family in an average income in this country is somewhere around $2,000 a year for four people. If you save one-half of 1 percent, say, on buying the cheapest item, I presume you are saving $10, according to my figures, for the year.

Have I figured this right? You can multiply a lot of people and make $25 million, but what I am trying to find out is what this does to the individual family.

I would say you can make a lot of errors in the buying of $10 cheaper if that is what you have in mind. This is the only thing I can come to when you talk about making a choice here—that you are buying a cheaper brand in order to come out with the cheapest item. This is the way I understood Mrs. Peterson and, as I understand you today, when you go to a store you are trying to buy the cheapest item per pound.

This is the only way I believe you are trying to make the best choice. Is that what you have in mind?

Mrs. NELSON. I am sorry you were not here when I discussed that in my presentation. I would certainly not hold to the point that price is the only consideration or is even the major consideration.

There are various factors that go into making a choice. Let's take the wholesaler, the meat-buyer or the potato-buyer. He will consider the grade of the potato, the water content of the potato, the availability of them on the market. He will consider a whole lot of things, but he will be dealing in standard units so that he can compare prices, too. He is interested in price, in addition to quality and availability, and so forth. The price is only one of several factors that goes into his buying desicion.

He will want to compare the price of potato culls per hundredweight with the price of No. 1 potatoes. He needs to buy them both in the same unit of measure and he has that privilege, he buys by the hundred pounds. So it facilitates his using each of these factors and weighing them according to his desires, and coming to a decision. But I would never say price is the only consideration.

I say we consumers, just like everybody else—the wholesaler, retailer, and processor—have the right to consider price. We have a right to a knowledge of comparative price, recognizing we are going to look at several factors together when we make our choice just as everybody else down the line of distribution does.

Mr. SPRINGER. Then you are going to take in this question where you sell two for so much money and three for so much and half a dozen. How are you going to simplify this?

Mrs. NELSON. It would be much easier for the housewife to weigh two for a quarter against two for 33 if the cans were the same size. Every time you increase the variables, if the cans vary and the price varies, pretty soon you have chaos, so you go and play bingo.

Mr. SPRINGER. Is the purpose of the legislation to standardize everything?

Mrs. NELSON. The purpose of legislation is enabling legislation. It enables the specifying of certain quantities in which quantities can be sold.

Mr. SPRINGER. Do you think this legislation will set, then, certain standard sizes of containers or so many ounces, is that correct?

Mrs. NELSON. I would hope it would do that for some common products with the cooperation of industry and in the due process of law.

Mr. SPRINGER. I submitted a question to Mrs. Peterson yesterday which you probably heard and you have potato chips, which this happens to be. The first two brands are two for 17 cents and three for 25. Can you tell me quickly while you are looking at six other articles which of those two buys is the best?

Mrs. NELSON. The 3 for 25 would have the edge.

Mr. SPRINGER. What is your calculation?

Mrs. NELSON. Eight and a third versus eight and a half.

Mr. SPRINGER. It would be one-sixth. Mrs. Peterson could not answer that yesterday. Did you take the benefit of the question yesterday to figure it out?

Mrs. NELSON. It is not fair competition, is it.

Mr. SPRINGER. I will have to give you an A, or perhaps you have done more shopping than Mrs. Peterson, but these are the points that bother us a great deal, when you intervene two other factors, price and quality. How does the poor housewife go to the place where she shops and determine all of these while she is comparing the price? I guess there would be in shopping for dogfood at least six on the counter in most of the big supermarkets. There would be six different kinds if they are displaying all that are available. Some of them only have two or three, but how you get at these two problems in your whole question of calculation in arriving at them is the real problem.

I am not so sure that the question of $10 can be determined as closely as you have indicated here, if you are talking about the average family in a period of a year saving $10, or roughly that, as I would figure it, 80 cents a month.

Mrs. NELSON. Mr. Springer, I want to clarify I did that calculation of one-half of 1 percent as an illustration. That is hypothetical I do not contend if you pass this bill, we will save this much, sir. I am saying that we are not discussing pennies here; we are discussing millions of dollars and if we could save as little as one-half of 1 percent, it would mean 25 million in California in 1 year for the families.

I do not assert that it is a precise figure of what people are now unable to control because of the present chaos.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Florida. I appreciate your testimony, too, and I am concerned, as Mr. Macdonald pointed out, it seems to me a difficult thing to pin down the exact pricing comparison that you say you want us to make in a general statement. Yet, when we talk about specifics, then it gets to be difficult, because we do not know the quality and where a bag of potato chips may be made from cull potatoes and have small chips, there may be a difference.

I don't know if they do that, or maybe the can of dogfood is different. I can see what you want is the price per pound or whatever

it may be in the packaging, but as to giving an intelligent comparison as to quality and price and what you are getting, when you are getting a quality pound of meat, choice meat, say in a particular pound can or prime, compared to price, this gets to be a difficult problem.

Mrs. NELSON. When you have the price per pound of both, say, good steak and prime steak, you are then in a position to evaluate the relative cost of superior quality.

Mr. ROGERS of Florida. But the housewife may just take the cheaper goods. Could this not possibly end up by creating a race to present the most inferior product so that the cheapest figure could be put on the label for the quantity?

Mrs. NELSON. I don't worry about that as a prospect. I think consumers have great brand loyalty. I think they buy for many other reasons than price, just as wholesalers and processors do. But I think they feel they are entitled as participants in our free economy to have this one factor of information, just as all other participants in our economy do.

Mr. ROGERS of Florida. Should they also have the information afforded them?

Mrs. NELSON. In many cases it would be desirable, not all of them, but in many cases.

Mr. KORNEGAY. Not long ago I went to the store for my wife and looked at various items, compared them, and picked out the cheapest item I could find. It happened to be a chainstore brand. I got it home and my wife said, "You got the wrong kind of mayonnaise." I said I got the best I could find for the money. She said that is not the kind I want or usually buy, so I took it back and got the more expensive kind.

She is the expert in my family.

Mr. NELSEN. I would like to make some reference to the reference earlier made to the cost of potatoes and the 10-pound box. There could hardly be a comparison between the cost per pound of a raw material as between the cost of a flake potato. Do you have any idea how many pounds of potatoes it takes to make a pound of potato flakes?

Mrs. NELSON. My recollection is that it is seven.

Mr. NELSEN. When I sell 100 pounds of milk from the farm it used to be about $3.50 a hundred—it has since gone up some—but when I go to buy a quart of milk, it costs a considerably higher rate per unit, but much is involved in packaging and delivery of the product.

You made reference to two packages of equal size, one having in its content less weight of product, is that true?

Do the labels state a difference as to the content?

Mrs. NELSON. These two both weigh 1 pound, but one of them advises that you make 20 servings out of it and the other one advises that you make 25.

Mr. NELSEN. I might also ask, are you critical of the fact that there are two packages, one with lesser weight than the other and no differential in price? Is the criticism on the basis that the product package you are getting is not the same amount? Are you critical

of the way it is packaged where one may have 14 ounces in it and another may have 15 ounces, yet the package is the same size?

Mrs. NELSON. That is not my biggest worry. More important, I think is that we have a sensible understanding between manufacturers and consumers of how many choices of instant mashed potatoes they would like to have; quantities. For example, in Great Britain, for 40 major categories of staples, by law they specify the quantities, 2 ounces, 4 ounces, 12 ounces, a pound and a quarter, and a pound and a half and then regularly stepped-up sizes.

If we had something of that sort, I think the shape and size of the actual container would become less important.

Mr. NELSEN. I am sure you have been in factories where products are being canned or packaged, and the thing that I was attempting to pursue was that I might have a product that I wished to sell if I were in the business, and if I wished to vary package sizes I would have to have a complete new train of packaging that would add considerably to cost and there might be a need of having a package in which the content might vary in weight, yet the package would be the same size in order to keep the cost down as to packaging.

This could be a problem.

Mrs. NELSON. I would say it is a problem that consumers should be willing to go a long way in working with you on.

Mr. NELSEN. The dogfood package that you referred to there, it is properly labeled, is it not? The weight is on the package. There is no deception as to weight?

Mrs. NELSON. The weight is on the package; yes. They meet California law.

Mr. NELSEN. The thing I find difficult to understand is how the things this bill professes to accomplish can really be accomplished. So many times we pass laws with a fancy title to do something and then when we get all through, we find it impossible to handle it. It has been bothering me as to how we are going to get all of these things done.

I am concerned about one thing. This committee has always been very cautious about proceeding on cease-and-desist legislation in antitrust matters and what have you, placing the accused in a position of being found guilty until proven innocent.

I understand that by rulemaking authority provided for in this bill, the Government or the Federal Trade Commission can set up certain rules whereby the industry is governed by rulemaking, and if a product goes on the shelf that in their judgment is in violation of the rule they have established, the accused are guilty until they prove themselves innocent.

It seems to me we could run into many, many such legal situations and the fine is quite heavy.

Mr. MACDONALD (presiding). I am sorry, the time of the gentleman has expired.

Mr. KORNEGAY. Like my colleagues, I want to thank you very much for coming and giving us the benefit of your experience. Quite obviously, you have worked long and hard in this area and I know you are generally concerned, as I know the members of the committee are, with respect to any unfair practices that are going on in the market.

I would like to see those small boxes of potatoes again, if you don't mind. Are they in the original packages or dummy packages?

Mrs. NELSON. They are in the original packages.

Mr. KORNEGAY. I didn't know if you made up dummy packages or not.

Mrs. NELSON. It is not our desire to embarrass anyone, but I didn't want to bring dummy packages to the U.S. Congress.

Mr. KORNEGAY. I wanted to find who put them out.

Mrs. NELSON. That is not my purpose in bringing them.

Mr. KORNEGAY. These are Betty Crocker-marked potatoes. Some of them are mashed potatoes and some are potato buds. What is the difference between mashed potatoes and potato buds?

Mrs. NELSON. The Agricultural Research Center in Albany, Calif., tells us there is none essentially, that the recipe stays the same, and the nutritional value is the same.

Mr. KORNEGAY. Is the recipe the same in all of these examples that you have shown?

Mrs. NELSON. Yes.

Mr. KORNEGAY. The main complaint, as I understand it, is that they decrease the contents while the price remains constant and the package remains constant; is that right? In other words, the consumer thinks he is getting as much as he got the last time, but there has been a decrease——

Mrs. NELSON. The price increase is achieved by diminishing the quantity in the package rather than by an increase in the cost or the price for the package.

Mr. KORNEGAY. Would you say that is deceitful?

Mrs. NELSON. I don't think it is fair competition.

Mr. KORNEGAY. You would say it is unfair then?

Mrs. NELSON. Yes, I do not think it is the kind of economy we are trying to build in this country.

Mr. KORNEGAY. Did you call this to the attention of the Federal Trade Commission?

Mrs. NELSON. I see no violation of current law in that.

Mr. KORNEGAY. The Federal Trade Commission has the authority to stop any unfair trade practices. If this is unfair, then as I understand the present law, that is covered, and Mr. Dixon has testified he has very broad authority in this field although he does wish some new direction.

Mrs. NELSON. I think this bill would give him that new direction.

Mr. MACDONALD. The time of the gentleman has expired.

Mr. Curtin?

Mr. CURTIN. I quite agree with you, Mrs. Nelson, that we should do something about this marking of "servings" on a package, but I do not feel that an official definition of what constitutes a serving is going to solve a problem. I can very easily see where perhaps the official downtown who is to decide may not agree as to the amount in a serving with someone who is consuming that product, particularly if the definer of the "serving" does not have the same appetite as the consumer. He may not like soup, so to him a cup would be a serving; the consumer might be very fond of soup, so, to the consumer, an ample bowl of soup is a serving.

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It seems to me the best thing would be to eliminate the use of the word "serving" completely from labels. Would you agree to that?

Mrs. NELSON. I would not.

Mr. CURTIN. I believe you also favor the standardization of packaging. Is that correct? Do you want all packages to be standard as to size, shape, and weight of contents?

Mrs. NELSON. No. What I think is very valuable about the bill before you is that it would enable—under the aegis of the Government—it would enable industry and consumers to get together and agree upon some choices of quantities in which a commodity could with fairness and usefulness be put on the market.

Mr. CURTIN. Let's follow that a little bit further. Using that illustration, I would presume that you would think that all baked beans, for example, should be in 10-ounce cans, so that when a woman is in a store trying to decide which kind she wants, she can base it purely on what the price is for one can as against the other. This, of course, disregards quality. If you have a situation where one processer thinks the 11-ounce can is the size he wants to sell as against another who thinks he wants to produce a 9-ounce can, it is going to cause confusion.

Mrs. NELSON. It is presently causing great confusion.

Mr. CURTIN. Then you would think they should all be in 10-ounce cans?

Mrs. NELSON. No.

Mr. CURTIN. What do you think?

Mrs. NELSON. I think the manufacturers of soup, who are only four or five, might get together, as this bill would make possible, with some representatives from consumers and retailers possibly and discuss and possibly reach some agreement.

Mr. CURTIN. Do you mean as to how many ounces they are going to put in a can of soup?

Mrs. NELSON. As to what sizes of cans of soup we would be marketing in the future.

Mr. CURTIN. Then you are for standardization of sizes for cans?

Mrs. NELSON. I would have no interest in the shape, the size, the dimensions of the container. I do wish for some standardization of the quality in the container, so that we have the equivalent of a pound or a half a pound.

Mr. CURTIN. On the question of soups, I understand that a certain number of ounces of one kind of soup would certainly be different in volume than the same number of ounces of another kind of soup depending on the density of the product, so you could not have the same size can containing the same number of ounces of all kinds of soup.

Mrs. NELSON. This could very well be the result that would come out of such a meeting.

Mr. CURTIN. I think that might be difficult. At any rate, you heard, I believe, the panel that was here yesterday?

Mrs. NELSON. Yes.

Mr. CURTIN. You heard them say—at least as I understood them to say—as long as a label contains the number of ounces in that container, as long as that label contains what the product of that container is, that would be perfectly legal under this particular legislation, regardless of the size and shape of the container.

Did you understand them to say that? In other words, they said as long as a label clearly defines the ounces in the can, or the carton, or the jar, and as long as the label clearly indicates what is in that container as to product, that would be sufficient under this legislation, regardless of the size or shape of the container.

Mrs. NELSON. That is the only part of this bill which is so-called mandatory, as I understand it.

Mr. CURTIN. Yes; that is true. It is mandatory that the label be truthful.

Mrs. NELSON. That would be the only thing that would automatically apply when this law went into effect.

Mr. CURTIN. You are going beyond what this legislation would require then?

Mrs. NELSON. My views are that we need everything in this bill.

Mr. CURTIN. But do I understand that you feel we need more? Do you feel that there should not be odd-sized containers put on the market such as 12.5- or 14.5-ounce cans? You are objecting to the Dash cans because the label says that the product weighs 15.5 ounces? What is deceptive in that can?

Mrs. NELSON. I have not and do not assert that either of these cans is deceptive.

Mr. CURTIN. If a manufacturer wants to put on his container that it contains 15.5 ounces of a product, what is deceptive or what is misleading in that label?

Mrs. NELSON. Nothing.

Mr. CURTIN. Then why do you object to it?

Mrs. NELSON. Because sitting on the shelf with other products from other manufacturers and in relationship to perhaps the previous can from the same manufacturer that sat on that shelf, the consumer cannot compare prices and make an informed decision.

Mr. CURTIN. She can if she reads the label and one label says 16 ounces and one says 15.5, and she is buying strictly on volume.

The CHAIRMAN. The gentleman from California.

Mr. VAN DEERLIN. The committee has been very impressed by Mrs. Nelson's testimony and her skill in handling questions.

In light of the industry's desire to keep certain promotional gimmicks, and the housewives desire to keep such things as trading stamps and coupons, I would appreciate an evaluation by you of cents-off gimmicks and the other promotional devices that I have mentioned. What would be acceptable to you as a consumer counsel in preserving these promotional prices?

Mrs. NELSON. I think we are going to have some promotional gimmicks. We have them in other places than the grocery store, so I am not going to strike out across the board about all promotional gimmicks.

Let me talk for a moment about the cents off. I think that the cents-off device has become rampant because the consumer cannot compare prices. We don't know whether this is cheaper than that or whether one is cheaper than it was last week.

When we have 8,000 items, we can't store information in our brain to the same extent that a computer can do. If we had a more orderly market where the consumer could by her own analysis in a reasonable

length of time compare prices, the incentive to the manufacturer to go to a cents-off thing would diminish.

It might not disappear, but it would diminish.

Mr. VAN DEERLIN. You referred in one label to the fact that the 2 cents off was part of the originally printed label at the plant.

Mrs. NELSON. Yes.

Mr. VAN DEERLIN. Are you suggesting this is an impropriety?

Mrs. NELSON. It suggests to me that it is not going to end this weekend. They probably bought a good quantity of these, and it also suggests to me that if they do remove it eventually, they will have the cost of a new label. We are paying costs for lots of labels now that we might not have to pay for if we had shored up, if we had had the provisions of this bill in time to have held the line—and had dog food in 1-pound cans, for example.

Mr. ROGERS of Florida. Would the gentleman yield?

Mr. VAN DEERLIN. I yield.

Mr. ROGERS of Florida. Dash is a meat product that would not be affected by this?

Mrs. NELSON. Yes. In general the cents-off gimmick arises, in my opinion, out of the inability of the consumer to tell whether the thing is indeed cheaper this week or not. It is impossible. It is most impossible in instant coffee, where confusion reigns supreme. It is extremely difficult to determine the relative prices.

This is where you get the tremendous number of cents-off and also in household cleaning items for the same reason. It is in those products where it is most difficult to compare prices that you most often get these cents-off gimmicks.

Mr. VAN DEERLIN. What about trading stamps and coupons?

Mrs. NELSON. I think the same thing in general can be said about them, that the consumer in her frustration over comparing prices is diverted by the trading stamp, by the coupon. It is impossible for her to tell whether or not the store that gives trading stamps by and large has higher prices than the one that does not.

Coupons are a very valuable way to introduce a new product.

Mr. VAN DEERLIN. Back here in the East, they even have special deals where if you buy a certain product on a certain day, you get 50 stamps as a premium just for buying the product.

The CHAIRMAN. The time of the gentleman has expired.

The gentleman from Massachusetts.

Mr. KEITH. I am sorry I could not be here for all of the testimony that you offered. I would just like to put some of these things in perspective. I have looked at your prepared statement and note that you mentioned that if they had overcome some of the problems that you have presented, that they might have saved perhaps $25 million in the State of California.

That is on the first page of your testimony. How many people are there in California?

Mrs. NELSON. About 19 million now.

Mr. KEITH. So it is about a dollar and a quarter per person per year that would be saved?

Mrs. NELSON. I will take your word for it.

Mr. KEITH. The $25 million that would be saved by reason of this present legislation—what do you suppose would happen to that?

Mrs. NELSON. I think I must clarify. This illustration on page 1 of my testimony is not a claim that this bill will save $25 million. Maybe it will save a whole lot more.

Mr. KEITH. Assuming that it did, what do you suppose the corporations that run the canning companies do with that money?

Mrs. NELSON. I don't know.

Mr. KEITH. They are competing in goods and services with other corporations. The profit that they make enables them to do their research and development and to improve the product as well as the packaging. I don't think it is necessarily adverse to the competitive situation. Some of it undoubtedly helps the consumer.

How often have you used your right or your position to encourage officials of the State government or individuals to take advantage of the present law?

Mrs. NELSON. Very often.

Mr. KEITH. With some success?

Mrs. NELSON. Varying, I have had considerable success on the State level, less on the Federal level.

Mr. KEITH. How many times in the last 5 years have you referred to the Federal agencies?

Mrs. NELSON. I have——

Mr. KEITH. How many times has the State of California protested on behalf of State government or its people to the Federal Trade Commission?

Mrs. NELSON. Fortunately we don't. We have a running correspondence with them. There is a State-Federal liaison and we have a running, working relationship with them.

Mr. KEITH. A lot of problems come up by informal presentations of cases that are informally resolved and no real threat has been posed and no real action has been taken.

You get sort of defeated in detail. But have you ever really pressed a case? How many times have you really ever pressed a case and taken it to court?

Mrs. NELSON. My greatest disappointment has been in trying to urge the Food and Drug Administration to make additional tests of their deceptive packaging law.

They lost a court case which is referred to as the *Delson Mint* case. They felt after that as I got the explanation that their law was simply inadequate and until they had a new law they could not even invest the time and the money against the very slight chance of being successful because of the basic weakness in the law which they had to use.

Mr. WATSON. Mr. Chairman, may I make one observation? I believe it will help the committee and I have no interest in the Pillsbury Co. It is not in my district, but I did not want to leave the impression with this committee nor with those listening that most packages were the same which were purportedly the same, because I have examined them closely and I believe you will agree that although they contain each 1 pound, the size was the same, one was a new recipe which, if you followed it, would give you 25 servings where the other was the old recipe which would only give you 20 servings.

The reason for it is there was a difference and a substantial difference in the additives or the mixtures. Is that not correct?

Mrs. NELSON. I believe so. The 25 servings were smaller.

Mr. WATSON. If you will look on the package it says twenty-five 4-ounce servings and then you will have a difference in the mixture.

I am sure you ladies will follow the recipes, but it seemed to be patently wrong, Mr. Chairman, I examined it closely and I wanted to bring it to the attention of the committee and to those listening.

I have the three recipes typed out and I will leave them for the committee.

The CHAIRMAN. They will be inserted in the record.

(The document referred to follows:)

When package claims to offer increased number of servings, size of serving is reduced. Example:

Pillsbury Instant Mashed Potato

[4 servings as stated on the package]

	1 lb. pkg., 20 servings stated	1 lb. pkg., 25 servings stated	15¾ oz. pkg., 24 servings stated
Water	1½ cups	1¼ cups	1¼ cups.
Butter	2 tbsp	2 tbsp	2 tbsp.
Salt	½ tsp	½ tsp	½ tsp.
Milk	½ cup	⅓ cup	⅓ cup.
Potato flakes	2 cups	1½ cups	1½ cups.

The CHAIRMAN. Mr. Satterfield.

Mr. SATTERFIELD. You are contending by this legislation that it is the right of government to take care of that situation where the cost of food increases rather than permit a decrease in the quantity of a package to require an increase in the cost of that package; is that right?

Mrs. NELSON. This would be done on a commodity by commodity basis.

Mr. SATTERFIELD. I believe in answer to a question from the gentleman from Pennsylvania you said it was not the size or shape of the package or can you are talking about but the quantity contained it it.

Am I to judge that what you are really saying is that regardless of the size a container might end up being, you feel that products of a like nature should be packaged in the same quantities or in containers of the same net weights?

Mrs. NELSON. Yes, or a series of them, not necessarily just one.

Mr. SATTERFIELD. I understand in the canning industry there are standard sizes of cans.

It seems to me, that depending on the density of the product we might find that a standard size can today would not hold exactly one pound or any other required specific weight of a given product.

Would it not then require that a manufacturer, in this circumstance would have to have made for him special size cans so that he could package his product in the required weight?

Mrs. NELSON. They—theoretically that is possible, but speaking from the consumer point of view, the canned product is not the top priority problem.

Mr. SATTERFIELD. I realize it is not. You were talking about canned Dash here, which I think was an excellent example. You said

there were 15½ ounces in the can. I doubt if any standard-sized can would hold exactly 1 pound of this product since the one holds 15½ ounces.

Mrs. NELSON. This one has 15 ounces.

Mr. SATTERFIELD. Taking into account the density of the product to be put into the can, would it not be a fact that the product having the least density would end up with the largest size package which of itself would be likely to be more appealing to the shopper?

Mrs. NELSON. It could be, but you—if you have some discrete differences. Again let me refer to the British system. They have 2, 4, 8, and 12 ounces. You would have to blow up a 4-ounce package an awfully lot to make it look like an 8-ounce package, so there is not the same risk of confusion there.

Mr. SATTERFIELD. If we are going to have a standardization of 2-, 4-, 6-, 8-ounce packages, aren't we really talking about having to have a whole lot more different sized containers than we have today just by virtue of the density and weight of the products going into these containers?

And is it not equally true that to require this we are going to raise the cost of all products because of the increased costs in packaging?

Mrs. NELSON. On the contrary, I would hope that wisely administered this could lower prices.

Mr. SATTERFIELD. Do you know of any investigation or have you made any investigation or has the State of California attempted to ascertain in any way what the economic effect of regulations under this act might do to the cost of food?

Mrs. NELSON. No.

Mr. SATTERFIELD. Thank you, Mr. Chairman.

Mr. CARTER. I believe the idea of legislation is to give some comparability between the costs of similar items in certain cans. You have a comparison of the same type of foods.

Mrs. NELSON. We are striving for such sufficient order that it will be possible with reasonable effort to compare prices of similar foods.

Mr. CARTER. For instance, 1 pound, 6 ounces of lomolinda wheat costs, per pound, 32.7 cents, and Quick Cream of Wheat costs 28.6 cents per pound.

Of course there are different prices. You would ask for a standardization so you could compare relative costs of these two items; is that true?

Mrs. NELSON. Yes.

What are we going to do with the item of lomolinda and an offer of three silver spoons for 50 cents plus one box top, this distorts the possibility of comparison.

Mrs. NELSON. I would leave that alone.

Mr. CARTER. How would we determine the equity in the three silver spoons so we could make an adequate comparison? Would that be possible? We get on down to special offer on Mother-In-Law dresses and so on. When you purchase one item you also have an equity in that dress.

Regardless of the ounces and the price per-pound of these items, we have other things coming in. The equity in the first case, in the Mother-In-Law dresses, I am thinking of the purchase of this food in comparison with another item which does not offer a dress.

What are you going to do about that? How could you compare these prices?

Mrs. NELSON. Leave it alone.

Mr. CARTER. Then that does away with our comparability if we do that. You cannot make an accurate comparison then.

Mrs. NELSON. If the consumer can compare the money she has to lay out for the same amount of one product versus another, then like comparison of quality, comparison of the value of the premium is a separate consideration.

Mr. CARTER. It is a rather diffcult comparison to make on such an additional offer. It make it much more difficult to adequately compare two items when we have other things thrown in. For instance, as the distinguished gentleman from California mentioned, the bonuses which one gets make it difficult, too.

Thank you.

The CHAIRMAN. The gentleman from Ohio.

Mr. GILLIGAN. Thank you, Mr. Chairman.

Dr. Carter just brought up a point, as did Mr. Van Deerlin earlier, that was on my mind. You speak in your pamphlet and in your prepared statement, Mrs. Nelson, of the consumers' right to know what then she is getting for her dollar.

Mrs. Peterson complained, and you echoed the complaint, of the difficulty of dividing fractions and so forth. If you take into account the computations that have to be undertaken in order to know what you are buying when you are buying coupons on silver spoons, or as I was checking out of a grocery store last night, they threw in something that goes into a bingo game.

Now what are my odds of winning in that bingo game as against the price of the articles I bought? I think one of the things that may be troubling the committee is, granted the marketing system in this country is not perfect, but is the cure offered to us here more dangerous than whatever diseases afflict the marketplace?

I notice for instance your rather brief reference on page 4 of your prepared statement, if we cannot see the product, we need to find on the package clear, readable, and accurate statements of the ingredients and quantity and then in many cases we may need to find a declaration of Government grade of quality and a recognized standard of size.

Would it be your idea then, in order to do the job necessary to help the housewife, that the Government not only standardize weights and so forth of which consumer products may be sold but get into a Government grading system of these various products?

Mrs. NELSON. The Government is in the business of grading products. Practically all grains, foods, fruits, vegetables, are sold in this country from the farm all the way down to the consumer by grade and by Government grade. It is primarily at the consumer level for the first time the grade designation is left off.

Mr. GILLIGAN. Are you then advocating any Government grading system for packaged products at the consumer level?

Mrs. NELSON. I think the grade designation on packaged products where it is pertinent and useful information.

Mr. GILLIGAN. Where would it not be pertinent?

Mrs. NELSON. On bread products for example.

Mr. GILLIGAN. Do you mean it is not important for the consumer to know the quality of the bread he purchases?

Mrs. NELSON. The Government has already pretty well standardized the basic bread. There is a standard of identity for most breads.

Mr. GILLIGAN. Is there a difference indicated by the Government for instance on a commercial bakery bread as against a specialty bread like Pepperidge Farms bread?

Mrs. NELSON. There is a difference.

Mr. GILLIGAN. There is an indication that the Government rates one quality higher than the other?

Mrs. NELSON. The Food and Drug Administration has a series of identities for bread.

Mr. GILLIGAN. Is this evident to the consumer at the time of purchase?

Mrs. NELSON. Not always, no.

Mr. GILLIGAN. Do you advocate that it should be?

Mrs. NELSON. Yes, I think it would be helpful.

Mr. GILLIGAN. Is there any product on the consumer shelf that would you not have graded according to quality by the Government, or would you have a Government grading system for every consumer product on the shelf?

Mrs. NELSON. I think you would do this on a priority basis. You see, we are getting Government-graded beef now at the consumer level.

Mr. GILLIGAN. We are not concerned about meat in this bill. We are talking about all of these other products. Do you advocate the extension of this process to include every packaged product?

Mrs. NELSON. No.

Mr. GILLIGAN. Which ones would you exclude?

Mrs. NELSON. I think in that subject like in much of this law to be successful you have to start with priority needs, start where it is most needed.

In fruits and vegetables, for example, it would be very simple, relatively, to continue the grade labeling on down to the consumer because the canner knows the grade, he now knows the sizes, and it would be relatively simple to reveal it to the consumer and it would be very useful.

Mr. GILLIGAN. I don't wish to be rude but our time is limited.

One of the most remarkable things to my layman's eye in the food marketing industry has been the enormous success of frozen prepackaged, pre-prepared foods which obviously cost more than buying the raw product at the farmer's stall, yet the American consumer has gone for it hook, line, and sinker.

In many instances of prepared food, TV dinners and so on, we are not only buying the food, but we are buying the recipe and the skill of the person putting it together. Would you have the Government rate the recipes involved in these things as to superior, inferior, average, and so forth?

Mrs. NELSON. No. The grade designations could reveal to the consumer what is known to everybody else who has handled the product, but it would be most applicable in an unmixed product, so to speak.

Mr. GILLIGAN. Today many of our products and a lot of the consumer dollar is going into that.

Mrs. NELSON. It would be less applicable there.

The CHAIRMAN. Mr. Watson?

Mr. WATSON. I want to thank you, Mrs. Nelson, for your contribution to this discussion. I have a number of questions. Unfortunately, the time does not permit me to ask them, but I was quite interested on page 5 you underline this statement, "Packaging has eroded the consumers' right to name the quantity he chooses to buy."

Am I to conclude that you preferred going back to when we sold everything in bulk and then we would just dip and bring it out?

Mrs. NELSON. No, sir.

Mr. WATSON. I cannot reconcile the positions. Mrs. Peterson complained about the proliferation of packaging and all of that but I would conclude from that statement that you would want even greater proliferation since that was one of her favorite words.

Am I to conclude that?

Mrs. NELSON. No.

Mr. WATSON. Why do you say the consumer has the right to name the quantity he wishes to buy. It seems to me the packaging has changed to getting into quarter ounces in trying to meet the various size families of America. Now you say you want more of it.

Mrs. NELSON. The families I talked to were not persuaded that the change to the quarter ounces was done at their insistence. They did not make that choice. It was not done to meet their request.

Mr. WATSON. I notice in the third paragraph you state that there is such a high concentration in the food industry that four firms achieved the largest sales volume in dry goods category. That would indicate to me and I believe to you that if the FTC or the Food and Drug Administration were to move against one of these companies for any alleged deception in advertising or in labeling, then they could very easily correct this under the existing laws that they have.

Mrs. NELSON. I would like to try to make it abundantly clear that I feel that none of the examples I have set before the committee are deceptive in any actionable way.

Mr. WATSON. They are not deceptive?

Mrs. NELSON. They are not deceptive.

Mr. WATSON. Since you are here testifying on this legislation and you have had vast experience in this category, if you could have found any deceptive practices, you would have presented them to this committee this morning, would you not?

Mrs. NELSON. That, in my mind, was not the most important thing that I wanted to present on behalf of consumers to this committee. If the existing laws are being violated, there are responsible agencies there. We are talking about new laws. I was hoping to demonstrate to the committee how valuable the new law would be in correcting some problems that consumers have that the existing law does not deal with.

Mr. WATSON. I might say this in all kindness, it has been my experience the more laws we have passed the more confused the people become, so if you are holding forth promises to the consumer that this is going to make things less confusing, I think not all promises would justify it.

Further on in your statement, you have painless price increase. Would you mean when the cost of manufacturing these products and the increased labor necessitate a company increasing its price for a

commodity, you would want them to declare that price has been increased 1 cent over last week or last month? Is that what you mean?

Mrs. NELSON. When the potato packager bought those ingredients initially, he bought them in a market that was sufficiently orderly so that he bought them by a standard measure of 1 hundredweight or a bushel or a 50-pound sack or whatever it is in the potato industry. He knew whether the price this week was up or down from last week.

I think the consumer ought to have the same privilege.

Mr. WATSON. You must understand that the cost of living has gone up and I think I would like to see them put on the cans that prices indeed went up 1 percent as they went up the first of the year, higher than they have ever been in the past 8 years.

Mrs. NELSON. Support this bill, and it will do that.

The CHAIRMAN. Mr. Adams?

Mr. ADAMS. Mrs. Nelson, I am worried about the fact that we are going to have a series of witnesses come in to testify from an industry point of view, and you represent the consumer point of view, and we on the committee cannot obviously examine some 2,000 to 7,000 items and therefore we need your help to obtain an understanding of the problem.

I am going to be asking the other witnesses as they come along about these subjects and I want to start and get your conclusion and then if later by some statement you can come in with certain specifics I would like to have them.

First, do you believe that packaging has become a method of price competition between industries rather than reducing or increasing their price so they can maintain a stable price by varying their containers or their quantities as their costs increase.

Is that your conclusion?

Mrs. NELSON. I have seen much evidence where they vary the quantity and maintain the same price.

Mr. ADAMS. Do you think this is a definite factor in the American industry that they are doing this?

Mrs. NELSON. Yes.

Mr. ADAMS. Secondly, I notice all of your examples, and this is why I worry because we can't go through the 2,000 to 7,000, but doesn't much of the proliferation come in the area where you are using a freezing, a dehydrating, or a formula-type process, which is a new type of American processing to the consumer where we freeze things and when you freeze things you take water out and varying amounts of water you take will determine the density and therefore the type of product that you will end up with.

The same thing with dehydrated food, also when creating a formula like your dogfood example, the amount of meat you put in it opposed to something else will vary the weight of it.

Now, with these things occurring, isn't this the main area of proliferation? I expect to hear testimony—and I want your reaction to it—that the quantities in things like the ones I have mentioned—and you can add instant coffee which is dehydrated—and you can add detergents which have a formula of so much cleaning power, and find that these vary because the formulas or dehydration will change. Now the system of creating these products will change and therefore the

producers may be using the same container but will vary the amount in it or keep the same container and volume but the weight will vary because of a change in the type of product.

Is it your conclusion that this is a major cause of the proliferation of weight and volume categories.

Mrs. NELSON. It may be. I would not say that this is not a factor, but I do not think that is the total or even the primary explanation.

Mr. ADAMS. So your conclusion then, and I am sorry to have to ask you for conclusions—I would rather have you take 2,000 items and compare them—but your conclusion is that the proliferation and the problem exists because of the competitive pressures on the producers who are putting this out in the competitive world plus the influence, I think you mentioned, of testing techniques and promotional techniques that caused this to happen.

It makes a great deal of difference in what kind of law you put down because if proliferation is caused by formulas and all of these technical variations, we are going to have some real problems when we start, and it might be that you have to go to a container standard rather than a weight standard, but if it is due to competitive pressures, then I think you can go to labeling and standardization of weights as you mentioned and that will probably be enough and a good result will follow.

Now, which do you think?

Mrs. NELSON. I don't think you can back off of the problem because of the formula. In the instant mashed potato, the Agricultural Research Center in Berkeley developed the dehydrating process with the taxpayers' money. They say it does not matter that there is no variation in formula—a certain amount of dried potato makes a certain amount of mashed potato of a given liquidity or stiffness.

So that is not the explanation according to these people.

Mr. ADAMS. I don't know enough about mashed potatoes but I can see where you can dry it out to 50 or 57 percent, whatever the formula might be.

Mrs. NELSON. I can submit to the committee some information from the Agricultural Research people to this effect, because we went into this very thoroughly with them through a home economist.

Mr. ADAMS. So it is your conclusion that this proliferation and fractional sizes and the lack of comparability is caused by the pressures in the industry and the advertising and promotional techniques rather than formularization dehydration and freezing.

Mrs. NELSON. I think that is an awfully general statement.

Mr. ADAMS. I know it is. I don't know any other way of attacking it. If someone does not come in here and say the variation of sizes of containers is due to the fact that we have a new and improved formula and therefore we can give you as many servings by adding more water to less of what we are giving you, I would be very much surprised, and I want to know your conclusion on the other side.

Mrs. NELSON. I would be very much surprised.

Mr. ADAMS. Thank you. Mr. Chairman.

The CHAIRMAN. Thank you, Mrs. Nelson. You have been very patient and you have enlightened the committee greatly.

The committee will have to adjourn until next week. I am sorry. We have a bill on the floor and we cannot sit in the afternoon.

When the bill was announced we had no idea the civil rights would be up but we have it up and we just cannot sit.

If there is anyone who was to be a witness today who would like to have his testimony to go into the record for the edification of the committee he may do so. The committee will stand adjourned until next week. I am awfully sorry. I regret that I have to tell this to you people who are here to give testimony but there is just nothing else we can do. We hope that next week we can go into night sessions in order to accommodate the people who have come some distance to be here.

I will certainly be available at night and we will have some other members of the committee so we can have night sessions in order to get the hearings finished. I do say again any of you who wish to present testimony for the committee for the record, please do so.

The committee stands adjourned until 10 next Tuesday morning.

(The following information was submitted by the California Department of Agriculture in response to a request from Congressman Moss:)

CALIFORNIA DEPARTMENT OF AGRICULTURE,
Sacramento, Calif., September 8, 1966.

Mr. JOHN BILLETT,
Legislative Assistant to Congressman Moss,
House of Representatives,
Washington, D.C.

DEAR JOHN: In response to your telephone call the other day, I am enclosing copies of memos from two of my divisions, listing the standard containers which are regulated by the California Department of Agriculture.

I hope this information will be helpful to you.

Sincerely,

CHAS. PAUL, *Director.*

SACRAMENTO, *September 8, 1966.*

Memorandum.
To: Chas. Paul, Director.
From: California Department of Agriculture, A. E. Reynolds, chief, Bureau of Dairy Service.
Subject: Dairy products packaging.

You have asked for information relating to standards which apply to packages of fluid milk and milk products. Division 4 of the Agricultural Code contains the following references to package sizes and restrictions:

Market milk and similar fluid products

Market Milk and similar products are required to be disposed of to retail trade in standard milk bottles or single service containers. The Bureau of Weights and Measures enforces the "size" provisions in reference to milk bottles and single service containers.

Ice cream, ice milk and similar frozen products

These are usually sold in pints, quarts, one-half gallon, gallon, two and one-half gallon and three gallons. Smaller quantities are sold in cups, slices, bars, etc., in fluid ounces. There are no standards for package sizes enforced by the Bureau of Dairy Service.

Dietetic and diabetic ice cream or ice milk

Dietetic and diabetic ice cream or ice milk must not be sold in packages larger than one pint.

Butter

Butter is usually sold in one-quarter pound, one-half pound, one pound and two pound quantities. The Bureau of Dairy Service enforces no packaging requirements.

Cheese

Cheese is sold in random weight packages; the Bureau of Dairy Services enforces no size restrictions except the following: Pasteurized processed cheese spread, pasteurized processed cheese food and cold pack cheese food must be sold in packages of not more than two pounds.

Evaporated milk

Evaporated milk is sold in tall, standard, baby and No. 10 cans.

Evaporated skim milk

Evaporated skim milk is not permitted to be sold in containers smaller than No. 10 size. This is enforced by the Bureau of Dairy Service.

Sour cream dressing

Sour cream dressing must be sold in containers of at least one-half gallon capacity unless flavored with oinion, cheese, salmon, anchovy, or pickle. This requirement is enforced by the Bureau of Dairy Service.

Oleomargarine

No packaging requirements.

Dry milk products

No packaging requirements.

Acidified cream dressing and sour cream dressing

Acidified cream dressing and sour cream dressing must be sold in containers of at least one-half gallon capacity unless flavored with fruit, vegetable, sea food, meat, cheese or spice. The Bureau of Dairy Service enforces this requirement.

Dairy spread

Dairy spread must be packaged in containers of four fluid or avoirdupois ounces minimum, eight fluid or avoirdupois ounces and one pound or two pounds. The Bureau of Dairy Service enforces these requirements.

Nonfat frozen dairy dessert

Nonfat frozen dairy dessert must be sold in consumer-size packages of one-half gallon or less. The Bureau of Dairy Service enforces this requirement.

SACRAMENTO, *September 7, 1966.*

Memorandum.

To: Chas. Paul, director.

From: California Department of Agriculture, W. A. Kerlin, chief, Bureau of Weights and measures.

Subject: Regulations concerning retail sale of commodities in standard size containers.

In reply to your inquiry concerning products sold in standard size containers, we wish to advise that Berries, Butter, Oleomargarine, Milk, Potatoes, Flour, Meal and Bread are all governed by provisions of the California Administrative Code (Regulations), or the Business and Professions Code (Law).

The actual regulations are as follows:

2875. *Berries in containers.*—Berry boxes shall not have a false bottom or be so constructed as to facilitate deception or fraud. The standards of net weight and volume for berries in containers shall be:

(*a*) Strawberries: One pound six ounces (1 lb. 6 oz.) (quart 67.2 cubic inches); twelve (12) ounces (pint 33.6 cubic inches).

(*b*) All other berries: Twelve (12) ounces (pint 33.6 cubic inches); eight (8) ounces (one-half pint 16.8 cubic inches).

2876. *Butter in containers.*—The standard net weight of butter (when sold, offered or exposed for sale) in a "container" shall be one-quarter pound, one-half pound, one pound, or two pounds net avoirdupois weight.

2877. *Oleomargarine in containers.*—The standard net weight of oleomargarine (when sold, offered or exposed for sale) in a "container" shall be one-quarter pound, one-half pound, or one pound net avoirdupois weight.

The provisions of this section shall become effective January 1, 1964.

2887. *Potatoes in containers.*—

(*a*) The standard net weight for potatoes in containers shall be: 100 pounds, 50 pounds, 25 pounds, 20 pounds, 10 pounds, 8 pounds, or 5 pounds

net weight. The content declaration shall be conspicuously marked or branded thereon.

Effective January 1, 1965, the 25 pound and the 8 pound standards shall be repealed and are void.

(*b*) Potatoes when sold in containers of less than five pounds net weight, whether in the possession of the producer, wholesaler, or retailer, must have the net contents indicated on the container thereof.

(*c*) Overpack shall be made by the packers in an amount sufficient to insure compliance with the above standards.

Milk in bottles

3127. *Units.*—The capacity of a milk bottle shall be 1 gill, ½ liquid pint, 10 fluid ounces, one-third quart, 12 fluid ounces, 1 liquid pint, 1 liquid quart, ½ gallon, or 2 gallons, when the temperature of the bottle is 20 C. (68 F.).

Copies of laws from the Business and Professions Code governing bread loaf (attachment A) and flour and meal containers (attachment B) are enclosed. Copies of article 4, Labeling (attachment C) also accompany.

Should you desire further information, please advise.

[Attachment A]

CHAPTER 5

STANDARD BREAD LOAF, CALIFORNIA BUSINESS & PROFESSIONS CODE

19800. All loaves of bread, sliced or unsliced, made or produced for the purpose of sale, sold, offered or exposed for sale in the State of California shall weigh, until 24 hours after baking, within the limits hereinafter set out, for standard loaves and standard large loaves, as herein defined; provided, however, that larger loaves having weights that are multiples of the mean weight of a standard loaf weight may be made or procured for sale to restaurants, caterers, sandwich makers, hotels, commissaries, institutions, or other public eating places. The total tolerance in excess or deficiency for each of such larger weight loaf shall not exceed two ounces. (Amended by Ch. 1774, Stats. 1953.)

19801. "Standard loaf" shall weigh not less than 15 ounces, and not more than 17 ounces avoirdupois.

19802. "Standard large loaf" shall weigh not less than 22½ ounces and not over 25½ ounces avoirdupois.

19803. Bread commonly known as "twin loaves" may be made or procured for the purpose of sale, sold, offered or exposed for sale, providing each unit of such twin loaf conforms to the standard weights as herein defined for standard loaf and standard large loaf. (Amended by Ch. 1774, Stats. 1953.)

19804. Whenever any bread is wrapped, in any wrapping, for sale through retail outlets, there shall appear on the body of the wrapping, or on the insert band, in letters clear and legible to the buyer or prospective buyer, in a color contrasting with the background, the words required by this section. Such label shall also comply in all respect with the provisions of Chapter 6 (commencing with Section 12601) of Division 5 of this Code.

The words required on such label shall read "standard loaf, minimum net weight 15 oz.," or "standard large loaf, minimum net weight 1 lb. 6½ oz.," as the case may be, and the lettering thereof shall be of minimum height of one-quarter inch.

This act shall become operative January 1, 1964. (Amended by Ch. 516, Stats. 1963.)

EXCEPTIONS

19805. The provisions of this chapter shall not apply to crackers, pretzels, biscuits, buns, scones, rolls, or loaves of fancy bread weighing less than one-fourth of a pound avoirdupois or to what is commonly known as "stale bread," sold as such, provided the seller shall, at the time of sale, expressly state to the buyer that the bread so sold is stale bread.

19806. Any person, firm or corporation who shall make or procure for the purpose of sale, sell, offer or expose for sale within the State of California any bread in loaves otherwise than herein provided for or in conflict with the standard weights of bread when baked as herein fixed, shall be guilty of a misdemeanor. All inspection of the weight of bread shall be made on the premises of the maker or manufacturer or on the premises of the retail store from

which the bread is sold, or offered for sale or exposed for sale by averaging the weight of not less than ten loaves of bread of any one unit of a specific brand name and such average weight per loaf shall not be less than the minimum or more than the maximum weight herein fixed for the respective loaf for such unit; provided, however, that in the event 10 loaves of bread of any one unit of a specific brand name shall not be available at the time of inspection, the average of weight shall be made upon the basis of such loaves of bread of any one unit of the brand name as may be available. (Amended by Ch. 1499, Stats. 1949.)

19807. The enforcement of the provisions of this chapter shall be under the supervision of the Chief of the State Bureau of Weights and Measures.

19808. Any person who violates any provisions of this chapter shall be guilty of a misdemeanor.

19809. Chapter 704, Statutes 1921, together with all acts amendatory thereof and supplementary thereto are repealed.

19810. Notwithstanding any other provision of this chapter, any bakery which maintains and operates premises upon which it offers bread for sale at retail may bake and sell upon such premises loaves of bread which weigh eight ounces, or less, avoirdupois. (Added by Ch. 1153, Stats. 1965.)

[Attachment B]

CHAPTER 10. FLOUR AND MEAL CONTAINERS

(Heading added by ch. 159, Stats. 1945)

STANDARDS OF WEIGHT

13000. It shall be unlawful for any person, partnership, corporation, company, cooperative society, or organization to pack for sale, sell, offer or expose for sale any of the following commodities except in containers of net avoirdupois weights of five (5), ten (10), twenty-five (25), fifty (50), and one hundred (100) pounds, and multiples of one hundred (100) pounds: Wheat flour, self-rising wheat flour, phosphated wheat flour, bromated flour, enriched flour, enriched self-rising flour, enriched bromated flour, corn flour, corn meals, hominy and hominy grits.

EXCEPTIONS

The provisions of this chapter shall not apply to (a) the retailing of flours, meals, hominy and hominy grits direct to the consumer from bulk stock, or (b) the sale of flours and meals to commercial bakers or blenders in containers of more than one hundred (100) pounds, or for export, or (c) flours, meals, hominy, and hominy grits packed in containers the net contents of which are less than four (4) pounds, or (d) the exchange of wheat for flour by mills grinding for toll. (Added by Ch. 159, Stats. 1945.)

PENALTY

13001. The violation of this chapter is a misdemeanor punishable by a fine of not less than twenty-five dollars ($25) nor more than five hundred dollars ($500) for each offense. (Added by Ch. 159, Stats. 1945.)

[Attachment C]

ARTICLE 4. NET QUANTITY DECLARATIONS ON PACKAGED COMMODITIES

2918. *Application.*—These regulations shall apply to all commodities in package form, except as exempted by provisions of Divisions 5 and 8 of the Business and Professions Code, and the declaration, or declarations, of quantity on a package or container shall be determined on the basis of the standards set forth herein.

DEFINITIONS

2919. *Label.*—The term "label" means a display of written, printed, or graphic matter upon the immediate container of any article. If the area of a label is

used to determine the type size for a quantity statement, then the net quantity statement shall be on the label, subject to the provisions of Section 2920.3.

2919.1. *Tag.*—A tag is a card or similar article of paper or other material which is affixed to a container by a wire, string or similar means. It may be used on a sack, bag, or container which has a brand or other label, but if the area of a tag is used to determine the type size for a quantity statement, then the net quantity statement shall be on the tag, subject to the provisions of Section 2920.3.

2919.2. *The principal display panel.*—The principal display panel or panels shall be construed to mean that panel or those panels of a label that is, or are, so designed as to be most likely to be displayed, presented, shown, or examined under normal and customary conditions of display and purchase. If the area of the principal display panel is used to determine the type size for a quantity statement then the net quantity statement shall be on the label, subject to the provisions of Section 2920.3.

2919.3. *Area of principal display panel or panels.*—The principal display panel area shall be:

(*a*) The product of the height times the width for a rectangular label.

(*b*) Forty percent of the product of the height times the circumference for a cylindrical or nearly cylindrical container with a label covering the entire cylindrical surface.

(*c*) The total printed area or one-third the total flat area of one side whichever is greater for a flat container such as an envelope, sack, or bag.

(*d*) The total actual area for a container with a distinctively identifiable label area.

2919.4. *Effective date.*—These regulations shall be effective with respect to all labels, tags or principal display panels after January 1, 1967, and to other labels, tags or principal display panels:

(*a*) That are redesigned after January 1, 1965.

(*b*) That are prepared from plates, dies, cylinders, and the like, made after January 1, 1965.

The provisions of this section shall not apply to content statements formed into the surface of containers in compliance with Section 2920.5.

QUANTITY DECLARATION

2920. *Presentation.*—The declaration, or declarations, of quantity of the contents of a package shall be presented on the principal display panel in such a manner as to be generally parallel to the base on which the package rests as it is designed to be displayed. Quantity declarations intended to be read through a liquid commodity shall not be permitted.

2920.1. *Style of type of lettering.*—The declaration, or declarations, of quantity shall be in such a style of type or lettering as to be boldly presented, clearly and conspicuously, with respect to other type or lettering or graphic material on the panel or panels. (As for example, bold faced or block style type).

2920.2. *Color contrast.*—The declaration, or declarations, of quality shall be in a color that contrasts definitely with its background: Provided, that this section shall not apply to (1) permanently labeled reusable glass containers for which standards have been established for specific products and, (2) blown or molded containers which comply with the provisions of Section 2920.5.

2920.3. *Minimum height of numbers and letters.*—The height of any letter or number in the required quantity statement shall be not less than those shown in Table 1, with respect to the square inch area set forth. Provided, that the height of each number of a common fraction shall not be less than one-half the dimension shown.

TABLE 1.—*Minimum height of numbers and letters*

Square-inch area of principal display panel:	*Minimum height of numbers and letters (inch)*
Greater than 0 square inch and not greater than 25 square inches	1/16
Greater than 25 square inches and not greater than 120 square inches	1/8
Greater than 120 square inches and not greater than 400 square inches	1/4
Greater than 400 square inches	1/2

2920.4. *Free area.*—The declaration, or declarations, of quantity shall be in an area sufficiently free from other printing, lettering, or marking, to make said declaration, or declarations, stand out definitely with respect to the surrounding printing, lettering, or marking (such as an area free of printing or marking in all directions from the statement for a dimension not less than twice the minimum required height for the letters and numerals of the statement).

2920.5. *Information formed into surface.*—Quantity statements may be formed into the surface of a container for liquids by molding, blowing, or similar means, provided that in such case the height of any letter or numeral shall not be less than three-sixteenths of an inch for containers of one pint or less capacity, and not less than one-fourth inch for containers of greater than one pint capacity; and provided further, that if the trademark or brand name is also formed into the surface of the container, then the required declaration or declarations of quantity shall appear in close proximity to the trade or brand name. If a label is attached, the quantity statement shall appear on the label.

When the trademark or brand name is applied to the surface of a container in a contrasting color the required statement of quantity shall also be applied to the surface in a contrasting color, and shall be in height not less than one-eighth inch for containers of one pint or less capacity and not less than three-sixteenths of an inch for containers of greater than one pint capacity.

Permanently marked or branded, reusable containers in use prior to January 1, 1966, may remain in service, but all such containers manufactured after January 1, 1966, shall conform to this section, and shall be permanently marked or branded with the final two digits of the year of production. All new molds, dies, etc., made after January 1, 1965, shall produce containers in full compliance with these regulations.

GENERAL

2921. *Other information to be shown on packages.*—Except as otherwise provided in this article, any commodity in package form kept for sale, offered for sale, or exposed for sale, shall visibly 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, and (2) the name and place of business of the mnufacturer, packer, or distributor, unless the commodity is kept or offered for sale on the premises where packed.

2921.1. *Covering.*—A covering, such as a display carton or band, shall not obscure a statement of net content, unless such covering or carton also includes a proper content statement for the container.

2921.2 *Supplemental statements.*—A secondary statement of contents for consumer information, other than the required statement, is not prohibited, but shall not be placed or designed so as to obscure the required statement. A supplemental statement shall be accurate.

2921.3 *Units with two or more meanings.*—Units with two or more meanings shall be identified as to the particular meaning employed in a net content statement. Distinction shall be made between "avoirdupois" and "fluid" ounces. However, such distinction may be omitted when, by association of terms (as "1 pound 4 ounces," "weight 6 ounces," or "1 pint 8 ounces"), the meaning is obvious. Pints and quarts shall be considered to be liquid measure if not identified. Dry pints and quarts shall be identified by the word "dry" in the statement of quantity. Normally accepted abbreviations may be used unless prohibited by provisions of the Business and Professions Code applicable to the labeling of bread.

2921.4. *Accurate consumer information.*—Accurate consumer information shall be provided by any net quantity statement. Any statement of count shall be accompanied by a statement of weight or measure if necessary to provide accurate information.

2921.5. *Common fractions.*—Common fractions shall be reduced to their lowest terms.

2921.6. *Approval.*—Quantity statements for which the display panel area determination is not applicable, as shown in Section 2919.3 may be submitted to the Department of Agriculture, Bureau of Weights and Measures, for approval. (Revised 6/22/66.)

(Whereupon, at 12:25 p.m., the committee recessed, to reconvene at 10 a.m., Tuesday, August 2, 1966.)

FAIR PACKAGING AND LABELING

TUESDAY, AUGUST 2, 1966

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to recess, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

We are continuing our hearings on fair packaging and labeling bills. Our first witness this morning will be one of our colleagues from New York, the Honorable Seymour Halpern.

We are happy to have you with us, Mr. Halpern.

I want to say that Mr. Halpern always comes before the committee when he has anything of interest to his people and to his State on which to testify.

We are glad to have you.

I yield to my colleague from North Carolina.

Mr. KORNEGAY. Mr. Chairman, I hesitate to interrupt at this point, but I do want to bring up a matter before we commence to hear the witnesses today, which I think is of vital interest to this committee, the Congress, and the Nation. That is the matter of the airline strike.

The Senate has held hearings and reported out bills, as I understand it. As the chairman knows, I have been interested in this matter for some time. I have requested hearings on two occasions.

I just wanted to bring that up at this time and say that while these are important bills that we are considering, I think that the airline strike is of far greater importance. The damage being done by the airline strike is far greater on the consuming public than this matter of packaging.

I would like to again urge the chairman to call hearings on my bill and other bills of similar import in connection with the airline strike at the earliest possible moment, and to ask the chairman when and if he believes those hearings will come to pass.

The CHAIRMAN. I would like to say to the gentleman from North Carolina that it is the chairman's intention, in working with the leadership of the House, to take up the airline strike legislation just as soon as something tangible comes out of the Senate. We will immediately set other affairs aside, because I, too, think as you do, that it is one of the most important things today facing the Nation and Congress.

I believe it is wise, and the leadership does, to wait and see what comes from the Senate.

Mr. KORNEGAY. Mr. Chairman, it is far more important to the country than this bill we are now considering. I would hope that we would suspend action on this truth in packaging bill until the committee has taken action in the strike situation.

The CHAIRMAN. I agree with the gentleman, but, as I say, it is the wisdom of the leadership of the House that there will be no action taken until we see what comes from the Senate. It would, perhaps, cause duplication and we might get into difficulties here if we take up one proposition and the Senate comes out with another. We might not get it settled for weeks.

I think it is best, and the leadership does, too, to take up what comes from the Senate, which we hope will be finished today. It will not prolong very long what we have to do here.

Mr. KORNEGAY. If I understand the situation, then, as soon as something comes from the Senate we will suspend with the business now before the committee and proceed to consider legislation that will end this airline strike, which is so dangerous to the economy of the Nation.

The CHAIRMAN. I might say we will not necessarily suspend, because we might go into it at nighttime to try to get it out. We will expedite it as much as we can.

Mr. KORNEGAY. Thank you, Mr. Chairman.

Mr. YOUNGER. Mr. Chairman, what assurances do you have that the matter is coming to our committee? Yesterday, the House Education and Labor Committee had hearing on this subject. It is coming out of the Labor Committee of the Senate and not the Commerce Committee. This is a legislative matter that has always been before this committee.

What assurance have you received that it is coming to our committee?

The CHAIRMAN. I have such assurance from the leadership. It will come to our committee.

After all, it is an amendment to the Railway Labor Act, which belongs to this committee.

Mr. YOUNGER. I think we ought to have some action on it.

The CHAIRMAN. I am in agreement with the gentleman.

Mr. Halpern, you may proceed.

STATEMENT OF HON. SEYMOUR HALPERN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK, ACCOMPANIED BY STEVEN NEY, STAFF ASSISTANT

Mr. HALPERN. Mr. Chairman and members of this distinguished committee, I do appreciate this opportunity to testify before this distinguished committee today in order to present my views on the fair packaging and labeling legislation, which I have long sponsored and supported.

At the outset, Mr. Chairman, with your permission, I would like Mr. Steven Ney, of my staff, to sit at the witness table, since he has some exhibits that I think would be pertinent to my testimony.

I would also like to express my deep appreciation to the distinguished gentlewoman from the great State of Washington for yielding to me this morning. I assure her, as I do the committee, that I will be extremely brief.

I do have an executive session of another committee and I must rush over there.

I do appreciate her courtesy in yielding to me.

I appeared last May before the Senate Commerce Committee and stated at that time: "The need for this legislation has been with us for too long, and now, surely is the time for action." Today, more than 1 year later, and appearing on the House side, I say with an even greater sense of urgency, Mr. Chairman, that now is the time for your committee to act.

Until it looked like Congress was going to move in this area, the practices had gone from the subtle to the ridiculous. The situation is still serious and the only way to stop these abuses is to adopt protective legislation.

For too long the consumer has been shortchanged and deceived by excessive advertising practices and misleading distortions of truth. It is high time to correct them.

Let me show you what I mean. Here I have a frozen cherry pie whose label shows a pie just chock full of cherries. The real pie inside, however, contains only a fraction of the number illustrated. Look on the cover, Mr. Chairman, one-quarter of the pie is exhibited.

I count 40 cherries in this picture representing one-quarter of the pie. We open the pie and discover that there are only, I believe, 72 cherries in the entire pie. One could expect if there are 40 illustrated that there would be 160 in the full pie.

Here are the cherries that were in that entire pie. I have them here in this dish.

Just to show that it isn't just an exception, Mr. Chairman, I brought along a couple of these pies unopened, and frankly had one baked in case the committee would like to share in it and see for themselves the fact that the vast percentage of this pie is mere filling and not the cherries that are illustrated on the cover.

I have knives and forks and I have a member of the staff who would be very happy to serve this to members so that they can see for themselves.

We have here another deceptively packaged cherry pie. We wanted to know if it was just that particular brand. We did find another brand. In this instance, they just show a side view, of one slice. We count there 14 full cherries. We would expect, based on the fact that this is just a little side view and represents one-sixth of the pie inside, to find hundreds of cherries inside. But by actual count, believe it or not, there were only 44 cherries in the entire pie serving 6 people. I don't know of any more blatant example from the pictorial aspect than these two instances I cite here.

As another example, I have covers of some frozen dinner packages. In one instance the beef shown on the cover—and this is even smaller than the average plate, so we would take for granted this would be the serving inside this so-called dinner, and yet the beef shown on the cover is actually twice the size, Mr. Chairman, of the beef inside.

We have next a frozen turkey dinner. Here is the turkey illustration and yet inside was only 25 percent of the contents shown on the cover. The rest was sloppy, wet dressing, Mr. Chairman.

These couldn't be more blatant examples.

As a final example, I have two boxes of well-known breakfast foods put out by the same manufacturer within a short period. One contains 18 ounces and the other 14½ ounces. Yet both are packaged in boxes of the identical size. This is extremely misleading.

But I must mention that it is not enough for a package to be nondeceptive. It must also accurately and completely inform the housewife of what she is buying. The American housewife deserves a fair deal. Rather than befuddling and confusing her, labels must help her to make informed shopping decisions.

The fair packaging and labeling bill accomplishes that objective. It will give the Food and Drug Administration and the Federal Trade Commission authority to require that all labels be nondeceptive and for the first time ever, that labels "facilitate price comparisons" for the consumer. This is a great step forward.

The bill is significant because also for the first time a mandatory section of the bill requires the promulgation of specific regulations for packaging and labeling; not mere guidelines which are often ignored by industry. This, too, is a great step forward. It is true that there are already some existing standards in this area, but they are rather vague and nebulous injunctions against deceptive and misleading labeling.

When this bill is hopefully adopted and regulations are established, all manufacturers of a particular commodity will have to make sure that their labels satisfy definite minimum standards. There will be no room for legal doubt or uncertainty on any side. The mandate will be clear to provide specific and detailed regulations.

As you well know, the bill before us differs in some respects from the original bill of Senator Hart, of which I am proud to be the first House sponsor. Some of the changes made are eminently sensible and have garnered considerable support, including mine. I refer to the new mandatory requirement that the net contents statement be printed parallel to the base of the package in a uniform location, and further, that the label must show the name and place of business of the manufacturer, packer, or distributor.

I am in agreement with the specific prohibition of mixed units, and the transfer of the "cents-off" section to the discretionary part of the bill. I also commend the chairman for reinserting in his bill a provision deleted by the Senate—the so-called slack-fill section.

Some changes, unfortunately, have weakened the bill. The time limit set forth in section 5 is unduly long. Why does any industry need 12 to 18 months for developing a weight or size standard on one particular commodity? Thousands of deceptive and confusing labels brought out in years of hearings demonstrate that industry in many cases has not voluntarily regulated itself. I would prefer the far stronger provision in the Hart bill which authorizes the relevant agency and not the industry to promulgate regulations after full hearings.

An important section was deleted from the original bill. It would have prohibited deceptive pictorial matter such as the cherry pie labels which I showed you. Admittedly, it will be difficult in some cases to devise standards pertaining to illustrative material. However, for some products, this may be feasible.

In order to cover those cases, I would favor inserting such a section originally in the mandatory section of the Hart bill, but deleted in the Senate version, into the discretionary section of the chairman's bill. In this way, joint Government-industry cooperation under the voluntary products procedures of the Department of Commerce, could formulate standards in this sensitive area. By placing pictorial matter in the discretionary part, we would have a workable provision.

I urge that you consider adopting these changes to what I consider to be a very fine bill in both concept and construction.

I disagree that this legislation will interfere with our system of free competitive enterprise, as some of its opponents contend. On the contrary, this bill preserves and enhances free and fair competition. It will not stifle the growth of industries or preclude product diversification. Ample room is left for competition in the marketing of products. The only restriction is that packaging must be honest and fair. I am convinced that this will not be inordinately burdensome on the creativity and imagination of American business.

I am privileged to have worked for years at the forefront of this type of legislation to give the consumer a square deal and urge that your committee report this bill favorably.

Once again, I want to thank you, Mr. Chairman. I have kept to my word of being brief, and I want to thank you and the committee for giving me this privilege of appearing before you this morning. I certainly hope that we will get reasonable legislation from your committee along the lines I have outlined in my brief testimony.

Thank you again, Mr. Chairman.

The CHAIRMAN. We appreciate your coming before the committee to give us your views. You are always out in front to present what you feel is in the best interests of the country.

Are there any questions?

We have one of our colleagues from New York.

Mr. MURPHY. I would just like to point out, Mr. Chairman, that the gentleman from New York represents an area in New York that probably is subjected to some of the most competitive type of advertising in the consumer field. The gentleman, prior to his long service in the House, served in the State legislature of New York. During that period of service he was consistently thoughtful and attentive to some of the problems of advertising in a mass metropolitan area where I think the thrust of this legislation will probably have its biggest impact.

There is one thing I would like to ask about the manufacturer of those cereals.

Was there a difference in price between the two cereals based on the 16- and 14-ounce packages?

Mr. HALPERN. Ironically, and this is very interesting, Mr. Chairman, and I should have made this point, the cereal package with the smaller contents, which was cut off where the contents ended, cost 2 cents more than the other box. Both were manufactured and offered on the market by the same manufacturer.

Mr. MURPHY. It probably points out that the manufacturer is trying to standardize on a carton size, and, therefore, affecting a manufacturer savings, at least in the administrative end of the business.

One of the criticisms of the legislation is the fact that it is going to standardize packaging. But the manufacturer here has already gone to standardization, even though he does vary the price, probably because of content and not because of the package.

Mr. HALPERN. That is a very good point.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

Under the present law, the Federal Trade Commission does have power to prevent deceptive advertising. Would you say, in the case of the sizes there, that was deceptive advertising?

Mr. HALPERN. I think it would be a case that the agency would have to prove, and, at best, without having the rules and regulations offered by this legislation it might be difficult to prove.

Mr. YOUNGER. The Chairman of the Commission stated before the committee that they have full power now to act in any of these cases. Did you call this to the attention of the Federal Trade Commission?

Mr. HALPERN. These specific instances? I merely went out and with the help of my staff within the last few days obtained these as flagrant examples, as I said in my testimony. These come from local supermarkets. It wouldn't have happened if we had legislation such as I propose. There would be standards and this would not be allowed to exist.

Mr. YOUNGER. Why do you say that is true when the Chairman of the Federal Trade Commission has told us that he has ample authority under existing law to stop any of that? They are the ones that are going to enforce this new law.

Mr. HALPERN. But he has to work on a case-by-case basis. It takes too long. In the meantime it is produced. I don't know how long these products have been on the market, but they could have been on for years. Evidently they still are. Since the packages were purchased just yesterday.

Mr. YOUNGER. The Federal Trade Commission has already decided they do not have to proceed under a case-by-case basis, but they can proceed against the whole industry. They did that in the case of the cigarettes. The Chairman of the Commission admitted that before the committee.

I am interested in this: If there is any additional power that should be given to the Federal Trade Commission in the sense that they can proceed against the industry as a whole, or a case-by-case basis, in the case of any deception, wouldn't that be a proper amendment to the Federal Trade Commission Act?

Mr. HALPERN. If you recall correctly, I believe it was Mr. Dixon who, in his testimony, said he would like to have mandatory power, so his Commission could be much more effective.

I believe this is the way you should and could do it, to protect the public in advance.

Mr. YOUNGER. That is not an amendment to the Federal Trade Act. This is creating a new bill entirely, a new law, creating more confusion.

Mr. HALPERN. I think we should have both. I think we should have legislation which I believe is fair and reasonable in order to prevent

any of these abuses from happening, and I think the agency should have the power it requests, through the amendment you propose, sir.

Mr. YOUNGER. I noticed that you put the word "reasonable" in here, which is not in your printed thought.

Mr. HALPERN. I commend your attentiveness.

Mr. YOUNGER. What worries me, how to get the same enforcing agency of the Government to act in the case of these deceptive and frustrating points of view. Both the Federal Trade Commission and the representative from the Food and Drug Administration said that they would be satisfied to have these as amendments to their act, giving them this additional power which they want. You are an attorney and I thought maybe you would have some thoughts on this question.

Mr. HALPERN. We would go further than just the deception to which you refer. We want to help the consumer make price per unit comparisons. I believe this is one of the main thrusts of the legislation.

Mr. YOUNGER. Thank you.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Florida. Thank you, Mr. Chairman.

Mr. Halpern, I have enjoyed your testimony very much. If I had not had breakfast this morning I would have eaten the cherry pie.

I was interested in your examples on the meat TV dinner and the turkey TV dinner. I am not sure that that actually would be covered by this law because there is an exclusion in the Senate bill and this bill of any meat or meat product and poultry product.

What would be your opinion? Do you think a meat product would be covered with this exclusion?

Mr. HALPERN. I would like to have it covered, sir. Right now I believe it would be covered by the Agriculture Department. It is not in the chairman's bill or in the bill that came from the Senate. I would like to add that. It is in my bill and it was, I believe, in the original Senate bill.

Mr. ROGERS of Florida. As I understand it, the administration's position has been that the Department of Agriculture has sufficient authority. Therefore they have not asked that this be covered. Yet these examples exists.

I wanted your opinion on them.

Mr. HALPERN. That is why I would put it in the discretionary part of this bill, where we have the voluntary products standards provisions. I would include the pictorial matter so that the industry can clear up its own standards.

Mr. ROGERS of Florida. Thank you.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. I would like to make reference to the idea that the Federal Trade Commission would, by rulemaking, have the broad authority that our good colleague suggests.

I recall in the antitrust legislation with cease and desist powers that the Federal Trade wanted at that time, under the provisions granted in this particular legislation a person would be adjudged guilty until you prove you are innocent, rather than innocent until they prove you are guilty.

I wonder if, by rulemaking authority, which this bill, I understand, will provide, in the way of standardization of labeling and packaging,

it seems to me there is a possibility that the entire industry, whether it be canners or some other cooking materials, would be in jeopardy of any attractive packaging they might have to catch the public eye and if they would be found in violation of this so-called standard or rule they would be guilty if so charged until they proved their innocence. Am I right or wrong?

Mr. HALPERN. I think you are wrong. By no stretch of the imagination is it in the interest of this legislation, nor do I interpret it as such, to do anything else but eliminate the unfair and deceptive practices that now exist.

I feel there is plenty of room for good illustrations, plenty of room for intelligent, imaginative, creative packaging to attract the consumer.

We have no intent whatsoever to change that. But we do want it to be fair and we do want it to be honest. That is all we ask.

Mr. NELSEN. I am advised, however, that the authorities would be in a position of saying that this is in violation of what we consider to be selling or merchandising and, therefore, you are guilty.

I have checked this with some attorneys.

Mr. HALPERN. They would still have to go to court.

Mr. NELSEN. I am glad the discussion has brought it to our attention. I believe you need to carefully check this very point. I am fearful of the fact, and I am not a lawyer, because I have been advised by those who are lawyers, that this might very well lead into an area that would be very, very difficult for any person who is merchandising a product.

I thank the gentleman for his time.

Mr. Chairman, I have no further questions.

The CHAIRMAN. Are there any further questions of this witness?

Mr. KEITH. My compliments to the gentleman.

Mr. PICKLE. Mr. Chairman, I will forego questioning, but I wonder if the gentleman would pass to the committee the cherry pie boxes and the cereal boxes? I would like to see them.

The CHAIRMAN. Mr. Cunningham.

Mr. HALPERN. I might say these are not manufactured in Omaha.

Mr. CUNNINGHAM. I am on your side so far as abuses are concerned.

Sir, could you explain what you were talking about in these two packages?

Mr. HALPERN. Yes.

Both packages come from a single manufacturer of the same breakfast cereal. One box evidently was a previous one, but is still on the market, although there has just been a recent change.

The boxes are identical in size as you can see. The contents of one is 14½ ounces and the other 18 ounces. On the one which is slight, the contents came up to the point of that slit. The rest was merely cellophane and air. Yet the box is the same size.

I might add that the box with the smaller content cost 2 cents more than the other.

Mr. CUNNINGHAM. Thank you.

The CHAIRMAN. Are there any further questions?

If not, thank you very much.

Mr. HALPERN. Thank you, Mr. Chairman.

The CHAIRMAN. We will now hear from our colleague, the Honorable Catherine May, a Member of Congress from the State of Washington.

STATEMENT OF HON. CATHERINE MAY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

The CHAIRMAN. We want to say that we appreciate your taking time from your busy schedule to give your testimony to the committee. As I have said many times, we always find you very helpful.

Mr. SPRINGER. Mr. Chairman, may I say that in this field I feel that Mrs. May from Washington is one of the authorities. She has made a study extending over a long period of time. She has devoted herself seriously to this question. She has appeared on national radio and TV programs, appearing last week, I believe, on the "Today" program, in which she presented some of the points she will make today.

I think we are listening to one of the authorities in this Congress on this problem.

Mrs. MAY. I thank my colleague and the chairman.

The CHAIRMAN. You may proceed.

Mrs. MAY. Mr. Chairman and members of the House Interstate and Foreign Commerce Committee, I certainly do welcome this opportunity to testify on S. 985, the proposed Federal packaging and labeling bill.

I appear before you today to oppose this legislation because, in my opinion, it is legally superfluous, technically inexact, and an inflationary time bomb for the American food and grocery consumer.

However, I would like to say, in due deference to the kind remarks of my colleague from Illinois, before I develop these points, my opinion that I don't think women own any monopoly in the field of consumer expertise. I say this because I think some of the proponents of S. 985 have obviously tried to exploit what well might be described as the average male Congressman's innate terror of organized womanhood in the legislative field.

As one who is both a housewife and a House Member, let me assure the members of this committee that no single sex or group can claim to speak with more authority than any other in behalf of consumer interests.

Men and women, young and old, Democrat and Republican alike—we are all consumers.

Nor can any individual truly say that he or she has a mandate, or should be given a mandate, to speak for the American consumer.

For under our system, the consumer speaks for himself, and herself, through exercise of freedom of choice in the marketplace.

In fact, were I to sum up my opposition to S. 985 in one sentence, it would be that I am against this bill because it seeks to replace consumer freedom of choice with Government regulation of choice.

And for what reason? Let me quote from testimony given this committee last week by Mrs. Esther Peterson, special assistant to the President for consumer affairs.

"Mr. Chairman," said Mrs. Peterson—

there is a clear-cut need for this legislation. It grows out of the abundance and complexity of the American economy with its thousands of packaged products. It grows out of the efficiency of our large-scale, self-service system of retailing * * *.

If I then understand Mrs. Peterson's argument correctly, the compelling reason Congress must enact additional legislation to regulate our food and grocery system is that this system has proven to be successful.

Mrs. Peterson spoke of abundance and efficiency. Indeed, the American consumer enjoys the most abundant, efficient, modern food and grocery system in the world.

But let us also note the fact that, to date, it has been the least Government-regulated modern food and grocery system in the world.

Is there a relationship between our system's being both successful and free? I cannot speak for Mrs. Peterson or other proponents, but in my opinion our market abundance and efficiency is a product of this freedom of our marketplace.

Is this harmful to the interests of the consumer?

Yes, replies Mrs. Peterson, to the extent that it has led to the "complexity" of the modern supermarket. And this "complexity" in turn has led to consumer confusion.

Perhaps it came as a surprise to some members of this committee—it certainly did to me when I studied the transcript of last week's hearings—that the real thrust is therefore directed at protecting the American consumer not from deception, but from this purported confusion in the marketplace.

Government's responsibility and role in curbing deception in the marketplace is well established. But it is quite another matter to ask for a legislative mandate aimed at ending confusion, as Mrs. Peterson, Mr. Dixon and other S. 985 proponents argued last week.

I am not a lawyer, but as a legislator the distinction seems clear to me. Deception is an objective act, capable of certain legal definition and restriction. But confusion is subjective and wholly incapable of being measured by any certain legal criterion.

Thus, Congress can—and has—set standards and criteria for what constitutes deceptive practices in the marketplace. But who is to say what is confusing and what is plain to understand?

More to the point, who in Washington, D.C.—which, I am told, is sometimes referred to by the less reverent as "the District of Confusion"—who in Government should be empowered to save the American consumer from confusion in the supermarket?

Perhaps it will be Mrs. Peterson. Perhaps, Mr. Dixon. I have great personal respect for both, but if the testimony presented this committee last week is an example of deconfusion, Congress might well spare the American consumer that bargain.

No, the answer to possible confusion in the marketplace is not to substitute long-distance judgment of a Washington, D.C., authority for that of the consumer in the marketplace.

We can protect consumers from deception—but Congress need not enact the superfluous provisions of S. 985 to do this. All that is needed

here is the strict administration and rigid enforcement of existing laws by appropriate agencies.

But in the gray area of trying to do something about confusion resulting from the "complexities" of the modern marketplace, no law, laws or mandates can in themselves protect the consumer.

What Government can do in this area, however, is to help consumers protect themselves. And this can best be accomplished by an expanded and modernized program of consumer education. I have said this many times before and I will say it again.

If anywhere near half the effort which Government officials and other suporters of S. 985 are expending on behalf of more legislation were spent, instead, on improving Government's education efforts to make smart shoppers out of today's buyers, they could truly be doing a job to benefit the Nation's consumers.

For in education—not legislation—lies the answer to eliminating consumer confusion in the marketplace.

We live at a time when one-half our population is under the age of 25. And when Luci Johnson is married this Saturday, she will join some 40 percent of Americans brides who are now under the age of 20.

Yet, the unfortunate fact is that most of the programs we now have in our schools, extension service, and the many places we have them, to prepare young women like Luci for their responsibilities as shoppers are not geared to what Mrs. Peterson calls the "complexities" of the modern marketplace.

Luci and millions of other young women have not been prepared for the thaw-and-serve age—the market-oriented kitchen—of the 1960's. Instead, what home economics training most young girls today receive is geared to the cup-and-teaspoon era of their mothers and fathers.

In shopper education lies the real challenge and opportunity for those in the executive branch charged with the responsibility of looking out for the interests of the American consumer. Thus, the father of this Saturday's bride might better direct the efforts of his consumer adviser toward educational rather than legislative enterprises in the consumer's behalf.

I have said that S. 985 is legally superfluous and technically inexact. In addition, it is an inflationary time bomb which would inevitably result in higher food and grocery prices throughout the country.

It was surprising that proponents of S. 985 said that the aim of this bill is to protect the American consumer not from deception but from confusion.

But it was more than surprising—it was in fact alarming—that none of last week's Government witnesses could offer the committee a single study or analysis made to determine the effect of this legislation, if it should be enacted, on food costs. Surely, those officials, whose job it is to look out for the interest of the consumer, must know that the greatest threat today to that interest is the escalating cost of food and groceries.

Nevertheless, S. 985 apparently has been submitted to the Congress without any consideration being given its possible impact on food and

grocery manufacturing costs—or on the high price which our consumers would have to pay for the nebulous "protection" this bill might afford them.

As a member of the House Agriculture Committee concerned with anything affecting food prices, from the farm to the table, I have looked into the matter of the cost impact of S. 985. In the absence of any evidence to the contrary being offered by the bill's proponents, I submit what food and grocery manufacturers themselves have to say on this subject.

In the testimony given to the Senate Commerce Committee one manufacturer estimated that the bill would require "at least $10 million for new equipment and equipment modifications" in his operations, in addition to "$3 million in recurring annual costs because of manufacturing inefficiencies and additional packaging material costs."

A food manufacturer told the Senate committee that the bill would result in additional manufacturing costs "in excess of $5 million" for his operations.

A cereal manufacturer estimated increased expenditures of over $4¼ million for capital equipment and additional operating costs of over $2 million annually to comply with the bill's provisions.

Another food manufacturer estimated "as much as 25 percent increased costs" as an outgrowth of S. 985.

Nor should the bill's effect on the small manufacturer be overlooked. I quote from testimony of one of the industry witnesses before the Senate committee:

"A small manufacturer will find this additional machinery investment particularly burdensome, as he generally has a much rougher time obtaining the necessary financing."

Let me again point out that last week's Government witnesses, by their own admission, have developed no studies or analyses to reply to or offset these estimates furnished by industry experts.

How would these additional manufacturing costs be incurred—these costs which would result in increased food and machinery prices for the consumer?

Let me give but one example, that of the bill's possible effect on packaging weights.

Much has been made by the bill's proponents of the "confusion" caused by the use of fractional weights in packages. But what is overlooked is that were it not for the use of fractional weights, food and grocery manufacturing plants would be forced to "proliferate" their packaging equipment at a tremendous cost to the consumer.

Modern packaging efficiency is made possible because standard machinery can be used to manufacture similar sized containers for a multitude of products. But as we know, these products vary in density and weights.

Thus, the same-sized package which comes off the assembly line containing an even 1 pound of lead—and I would like you to look at this package, this is 1 pound of lead, fishing weights which I have weighed—would contain only a fractional one-fourth ounce of feathers. One pound of lead in the same size package as a quarter ounce of feathers.

But what if we were to seek an even-weighted 1-pound package of feathers?

Here it is, gentlemen.

With new and expensive machinery required to provide an even 1 pound—don't fool yourself, it will be the consumer who will pay the cost of this equipment "proliferation."

This, of course, is an extreme example of the reason for fractional weights. It does, however, illustrate the overall problem of relative density affecting weight measurements in foods and grocery items such as cake mix, cereals, and soap.

This illustration is only by way of explaining a phase of modern food and grocery manufacturing which too few of our consumers understand. Even if fractional weights are as confusing as S. 985 proponents charge—and I personally do not believe American consumers are nearly as confused about such matters as some of their would-be "protectors" seem to be—the question remains as to whether we are prepared to pay the higher food costs which changing the system would require.

Let me conclude then, Mr. Chairman and members of the committee, by repeating that S. 985 is legally superfluous, technically inexact, and an inflationary time bomb for the American food and grocery consumer.

The Federal Government is already involved in nearly 300 programs to help the consumer. Some 118 of these activities are aimed at directly looking after and advancing consumer interests. The costs of these programs total over $100 million a year and employ 7,000 Federal workers full time.

The laws are already on the books, and the Government apparatus already in existence, to accomplish the objectives which S. 985 is said to seek.

This bill, which was before the Senate for 5 years, has actually been before the House for only 5 months. I submit that we would therefore do well to take a careful look at this legislative package—to examine its contents as well as its label—before buying it and passing it on to encumber the national economy and the American consumer at this time.

Thank you very much, Mr. Chairman and gentlemen of the committee, for allowing me to appear today.

The CHAIRMAN. Thank you, Mrs. May.

I noticed you quote several people who testified in the Senate. We hope to have all of them before us in the House.

Mrs. MAY. I realize that, Mr. Chairman. But, as I said, I had to tie my testimony to the transcript of the hearing I read, held before your committee last week, and I wanted to go where I had the cost analysis, which the Government officials did not seem to have.

The CHAIRMAN. Thank you so much for coming before the committee.

Are there any questions of Mrs. May?

Mr. Macdonald.

Mr. MACDONALD. Mrs. May, I am sorry I didn't hear all of your statement, but I think I got the gist of it.

I take it you are opposed to the legislation.

Mrs. MAY. Yes, I am.

Mr. MACDONALD. You are now talking about the Senate bill. How about the House bill? You didn't mention that.

Mrs. MAY. I am opposed to the House version of the Senate bill, shall we say, I am opposed to legislative restrictions in this field. I have followed Senator Hart's bill from the beginning, Mr. Macdonald. I know there have been changes made in it. But in going over it again, and I know the subsequent witnesses will go into the technical inexactness of it, I still think it is a mandatory regulation bill that is going to cost the consumer.

Mr. MACDONALD. In other words, you oppose the bill in toto, is that right?

Mrs. MAY. Yes, I do.

Mr. MACDONALD. Even the identification parts? You are opposed to those?

Mrs. MAY. In this committee, if you want to rewrite present law——

Mr. MACDONALD. No, I am asking you what you think.

Mrs. MAY. I am opposed to the bill in toto because you are rewriting present law. I might say, I think rather confusingly. Mr. Macdonald, I admitted I was not a lawyer, but I have a feeling if this bill in its present wording is enacted, it would be very confusing. It would confuse present law even more.

Mr. MACDONALD. You are not confused, I am sure.

Mrs. MAY. Yes, I am, by the wording of this bill, as to its implications under labeling, under packaging.

Mr. MACDONALD. Don't you think it would be a good thing to have the items in a supermarket or any store labeled truthfully?

Mrs. MAY. Yes, I certainly do. You have all the laws you need to do this.

Mr. MACDONALD. This, of course, is in the bill.

Mrs. MAY. This is in the law, Mr. Macdonald.

Mr. MACDONALD. When you oppose the bill in toto, you oppose that, too.

Mrs. MAY. No one is for deceptive labeling.

Mr. MACDONALD. But you said you opposed the bill in toto.

Mrs. MAY. Because we already have the laws against deceptive labeling and packaging on the Federal statutes. I do not want us to go into this field further where I will have to pay more for my food where we already have the right under law to cover these deceptions that have been talked about.

As I pointed out, the thrust of last week's testimony finally came to the point that the Government wanted to go into this to end confusion in the marketplace, rather than deception. I don't know how any law is going to do that.

Mr. MACDONALD. Don't you think it would help end confusion if people who are buying the products could see what is in the package?

Mrs. MAY. Do you mean to have it with cellophane sides so I could look into the inside?

Mr. MACDONALD. I might state what I meant. By seeing what is on the package, I meant by reading what weigh it was.

Mrs. MAY. This is already in the law. It has to have the contents and weight on every package.

Mr. MACDONALD. How about when they put towels and glasses and stuff like that in there? Wouldn't you like to find out just how much

of the product you were buying and how much you were paying for the glass and the towel?

Mrs. MAY. As I say, if I buy something—do you mean because I am getting a bonus and I know there is a special cup in a box of cereal? Is that what you are talking about?

Mr. MACDONALD. And glasses, that is right.

Mrs. MAY. Mr. Macdonald, if I want the cup and the glass that way, honestly, I am going to know that it is going to displace a certain amount of the cereal or the flour in there.

Mr. MACDONALD. Don't you want to know how much?

Mrs. MAY. One choice, one time, one purchase, will tell me that. It is like all of us in Congress. Our whole political system rests in informed people making wise choices. They have to vote for us once and see how we perform.

But all the packaging, all the labeling that we have now, unless a woman or a man, or a young person, buying at the marketplace, is willing to read it, to inform themselves and then act on it, it will not end the confusion at the marketplace.

She has to act on her information, her wisdom, and her experience. As I say, this is one thing I resent about this bill. Anyone that knows anything about business knows that a manufacturer cannot stay in business on a one-time shot purchase by Mr. and Mrs. Consumer. He has to have repeat business. If he is trying to give me a deceptive package, believe you me I am not buying it again and neither are 10 million other women. He is out of business and heaven help him.

Mr. MACDONALD. Thank you.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman.

Thank you very much, Mrs. May, for your very thorough and complete analysis of your views.

On the question that I have asked the other witnesses, there seem to be two phases of this treated in this bill that might well be treated by amendments to the existing law.

You have read the testimony where the Chairman of the Federal Trade Commission said there was some doubt about proceeding against an industry. He didn't like to proceed against each individual case, although they did proceed against the industry in the cigarette case, as a first exception.

Would it not be all right to amend the Federal Trade Commission Act and authorize the Federal Trade Commission to proceed industry wide on a case where they found deception?

Mrs. MAY. Mr. Younger, no one could object to the proper implementation of law as needed and as testified to under any Government agency, whether it is the FDA or the FTC. If they need an amendment to the present law, if it is proven this is why they are not using all the authority they have testified that they have to have to take care of, cents-off, deceptive labeling, all these things, whatever they need to have should be given to them.

I honestly don't understand why they haven't proceeded where they had all the law to do it if this marketplace is supposed to be so full of deceptive practices, which I, for 1 minute, do not believe, by the way. But they have the laws there. We want them on the books. Whatever is necessary by way of amending the law as it now exists, I think

this committee certainly, legitimately, has the responsibility to proceed in this way.

Mr. YOUNGER. I have a feeling, as I expressed to Mrs. Peterson, that the real thrust of this bill is the first step to creating a new department in the Government called the Consumers' Department. It isn't to correct these things that they are talking about. It is a step.

If they came in to create this department today, the Congress probably would not accept it. But if we accept the first step, next year it is a different step, and finally they will get what they want.

Is there any justification for my conclusion?

Mrs. MAY. Mr. Younger, I would hesitate to try and figure out what is in the minds of any Government officials for future plans, any more than I would try to out-guess a fellow Congressman. However, you have been a Member of Congress for some years, as I have, for a few years, and I do know that this is a procedure we have all seen happen.

May I say this: I have great respect for Mrs. Peterson. I think she is a very capable and dedicated woman, with a great potential for giving leadership in the consumer education field. Mrs. Peterson and I are close friends and we debate this subject because we are heading for the same goal, only by different routes.

I think we could get there and do a real good job of it, as I have said in my statement, by helping make wise, smart shoppers out of today's young people, particularly, instead of legislative mandates which are really rewrites of present law. This means that certain leadership could come from the Government, and we have other tremendous resources—I think this is a responsibility of industry, too, to help, and schools, extension services, home economic experts, magazines—we have tremendous resources to make better shoppers out of today's women on a value-buying basis; simple price comparison is not enough.

We are taking the attention off the real answer to the problem with this diverting legislative approach. Whether there is a goal here to create a Department of Consumer Affairs for one reason or another, I don't know. But if it is, my concern would be what is that Consumer Affairs Department to be used for and what is it going to do?

Mr. YOUNGER. Thank you very much for the contribution you have made to our hearings.

The CHAIRMAN. Mr. Jarman?

Mr. JARMAN. Mrs. May, I was interested in your reference on page 6 to the high prices which our consumers would have to pay for the "nebulous protection" this bill might afford them. Of course, the price of an item will be based largely on competition in the marketplace. But even assuming a higher price that this legislation might achieve in products, don't you think that might be offset by the savings that consumers would achieve by a better comparative understanding of content and price of individual items?

Mrs. MAY. No, Mr. Jarman, I don't, because I don't think mandatory regulations on rules, pictures, packaging weights, will result in significant savings to the consumer.

Actually, there are two increased prices that we as consumers might have to pay. One is the additional cost to the food manufacturers, which will be passed on to the consumers, and then there is the loss of flexibility of the manufacturer and the retailer to try and please

us and compete at the marketplace with specials, true cents off, and other bargains.

As you know, today's shopper, can save 16 percent a year on her grocery bill—and that is a very considerable amount—just by buying specials. The reason we have specials is because our retailers and manufacturers have to survive in the most tremendously competitive business there is.

You have to please the consumer to stay in business. I want them to be in there competing just like mad all the time, with all the flexibility they have to please me. This is going to cost me less, I will be better fed, and I will have better products to choose from.

When it comes to good value buying, price comparison is only one part of the question. I now have everything I need on my label. I can buy by servings for my family. I know that maybe oatmeal, for instance, costs me less than, let us say, bran flakes or Wheat Chexs. But if I cannot get my children, husband, and family to eat anything but Wheat Chexs, buying oatmeal by price comparison is certainly not a good value for me.

I will have a box of oatmeal or some other cereal sitting on the shelf and that is a full waste of whatever the cost of it was. Price comparison is only one part.

An informed shopper is buying values and she has to be educated to do this. She has all the labeling now, the weights, the contents, the servings. If she isn't sure, one purchase will tell her whether it is what she wants or not.

Mr. JARMAN. Thank you.

Mr. MACDONALD. Mrs. May, if you object to this bill in toto, you are objecting to the very thing that you say guides you in the purchase of foods.

Mrs. MAY. I don't understand that.

Mr. MACDONALD. I don't know why you don't understand it. Part of the bill which you say you object to in toto has to do with the proper identification, the proper weight, et cetera.

Mrs. MAY. Mr. Macdonald, we already have it under the law. Our labeling people are under very strict regulation now as to weight, contents, a list of ingredients. They have to list the ingredients by the greatest amount first, and I know how to read it. Your wife knows how to read it.

If someone doesn't follow this law or deliberately intends to deceive, you have all the laws in FTC and FDA to move right in on them.

I have no objection to rewriting present law in part of this bill. It just seems to me that Congress right now ought to be expending more time figuring out ways to cut food costs, not increase them.

The CHAIRMAN. Are there any further questions?

Mr. Nelsen.

Mr. NELSEN. I wish to thank our colleague for the very fine statement.

I would like to point out at this time that I am a little bit disturbed about the deception that seems to be practiced in the presentation of some of the points dealing with this bill. For example, the other day two packages of a Pillsbury product were exhibited as evidence of deception of labeling, and the contents of the two packages were not the same.

We have these two packages today. One is the bright, new box, I assume the new package which has been used in substitution for the old one. The content is not exactly the same, but the manufacturer did not put the price on it. The retailer did. So there is some deception in the sale on the point used here.

As you have pointed out, the size of the package, if we are going to put a new line in, is going to be very expensive as far as production is concerned, whether it is filled to two-thirds of its level or completely full being a minor thing. But the weight is on both packages. The ingredients are shown.

The thing that has been bothering me has been the deception. We are getting letters from people who are asking us to do things that we have already done. To me, as has been pointed out on the floor by one of our colleagues, this means that we are passing labels in the Congress, political labels, and I am beginning to sense a little of that in this legislation.

Mrs. MAY. Might I point out to my colleague, because I certainly do agree with him, on the example that my distinguished colleague, Mr. Halpern, used, you might also pick up one of those packages and find an overfill of ounces. You know how cereal boxes are filled by mechanical means. They fill with so many boxes to a carton for a hundredweight measure. So some of the fractional weights may be over what is labeled on the package because they do it by the whole case.

He might have gone and picked the next package and found out that it had more in it. On filling cereal, you know you don't want to spill it all over your kitchen shelf when you open a package packed with that type of a product. That is why it is not packed to the top. It is a deliberate reason. Plus the fact that moisture changes in these packages can cause trouble if they are filled to the top.

The thing is by law you have to put your contents, weight, what is in it on the label. The price, of course, is up to the retailer.

Mr. NELSEN. I noticed on your package of feathers there was no price. I have a friend who ties flies for fishing, and if the price is right I would like to buy those.

Mrs. MAY. I will be glad to donate my fishing weights to the members of the committee now that I have finished with my example.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Florida. I, too, am somewhat concerned that no figures have been presented as to what this may cost the consumer, other than the point that it would increase the cost. I am also concerned about the present law. I have asked the Federal Trade Commission and the Food and Drug to give us their suggested amendments to present law which they feel necessary.

I am also concerned that probably the largest item of a food bill for a family would be meat and meat products, poultry and poultry products. Yet, they don't attempt to cover these in this bill.

If that is the major price concern for a family buying food, and I would think they are probably the highest items, and they say all of this confusion exists, why do they exclude it from the coverage of this bill? Do they feel present authority exists for meat and meat products?

Mrs. MAY. This is correct, Mr. Rogers; it does.

Mr. ROGERS of Florida. It makes me concerned about whether we do have sufficient coverage under present law for all products, or maybe there should be a minor amendment or two to present law. I believe in Food and Drug they even get into quality.

Don't they now tell what percentage peanuts must be in peanut butter?

Mrs. MAY. That is right. They have the right to set out those regulations.

Mr. ROGERS of Florida. I am very much interested in going into the present law and going into it thoroughly to see what amendments might be necessary to present law.

Mrs. MAY. I think that is what would be necessary to solve the approach to this.

Mr. ROGERS of Florida. Thank you very much.

The CHAIRMAN. I would like to say to the gentleman from Florida that we have asked the Department of Agriculture and the Department of the Interior to testify before this committee.

Those questions will be answered by them in due time. I feel certain Mrs. May cannot authoritatively answer those questions.

Mrs. MAY. I am somewhat familiar with it but I wouldn't want to get into the legal technicalities. I know how the meat inspection and control and regulation over the meat industry works.

The CHAIRMAN. I thought we would have the authorities who control it come and answer the question.

Mr. Cunningham.

Mr. CUNNINGHAM. Thank you, Mr. Chairman.

Mrs. May, I know of the tremendous work you have done on the Agriculture Committee and your knowledge in this field.

I want the committee to know that Mrs. May, myself, Congressman Rosenthal, Congressman Purcell, and Congresswoman Sullivan were the five Members of the House who spent 18 months on the Food Marketing Commission. I am sure that broadened our knowledge in this field, although our study was much more involved than this particular subject today.

On page 6 of your statement, in referring to the Senate bill, you say, "In addition, it is an inflationary time bomb which would result in higher food and grocery prices throughout the country."

I am inclined to feel just the opposite. I think if we eliminate deception and have greater competition it might have an opposite effect.

Be that as it may, with your knowledge as a member of the Agriculture Committee, and the information that we gathered as members of the Food Marketing Commission, how do you sum up the reasons for the 2-cent increase in a loaf of bread which I understand is going into effect? There is no change in packaging. And it certainly is inflationary.

Mrs. MAY. I think here, Mr. Cunningham, as we studied on the Food Commission, this cost-price spread—and we know very little of it has to do with the original cost of wheat—is increased labor cost, increased transportation cost, increased packaging cost, and all the things that we so carefully set out in our Commission study.

Naturally, now that we have a nationwide inflationary spiral it may be that all of these costs in our Commission report are already out of date, because I am sure that the various things have already gone up.

Then, if you add a new packaging cost, that is something more to add to the cost of the final product. The small businesses we found to be the hardest ones to make entry into these markets.

With this, you would have real trouble for your small businessman who is already having a much harder time under the burden of inflation than the big businessman.

Mr. CUNNINGHAM. I believe the spokesman for the bread people said it was due to labor and materials. There have been no changes in packaging so far as bread is concerned.

Mrs. MAY. No; none at all. If this bill were passed, that would be on top of the already high price of bread.

Mr. CUNNINGHAM. I have no intention whatsoever, and I have so voted in the years I have been here, of not supporting things that would be helpful to labor, so I am not objecting to what they receive. But I think we ought to be honest about it. It is the labor cost, and it is the transportation cost, evidently, causing this 2-cent increase in the price of bread. Certainly, it is not the farmer who is getting this increase.

Mrs. MAY. I am delighted the gentleman makes this point. He and I agree on this. We had discussion about a bread tax in a certain bill not too long ago. He and I both disagreed with that theory because we know that the price of wheat flour has very comparatively little to do with the ultimate price of bread. Our Commission on Food Marketing study pointed that out.

This added cost to the manufacturer and retailer, is labor, transportation, the increased cost of the materials, this sort of thing. That is why, of course, I think he should be given the advantage of every cost-cutting factor he can be given, and good economical methods, to still keep us the best-fed people at the lowest cost of any people in the world. I want it to stay that way.

Mr. CUNNINGHAM. I am for the principle of this legislation, unless someone changes my mind. I don't say I am for the bill as written. I don't mean I will buy everything in this bill. I don't want to injure anybody, but I want truth in packaging and labeling.

Mrs. MAY. Mr. Cunningham, I couldn't agree more. You and I are both for that. There is no one who could be against truth in packaging. I am just submitting that you have the law now to enforce this. If something is needed in the way of amendment to the proper agency, that would be the sound approach.

Mr. CUNNINGHAM. But I can't be convinced that this bill would contribute to inflation. I think in my own judgment it would probably be just the opposite because it would probably bring about more competition.

Mrs. MAY. With the cost of food manufacturing obviously going up? You would have to change your methods of canning, processing, packaging, you would have to change your equipment, all the things that over the years our processors, canners, and manufacturers have developed to do an economical job and pass the savings on to us? I don't fool myself, Mr. Cunningham.

If they are forced up by millions of dollars of cost, that cost is going to be passed on to me, the consumer.

Mr. CUNNINGHAM. Thank you, Mr. Chairman.

Mr. MACDONALD (presiding). Are there any other questions of the witness?

Mr. ADAMS. Mr. Chairman, I wanted to thank my colleague from my home State for being here this morning. I think her testimony was excellent.

I would like to inquire about one thing. I assume you are familiar with the fact that in the Weights and Measures Division of the Department of Commerce they have attached proliferation already in a number of industries. For example, 49 different types of milk bottles were reduced to 9, and 10 types of milk bottle top containers were reduced from 10 to 1.

Would this not produce savings in basic industries if this were done, as it had been done in the canning industry and the milk industry?

Mrs. MAY. On a voluntary basis wherever there are to be savings effected by the manufacturer, he will do it, of course.

Mr. ADAMS. You had the 1 pound of feathers. I would like to ask you if you believe that in American industry at the present time they compete by means of maintaining a single price and reducing quantity contained in a single item?

Mrs. MAY. No; I think competition is all on the basis of quality, the attractive and the convenient container.

Mr. ADAMS. Then I just ask you this: If we take that pound package that you had of feathers——

Mrs. MAY. And which I don't know where I would store on my shelf.

Mr. ADAMS. Right—and one of them has 1 pound, $5\frac{3}{10}$ ounces for 71 cents, and an identical package has in it $15\frac{3}{11}$ ounces at 56 cents, which is the better buy, assuming identical feathers?

Mrs. MAY. As I say, this is the decision that I have to make, depending on which kind of feather I want.

Mr. ADAMS. No; they are identical feathers. One is called the large economy size and the other is the jumbo size. One has 1 pound, $5\frac{3}{10}$ ounces at 71 cents, and the other has $15\frac{3}{11}$ ounces at 56 cents.

Mrs. MAY. I don't make my choice on that.

Mr. ADAMS. They are identical size.

Mrs. MAY. Then I want the big jumbo size of either size, or the large one, or whatever you want to call it, depending on what kind of package I want. In this case, if they are identical size and identical feathers, I will take the lowest cost one.

Mr. ADAMS. Which one costs the least?

Mrs. MAY. Whichever the price is on the outside of the package.

Mr. ADAMS. One is 1 pound, $5\frac{3}{10}$ ounces at 71 cents and the other is $15\frac{3}{11}$ ounces at 56 cents. Which is the cheapest?

Mrs. MAY. Frankly, as I say, there, again, you get into what you call your slide rule thing. But I don't look at it, because I have the weight on it, by law. Feathers was an extreme example, but I also have the number of servings, and that is where I make my comparison, not on the fractions. But on the number of servings, what I am going to use it for. I leave my slide rule at home.

Mr. Adams, I have always wondered, how do you get an exact 1 pound of apples as required under this bill, unless you take a bite out of the apple?

Mr. ADAMS. Mrs. May, here is what I think is happening, and we are trying to do something with it. This is a weight-and-measure bill more than anything else. Industry is having to compete and they are having increased costs but they don't want to raise the basic price on the shelf because the housewife has been buying on *x* price. They advertise in terms of different sizes, jumbo, El Supremo, and put another label, a picture, more cherries, they do all that, and at the same time, in order to compete, and I think it is very legitimate—I don't think it is dishonest or fraudulent—they will have to drop their quantities a little bit.

It is not a lot. This is where you get your one-third ounce or two-thirds ounce. It is a tight business. A penny or a half penny profit on a package may be the profit. As consumers, all we want to do is compare prices. If I give you identical feathers in an identical box but I vary the amount and go into pounds and fractional ounces and into an odd figure, I couldn't compare it.

While you were testifying, I was figuring out this little example. It took me 10 to 15 minutes.

Mrs. MAY. That is not the way you shop, Mr. Adams. That is what I am trying to say. You have this on your packages for comparison. You have the information you need on what I call value comparison as well as price comparison.

I have no objection to jumbo and economy size. I am sure you don't. We have always used these terms, "small," "medium," and "large." It used to be plain society and now it is Great Society. Tomorrow it may be jumbo society. I don't know. These fractional weights that everybody keeps bringing in, I just don't happen to believe are what are giving American shoppers any trouble in becoming good value shoppers.

Mr. ADAMS. If those feathers are identical, you say you don't really care whether one costs more as long as you have the package and you have been buying the brand or whatever it is, and you say you are satisfied, even though he may have dropped it a third of an ounce or two-thirds of an ounce because of the competitive situation.

Mrs. MAY. I know he uses similar size containers to package many products which affords an overall savings for him of his products.

Mr. ADAMS. Doesn't it necessarily drive the manufacturer and the retailer, then, to the lowest level? In other words, the pressure is always on him because if his competitor dropped it as he did with this package to $15\frac{3}{11}$ ounces at 56 cents, then he has to drop his price or he will not be competitive in the market and his profits will drop. I mean competitive in terms of his profits.

I couldn't tell between the two packages which was the better buy.

Mrs. MAY. He is always going to have to meet competitive practice.

Mr. ADAMS. One of them, incidentally, will cost you 6 cents a pound more in that example.

Mrs. MAY. If that example were typical of the various different weights today, and it isn't. I used an extreme example and you have used one, too, which is what we do for purposes of argument. But it is not the rule of thumb in the marketplace today.

Mr. MACDONALD. Mr. Van Deerlin.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

It seems to be the impression that we have quite a bit of feathers in S. 985.

I wonder if on page 7 of your statement, Mrs. May, you might identify by category the manufacturers to which you referred in paragraphs 1 and 2.

Mrs. MAY. Do you mean where I gave the quotes from the Senate testimony?

Mr. VAN DEERLIN. Yes. This is one the increased costs to the manufacturer under this legislation.

Mrs. MAY. I don't have the Senate testimony with me. It came directly from the Senate testimony, however. It would take a moment or two. You want the name of the man and the company represented.

Mr. VAN DEERLIN. I would say what category, not the company name.

Mrs. MAY. I said a cereal manufacturer.

Mr. VAN DEERLIN. I was wondering if the first two might be dealing in canned products.

Mrs. MAY. I only used a few. There were many, many examples. I can supply this for the record, if you wish.

Mr. VAN DEERLIN. It is in the Senate testimony.

Mrs. MAY. I would have to go back. I have all of this material in my office.

Mr. VAN DEERLIN. Mr. Adams and I were just this morning at the National Canners Association to look over the various size cans, and talked with some of their officials. We came away with the impression that they thought that there were going to be some costs in here that we do not see in the House legislation.

Obviously, if there were evidence that there was going to be a considerable rise in manufacturing costs to comply with this legislation, we would try to meet it. I would think that maybe some of these examples are what the manufacturers may be reading into the legislation, and where we could tighten it up.

I am sure in the canned foods, which is such an efficient industry already, and one in which there has been a great deal of progress in voluntary compliance through the years, we could probably do away with some of these fears very easily in the legislation.

Mrs. MAY. I would certainly hope so. As my distinguished colleague from Washington, Mr. Adams, and I, do live in an area which certainly represents the tunafish canning business, with me representing vegetables and fruits. I am very familiar with canning operations, particularly of the smaller operators, the cooperatives and others, where their very ability to stay in business is to use cost-cutting machinery and methods for fruits, vegetables, and fish.

There are differences in the density, and weights, of course, as Mr. Adams can tell you, between tunafish cans. It is not because our tunafish packers on the west coast want to deceive consumers, but because I want to buy my tunafish in brine for one purpose, solid pack for another, and they do this because they know that is what the shoppers want. It is not to deceive them.

To me, this proliferation is catering to the consumers' wants in these fields, and changes which would make it impossible for them to do this in their cost-cutting machinery would, of course, be extremely in-

jurious to their economy. They can't adjust to it half as quickly as the bigger businesses can.

Mr. VAN DEERLIN. Thank you.

Mr. MACDONALD. Mr. Pickle.

Mr. PICKLE. Mrs. May, I just want to make sure of the position you have taken. I have enjoyed your testimony.

Sections 3 and 4 of the bill pending before this committee deal primarily with making certain that the labeling, the weight and the contents are clearly stated on the package, plus the prohibition against such qualifying phrases as "giant" and "jumbo."

Is it your position that the manufacturer ought to be able to put giant and jumbo or family size on the package?

Mrs. MAY. Yes. I don't get hysterical over this. He either has to say small, medium, or large, but he wants to show me that this is a bigger soap package to use in my laundry room, so he can call it jumbo if he wants. I know what he is trying to say.

As I say, we raise potatoes and apples in my district and you have to package those. How are you going to get an exact pound of apples or potatoes? He can't say approximately 1 pound. It has to be 1 pound, period. Under this legislation, it will be kind of difficult to live with.

Mr. PICKLE. If you say that the manufacturer ought to be able to say giant and family size and jumbo, then I would assume he could say "cents off"?

Mrs. MAY. As long as it is legitimate cents off. If not, that is where the FTC should zero in and get that guy. They have the law to do it now. Mr. Dixon testified to that.

Mr. PICKLE. Is it your feeling that we have enough laws now to prevent cents-off advertisement?

Mrs. MAY. Absolutely. Mr. Dixon testified that we have that in the law. They should be moved in on if they use that cents off deceptively.

Mr. PICKLE. Thank you.

Mr. MACDONALD. Mr. Satterfield.

Mr. SATTERFIELD. Mr. Chairman, I am sorry that business in another committee prevented me from hearing my distinguished colleague. I assure her I will read her testimony with a great deal of interest.

Mr. MACDONALD. Mr. Mackay.

Mr. MACKAY. I have one question, Mr. Chairman.

I was interested in your testimony, Mrs. May, and I wanted to ask you, based on your extensive study of this, whether you feel that the Federal Trade Commission and the Food and Drug Administration are vigorously prosecuting under existing laws; whether you think this has arisen out of the slackness of existing Federal agencies.

Mrs. MAY. Mr. Mackay, I would not like to make a straight statement of "Yes, I agree with you." I would say that all evidence up to date would lead me to feel very strongly that this might be the case.

Mr. MACKAY. I am sure that you have attracted a great deal of mail from your appearances and your writing on this subject. I wondered if you had received any complaints about the inadequacy of present law.

Mrs. MAY. Amazingly enough, and I have been interested in this field since shortly after I came to Congress, but I have had very little complaint. Of course, I haven't done anything to try to engender it,

except I have been certainly speaking a lot about this and trying to warn people what is in the bill, costwise and everything.

I have had very little complaint. The complaints that I have on record, all of them, are covered under present law and I write them and tell them this, and tell them what to do.

Mr. MACKAY. Have you received much response otherwise?

Mrs. MAY. No. This is why I think that the American consumer is a kind of a happy consumer, Mr. Mackay, except when the prices go up.

Mr. MACKAY. Thank you, Mr. Chairman.

Mr. MACDONALD. Mr. Watson?

Mr. WATSON. I have no questions.

Mr. MACDONALD. Mr. Gilligan?

Mr. GILLIGAN. I have no questions, thank you, Mr. Chairman.

Mr. MACDONALD. I just have one question, Mrs. May.

I was wondering how you came about this knowledge concerning the manufacturers' points of view. How did you come about this knowledge? Did they write to you?

Mrs. MAY. I was the chicken that came before the egg. I come from a 100-percent rural district. I have no big business or big manufacturer at all in my district. I am interested in the canners and processors viewpoints from the technical side. But I came to Congress thinking that this would be the kind of thing that, as a woman, I would be interested in. Then I got the surprise of my life.

I decided that this consumerism movement was going to be far more restrictive on me, so I have tried to be kind of a spokesman for the other side of this, as far as consumers are concerned. I don't think I want to pay for all of this so-called protection that much, and I don't want to lose the freedom of the marketplace where I, as a consumer, am the boss. This has been the tenor of my remarks.

Mr. MACDONALD. I am sure you are the boss, Mrs. May. Thank you very much.

Mr. Kornegay?

Mr. KORNEGAY. I regret very much that I was not here to hear your testimony, but I have read it and it is a very fine statement on the subject.

I wish to thank you for the information you have given us.

Mrs. MAY. Thank you.

May I say that I heard your opening statement and I hope in the wisdom of the chairman's viewpoint, and your viewpoint, we can work on the airline strike which is of real concern to the national consumer.

Thank you.

Mr. MACDONALD. Our next witness will be Harry Schroeter, vice president for packaging, National Biscuit Co.

STATEMENT OF HARRY F. SCHROETER, VICE PRESIDENT FOR PACKAGING, NATIONAL BISCUIT CO.

Mr. SCHROETER. Mr. Chairman, and members of the committee, my name is Harry F. Schroeter, and I am vice president for packaging of National Biscuit Co. I would like to express my appreciation for this opportunity to appear before this Committee on Interstate and Foreign Commerce. We had hoped that the president of our company, Lee S. Bickmore, might be able to appear, representing both Nabisco and

the Biscuit & Cracker Manufacturers Association, of which he is also current president.

However, his long-established schedule required an earlier date than the committee was able to assign. Although he must be in another part of the country today, he is familiar with the views I will express and endorses them for both Nabisco and the Biscuit & Cracker Manufacturers Association.

Nabisco has taken a deep interest in this investigation of packaging and labeling since it was begun in 1961. Mr. Bickmore testified in February 1962, at the request of the Antitrust and Monopoly Subcommittee of the Senate Judiciary Committee. Last year he appeared before the Senate Commerce Committee to present Nabisco's view on S. 985.

Nabisco's concern with packaging goes back much further. Soon after the company was formed in 1898, it introduced Uneeda Biscuit, the world's first packaged cracker and, indeed, one of the first packaged grocery products. More recently we were a founding member of the Food Law Institute in 1949. We were also a founding member of the Cereal Institute and participated in their development of principles of good labeling practices.

We applied those principles to all of our packages—not just to cereals—as soon as they were formulated. Further we participated in the development of the model statute endorsed by the National Association of Weights and Measures which has been adopted by many States. We apply these regulations to all our packages, following the most demanding requirements.

We have done and will continue to do these things because we believe it is the honest thing to do. We believe strongly that we are in business to earn the right to make a profit. We earn this right by giving consumers the best values possible. Nabisco can succeed as a company only as it succeeds in satisfying the needs and wants of American consumers.

My testimony will be directed to H.R. 15440. However, I will also mention proponents of the legislation, and that phrase is used to refer to those who so vociferously advocated S. 985 or its ancestors in the various Senate committee hearings on the floor of the Senate and in public.

Some of these proponents have already appeared before this committee earlier.

During a business career of more than 30 years, I have never before seen such unanimous business opposition to proposed legislation. Nothing I have experienced has generated such unanimity among my associates in Nabisco, among the membership of the Biscuit & Cracker Manufacturers, among fellow members of other trade associations and among packaged goods manufacturers in general. I have wondered why this should be so.

After much thought, I think I have determined why. The reason goes beyond any particular provision or any particular feature or area of business. I think the reason is because there is a fundamental clash of philosophies between the proponents of this legislation and the business community. I would like to point out these fundamental differences.

One, we believe in and respect the American consumer. We rely on her acumen and ability to choose what is best for her family. Proponents of this legislation downgrade the consumer's intelligence and want to dictate her purchases.

Two, we believe in the marketplace with freedom of fair and moral competition for consumer selection. Proponents fear free competition and would throttle and limit it to price competition only.

Three, we believe in progress through American ingenuity, invention, and innovation under free enterprise. Proponents fear freedom of enterprise and want to substitute bureaucratic conformity, restriction, and stagnation.

Four, we keenly anticipate a future of greater consumer choice and increased consumer satisfaction. Proponents fear the future and want to curtail and freeze the present.

Thus, the views I will express today are the result of careful study over a long period of time. I am gravely concerned about the proposed legislation—H.R. 15440—because thorough deliberation has convinced National Biscuit Co. and myself that enactment of this legislation would be against the best interests of the people and consumers of the United States. From the consumers' standpoint it can best be characterized as the "low choice high cost packaging bill."

By unanimous vote the board of directors of the Biscuit & Cracker Manufacturers Association has adopted the same view. Members of the association have an annual sales volume of approximately $1,500 million. The 67 U.S. members employ almost 50,000 people. Only a handful of these companies are national and publicly owned. The vast majority are small enterprises, usually family owned and serving a limited market area or specializing in particular types of crackers and cookies.

Proponents of the legislation say much about confusion on the part of the housewife. They maintain that she is bewildered by the great number of products on sale in our supermarkets, by a profusion of different weights and package sizes in which products are offered for sale.

Nabisco lives very closely with consumers. We work hard to learn about consumer needs and preferences. Starting with this information we then try to design and produce our products and packages to please housewives. It is important to remember that the biscuit and cracker industry, as well as other packaged grocery goods, depends upon repeat sales for its success.

This fundamental point is frequently omitted by advocates of restrictive controls. They forget that we run for reelection millions of times every day. If we do not satisfy consumers, if they do not trust our products and packages, they will desert us for competitors or for other types of food which do satisfy them and which they do trust.

This is the law of the marketplace. Satisfy your customer—or lose her. We have nothing to gain by falsely representing our merchandise for an initial sale. We can only hurt ourselves. Our merchandise bears the Nabisco trademark, our mark of quality, and every package we sell must increase consumer faith and confidence in products that carry our name. We know from long observation of the marketplace in action, that a cheating competitor is soon found out. Consumers leave his package on grocery shelves. He is soon displaced.

We believe that if consumers were confused or opposed to current packaging and labeling practices, we would know about it directly. We get no such message from our consumer mail which is substantial. nor do we hear about it from the more than 3,000 Nabisco salesmen serving in grocery stores all over the United States every day.

Proponents of the legislation point particularly to potato chips as causing great consumer confusion. I do not know the source of their facts, but many proponents say that potato chips are packed in 71 different weights—some say 74. They would have you believe the housewife must struggle to make a choice among this many possibilities, that she is confused—not served thereby.

What is forgotten is what consumers look for and want in potato chips. Some seek thin chips, others prefer theirs thicker; some like little chips, others demand large ones. Some like them ruffled or crinkled, others do not. Some want them flavored, others prefer the regular kind, but everyone wants chips that are fresh and crisp.

Packaging that keeps chips well in Arizona would be inadequate in Louisiana or Florida. And the consumers want different sized packages for different purposes. A small package will suit a couple watching television. When they give a party they need far larger units. Teenagers' appetities are larger than their grandparents'.

At a ball game or a roadside stand, packaging is different again because the distribution system requires it.

Treating this as a business problem—and let me add that Nabisco is not in the potato chip business—we thought we would learn what the facts are just as we would for any other business problem. So we asked our divisional sales managers to survey actual potato chip offerings in their territories. Our 20 divisional sales managers are located in population centers around the United States.

Each of them surveyed about 10 large grocery stores and reported all the different weights and packs in which potato chips were being offiered for sale to shopping housewives early in the month of July.

Altogether we collected data from 198 different supermarkets. Here is what we found. In these stores the average number of packs offered was 17 and those 17 packs represented only 9 different weights on the average. This is a much different picture than 71 or 74 weights, I think you will agree. We do not believe that these facts support the arguments of the proponents of the legislation.

Interestingly enough, consumer choice is the reason for even this modest number of different weights—only nine, you will remember.

First of all, manufacturers frequently offer chips in different flavors, barbecue, onion and garlic, green onion, even chili. Often these flavors are offered in slightly lower weights for the same price as regular potato chips. Another feature is that different packs will be offered.

At approximately the same weight, the housewife can buy a combination of individually wrapped small packages, or she may prefer two or three inner bags or just a single unit. The spread of weights for this different packaging amounts to less than an ounce but is another reason why packages of nine different weights are offered by the average American supermarket. So we don't think consumers are bewildered by the weights. We are sure they regard them as less important than having a broad selection of flavors and of packaging to meet their needs at any particular time.

Then too, some manufacturers will offer for the same price more weight than their competitors. Certainly this is competition at its healthiest. Offering the housewife more for her money is competition just as truly as charging less for the same weight. It may even be clearer, mathematically.

To a very great extent, H.R. 15440 restates existing law, at least as far as foods are concerned. Since 1906 there have been Federal food laws. For almost 60 years Food and Drug officials have addressed themselves to the very problems that proponents are now concerned with.

During this period of time, the American food industry has performed an economic miracle. Americans are the best fed people in the world. Our standards of nutrition are not even approached in other countries. As prosperity has come to more and more of our families, they have demanded greater and greater variety of foods, more convenience in packaging and an increasing range of sizes and varieties to meet particular needs and desires.

This has come about by the application of mass production techniques, by the adoption of increasingly severe standards of sanitation and quality control, and by wider application of improved protective and convenience packaging. Efficiency has resulted in the lowest food bill for any people anywhere in time.

This very year, Americans will spend only about 18 cents out of every after tax dollar for food. In Western Europe the comparable figure is about 30 cents. Behind the Iron Curtain it rises to more than 50 cents.

This has been achieved with food regulations under existing law. Existing law does not specify in detail how a label should appear nor does it control the weight, shape, or dimension of packages. It has a simple basis. A package that is deceptive in any way is misbranded—and so, unlawful.

Out of this the Food and Drug Administration has formulated easy to follow rules and, in cooperation with the States, has striven toward uniformity of regulation which is essential to the efficiencies of mass production in the national market.

If the proposed legislation merely rewrote the existing law, we would think it unnecessary, but would not oppose it. However, in many respects H.R. 15440 goes far beyond anything known in the United States before. Some of the specific points covered are unreasonable and can only deny food processors the benefits of mass production techniques and deprive customers of choices they now exercise freely. Let me illustrate some of the problems which will be caused by the proposed legislation.

For many years, the FDA has required that weights over 1 pound should be stated in pounds and ounces. Such a provision is also required within their borders by 28 States. That means that a package like this spoon-size shredded wheat must be clearly labeled 1 pound, 2 ounces as you see it. The proposed legislation instead demands that the total number of ounces be stated.

This package would have to be labeled 18 ounces; that is if it moves in interstate commerce. If the package is to be sold within the State where it is manufactured, only the State regulation will apply, and, as I said, 28 States require the use of pounds and ounces.

This package of cereal is made in Niagara Falls, N.Y., and Oakland, Calif. It is widely sold in both States. To comply with the laws of New York and California, we would have to continue to label it 1 pound, 2 ounces. To comply with proposed legislation, we would have to add a second weight statement reading 18 ounces. We think this will only confuse the housewife even though elimination of confusion is one of the alleged purposes of the legislation.

Perhaps proponents think we should have two packages—one for sales inside New York and California and the other for interstate commerce. This would raise our costs because of the necessity of maintaining two inventories of both types of packages, and we would be unable to take advantage of long uninterrupted production runs—a most important requirement for efficient production.

Another proposal gives authority to the administrators to require "information with respect to the ingredients and composition." Statements of ingredients have long been required on all U.S. food packages. We are required to list these in descending order of amount in our formula. What more could be needed or required we do not know and the proponents do not say. However, great mischief could result if administrators should require additional information.

Many of you will recall, I am sure, the sugar price inflation of 1963. Sugar rose in price from about 9 cents a pound, upward of 15 cents and then back to 10 cents within a space of 6 months. All bakers were scrambling for sugar and were forced to depart from normal supply sources.

In general we use cane sugar in our Eastern bakeries and beet sugar in the West. Not only were we then trying to obtain sugar from any source, we were hard at work trying to find sugar replacements so that production could continue. Had our package materials specified cane or beet sugar (which might well be required) we would not have been able to respond to the critical situation and keep merchandise flowing into grocery stores of the United States.

As another example, perhaps country of origin might be required. If so, we would have a real problem in fig newtons cakes which are filled with a mixture of domestic fig paste and other pastes imported from several different countries. As prices and supplies vary from year to year, we vary formula. Only rarely can we obtain certain of exact proportions in advance.

How adding information like this to ingredient statements on packages would help housewives we do not know. I think it would be exceedingly unwise for Congress to delegate such broad powers to administrators, who, however well meaning, could not possibly anticipate sudden and critical changes in supplies. We can rarely anticipate all of them ourselves, but we try to retain flexibility so that they can be met when they arise.

Those are a few examples of the problems in labeling which can easily arise under the proposed legislation. However, H.R. 15440 goes far beyond labeling and provides for standardization of packaging.

The chief objective is to provide for weight standardization. As we understand it, this could require that crackers, for example, be packed in weights of 8 ounces and 1 pound only. For cereals, the standard weights might be different.

In the Senate Commerce Committee report which was filed with S. 985, on pages 3 and 4, two examples of standardization are cited in support of weight standardization. The two examples are can sizes and the sale of alcoholic liquors in parts of a gallon—quarts, fifths, and pints.

Let me read the two consecutive sentences I refer to:

> The voluntary standardization of can sizes through the Department's procedures is probably the outstanding instance of such successful cooperative effort involving consumer commodities.
>
> The uniform marketing of liquor in pints, fifths, and quarts also supplied the committee with a concrete example of weight standardization.

There is confusion and misunderstanding somewhere. The examples the Senators cite are standardizations of volume. They have nothing to do with weight.

The standards for cans consist of two figures. The first is diameter, the second height. Both are stated in inches and sixteenths of an inch. For example, a No. 303 can is defined as 303 by 400. This means it has a diameter of $3\frac{3}{16}$ inches and a height of 4 inches. It is perfectly apparent if you fill a can of such dimensions with popcorn, or potato chips, that the quantity of popcorn or potato chips will weigh less than the same volume of mashed turnips or sweet potatoes or peaches in heavy syrup.

A prominent proponent of the legislation said on the Senate floor that all canned soups would be exempt because they were packed in standard cans. However, the leading line of soups in the United States uses what is known as a No. 1 can—one defined as 211 by 400, meaning $2\frac{11}{16}$ inches in diameter and 4 inches high.

But the weights of the soups so packed in that size vary considerably. In the grocery store some are marked $10\frac{1}{2}$ ounces, others $10\frac{3}{4}$ ounces, still others 11 ounces, $11\frac{1}{4}$ ounces, and $11\frac{1}{2}$ ounces. Thus, there is no such thing as standardization of cans by weight. There is only standardization of volume.

Regarding the other citation, sale of liquors as example of weight standardization—it is a fact that the official U.S. definition of a gallon is 231 cubic inches. A quart is one-fourth of that cubic content, a fifth, one-fifth and so forth.

This standard of volume again has nothing to do with weight. Alcoholic liquors vary in their density and hence in their weight. Even though this should be obvious, I asked our laboratory to supply some facts. They told me that a quart of 100-proof liquor like vodka will weigh 1.9 pounds or about 1 pound $14\frac{1}{2}$ ounces. On the other hand, a quart of a popular cordial like creme de menthe will weigh 2.3 pounds or about 2 pounds 5 ounces.

Those proponents are confused on standardization. The bill they advocate calls for standardization by weight. The examples they cite are standardizations by volume. The volume standardization is necessary to achieve the efficiencies of mass production.

Weight will vary with the density of product, as it did in the case of soups and liquors. Consequently, the weight marked on the package will sometimes be in even ounces and sometimes in odd ounces, depending, in the case of baked goods, upon the density, shape, size, and other features of the product being baked.

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I want to demonstrate this to you gentlemen. But before I do, I would like to tell you a little about the production methods used in the biscuit and cracker industry.

Since 1945 Nabisco has spent more than $290 million on building and equipping the most modern bakeries in the world. They were designed and built to operate on a straight-line production basis. Raw materials are received at one end and finished product leaves the other.

The backbones of these great plants are their continuous ovens. These ovens, which were designed and built by Nabisco engineers, are 300 feet long. Each is capable of producing many millions of crackers and cookies daily.

Such prodigious production is possible only because these ovens are served by high-speed, automatic packaging machinery capable of keeping up with them. A single oven bakes 40,000 pounds in an 8-hour shift. The packaging line servicing this oven has to be able to handle that enormous production flow.

Incidentally, Nabisco would be pleased to have members of this committee and its staff tour one of these bakeries to see how great is Nabisco's interest and investment in providing products and packages to please and satisfy the American family.

Now, let me return to standardization by volume.

Here is an 8-ounce package of Ritz crackers. It was originally designed in 1935 for that product. While it has been modified slightly we now use it to package 14 other varieties of crackers.

Only 2 of these 15 varieties fill the package at 8 ounces. For the remaining 13 products, it takes more than 8 ounces to reach the same level of fill. The declared net contents of the 15 varieties are:

Number of varieties:	*Net weight (ounces)*
2	8
1	8¼
3	8½
5	9
1	9¼
1	9½
1	9¾
1	10½

Thus, there are eight different weights packed in the same size package. The proper weight is dropped automatically into the top of the package which then moves on to other machinery which folds and seals the inner glassine paper, then closes and glues the top flaps of the carton itself. All this happens at the rate of 81 to 130 packages per minute, depending on the product.

Here are four transparent packages of the exact inside dimensions of this Ritz package. The black line represents the level to which we now fill to obtain declared net weight.

The space above that line is required for the machinery which closes the package as I have described. Suppose we were required to pack only in 8-ounce units.

As you look at these, the contents of each transparent package is exactly 8 ounces. You can see that, if standardization rules required that each package of each variety weigh exactly 8 ounces, additional package sizes would be needed.

With new package sizes required to pack each of these 15 varieties to 8 ounces, we would be sacrificing the benefits of mass production. Each new size at any one oven would require its own separate line of packaging equipment to handle it. Just one such new packaging line requires an investment in plant and equipment of almost $400,000 and a building area of approximately 4,800 square feet.

I asked our production people for a preliminary estimate of the number of new packaging lines we would need based on our present backery schedules. I think their estimate will surprise you. It was 27.

Let us assume we could rearrange bakery schedules even though shipping costs would be increased. Maybe it would be possible to cut that number in half to 13 new packaging lines. At $400,000 each that is more than $5 million and I am not sure we might not need more land as well, or bigger buildings.

If we were to make that investment, what would happen to our costs? They would go way up. If we then averaged four packaging lines per oven, only 25 percent of our investment in packing equipment and the plant required to house it would be productive at any one time. Even if only one additional line were required for some particular oven, it would be idle half the time.

Because of the time involved in shifting from one line to another, our efficiency would be further decreased by additional start-up and shut-down 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 continue to make these products. The variety of products available to consumers would thus be reduced. Freedom of consumer choice would be curtailed.

Elsewhere in the proposed legislation is a restraint on the administrators which, oddly enough, creates more inequities. No regulation may establish any weight less than 2 ounces. We are told that the purpose of this is to permit free variation of weight by manufacturers of very small packaged foods sold through vending machines. Because the price to consumers must be maintained at an even 10 cents, only by varying the weight offered can increased ingredient cost be overcome.

But let us see what happens under such a provision. Here are the five leaders in the line of merchandise Nabisco offers to vending machine operators. Three of these are under 2 ounces and so would be exempt. But there is one marked 2 ounces and this favorite, Fig Newtons Cakes, is 2¼ ounces. Are some of these to be controlled, while others are exempt?

Raising the exemption would do no good. The same problem would remain at any level. Our marketing people are now receiving requests for 15-cent vending machine items. Naturally weights will increase and the same inequities persist. When demand for 25-cent items comes—and it will—weights will increase again and the whole problem would repeat at higher levels. How does the consumer bene-

fit from Government regulation of some vending machine items while others are exempt?

H.R. 15440 also delegates to administrators authority to make rulings on the shapes and dimensions of packages. Rulings in this area could also prove costly and deprive consumers of features they prefer, such as the inner units we call Stack Packs.

Stack Packs are inner packs of rows of single crackers. Several of these may be placed in a single package. The consumer may then open one inner pack while the remainder keep their contents fresh for days or even weeks. Stack Packs were first introduced in 1952, and they have proved exceedingly popular. We have gradually extended this unitized packaging to a number of our better selling varieties.

Stack Pack machinery is enormously complicated and expensive. Its development in our engineering laboratory took several years and cost a great deal of money. Improvement research goes on constantly. One such unit, which can work for only one oven, represents a massive investment. Once set, it functions at high speed, but changes and adjustment in the size and contents of the individual Stack Packs would be costly, difficult, and very impractical. The entire packaging line would have to be rebuilt. Both it and the oven it services would have to be shut down while this was being accomplished.

Our competitors have their own types of inner packs. Some package single crackers like our own. Others make unit packs of blocks of two, four, or even six crackers. In each case, a costly, highly specialized piece of machinery is involved.

And consumers say the inner pack is quite important. Housewives are keenly interested in the added product protection and convenience it offers them. And it is, of course, another area in which we competing manufacturers try to please these American housewives and so win their continued patronage for our brands. Let me show you how this works in the largest-selling type of crackers—soda crackers or saltines as they are better know today.

Here are the 2-pound packages of the four leading brands of saltines in the United States. Not all of them are available everywhere but at least three compete in most sections of the country. Please note that all display "2 pounds" in very large type, although package shapes vary.

The difference in outside dimension is less significant that the variations in the inner units. First let me point out our Premium Saltine Crackers. We pack single crackers in a one-quarter pound stack—what I referred to earlier as our Stack Pack. And eight of these are packed parallel to make up 2 pounds.

Next Zesta Saltines—made by Keebler Co., formerly known as United Biscuit. Here we find pairs of crackers packed in one-eight pound units. Sixteen of these make up their 2 pounds.

Now we have Krispy Crackers made by Sunshine Biscuit. Inside we find blocks of six crackers, packed in half pounds so that four packs make up their 2 pounds.

Finally, we come to Flavor-Kist Saltines baked by Schulze-Burch of Chicago. Inside there are blocks of four crackers, wrapped into quarter-pound units so that eight units make up 2 pounds.

The four leaders are also different in ingredients or proportions of ingredients or both and they also vary somewhat in thickness. But the big distinction lies in their packaging.

Now is have done our best over a number of years to persuade American housewives that our single cracker stacking is preferable. But a great many still prefer Krispy's, or Zesta's or Flavor-Kist's method. No matter how we try to persuade, they cling to twin-crackers, or blocks of four or of six—thus exercising their freedom of choice.

Will the regular users of any one of these brands take kindly to a Government ruling that their favorite pack must be abandoned and replaced by standardized substitute?

We know they will not. If we are adversely affected, we know they will protest to us in person, in the store, and by mail.

And we or our competitors—or perhaps all of us, depending on the exact ruling—would have to incur added investment, meaning higher costs, in order to remain within the law.

Let me stress that any requirement or ruling that sets standards causing structural packaging changes in crackers—any or all of them—will lead to price increases. For manufacturers higher costs will have to be passed along. Consumer prices will rise and consumer choice will be restricted as consumer favorites are abandoned. I do not see how the consumer can benefit.

There is another aspect of standardization that troubles me. This is its impact on packaging research and development. Some of the recent improvements in packaging have been shown today, and our supermarkets are full of others. All of them are a tribute to America's system of free competitive enterprise.

Doesn't standardization of any kind inhibit invention? Who will strive to find a more convenient package if Government edict may prevent its use? Who will finance exploration work in the laboratory if standards cannot be changed—or if there is even uncertainty about changing them? Must housewives forever buy existing packages because no manufacturer may legally offer a new one except with the Government's concurrence? These things disturb me because America has progressed by the development and risk taking of new ideas and new ventures—not by mandatory clinging to the old. I worry lest this standardization result in freezing yesterday for our children to live in tomorrow.

To serve Nabisco and its operating divisions in the United States, more than 150 Nabisco people spend full or part time on package improvement and development. In laboratory and consumer research, in design or machinery development, they are backed up by thousands more employed by our many suppliers. And we are only one company—the same tale can be told by scores or hundreds of others. How will standardization affect all this effort?

I am not just philosophizing. This is real concern. Let me give you some real problems in innovation we see under standardization. New products are most important to the continued growth and progress not only of manufacturers, but to the American economy as a whole. In our product lines this means new items for the housewife.

For example, we have a famous hot cereal—Cream of Wheat. Nabisco is also famous for graham crackers. We know that mothers value

highly the nutritional merits of graham flour. We knew that there had never been a graham cereal. Our people worked hard to develop such a product—tasty, nutritious, easy to prepare. When we had the product we had to package it. Ready at hand was the machinery used to pack 14 ounces of Cream of Wheat—this package here. Now the new graham cereal differs in density—only 11 ounces fills the same volume. But we were free to move quickly and save money by utilizing existing equipment.

Here is "Hi Graham" as we are now marketing it. The package is marked "11 ounces." So far consumers seem to like this new product. They are buying it regularly.

But suppose we were required to pack hot cereal products in units weighing 14 ounces only. This could well become a "standard" under H.R. 15440. We would have had to invest more than $200,000 for new equipment, just to test a new product in a few cities. Such a sum—added to other inescapable development expenditures—would increase costs which prices must recover. We might well have been discouraged from the whole venture. What benefit would this be to housewives?

As another example, let me mention "aerosol" packaging. Only a few years ago such spray cans did not exist. When they became available, new products, like hair sprays, were invented—and believe me, consumers like them.

Makers of other lines adapted their products to aerosol requirements. Paint is a notable example. And, believe it or not, cheese is another. Here is our "Snack-Mate" cheese spread. We now have six different flavors and more are being developed. Housewives like them. Even children can spread crackers without messing up the kitchen. Party guests like the "do it yourself" idea as well.

But how could we have done this under "standardized" packaging? As one of the pioneers, we found few precedents. Everything had to be developed from scratch. How much product we could pack depended on the can size available in sufficient quantity, and the consistency required by the dispensing method. These cans are the size we could count on receiving in large numbers and it turned out that they accommodated 4¾ ounces by weight. They are so marked. Could we have obtained Government's blessing? How long would that have taken? And wouldn't our competitors have been forewarned? Or, and I think it more likely—would such an innovation be blocked because it didn't conform to previously existing packaging standards?

Since legislation of this nature was first proposed, it has consistently referred to "any consumer commodity." I am sure that the proponents believe that this can be determined and defined. However, when we have inquired what the phrase means, we have not received any clear-cut response. We have not been told, for example, whether this means that all crackers are a commodity, or all cereals are a commodity. We do not know if this means that soda crackers are one commodity and graham crackers are another commodity—and how about these snack crackers which I have demonstrated here today? Are they all the same or is each flavor a separate commodity? Obviously, unless "any consumer commodity" is clearly defined, only confusion and uncertainty can result.

But, I don't believe anyone can satisfactorily define a consumer commodity. We are now introducing a new product all over the

United States. It is now being distributed to grocery stores and you will soon see it advertised on television and in magazines. A similar product has been successfully marketed for several years by our Canadian affiliate.

Here it is. As you can see its name is "Doo Dads" and it is further described on the face of the package as "Five munchables in a savory mix." The generic word we have given it is "snacks." I do not know whether proponents of this legislation would consider snacks as a consumer commodity. But what "consumer commodity" would they consider it?" Let me read the opening sentence of the ingredient statement. "Contains wheat and rice cereals, cheese crackers, pretzel sticks and salted peanuts."

What kind of a consumer commodity is that?

As revised, the legislation provides a procedure for the establishment of standards. This, they say, will guard against unwise and damaging administrative rulings. I will leave it to others to testify from a legal and constitutional viewpoint. However, I would like to make two comments as a businessman.

First, it will be impossible for administrators to make rulings which will not discriminate and harm some. Most often, those damaged will be the smaller businessmen. Those trying to offer something more, something new, something different than their larger, more affluent competitors.

Second, the procedure will be expensive. The Government's role will cost the taxpayers more, and we are all taxpayers. As for business, I see unending expense is preparing testimony, presenting witnesses, retaining counsel.

Let me remind you again, increases in cost mean increases in prices. The consumer will have to pay more for the doubtful privilege of having her selection reduced, her choice restricted. She will pay more for less choice. That is why I have referred to this proposed legislation as the "low choice-high cost packaging bill."

As a result of the problems I have laid before you today and careful consideration of all the views expressed over the last 5 years, I have come to the conclusion that it is impossible to write a bill which is fair and equitable to the many different business interests involved. I do not think it is possible for legislation to cover wisely all of the many problems involved in packaging and labeling the range of merchandise which is offered for sale in the United States today. Inequities would be inevitable and no matter how wise the administration of the legislation, inequities in rulings would necessarily result. Any bill restricting consumer choice and severely limiting packaging, both existing and future, will do the consumer more harm than good.

This brings me again to the conflict of philosophy between the proponents of this legislation and the business community—the conflict between consumer choice and standardized commodities, between freedom of the marketplace and authoritarian controls, between innovative progress and regulated stagnation.

On only one point do the two sides agree—that the consumer should be well informed. She is entitled to all essential information so that she may make informed buying decisions freely as she sees fit to meet the needs and preferences of her family.

We think existing law now requires this kind of information on food packages. We have repeatedly urged that existing law be fully enforced, increasing the budgets and personnel of the administrative agencies if that is necessary.

Proponents of this legislation maintain that more information is needed but they do not specify what it is. Instead they would grant power to administrators to issue rulings—all kinds of rulings—"to prevent the deception of consumers or to facilitate price comparisons." These rulings may include standards of weight, measure, or count, standards of packaging design and construction and standards of labeling. Such standards are not necessary to provide the consumer with information. In any field, standards are set for purpose of control, not for information.

Consumer information is the issue, gentlemen.

Do our packages inform the consumer or do they not?

We are sure they do.

Thank you very much.

Mr. MACDONALD. Thank you very much for a very fine statement.

I know you are a very busy man, but the Chair has been asked if it would be possible for you to return in the morning to answer questions of the committee.

Mr. SCHROETER. I am at your command. I will be here.

Mr. MACDONALD. If you can, we are looking forward to talking to you tomorrow.

The committee will stand in recess until 10 o'clock tomorrow morning.

(Whereupon, at 12:37 p.m., the committee recessed, to reconvene at 10 a.m., Wednesday, August 3, 1966.)

FAIR PACKAGING AND LABELING

WEDNESDAY, AUGUST 3, 1966

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to recess, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

Yesterday, when the committee stopped, Mr. Harry Schroeter was testifying. The gentlemen who wanted to ask you questions are not here. So, if you can stand by for a while we are going to take the next witness and then put you back on the stand.

Mr. SCHROETER. That is quite all right, Mr. Chairman. We have had the exhibits set up. Will they interfere?

The CHAIRMAN. We will see that they don't interfere. Is Mr. Milan Smith here, executive vice president of the National Canners Association?

Mr. SMITH. Yes.

The CHAIRMAN. Could you proceed now? If you would, we would appreciate it if you would start now. Mr. Schroeter, we will get back to you for the questions.

Mr. SMITH. We also have some exhibits here.

The CHAIRMAN. If you care to leave them there you might. I would like to say if you have a long statement, you can put it in the record and summarize it. We would appreciate it. You may proceed.

STATEMENT OF MILAN D. SMITH, EXECUTIVE VICE PRESIDENT, NATIONAL CANNERS ASSOCIATION

Mr. SMITH. My name is Milan D. Smith. I am executive vice president of the National Canners Association, whose 585 members, with canneries in 44 States, pack approximately 85 percent of the national production of canned fruits, juices, vegetables, meats, seafoods, and specialties.

We very much appreciate this opportunity to appear before you to present our industry's view on this legislation.

My appearance today will be the fourth time in four and a half years that I have testified before a congressional committee on packaging and labeling. In February of 1962 I was privileged to appear before the Senate Antitrust and Monopoly Subcommittee to describe the voluntary packaging and labeling programs of this association and its members. At that time Senator Hart commended the pro-

grams of the canning industry that serve the consumer and complimented our efforts in the development of those programs by the National Canners Associtaion.

In March of 1963, I again testified before that same subcommittee, to explain why the canning industry was opposed to additional packaging and labeling legislation. Once again Senator Hart was kind enough to comment favorably on the efforts of our industry, stating that:

> We do feel that the canning industry has been and continues to try to do an effective job in this area, it would be my impression, in a measure more seriously than most other segments of the economy.

In addition, Senator Ribicoff, one of the cosponsors of S. 985, commented as follows:

> As a matter of fact, voluntary activity on the part of industry to guard against deceptive packaging has existed for a long time. The canning industry, to name but one, is a good example of an industry acting through a strong national association to help assure generally good industrywide packaging and labeling practices.

Many other proponents of the bill have been complimentary to our industry and what it has done with its voluntary programs.

As the committee is by now aware, the bill before you differs in a number of respects from S. 985 as first introduced and as considered at the Sentae committee which this bill—as passed by the Senate—would, if enacted by Congress, have upon the canning industry and why we firmly believe that it is unnecessary and burdensome, duplicates existing law in many respects, will measurably increase costs to the consumer, and the other respects its provisions are impracticable for application to the canning industry.

In appearing here today on behalf of the canning industry, I am confident that this committee is not unaware of the economic importance of canned foods. Of the total grocery food products covered by the bill, canned foods account for $4.6 billion at wholesale value, or almost 20 percent of all of the food commodities to which this bill will apply.

We share with the proponents of S. 985 an abiding concern for the interests of the consumer. That concern has been responsible for the voluntary programs we have developed over the years, including the descriptive labeling program which was initiated in 1934, and the simplification of containers program which was begun in 1925. Both of these programs have been continually updated and revised in the intervening period to be sure that they were current and of maximum helpfulness to the buyers of our industry's products, and even at this hour the simplification of container program is being reviewed and the latest descriptive labeling manual, fifth edition, was published in March this year.

The basic understanding that what truly served the consumer, best served the canning industry, has been a guiding principle over the years.

Such a basic guideline also has helped in our dealings with the Federal Government and particularly with Congress. It was the basis for our endorsement of the 1906 food and drug law and our support of the 1938 revision. It underlay the sponsorship by the canning industry of

the McNary-Mapes amendment in 1930 to the original Food and Drug Act to provide for the first time standards of identity and fill of container, and minimum standards of quality, for canned foods. It has motivated the expensive efforts of this industry in developing with the FDA the many standards which have been promulgated for canned foods under the comprehensive procedural provisions of the 1938 Act.

Having in mind these basic principles of consumer interest the canning industry, along with other segments of the food industry, expresses its opposition to the need for this proposed packaging and labeling legislation. With your permission, I should like briefly to summarize our principal objections which combine to support our conviction that S. 985 is unnecessary. It will not serve the best interest of the consumer; in all likelihood it will increase the prices she must pay for the food items covered by the bill, and does threaten to disrupt voluntary programs developed over decades of effective industry effort, and could well greatly retard further improvement and development of the products of our industry.

In the first place, there is no real evidence that it is necessary in the case of canned foods to grant this vast new authority for expanded and rigidly detailed regulations.

The voluntary canning industry programs outlined in detail in our 1962 testimony have provided an effective framework for the packaging and labeling of canned foods that places cardinal emphasis on informing consumers as to the nature and quantity of the product.

Our second objection to the bill is that existing laws are adequate to control any abuses that may arise. To say that enforcing of these adequate, existing laws is handicapped by proceeding on a case-by-case basis is, we believe, in itself a misrepresentation.

As to all foods, there is in the Food and Drug Act existing authority for the establishment of detailed standards of identity, standards of quality, and standards of fill of container. As we developed in our earlier testimony, there are a great many canned foods already standardized on the basis of proposals made by the canning industry, including virtually all commercially significant canned fruits and vegetables, canned seafoods, and a number of others.

Indeed, under the Hale amendment, an industry bill which this committee reported and recommended in 1953, the current procedure is for the industry voluntarily to submit to the FDA any proposals and amendments on all FDA standards, and after discussion and consultation these are published. If there is objection on any particular point, the FDA statute provides for its prompt determination of the limited issue under reasonable procedural safeguards, in a public hearing from which there are developed findings based on the particular facts.

I am confident that the committee in the light of its jurisdiction over the Food, Drug, and Cosmetic Act, is familiar with the scope of these FDA standards of identity and fill of container. On the basis of our own experience, we know that with respect to the standardized composition included in a standards of identity and the correct label name set forth in that standard of identity, the existing laws are adequate and effective.

As to other areas of label control—such as the prohibition of any false or misleading label statement, the prohibition of deceptive con-

tainers, and the requirement of prominence in the label statement—the present FDA law is pointed, adequate, and enforceable.

Our third basic objection to the bill is that S. 985 would mark a distinct departure from existing Federal packaging and labeling controls, in that for the first time the Government would be authorized to prohibit practices that are not deceptive or misleading, and to impose requirements that go beyond the prevention of deception. The agency could adopt these additional regulations if it determined that they were necessary either to prevent deception, or to facilitate price comparisons as to any consumer commodity. Packaging controls would be adopted solely on an administrative finding that a commodity is being distributed for retail sale in weights or quantities that are likely to impair the ability of consumers to make price per unit comparisons.

No showing of deception would be necessary. The agency could adopt a regulation specifying the size of packages, requiring ingredient information, or designating package-size descriptions solely on the basis of a determination by an administrative officer that such a regulation might facilitate price comparisons of products.

In its overall consideration of the unprecedented and sweeping provisions of S. 985, this committee must not only satisfy itself that there is real need to delegate to these administrative agencies these wide powers to regulate in detail the bases for consumer selection of one food product over another. The committee must also determine whether there is any assurance that these governmental determinations will be superior to the judgments of the consumer, whose vote of confidence guides the businessman, who must satisfy her or lose out in the competitive race. We in the canning industry, on the basis of our performance in product development, abundant production, and the maintenance over decades of one of the best if not the best value in the consumer's market basket, are convinced that such administrative judgments will not effectively serve consumers.

Let me now turn to S. 985 and discuss its provisions in relation to existing law and realistic canning operations.

Under section 4(a)(1), the FDA could adopt a regulation to require that the label specify the identity of the commodity and the name and place of business of the manufacturer, packer or distributor.

The Food, Drug, and Cosmetic Act now provides that labels must bear the common or usual name of the food, and the name and place of business of the manufacturer, packer or distributor.

Quite frankly, we are totally at a loss to understand the basis for this legislative duplication. We can think of no reasonable explanation of why the Congress of the United States should enact— or even consider—a provision of law that does no more than restate existing law.

As to section 4(a)(2), the FDA would be directed to adopt regulations requiring that the net quantity of the contents be stated in a uniform location upon the principal display panel of the package. Early in our efforts to improve the labeling of canned foods, beginning more than four decades ago, the canning industry faced the practical problem of determining what would be the front panel of the cylindrical can as it might appear on the retail shelf. In the voluntary programs

begun many years ago to which I referred previously, we developed, with the endorsement of the FDA, as part of our descriptive labeling program the industry practice of placing the net weight, together with all other required or recommended consumer information, on an appropriate "information panel." This appeared immediately to the right of the trademark and the principal vignette on the label. That practice has served the consumer well over these many years; she became accustomed to the information panel; and we have had no consumer complaints about net weight placement on canned foods.

However, in an effort to meet new requirements in this area adopted by some States and simultaneously to provide consumers in all States with a second net weight statement for whatever value it may have to her, many canners for years placed the net weight declaration both on the information panel and on the principal display panel. In fact, the National Canners Association, several years ago recommended to all canners that after they exhausted their then supplies of existing labels, the net weight statements ought to be placed on the principal display panel.

Moreover, the present Food, Drug, and Cosmetic Act and regulations provide that misbranding will occur whenever any required information, including net weight, fails to "appear on the part or panel of the label which is presented or displayed under customary conditions of purchase."

With respect to canned foods, both our originally developed placement on the information panel and our later recommendation as to net weight are accepted by the FDA to be in full compliance.

Consequently, the front panel requirement of section 4(a)(2) of the Hart bill would do nothing more than restate present canning industry practices, and duplicate the requirements of both the FDA and most State laws. No plainer lack of need or case of statutory duplication could be suggested.

The added requirement in this section that net contents be declared "in a uniform location" on the front panel could add substantial additional costs by requiring redesigning of a high percentage of the grocery product labels. It would appear that as long as the net contents are clearly and conspicuously stated anywhere on the front panel that this would serve the purpose and would avoid injecting the Federal Government into the control of label design which we feel would be unwarranted and unnecessary.

Another new labeling requirement would be imposed by section 4(a)(3)(A), under which the net contents for most consumer packages would have to be expressed in terms of ounces, rather than pounds and ounces, or quarts and ounces. The assumption is that consumers do not know how many ounces are in a pound, pint or quart. Although this approach may facilitate package-size comparisons, it must be recognized that it is an abrupt repudiation of longstanding requirements under State and Federal law.

Section 4(a)(3)(B) and (C) of the bill would require that the quantity declaration "appear in conspicuous and easily legible type in distinct contrast * * * with other matter on the package," and in a type size established by FDA regulation. The existing law explicitly provides that every word, statement, or other information "re-

quired * * * to appear in the label or labeling" must be "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."

An FDA regulation provides that one basis for a violation of this provision would be the "smallness or size of type in which" required information appears on the label.

Within the past few years a number of States have adopted a type-size scale for the quantity declaration on the labels of consumer commodities, in accordance with the recommendation of the National Conference on Weights and Measures, and endorsed by the National Canners Association.

Canned food labels have no difficulty complying with these type-size requirements. But we see no valid basis for the promulgation of a Federal type-size scale, which at best would do nothing more than duplicate existing requirements already adopted in a great many States, and at worst could impose different and varying size requirements that would lead to untold confusion and needless costs. Here, again, there is no need and obvious duplication.

Section 4(b) of S. 985, prohibiting all qualifying words or phrases added to the quantity declaration, relates to alleged problems which do not exist with canned foods. However, even if this were to be a problem of canned foods, the present Food and Drug Act specifies that a food is misbranded and subject to seizure, "if its labeling is false or misleading in any particular." We submit that this provision of existing law is entirely adequate and that consumers would derive no additional benefit from regulations that prescribe precisely what may or may not be said on every food label.

It is true, of course, that section 5(b) recognizes that there may be exceptions to these prescriptions. But this turns on very vague phrases, such as "the nature, form, or quantity," of particular products or "for other good and sufficient reasons."

It is impossible to apply these ideas to canned foods. But more important, this ambiguous provision is equivalent to giving the administrative official completely unfettered authority to determine whether or not to apply the mandatory provisions of the bill to particular foods or classes of foods.

Turning to the second group of authorized additional regulations in section 5, on a product-by-product basis, we find that these are even more alarming in their implications for our industry and for the American consumer. These provisions would in large part take the most fundamental packaging and labeling decisions out of the hands of the manufacturer, and turn them over to the Federal official, whose sole basis for making these decisions would be his judgment of what is desirable to "facilitate price comparisons."

These additional regulations would be authorized without a finding of deception. They can be justified only by a conclusion official is better able than the ultimate consumer to make her everyday shopping decisions.

Regulations under section 5(c)(1) to establish size designations for packages would have little, if any, application to canned foods. Some

cans may not indicate the can size, such as No. 303 or No. 2½, on the label, but this is intended solely as a convenience to housewives who may be using a receipe that specifies a certain size can.

At any rate, this provision would appear to be based on a misconception—that size designations, such as "medium," "family size," or "giant," are used by consumers as a means of comparing prices for competing products. These terms are used by a manufacturer as a convenient means of distinguishing among his various sizes of the same product.

Every shopper knows that price and quantity comparisons between competing products should be based on the net contents declaration. There is thus no justification whatever for the Federal Government to concern itself with supplemental size designations.

As to section 5(c)(2), we can see no need for mandatory regulations establishing how much of a commodity shall constitute a "serving." Our association recognizes that many consumers appreciate an indication of the approximate number of servings provided by a particular package. This we have done as a helpful guideline, but we know also that any attempt to define servings by law cannot possibly take into account all of the widely varying appetites, tastes, dietary preferences, and circumstances that dictate how much of a food may be served and eaten at any one time.

The development and use of label information relating to servings per can or jar, or in terms of cups, is not designed to provide consumers with a method of comparing prices at the time of purchase, but as an aid to the housewife in preparing her meals.

They are generally comparable to the type of serving recommendations which are found in cookbook recipies. Government dictation of serving sizes for label declaration would appear to be a wholly futile exercise that might lead to the false assumption that products should be compared and purchased on the basis of a serving size declaration, or that the Government has determined that consumers should use no more or less than the specified serving; this would create misunderstanding and confusion where we feel little if any now exists.

We do not believe that consumers would be benefited by the regulation in section 5(c)(3) of so-called cents-off or economy size label statements. The abundant packs of the canning industry are offered for sale at different prices in various retail outlets in various localities depending upon freight and the type of retail store.

Although the cents-off promotion has not been a common practice in the canning industry, there may be occasions in which a canner who wants to move a surplus block of merchandise will reduce his price to the wholesaler or retailer. Whether this practice has been used or not, it can be successfully argued in our industry and outside that it is the one way the processor has of flagging the consumer that he is providing the retailer an allowance on merchandise which he, the processor, intends be passed on to her. Bear in mind that in this type of promotion the housewife would not necessarily know that any such allowance was being made. Thus there are many who urge that printing the price reduction on the label helps to insure that the lower price thus given will be passed on to the consumer by the retailer and the promotional ends sought will be achieved.

Here again, both the FDA and FTC presently have adequate authority to control any type of promotional labeling that is deceptive or unfair or false or misleading. This broad grant of additional power, to "regulate" cents-off labeling on commodity basis, serves no purpose other than to encourage unnecessary Federal control over a popular promotional device, when there is no evidence of consumer deception and with likely losses to the consumer.

As to further regulations in the case of foods to require ingredient information, authorized in section 5(c)(4), this is either a plain duplication of existing law, or an unwarranted extension of present requirements. On unstandardized foods, the present law specifically requires that "the common or usual name of each such ingredient" be designated on the label, and that these be set forth conspicuously.

But the authority granted by this section of the bill could be interpreted by a regulatory official to authorize him to require that something more than the names of the ingredients be declared on the label. It is impossible to predict at this time just what might be attempted under such a broad grant of authority. It would appear to us to be a blank check.

The provisions in the bill that have undoubtedly given rise to the greatest concern on the part of grocery product manufacturers are those in section 5 (d) through (g) authorizing the adoption of regulations to establish weights or quantities in which a commodity must be packed for retail sale. Senator Hart's original three-line provision has been modified and complicated apparently in an effort to meet the many valid objections to compulsory packaging standardization.

The Senate bill adds an exception for packages under 2 ounces, a qualified exception for packages used for related commodities of varying densities, a "grandfather" clause for returnable glass containers in use on the effective date, an additional hearing for the determination of the need for a regulation, a requirement that the FDA give due regard to a variety of factors relating to package size, and an opportunity to obtain a "voluntary" product standard that may be made compulsory by the FDA. But what the proponents do not seem to realize is that each one of these exceptions and modifications in effect recognizes the validity of the objections to compulsory packaging standardization without adequately meeting them.

For a number of reasons such standards make no commercial or practical sense for packages under 2 ounces. But many of these same reasons apply equally to packages over 2 ounces.

Establishing package sizes that preclude the use of the same container for products of varying densities is obviously not in the consumer's interest, as we documented at some length in our testimony before the Senate committees. But this conclusion is just as valid whether or not some Government official decides several years from now that the resulting fractional ounces are likely to deceive consumers because they make price comparisons difficult, and whether or not a particular container has been "customarily used" for this purpose in the past. These same considerations apply to new products and new containers, and the new uses for old containers.

Certainly returnable glass containers in use on the effective date should be protected, but so too should nonreturnable glass containers,

metal, paperboard, plastic, and foil containers by authorizing unreasonable restrictions on them that may not be applied to containers in use on the effective date?

The National Canners Association would be the last to question the benefits for consumers, manufacturers, and distributors that may be obtained for some industries from a purely voluntary simplified practice recommendation, for major segments of the canning industry have operated under such a program for over 40 years. But S. 985 would largely destroy the benefits obtained from a voluntary approach to container simplification. If such a program is to be beneficial for manufacturers, distributors, and consumers, it must have sufficient flexibility to enable packers to develop and try out new container sizes that meet shifting consumer tastes and demands.

Compulsory regulations, specifying the weights in which commodities must be packed, would make it extremely difficult, if not impossible, to make desirable container changes.

At the present time we enjoy the benefits of voluntary container simplification, but we have the flexibility and freedom of choice—for manufacturers and consumers—that are so important in a competitive, changing market situation.

The "voluntary" standards referred to in S. 985 would remain voluntary only until the FDA adopted an identical regulation which would then become compulsory.

At that point, the benefits of a flexible standard would be lost—and a manufacturer would be forced to go to two Government agencies if any change in package size was deemed to be desirable.

And finally, if Congress itself gives "due regard," as the bill suggests, to the factors it directs the FDA and FTC to consider in section 5(g) in promulgating container regulations, the only possible conclusion would be that compulsory packaging standards cannot be justified on any rational basis. These are the very factors that make any such standards wholly contrary to the public interest:

Cost of the packaging and cost to consumers;

The need for a reasonable range—which necessarily means a changing range of package sizes;

The use of wide, and constantly developing, variety of materials;

Customary use of various package sizes; and

Competition between containers made of different types of packaging material.

S. 985 as enacted by the Senate did not authorize regulations to prevent the distribution of commodities in packages of sizes, shapes, or dimensions which are likely to deceive retail purchasers as to the quantity of the contents. But such a provision is included in H.R. 15440, and I wish to comment on it briefly.

Existing law now provides that a food shall be deemed to be misbranded if its container is so made, formed, or filled as to be misleading. In addition, it authorizes the promulgation of regulations fixing and establishing for any food reasonable standards of fill of containers. Such standards have been adopted and in effect for many years for the major canned foods.

In our view, these provisions of the present law are adequate to prevent the sale of foods in deceptive containers. It is possible that

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the language in H.R. 15440 could be interpreted to authorize the FDA to prohibit the sale of particular commodities in all containers other than those specifically approved in a regulation.

We strongly believe that the only satisfactory approach to container standardization—as proved in the canning industry—is the formulation of truly voluntary recommendations. Container simplification, in this fashion, has obvious advantages to consumers and to the industry, and for that very reason voluntary industry programs in this area have proved to be highly successful.

Our industry experiences over the past decades have made us cognizant of a great many technological problems which I shall not elaborate. The fill of a canned food container and the specification of net weight for some commodities can most informatively be specified in terms of fluid ounces, or the water capacity of the can. For other commodities, it is best developed against what is called the drained weight. In still others the canning industry, in collaboration with FDA, has deevloped formulas for relating what is called pressed weight to input. We have done all of this under the provisions of the existing FDA Act. There is no need whatever for additional regulatory authorization.

Compulsory standardization would therefore unnecessarily inhibit the competitive development of improved container sizes, shapes, and materials that provide significant consumer benefits and permit the rapid adjustment to changing trends in consumer tastes and preferences in various parts of the country, changes in diet, as well as to family sizes. We cannot conceive of a compulsory standardization program that could on the one hand satisfactorily reconcile the complicated and interrelated factors bearing on container size and shape, and on the other hand permit the necessary degree of flexibility and change.

Mr. Chairman, we in the canning industry share with you the basic objective of fulfilling the consumer interest in informative labeling and protecting the consumer against deception.

Indeed, since 1952 we have distributed over 14,400,000 leaflets explaining our descriptive labeling program to housewives, schools, youth groups, adult education programs, and the like. An additional 10,100,000 leaflets devoted in part to labeling have been distributed in the past 14 years to these same groups. Our labeling manual has been widely distributed since the first publication in 1940, and it is constantly revised and supplemented.

It was republished in 1942 and a revised edition issued in 1946. The present edition, the fifth, was revised and published early this year. Nearly 4,000 copies are presently being used by canners, buyers, brokers, label manufacturers, and others.

The National Canners Association has expended many hundreds of thousands of dollars in such consumer and trade educational programs.

For example, our home economics-consumer services' primary objective is to provide factual information about canned foods and their use. Educational publications which include up-to-date information on labeling, can sizes, nutritive values, and how to buy and use canned foods are sent upon request to teachers, home economists, youth groups, homemakers, adult education programs, and others.

Our distribution of this type material has exceeded 8,500,000 copies in the past 14 years. The division also provides factual information to newspapers and magazine food editors, radio and television programs, and to authors of articles, books, and textbooks. And since its release in September 1962, an estimated 18 million people have seen "Behind the Label," the association's consumer film on canned food labeling.

Statements about quantities of publications distributed (such as the over 3 million distributed in the last 14 years) present only the initial distribution. Many of the publications are passed along to others or shared in school classes. Teachers report that most of the publications supplied for class distribution and used in schools are then taken home to parents. Thus the scope of influence of the NCA canned food information program goes far beyond the number of publications distributed.

We oppose S. 985 because we are convinced that it will not give the consumer any benefits not already provided by existing law. As to any misleading or deceptive element in packaging or labeling, the present laws are adequate. As to the further wide delegation of authority to administrative agencies to control and limit the quantity or weight in which any food may be packed, we believe that the proposed legislation is unnecessary, and in many respects impracticable, and will impede the development of new and the improvement of existing products.

I have been very pleased, Mr. Chairman, as I have listened over the past few days to testimony given here, with the very excellent and thought-provoking questions that have been asked, and with the apparent desire of this committee to ferret out the basic facts and to use these in your judgment. I have appreciated this opportunity to present these statements, which you have noted.

I am available to endeavor to answer any questions which you may have which would have bearing on your ultimate determination. Thank you.

The CHAIRMAN. Thank you so much for taking the time to come here to give us the benefit of your views. I want to apologize to you and to the other witnesses for the time you have had to spend waiting. However, in view of the legislative situation we cannot sit in the afternoon. This is an important bill, as you know. We are trying to do our very best with it. I heard you say something about compulsory standardization of packaging. You know that the bill calls for a formal hearing before anything takes place. It says—

> * * * whenever the promulgating authority determines after a hearing conducted in compliance with Section seven.

In these hearings the interested parties can bring their own people and there can be cross-examination of all witnesses, and so forth. This is not a case of somebody just saying, "You shall do this." Then even after that, there are 60 days after the determination has been printed in the Federal Register they can initiate voluntary proceedings aiming at industrywide standards. Anyone who thinks they are being unfairly treated certainly has very adequate protection, it seems to me.

Mr. SMITH. If, in response to your comment, I could quote here a paragraph or two, it would serve to elaborate on my earlier point.

Sections 5 (d) (f) and (g) set up what we feel is a complicated procedure for the adoption of regulations to establish weights and quantities in which a product must be packed.

The dangers of this type of control we believe have been documented in previous hearings. The procedure for obtaining voluntary standards in cooperation with the Department of Commerce set out in section 5(e) is in no real sense a limitation on the enforcement agencies' authority. Under Commerce Department regulations, the consumers or users, the distributors, and manufacturers, et cetera, would be represented on the committee responsible for recommending promulgation of a standard, and no standards could go forward that were unacceptable to three-fourths of this committee selected by the Department.

Further, the Department would publish the standard agreed to by the committee, only if the Department wished to do so. Therefore, either the Department or one-fourth of its committee could block the publication of a package standard. The industry may well be helpless, we feel, in getting a voluntary standard issued. This result well could be deliberate in a particular situation, forcing the adoption of a compulsory standard by the FDA or the FTC, regardless of the willingness of business to cooperate in the voluntary approach.

But I might go further, Mr. Chairman, and say that even if a voluntary standard were devised with the Commerce Department the FDA or the FTC would then still be free, as we understand the bill, to adopt compulsory regulations that did not vary from the voluntary standard.

In other words, this, we feel, would make something of a mockery of the standard as a voluntary measure, because any deviation from the so-called voluntary standard would then violate either FTC or FDA regulation. Amendment of the standard, for instance, to accommodate a new package, could be achieved only after a time-consuming procedure, first before Commerce and then before the FDA or the FTC.

So, the flexibility of the present voluntary approach would be totally lost. Industry would have to satisfy two agencies plus a broad committee established by the Commerce Department. We believe that the delay, the redtape, the complexity of this procedure, would make it, not only unrealistic and unworkable; it could be termed total misrepresentation, since the word "voluntary" could, in fact, Mr. Chairman, we believe, mean compulsory.

The CHAIRMAN. Well, I don't necessarily agree with that, Mr. Smith, because I think the language as set out in the bill is pretty plain. It says that hearings shall be conducted—

in compliance with section 7 of the Administrative Procedure Act.

And everybody gets a chance to come in and to cross-examine witnesses. Then determination is published in the Federal Register and they can say: "We want to try to agree on voluntary standards," and then the industry sits in and helps to make the standards. And if regulations are issued and if they say: "We have been injured," then under the procedures they can actually take it to court.

I think that every protection has been given. It is a procedure where different groups are trying to cooperate. There is nothing being put off on the industry here. Everything written into this bill

is to safeguard industry in every way, and to say that they can work out something that will be agreeable with them.

Mr. SMITH. We certainly would compliment the committee that played a part in improving the hearing procedures thus giving industry the opportunity to be heard. My comments went to the final decision. Action on the part of the committee still does not bind the Department, you see, to adopt the standard even though three-fourths of the committee agree upon it.

As we understand it, the Department may not do so even under those circumstances.

The CHAIRMAN. I want to allay your fears right now. I couldn't think this committee will ever put out anything that doesn't comply with the pledge that we want to try and bring the consumer and industry together. You will agree, I am sure, that there are some practices that are perhaps, not deceptive, but that are sort of unreasonable in certain respects I think if you sat in on the proceedings you would say: "Let's clear this up for the benefit of the consumers of this land." I believe you would agree with that.

You can't find anything that is perfect, not even in churches. By working together, by bringing industry and consumers and the Department together, maybe we can do a little better job.

Mr. SMITH. I certainly believe we would agree that, by and large, industry has done an excellent job in serving the consumer, because after all this is how they exist and live.

The CHAIRMAN. No one disputes that.

Mr. SMITH. There is still the problem of whether a suggested cure for the very occasional abuse, which we feel could be covered adequately under existing law, may be far more serious in consequences even for the consumer in costs than you would wish or we would wish.

The CHAIRMAN. You know what brought this about as well as I do. The fact is you have these large supermarkets and everybody has to look around and help himself. If you could find a clerk and tell what you want, he would get it for you. But today many labels and packages are confusing and deceptive, and that is the only thing we are trying to get at.

We are trying to protect the industry and the consumer and I don't think a fair America would oppose a bill that would also protect industry and the manufacturer.

Mr. SMITH. The matter of pricing in the stores is out of the hands of the manufacturer. This is handled, of course, by the retailers whom I understand are excluded from the bill. I believe the retailers too, as the manufacturers are by and large endeavoring to render the best possible service to the consumers as well as their own self-interest.

The CHAIRMAN. Ninety-nine percent of them are, that is right.

Mr. SMITH. The exhibits here that you see indicate various can sizes that are primarily in use under our voluntary simplification of container procedure, ranging from the No. 10 can—for your information there is indicated the quantity or net contents—including the 46-ounce can, the 2½, the No. 2 can, the 303, the 8-ounce can, and the 6-ounce can.

Now shown on the back of each are the products for which these various container sizes are primarily used for in our industry. Again

we believe that our voluntary simplification of containers program has been a very good thing in that it has given the consumer an adequate choice, while at the same time it does not freeze the manufacturer to these specific can sizes alone, thus removing the possibility of innovation.

The CHAIRMAN. I would agree with you that you are one of the men who do a 100-percent job. You are one of the fellows who as they say, "wear a white hat," but we have a lot of them that don't in this Nation, and those are the ones, and I think that you as an American citizen would want in fairness to protect everybody if you and your industry are not hurt and we are not trying to do that, because this won't affect you.

You are doing a good job. It isn't that at all. We are trying only to afford protection to the American citizen. I have taken more than my time. I will ask Mr. Macdonald if he has any questions.

Mr. MACDONALD. Thank you, Mr. Chairman. I only have a few short questions. I was wondering if you knew the panel—we call them a panel——

Mr. SMITH. Yes.

Mr. MACDONALD. But the Secretary of Commerce, the head of the FTC, the representative of HEW, all agree, and Mrs. Petersen, of course, represents the consumer in the executive branch, all disagree flatly with you on your testimony on page 9, in which you say "As to any misleading or deceptive element in packaging or labeling, the present laws are adequate."

Now, it seems to me that these people who are in charge of enforcing these laws, that their opinion about whether the present law is adequate or not would carry a good deal of weight. It is just strange to me that you, who represent the canners, take one position, and the people who enforce the laws take a 180° different position. Now, one of you have to be wrong, and it seems to me that since they are charged with the duty of enforcing the law, they ought to know whether or not the present laws are adequate. In answer to direct questions by members of this committee, they said that the present laws were not adequate. What makes you feel the present laws are adequate?

Mr. SMITH. We have had, of course, over a long period of time the advice of counsel as well as our own daily contacts with representatives of the agencies which you mentioned. Our counsel has clearly indicated existing law does cover abuses in the areas of deception and labeling and packaging. As I understand it, it was indicated by some of these witnesses that deception was not the primary concern of this bill, that they did feel they had adequate authority. Here they are moving on to another area of controls in packaging size and content which goes beyond that framework.

Mr. MACDONALD. No, sir. If you were here you would have heard Mr. Dixon, because I asked him practically the same question that you are answering, and he said that one reason, because the law was not adequate, that violations had to be taken up on a case-by-case basis, and under the law that we are now looking at, under the House bill that we are now looking at, this defect would be remedied. And I think this probably would help you and your membership. They wouldn't have to each time, each member, go in and fight with the FTC.

Mr. SMITH. Well, on the other hand, we believe that if there were to be any abuse—I am certainly referring to deception in packaging or labeling, which law for our industry is administered by the FDA—we would think that this should be handled on a case-by-case basis for the commodity involved, rather than a broad, across-the-board approach. We believe that the merits of each case should be very carefully weighed, in order that justice might be done.

Mr. MACDONALD. Well, as a concrete example, indicating the cans that you have on display here——

Mr. SMITH. Yes.

Mr. MACDONALD. Going from 10, I think, down to 2.

Mr. SMITH. To a 6-ounce size, yes.

Mr. MACDONALD. You listed the contents of those cans by way of servings, and I have yet to hear anyone tell anybody what a serving is. What is a serving?

Mr. SMITH. I am delighted you asked that question, Mr. Macdonald——

Mr. MACDONALD. I am too.

Mr. SMITH. Because the National Canners Association has likely done more work than any group in America on the principle of giving the consumer a guideline as to a serving. We have distributed millions of pieces of literature every year to the consumers, to schools, and other groups (and I have samples of some of them here on the table which I could hold up) all of which give suggested servings or guidelines. We would likely be the last to recommend that this be made a part of a law, because we recognize there are so many problems that such action could open a Pandora's box.

For instance, a serving for a lumberjack in the Northwest where I lived for many years is quite a different thing than a serving for an infant. We all recognize this.

Mr. MACDONALD. That is right.

Mr. SMITH. So it is merely a guideline.

Mr. MACDONALD. But why then——

Mr. SMITH. And this we have done.

Mr. MACDONALD. Then you agree with me that a serving is a very nebulous word.

Mr. SMITH. It can be very nebulous.

Mr. MACDONALD. A serving for my 10-year old boy is not a serving to me. Why then put on the can the number of servings? And by what magic can we say that this can will hold four servings or this can will hold eight servings? How do they determine that?

Mr. SMITH. Let me explain the problem and our efforts to reduce it: You see, we do not say in any of our literature "This will serve x number of people," but we have tried to equate a serving with a standardized measurement—the cup. Cups are used in recipe books and have been since time immemorial. We tie to this cup nomenclature you see, or part of a cup. In our exhibit here, for example, we have a No. 10 can [indicating]. It holds approximately 6 pounds 9 ounces, or 3 quarts, or 12 cups. Therefore, where it is appropriate to do so—and this isn't always true because of difference of products—we suggest as a guideline, servings in terms of cups.

Mr. MACDONALD. The words "suggest a guideline." Those words don't really mean anything.

Mr. SMITH. Mr. Macdonald, doesn't the housewife who has a large family know from experience how many cups of a given product it takes to serve her family? She equates the contents in terms of cups that will be needed to serve her family.

Mr. MACDONALD. What is a cup? I mean is it a demitasse or is it a mug? They are both cups.

Mr. SMITH. That is very true, and the quantity here that has been spelled out in our literature for a cup is——

Mr. MACDONALD. You are not suggesting, I am sure, sir, you are not suggesting that with each sale you hand out some literature so that the woman buyer can take a look at your literature and then see how many cans it is going to take?

Mr. SMITH. No; I am not doing that. But I am sure a lot of literature will be needed if we enact into law a standardized serving and make it compulsory in the law. Then it would open up this whole area to easily misunderstood specifics, whereas now it is a general guideline.

Mr. MACDONALD. But it is the same word and you are the one that originated the word, apparently. You put on your can *x* number of servings; is that right? And I am asking you who determines what a serving is, and after you answer that I wish you would tell me what they determine, because I, for one, don't understand it.

Mr. SMITH. Well, as to claiming the genesis of the word "serving" I can't say that we are responsible for that, but we feel it is very necessary to give the housewife a guideline.

Now if I may read to you from our literature here, I think it will specifically answer the question that you raise: "Why are industry terms no longer used in recipe writing?" This is one of the several questions that have come to us. The answer is:

> Such numerical designations have little meaning for the consumer.

This is talking now about the can sizes generally.

> A great deal of thought and work has been done by the home economists in the canning industry to simplify and standardize can size nomenclature for consumer use. Weight or fluid ounce designation is recommended for canned foods because, (a) the homemaker is accustomed to purchasing other foods by weight or fluid measure; and (b) every label must have stated on it the net weight or fluid measure which is a good method of identification, particularly in self-service stores.

Mr. MACDONALD. Sir, you don't have to continue because I think my time is up, but I would just like to make the observation that whoever that literature is beamed at, it is a smarter person than I am, because I don't understand what you are reading.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. May I say, Mr. Smith, on that can that you said is a No. 10, you have said 6 pounds, 9 ounces. Turn it around so I can see. it. Six pounds, nine ounces.

Mr. SMITH. Right.

Mr. SPRINGER. So a woman measuring it by ounces in a cup uses a standardized amount in cooking, isn't that correct?

Mr. SMITH. The ounces in a cup vary according to the product.

Mr. SPRINGER. Every housewife knows that a cup is so many ounces, at least that is the way it is in my home. You say the measurement is a standardized cup. I don't know how many ounces it is, but there

is such a thing. Now you said 6 pounds, 9 ounces. Well, maybe she doesn't know how to do it. You say 3 quarts. Immediately I have some idea of what it is like if I was shopping. I am not a very experienced shopper, but 3 quarts I have a pretty good idea now what that is.

Or 12 cups. Well, I don't know the exact measurement of a cup but it is somewhere around a teacup as I recall. It isn't a mug and it isn't a small one, but 12 cups. Now that is about as good an identification as I can think of for a shopper.

I suppose to an experienced housewife 6 pounds, 9 ounces might mean something. If a cup is say 8 ounces she could divide that and find out how many cups it is. Well, you have said 12 cups, all right. I take it that this isn't a standardized provision. But I would like to cover something else, Mr. Smith, and that is this: Everybody is staying away from this point, at least the proponents of the bill are, and none of them come here or seem to want to come here with any information on this question. Now, you go into this bill here as you have indicated and you are talking about ounces here. Is there going to be any increase in the cost to the consumer?

Mr. SMITH. We believe there definitely would be, Congressman Springer.

Mr. SPRINGER. Why?

Mr. SMITH. There undoubtedly would be an increase.

Mr. SPRINGER. Where is this cost going to occur? That is what I want to know.

Mr. SMITH. Whenever a change in size of a glass jar or a can occurs in our industry, it necessitates a retooling.

Mr. SPRINGER. Do you make the cans?

Mr. SMITH. Many of our canners manufacture their own cans. But in the minimum all of the canners would have to have change-parts or buy new closing machines or filling machines. As you change sizes, of course, these costs would be attendant.

Mr. SPRINGER. Well, now, we have one here who testified as I recall that there would be so many million dollars in the first effort in the changing. There would be then a continuing increased cost from year to year. That was his testimony. Now, what is your testimony on these two points?

Mr. SMITH. It is difficult to cover an industry as broad as the canning industry except in a generality here. It would vary, you can see, by commodity. But without doubt, if you had these changes of can sizes, it would necessitate in the minimum, change-parts for closing machines, for fillers. This would require a slowdown of operations which increases the unit costs.

If a company had sufficient resources so as to maintain the same volume, it would necessitate adding other lines and leaving intact the ones they had without the need for the change-part. This would necessitate additional plant space in which to fit the machines, additional facilities all the way back. This would have an effect from grower right through to consumer. There would be more cost required if this law were passed.

Mr. SPRINGER. Is that going to be permanent? Is that increase going to be yearly?

Mr. SMITH. I assume that as additional changes were required under the proposed law, that this would be a rather continual problem.

Mr. SPRINGER. Will you get us some information? You represent the canning industry in this testimony.

Mr. SMITH. That is correct.

Mr. SPRINGER. Will you get together some cost figures on what it is going to cost the industry to make the change, if you have to make changes in all these cans? I want to know, in addition to that, is there going to be a continuing cost, which is going to be added per unit to the cost of this each year as time goes by. Now those are two things I would like to have, because this is awfully important for this committee to know.

If you are going to talk about making these changes, these proponents are coming in here, I would like to know what this is going to cost the consumer, if it is going to cost him anything. I don't have the information on this question, and that is the reason I am asking you to come forward with it, because that is certainly going to be the first thing when we get over to the floor that somebody is going to ask. One of the things this committee ought to take into consideration in the marking up of this bill is whether or not there is going to be a continuing cost, and an increase in these various products which you have out here now, which you are testifying about. Can you do that?

Mr. SMITH. We can certainly make some projections. These would have to be based on hypotheses as to the number of containers, and so forth, in a given year that would have to be altered, but undoubtedly, Mr. Springer, it would run into the millions and millions of dollars for our industry. We will do that—develop such estimates.

Mr. SPRINGER. I would like this per unit, not in cents but in percentages, what is this going to increase the cost of a 6-pound, 9-ounce can, and down here the 6-ounce can, how much is it going to be increased in cost and the percentages, because the penny doesn't mean anything if that is 12 cents, that doesn't give us any idea how much the percentage is.

Mr. SMITH. Percentage, right.

Mr. SPRINGER. As you well know, the cost-of-living index in this country is based each month on the increase percentagewise, not in cents, but in percentage of increase, and that I would like to have from these industries as they come forward because that is the important item I think, and as far as I am concerned at this point, as to whether or not there is going to be an increased cost.

I will say the proponents simply didn't come in here with any information of any kind.

The CHAIRMAN. I would like for you to tell me what the increased cost would be on one wrapper.

Mr. SMITH. On one wrapper on a can?

The CHAIRMAN. I would like for the gentleman to project, if he can, what the cost for one wrapper is on that can, and then I will get my boy at home to run them off a little cheaper, because I think it would be infinitesimal. I believe you will agree with me that the wrapper itself that goes on there after it has been put in operation——

Mr. SMITH. Of course, our industry is a high-volume and an extremely low-margin industry.

The CHAIRMAN. Sure.

Mr. SMITH. This fact, the National Commission on Food Marketing report indicated, any element that increases cost has to be passed on to the consumer.

The CHAIRMAN. You will agree it is so small that you can hardly compute it for one of those small cans.

Mr. SMITH. The industry puts out 25 or 26 billion units a year.

The CHAIRMAN. That is right. The cost for that would be so small you couldn't divide it into mills, I would say. It would be less than that. But I think when you get down to the unit that goes to the housewife you are going to find that—you might talk about the 26 billion or million or whatever it is—but as I say, when it gets down to the cost of the wrapper, and I can't see——

Mr. SPRINGER. Mr. Chairman, I don't think we are talking about the same thing. I am not talking about the wrapper.

Mr. SMITH. I understand.

Mr. SPRINGER. The wrapper is a mighty cheap thing. Changing that from 10 to 11——

Mr. SMITH. The total cost.

Mr. SPRINGER. I am talking about what this is going to cost if you have other things that go into the operation as a result of the change which is a continuing cost. Now if the wrapper is all that is involved you haven't got much involved.

What I am trying to find out is whether there will be a continuing additional cost in the operation of the machines or the additions or whatever goes into it. Those two things ought to be in, the initial cost and the continuing cost.

Mr. SMITH. Right. Mr. Chairman, may I have 10 seconds?

The CHAIRMAN. Yes.

Mr. SMITH. In defense of our literature and to answer further Mr. Macdonald: A cup is a designation used way back in the history of our Nation by home economists as a basis of cooking, as a basis of recipe. That is why I indicated we have abandoned the industry nomenclature and have moved in favor of cup.

But let me read the one paragraph I didn't have time to read before:

> The use of a cup identification as used by home economists: Liquids can be measured accurately in cups and although some foods, such as vegetables, may fluff slightly on being emptied from the can, the approximate cup measure may be given as a guide.

Here are several examples: A can of condensed soup is 1¼ cups. Pineapple juice is 2¼ cups. Green beans—a 1-pound, 1-ounce can—amounts to about 2 cups. There are 8 fluid ounces in a cup if we are reducing it to fluid ounces. This much can be determined easily. But you can see it is more difficult when tied to each of many products, Mr. Macdonald. But the cup is the basic measurement unit that the home economists understand, I think the housewife understands also. This suggestion is on the label, as is also the net contents.

Mr. WATSON. Will the gentleman yield?

The CHAIRMAN. Mr. Macdonald had asked for recognition.

Mr. MACDONALD. I just want to reply that in addition to confusion on the cup, which confuses me even after your explanation, with all due respect, the thing that I still never have understood, and that I

didn't understand after your testimony, my questions went to servings, which are contained on the labels. What is a serving?

Mr. SMITH. Again as a serving is a guide, it is an approximate number of cups depending on the commodity. Cups are related to servings, and this is the way it is published in the literature, as I have indicated. Now my wife, being the mother of 10 and a grocery store shopper quite frequently, knows I am sure a great deal more about cups and equating the cups to servings than I do and probably most of us here.

But I do believe that the housewife finds that it is not confusing. As long as she has the net contents, she knows from experience in dealing with the produce how many cups she would obtain. This I would think would solve it.

The CHAIRMAN. Mr. Watson had a question.

Mr. SMITH. Yes, Mr. Watson?

Mr. WATSON. I just wanted to ask one question. We have had a lot of discussion about cups here. And while some of us on this commmittee might be undecided as to whether a cup is a demitasse or a jug or a jar or anything else, we are discussing something that Shakespeare wrote a play about—much ado about nothing. Now you deal with the public don't you?

Mr. SMITH. We do indeed.

Mr. WATSON. Are you conscious of any woman in all of your experience who has confusion in deciding what a cup is? Have you ever run across one that would be confused as to what you meant by a cup? Now Mrs. Peterson was talking about a demitasse or something else. Now back home we used to measure it by glugs, two glugs and so forth. But have you ever run across any woman who failed to know what a cup was and asked you to spell it out as to what constituted the size of a cup?

Mr. SMITH. I can honestly say, Mr. Watson, that this is not an area of concern as has been reflected in the National Canners Association or its members. Cup servings, suggested servings spelled out on the label, coupled with the tremendous amount of literature that goes out which we just touched on briefly, I believe, is adequate to provide answers where any questions might arise. Again we have not had the question directed to us. The users seem to understand the guide.

The CHAIRMAN. Well, I don't believe it is that simple. You said that a cup is a serving and a serving doesn't say cups. Mr. Dingell.

Mr. DINGELL. Thank you, Mr. Chairman. Mr. Smith, I would like to treat if I may first of all, the point raised on costs. Your industry has established voluntary standards for canned fruits and vegetables, am I correct? Formerly there were around 200 sizes of cans?

Mr. SMITH. That is correct.

Mr. DINGELL. Today there are something over only 32 sizes, am I correct?

Mr. SMITH. For fruits and vegetables.

Mr. DINGELL. Fruits and vegetables.

Mr. SMITH. Yes; approximately.

Mr. DINGELL. And as a result of this standardization there has been a significant saving in the can-producing industry, there has been a significant saving to the packers, has there not? This was established by voluntary standards of the industry, am I correct?

Mr. SMITH. That is correct, working with the Department of Commerce.

Mr. DINGELL. This voluntary standard is honored by your industry and I believe it is fully satisfactory, am I correct?

Mr. SMITH. Yes; it has worked as a voluntary program, as it has been.

Mr. DINGELL. Now you are aware of the fact that this bill continues the use of the voluntary standards which have heretofore been available to the industry, are you not?

Mr. SMITH. I had discussed earlier——

Mr. DINGELL. I am aware of that, but I have other points I intend to get into. I am satisfied you are aware that this bill would afford you the privilege of using voluntary standards, would it not?

Mr. SMITH. Yes; but what I pointed out was that the voluntary standards section in the way the procedures are set up, could well become a compulsory section by the promulgation of standards by FDA or FTC in the absence—in other words, if industry adopts the voluntary standards, they then may be made compulsory by Government agencies and then we lose the advantage of innovation.

Mr. DINGELL. What is the objection of having the industry work out standards that are going to be binding upon the industry, to assure that the industry is going to behave properly with regard to the information that the consumer gets?

Mr. SMITH. Well, the industry program is obviously designed in the consumer interest. It is obviously designed to reduce the number of sizes, but at the same time, and I underscore this point, at the same time without freezing them to specific sizes. There is a range, there has to be a normal range for creativity, for innovation.

Mr. DINGELL. On the contrary, you have by voluntary agreement reduced this to 32 varieties of cans and not approximately 32 varieties.

Mr. SMITH. But tomorrow if the consumers through test marketing and so on indicated a preference for another can size not on this list, they could go to that. They could go to it, you see.

Mr. DINGELL. Let me ask you, do you feel that there is a desperate and pressing need for an additional can size?

Mr. SMITH. Well, we have seen in the past decade where there have been some major changes in consumer preference because of changes in size of family and other factors.

Mr. DINGELL. But under the bill you could seek relief after the voluntary standards were adopted by the Secretary, could you not?

Mr. SMITH. We could, but this would——

Mr. DINGELL. Approximately how long would this take you?

Mr. SMITH. Of course, it could drag on into many months, as you know, under the provisions of the bill, or even years.

Mr. DINGELL. As a practical matter, how long would it take you?

Mr. SMITH. On this point we have had considerable difficulty with standards and amendments to standards that now exist, where we work cooperatively, because to get an amendment to a standard sometimes today requires years of time.

Mr. DINGELL. As a practical matter that is an extraordinary circumstance, isn't it?

Mr. SMITH. We hope it will improve.

Mr. DINGELL. As I say, as a practical matter that is an extraordinary set of circumstances. That is not the common practice in your industry.

Mr. SMITH. The common practice is it takes much too long. I would say a year would be——

Mr. DINGELL. How long does it take?

Mr. SMITH. I would say it would take a year to get most amendments through, or longer. We have one very pressing one now pending. We have been pressing for a year to get a modification of this standard.

Mr. DINGELL. Mr. Chairman, I think it would be very helpful for the record, for us to have a statement from the Departments on this particular point as to how long it takes.

The CHAIRMAN. It will be so ordered.

Mr. DINGELL. Now, would you agree that sections 5(c)(1) and 5(c)(2) are simply vocabulary sections, and that it would not be unreasonable for a particular industry to agree on a commodity-by-commodity basis on the reasonable meaning of such terms as medium, small, large, and serving?

Mr. SMITH. And serving?

Mr. DINGELL. Yes. You would have a full opportunity under the voluntary standards section to arrive within the industry on the meaning of these terms. Don't you feel that is a very fair provision as far as the industry is concerned?

Mr. SMITH. Well, we appreciate any interest that has been expressed here in consideration of the industry viewpoint. I only hasten to point out that even after these have been promulgated or recommended by the committee, there is no need, as it is now written, for the Department to adopt them as I mentioned earlier.

Mr. DINGELL. Well, it is very fair to the industry's thought that the industry should be permitted, under the voluntary standards, to fix the meaning of "small," "medium," "large," and "serving," isn't it?

Mr. SMITH. Well, it is——

Mr. DINGELL. This is certainly not a hardship on the industry to fix this kind of a description, is it, among its own membership?

Mr. SMITH. Take a look at these can sizes. We have here a few of the 32. Which is small, which is medium, which is large? Those are three terms.

Mr. DINGELL. I think you are begging my question. It is very fair for the industry to be able to fix their own definition of these terms and then have them approved by the Government and go into effect, is it not? This should afford maximum protection for the industry, should it not?

Mr. SMITH. I believe it does not. It isn't so simple as the industry determining——

Mr. DINGELL. What other concession could you ask from the Government in establishing the definition of what constitutes "small," "medium," "large," or the word "serving," than to have industry fix this definition previous to approval by the Secretary?

Mr. SMITH. But all of this, of course, is subject to review by the Government and approval by the——

Mr. DINGELL. Don't you think that it is in the public interest to avert the possibility of "hanky-panky" and rascality by the industry?

Mr. SMITH. I would certainly feel that the interests of the consumer are better served to allow these products to move to the marketplace, to the consumer, in a free competitive system with the minimum of governmental action consistent with the health and safety of the public.

Mr. DINGELL. Can you tell me how there is a lack of flexibility built into the voluntary standards section?

Mr. SMITH. Well, I covered this before in some detail, and I can review this again, Mr. Congressman.

Mr. DINGELL. Just briefly. I am satisfied if you have got a real point you can bring up the matter.

Mr. SMITH. A committee composed of consumers, of industry and so on, meet and if three-fourths of them agree upon a proposed standard, they make this recommendation to the Department.

The Department does not—as the law is written, so we are advised by counsel—have to promulgate this regulation or this standard, and this means, therefore, that the Department or one-quarter of the committee really ultimately does control or influence the decision. It is not in a real sense a voluntary program any longer. It becomes a compulsory program.

Mr. DINGELL. After the agreement is arrived at by the members of the industry.

Mr. SMITH. It is far more involved than members of the industry being involved.

Mr. MACDONALD (presiding). The time of the gentleman has expired. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

Mr. Smith, the testimony that we have had before from the proponents of this bill advocates the bill to do two things: one, to remove deception, and the other confusion.

Now in the testimony that we have had from both the Federal Trade Commission chairman and the Pure Food, Drug, and Cosmetic representative, say that anything that might be deceptive they have ample power to reach at the present time. The only question was as to whether they have the authority to proceed by industry.

Now, if they need additional authority to proceed by industry under the Federal Trade Act or the Pure Food, Drug and Cosmetic Act, would you have any objection to having them receive that authority by congressional act?

Mr. SMITH. Well, there are a number of items which are packed by members of our industry. The possibility of abuses arising in particular broad areas, as I indicated earlier, are very small. We believe, therefore, that a case-by-case review certainly has many, many advantages, and is one that should be followed.

I cannot envision that you would have a practice here that would be general in our industry, but I would like to reserve judgment on that and insert a statement in the record later, if I may, after giving more thought to this. It would cover what our industry position would be with regard to an approach, assuming that the same alleged abuse or whatever it may be, is an industrywide practice in this particular——

Mr. YOUNGER. It would have to be an industrywide practice. Otherwise they couldn't proceed against the whole industry.

Mr. SMITH. Yes, I would assume so.

Mr. YOUNGER. But suppose the practice was industrywide, a deception industrywide by labeling or what not. There is nothing wrong in having them proceed against the industry rather than against the individual cases, is there?

Mr. SMITH. I would assume not, but would like to insert something into the record later, as I requested. The possibility of this applying to our industry is extremely remote, because of our long period of working almost daily with the FDA, the agency which administers the laws now on the books as pertaining to our industry.

Mr. YOUNGER. Now as to the other problem of confusion, I know that is rather difficult to meet, because one person may be confused about something and somebody else wouldn't. I know our colleague here, Mr. Macdonald, is very much confused about a cup. So far as I am concerned, a cup is the same kind of a standard measurement such as a yardstick or an inch. We have a metal container that gives the cup or half cup or a full cup, and that is my understanding of what is meant by a cup, a measurement in cooking.

Mr. MACDONALD. Will the gentleman yield?

Mr. YOUNGER. No. I will as soon as I get through. And the confusion on this, of course, is hard to reach, but personally I see no reason that if there are markings or labels on cans which are confusing that there should not be a remedy. The chairman just mentioned to me a while ago that somebody from his office went down to get some pork and beans and there were five or six cans of pork and beans, all of them an ounce or two ounces different in weight, and not standard cans like your have exhibited.

Now I can see that there is a possibility of confusion, and I see no reason why that cannot be added to the authority of the FTC and the Pure Food, Drug, and Cosmetic supervisors. My theory is that if we are only going to accomplish those two things, then I think that what we ought to do is to proceed under the Federal Trade Commission Act, Pure Food, Drug, and Cosmetic Act, as amendments and give that authority, and not create another bill and a lot more confusion, because I am afraid that this would be more like a make-work program for lawyers before we get through with it.

Mr. SMITH. Mr. Younger, I would certainly feel that you have mentioned a different approach and I think a very good one, to go back to the basic legislation and to amend these laws where it would be deemed appropriate. But I do hasten to say, and I don't know that this has been made clear in testimony before, that whatever might be said about the problems of other industries—and they have specific problems which they can best explain—we can say as far as the canning industry, that the variation of weights, even within the same sized container, would continue to exist due to this difference of specific gravity. Also, the nature of the cook or the process requires a fill to the maximum in the container that is possible, consistent with headspace to allow some expansion of food while under cook.

Mr. YOUNGER. Thank you. I will yield now to the chairman, as long as my time has expired.

Mr. MACDONALD. I would just like to point out that the gentleman from California is very seldom confused, but both the witness and myself were confused about what was a serving.

Mr. YOUNGER. That is right.

Mr. MACDONALD. And we still are. Mr. Rogers.

Mr. YOUNGER. I think that is something we have agreed on that should be out.

Mr. ROGERS of Florida. Thank you very much, Mr. Chairman.

As I understand it, there is presently a procedure to establish voluntary status. That is already recognized in the procedure you now use, even though it is now written in this proposed bill, it that correct?

Mr. SMITH. We have standards with the Food and Drug Administration on fill of container, identity, and so forth. Are you referring to these?

Mr. ROGERS of Florida. Even as to quality, is that right?

Mr. SMITH. Are you referring to these or are you referring to the standard on container size?

Mr. ROGERS of Florida. If you decide on a certain can size, there is a present procedure where you can do this by voluntary methods now, isn't there?

Mr. SMITH. We have this in effect.

Mr. ROGERS of Florida. You have done that?

Mr. SMITH. Many years ago it was done.

Mr. ROGERS of Florida. Yes. That is a present procedure that this law doesn't bring anything new on. This is a present procedure that is now used, as I understand it?

Mr. SMITH. No, this proposed law fails to take into consideration that it would completely stifle the innovation that exists under the present procedure.

Mr. ROGERS of Florida. Yes. Now, as I understand it from the testimony I have heard so far, the Food and Drug has authority to move whenever there is false or defective labeling on this branding. The Federal Trade moves when it is false, misleading or deceptive.

Mr. SMITH. The monthly summaries would indicate that these agencies do so wherever abuses coming under their respective jurisdictious exist.

Mr. ROGERS of Florida. I understand the Department of Agriculture moves against meat when there is false mislabeling there, false or deceptive.

Mr. SMITH. I would assume so.

Mr. ROGERS of Florida. And it appears now that fish is covered under this bill, but this also is covered by the Interior Department, I understand, by laws that are similar to those in Agriculture referring to meats. But for some reason they went ahead and decided to put fish here but not meat and meat products and poultry and poultry products. So there is a criminal provision in the Department of Agriculture, but they don't want criminal provisions here. The rest of the products, and so this then gets to be a rather complex piece of legislation, goes up the hill one way and down the hill the other, and I don't know whether the consumer will come out or will until we look at it pretty carefully.

Now, as to servings, as I understand the industry now does research itself and asserts certain average standards.

Mr. SMITH. Guidelines.

Mr. ROGERS of Florida. Servings, guidelines.

Mr. SMITH. Yes.

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Mr. ROGERS of Florida. Yes, you are saying maybe a fourth of a cup, there are four quarter-cup servings.

Mr. SMITH. Yes.

Mr. ROGERS of Florida. Or maybe full-cup service.

Mr. SMITH. That is correct.

Mr. ROGERS of Florida. Now it may be that there is someone in Government that can get a better definition, but I am not sure, and I don't know why anyone in Government can give a better definition, phrasing of a serving, than those in industry. But I don't think there is any difficulty there, if they can come up with a better one. I don't think the industry would object to that, would you?

Mr. SMITH. Well, those of us who have been working on it for a long time, many of us have had a lot of Government experience as well as industry experience, and I would doubt that anyone in Government could come up with anything better.

Mr. ROGERS of Florida. Well, I share your feeling, but you would have no objection to that, I would assume, if they could come up with a good definition for serving. I would think you would have no objection to using it, would you? You are putting servings on your packages now.

Mr. SMITH. The very confusion that obviously exists here as to what constitutes a serving and what constitutes a cup which equates to a serving is to me ample reason why this should never be made mandatory or a part of a Federal statute.

Mr. WILLIAMS. Would you yield?

Mr. ROGERS of Florida. Yes; I would be glad to yield.

Mr. WILLIAMS. I would think the definition of a serving would be no more difficult than defining a drink. It all depends on who is eating that serving or who is taking that drink.

Mr. SMITH. Right. I think that is right.

Mr. ROGERS of Florida. So it is simply a way of letting the housewife know about what it would be. So I don't think you would have any objection, would you, if you can come together with the industry and the Government in trying to set this?

Mr. SMITH. Let me raise this flag, Mr. Congressman.

Mr. ROGERS of Florida. Answer this question. Will you honestly say you would object if there was a good firm definition that you could use getting the industry together, and Government?

Mr. SMITH. We would object to a mandatory provision in the law spelling out what a serving is, because of the confusion we feel that would inevitably result. We will be happy to sit down and to discuss it and to do our very best to cooperate with it, whatever the decision might be, but we feel that such a mandatory requirement would open a Pandora's box.

Mr. ROGERS of Florida. It would be just as confusing—there would be just as much confusion in some of these—as some of them claim there is now.

Mr. SMITH. I am not aware that today, from the letters that flow to us and our members—and the products of our industry constitute about 20 percent of those that would have been involved in volume under this bill—that we have any confusion as far as the consumer is concerned.

Mr. ROGERS of Florida. Well, you may be right.

Mr. MACDONALD. The time of the gentleman is up. Mr. Nelsen.

Mr. NELSEN. Thank you, Mr. Chairman.

Mr. Smith, just glancing through the bill, I find in it, for example, on page 3:

> The commodity shall bear a label specifying the identity of the commodity.

And point 2, the net quantity of contents, and as I turn the pages, it seems to me that much of the language in this bill is now provided in existing law, and by virtue of the fact that it is in this bill, the public is led to believe that it isn't covered by law. Is that a fact or am I misinformed?

Mr. SMITH. You are absolutely right, Congressman Nelsen. Through all the hearings I believe we have failed in some way to get across the fact that there are adequate laws now on the books to take care of deception, in labeling and in packaging, and the FTC and Federal Food and Drug are taking action weekly wherever they find abuses in America. So the answer is, "Yes, they do have adequate authority."

Mr. NELSEN. Now, it is my understanding that relative to the fill of a can, for example, that in a case of peas in a can, that a regulation or a standard has been established, where, for example, a can of peas, when it is emptied out, the liquid is poured out and the peas are put back in the can, it must be full of solids of peas. Now, this is a standard that has been established. How was it established?

Mr. SMITH. This is a rather involved procedure, Mr. Congressman, but I would take a moment and comment on this if you would like.

We do meet with the Food and Drug Administration. We work closely with them almost on a day-to-day basis. When we get to a standard of fill of container, such as peas, we agree that the housewife would feel that she was not getting her full due if, when the juice or the liquid surrounding the peas was poured off and the peas poured back into the can dry, they failed to fill the container to its height, to the top of the can. So this has been agreed upon in this standard.

In other items where it can't be readily done by pouring the product back in the dry form, then the fill of container is worked out on the basis of filling it to the absolute maximum of the container without crushing the product when the lid or top is placed on it in the closing machine operation, and to allow still a fractional head space so that in the cooking process when the food expands, it does not cause a bulge on either end or on the other hand, underfilling it, which would tend in a process to overcook the product and thus adversely affect the quality and taste.

Mr. NELSEN. Now, as I understand it, this is done under section 401 of the Federal Food, Drug, and Cosmetic Act, that these standards were established, were they not?

Mr. SMITH. That is correct.

Mr. NELSEN. In cooperation with industry. Now the Court has held, has it not, that the Food and Drug Administration has the authority to determine and to command the amount of solids in a package or in a can? It has that authority granted to them under the law, and the courts have held that they have that right; is that correct?

Mr. SMITH. Absolutely, and all the standardized products and the various standards that we mentioned, fill of container, identity and so on, if the product does not meet these standards, it is subject to seizure by the Food and Drug Administration and the courts have upheld the FDA in this.

Mr. NELSEN. I noted in your testimony that these rules that are to be promulgated, there will be industry representation in the promulgation of the rules, but in your judgment whatever comes out of the conference does not necessarily mean that this must be the rule.

Now, supposing that the Federal Trade Commission, or whoever the authority would be in charge of this, decides that they are not going to abide by this recommendation. May they then, according to your interpretation, go ahead on their own?

Mr. SMITH. Yes. It is my understanding that if the voluntary standard regarding containers is not promulgated by the Department of Commerce under the procedures as they would affect our industry, that the Food and Drug Administration and the FTC could then adopt and would likely adopt a standard which would make them compulsory.

Mr. MACDONALD. The time of the gentleman has expired.

Mr. Kornegay.

Mr. KORNEGAY. Thank you very much, Mr. Chairman.

Mr. Smith, one subject matter that I am very much interested in is what would the cost be to the industry, which of course would be passed on to the consumer, if this bill is passed? We have had a great deal of difficulty in getting any information along those lines.

The spokesmen for the administration put nothing in evidence as I recall, as to costs, other than the cost of several million dollars, as I recall it, to the Government in administering the program. One lady testified, a consumer, I belive, that this bill would reduce the cost, as I understood it, from the present level of about one-half of 1 percent. I have seen somewhere that one of the large manufacturers in the country estimated that the provisions of this bill would increase cost about 2½ percent.

Now, assuming those figures are reasonably close and correct, there would be a net 2 percent increase to the consumer. Now, in all frankness, I must say that it is my feeling that my constituents are far more concerned at this time over the total cost of groceries than they are as to what is on the label, how many servings there are or any thing like that.

Before I make up my mind, I would like to have some information as to cost. If you can, pursuant to some of the suggestions that have been made heretofore, furnish us with some information and estimation as to what the cost would be in the industry, I would appreciate it.

Mr. SMITH. I will be happy to do that, Congressman Kornegay.

Mr. KORNEGAY. Now, as far as the cans are concerned, aren't the sizes of those cans somewhat dictated by the public, that is, by those who purchase?

Mr. SMITH. We believe, Congressman Kornegay, that this whole effort is the result of the consumer need or demand. She is the one who at the marketplace every day determines whether she wants to buy a 46-ounce versus a two-and-a-half size can; or if a new can size is test

marketed and she prefers this and indicates so by purchasing it, it becomes apparent to the company testing the product that this size will be acceptable, then again it is the consumer who makes this determination. So these are——

Mr. KORNEGAY. I don't have a great deal of experience to rely on, as does the shopper, but when I am in Washington I am by myself a great deal of the time, and I do have to do some shopping. Now, when I go to the store buying for myself, I am going to buy as small a can of peas as I can find.

Now, when I am at home with my family—family of five—my wife buys the larger can. Now I know when I buy that small can that the price per pea is greater than it would be if I bought a large can, but in the final analysis, if I eat only one-third of a serving, whatever that is, I don't know, and let the other four or five servings in that can go to waste, then I have spent more money per pea and it would be—than it would be if I bought the smaller can at a higher cost per pea, when you compare it to the big can. The point I am trying to make is that it depends upon what the need is.

Mr. SMITH. That is correct. We believe, Mr. Congressman, that these container sizes are in response to consumer demands in the marketplace, and adequately reflect the need for this range of sizes which you have detailed so well.

Mr. KORNEGAY. Now, sir, some of the members of the committee have suggested that this is a real big deal, because in those areas where he can go beyond unfair and undetected practices, that you would have the right to come in be heard and get a hearing.

I say this somewhat facetiously, of course, but I am reminded of the old story about the western judge that assured the defendant in the rustling case that they were going to give him a fair trial before they hung him. So with that I will conclude, Mr. Chairman.

Mr. SMITH. Thank you very much. We do have our concern and reservations about the procedures outlined in the bill.

The CHAIRMAN. Mr. Keith.

Mr. KEITH. Thank you, Mr. Chairman.

I have seen situations like this develop at the State level and the Federal level, and the need for cooperation to be reached between Government agencies and in the industry is oftentimes overlooked by many of those who are in the decisionmaking role. For example, the cranberry problem. There wasn't adequate communication between industry and the Food and Drug.

Mr. SMITH. Yes.

Mr. KEITH. There was a very unfortunate situation which developed in the cost of cranberry products to the consumer at Thanksgiving time. It also cost the taxpayer $10 million in indemnities, all of it unnecessary in my view. At the State level in Massachusetts, where we had a problem comparable with this one, we found that the Bureau of Weights and Measures came in and asked for new packaging methods for ice cream and for new methods of sealing bottles. In each case they hadn't adequately consulted with industry, and they were imposing a burden that caused their recommendations to be rejected by the committee of the State legislature which was considering the problems.

To cite another example, the SEC has maintained a fine cooperative relationship and has worked very closely with the securities industry in drafting recommendations for updating the Securities Act. I wonder if there has been a comparable effort by Food and Drug and the Federal Trade Commission to sound out the packaging industry as to how some of the problems which have been pointed out to this committee could have been handled?

Mr. SMITH. In the area of weights and measures, the industry has worked closely with the Federal Bureau here, and many other parties were involved in the promulgation of a model weights and measures bill or law, which has now been enacted in at least 25 of the States.

We have supported this approach. We believe that it is sound. We subscribe to that. We certainly are against deceit in packaging or labeling. We are concerned about controls that go beyond that. There are a number of provisions in the bill we are considering that go beyond the model weights and measures law.

Mr. KEITH. Generally speaking, I think that the response which this legislation has provoked indicates that there is a very real need in some areas. I just wonder what positive approach has been taken by industry and by the Government to jointly come up with amendments to the present law that would overcome the abuses which exist.

Mr. SMITH. Well, I believe from time to time suggestions have been made on specific provisions of the bill. The National Canners Association will be very happy to discuss this at length, paragraph by paragraph.

Mr. KEITH. Has there been any effort on the part of the Federal Trade Commission or the Food and Drug to set up a committee that could study this and come in with recommendations?

Mr. SMITH. Not to my knowledge on this specific bill. There has not been.

Mr. KEITH. In your view would such a committee serve a useful purpose?

Mr. SMITH. I think it would be certainly helpful to us to sit down wth the Food and Drug, the agency with which we would be dealing as manufacturers here, and to discuss any aspect of this that is in their province.

Mr. KEITH. It is my understanding that the chairman indicated that generally speaking, the canners had done a pretty good job, and would not be adversely affected by this legislation. Is it your understanding that you are now exempt from it, or it is that just because of the fact that you have done such a good job that you might be exempt?

Mr. SMITH. We are definitely not exempt. We would be covered by the provisions of the law. In fact, we have done a great deal over many years through the voluntary approach, and it has been well accepted by consumers, and we felt all concerned.

We now may be operating with a different set of rules which does give us real concern, and we are concerned about the administrative blank check to the agencies, the governmental agencies in some of these critical areas.

Mr. KEITH. Now, would you say going to the standards of the packaging industry that this could be sufficiently standardized to be attempted?

Mr. SMITH. We are not exempted, as I indicated, but I would not be prepared to say that I believe the food industry as a whole has endeavored conscientiously to satisfy the consumer, to give her that which she desires and wants, and to avoid deception in packaging and labeling. But to rate them as to who has done the best and the next and the next would be very difficult for me to do.

Mr. KEITH. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Van Deerlin.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

Mr. Smith, in response to Mr. Kornegay's question, you said that you would be happy to provide estimates as to the costs of doing business for the canning industry under this legislation. Might I ask on what basis these estimates will be made? What in the legislation do you anticipate would constitute a cost item?

Mr. SMITH. Well, as I said, this is going to presume some hypotheses here as to the number of items where changes would be required, where there would be hearings held, and where you may eventually get compulsory standards. Obviously anything that would be coming into the marketplace that would be new, you are faced with this problem initially, and this would have to be estimated.

Mr. VAN DEERLIN. It is not anticipated that any agencies under this legislation would increase your present number of can sizes; is it?

Mr. SMITH. Well, if they want to standardize weights to one-half and 1 pound, and so forth, this would be inevitable in our industry. One cannot have it both ways. They either have to have the simplified containers with a reduced number of can sizes, or there will be a great proliferation of can sizes, in order to accommodate fixed weights, owing to the different specific gravities of products.

Mr. VAN DEERLIN. Would it help in your estimation of these costs, if we could get the agency officials to specify some plans that they might have in this regard?

Mr. SMITH. It would certainly be helpful, as this would help us with the basic premise on which to build our cause.

Mr. VAN DEERLIN. The retailers whom you supply have a great interest in making certain that they don't have an infinite number of can sizes to stack on their shelves—isn't that so?

Mr. SMITH. I would think so, still there is no alternative to meeting the requirements of fixed weights. In other words, to accommodate the different specific gravities we have discussed.

Mr. VAN DEERLIN. I should think that the committee would make it our business to find out as precisely as possible what the intent would be, if this law is passed, and it would help you in preparing these cost estimates which otherwise leave you completely in the dark.

Mr. SMITH. Yes. Yes, obviously so with an industry as broad as ours. Let me cite the State of California, your State, and the testimony of Helen Nelson, in which she estimated a saving in California of approximately $25 million. With the significance of our industry in California it would not be difficult to say with assurance—and this could be backed with the figures—that $25 million would be a very small saving in comparison to the additional cost with which the canners of California, in the broad lines they pack, would be faced if this bill were enacted in its present form.

Mr. VAN DEERLIN. Perhaps we can get some help for you.

Mr. SMITH. I certainly hope so.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Cunningham.

Mr. CUNNINGHAM. Mr. Chairman, I yield to Mr. Nelsen.

Mr. NELSEN. Thank you. I was going to make the observation earlier, when we discussed the possibility that the regulatory body in this case might completely ignore recommendations, and I refer to the legislation that was adopted by this committee at the time of the cigarette labeling.

We were considering legislation at that time, and bills had been introduced, hearings were about to start. The Federal Trade Commission came down here and advised us they assumed that they had the authority to do all of these things and moved right in. But we sort of put the brakes on.

Now I don't find any timid attitude on the part of some in governmental positions to overexercise authority, and I am sure that we in the Congress and you in the industry want to be very sure that whatever we do, and I am sure the chairman would agree and all the members of this committee, that we want to be very sure that we do not stifle and damage an industry that is willing to cooperate, if we can work out some type of media of liaison between industry and Government as has been pointed out by Mr. Van Deerlin. I am sure we would all agree that more good results could be obtained in that way. Now may I ask this question?

Mr. SMITH. Yes.

Mr. NELSEN. I notice that there are times, for example, a standard package continues to be used and in order to meet inflation that moves in, so costs go up, so the size of the package remains the same, but the content is reduced in order to maintain a standard level of price. This seems to have been done in some cases.

This may not be the area that you deal in, but has this been true in the canning industry, where the content, the weight is reduced, in order to maintain a standard price that may have prevailed over a period of years?

Mr. SMITH. No, this would not be the situation, generally, in the canning industry. The nature of the process and the fill of container and other standards which we have worked out cooperatively with Government, we believe have been mutually advantageous.

So there can't be any arbitrary change on this, and if the price goes up, the housewife, I presume, would move to the next size or lower priced item in her purchasing.

Mr. NELSEN. Supplementing what Mr. Kornegay has said, I mention that at the present time I happen to be doing the cooking at our own house. Mrs. Nelsen is back in Minnesota, and I, too, buy the small can, but I would like to suggest to Mr. Kornegay he should buy Green Giant peas. They are the best.

The CHAIRMAN. Mr. Cunningham.

Mr. CUNNINGHAM. I have no questions.

The CHAIRMAN. Mr. Pickle.

Mr. PICKLE. Mr. Smith.

Mr. SMITH. Yes, Mr. Pickle.

Mr. PICKLE. On the canned products which are on the table, you used the phrase "servings"?

Mr. SMITH. We do not on these cans.

Mr. PICKLE. In your testimony you say that this is all right for you to do it, but the Government cannot say what is a serving, by our law here. Now aren't you saying that you can put it on the can, yet the Government shouldn't be allowed to say what is a serving?

Mr. SMITH. The difference is, Congressman Pickle, that under the bill this would become a mandatory provision. Ours we have always maintained as strictly a guideline. Such titles as this leaflet, "Nutritive Values of Average-Size Servings of Canned Foods," you see, have been published by the millions of copies. These we maintain only as a guideline, however.

Mr. PICKLE. But if it were mandatory, would that make the definition of a serving accurate or wrong in itself?

Mr. SMITH. If purchases were made on the basis of contents serving x number of people and it served only half that many, the consumer may feel he had cause for strong protest, or even legal action.

Mr. PICKLE. I understand. A serving is broad and varied. And yet you say what is a serving on your cans. Now why is it that a Government agency, who is a promulgating authority working with you, couldn't determined what is a serving also?

Mr. SMITH. If it were strictly a voluntary guideline as such and not a requirement of law that it be so indicated, I would see no problem.

Mr. PICKLE. Well, would you object if you had voluntary procedures, and then at some point somebody would have to determine what was a measurement? Would you object at that point, if it was the Department of Commerce or the Federal Trade Commission, being able to say what is a serving?

Mr. SMITH. At the point that a serving would be determined and made a part of the law, we would have concern at that point.

Mr. PICKLE. In your testimony you have thrown out considerable opposition to section 4.

Mr. SMITH. Yes.

Mr. PICKLE. As well as in the vocabulary or the definitions under section 5.

Mr. SMITH. Section 5 is our particular concern.

Mr. PICKLE. Yes. I think I disagreed with you on that. I think there are certain advantages to be had by eliminating the qualifying statements. The heart of this measure though, it seems to me, is that this law is trying to say that we go beyond economic deception, and that we want to be able to give the consumer the ability to have immediate and instant price comparison.

In all of your statements, however, you haven't mentioned price comparison, or if at all, very, very little. That, it seems to me, is the most difficult thing to try to establish, and yet you haven't mentioned it. Have you purposely ignored that phase of it?

Mr. SMITH. Well, of course, the existing laws do not go to the point of price comparison. This is in the economic area. The bill as originally designed, as we had understood it, was purported to prevent deception in packaging and in labeling. Moving on into the other areas

such as the economic, we feel that the marketplace is the best place for these to be determined.

If a packaged product confuses the housewife, if she is dissatisfied with any of many factors, she likely will not repeat her purchase, so she casts a vote every time she buys a product, either favorably or unfavorably.

We think she is the best judge after all, and I have discussed this. As I say, my wife shops for a large family. I have talked to many women who buy for their families. I don't sense any great antagonism or any real problem here. I don't think that we can find any great flood of letters coming into Federal agencies or probably to Members of Congress. You gentlemen would know. Certainly not to the NCA or to our industry, that indicates that there is a problem here in making rational price comparisons now.

Mr. PICKLE. Then it is your position that a shopper is able to make price comparison now in the marketplace, and that there is no need for additional legislation in this field.

Mr. SMITH. We feel there is no need in the field of making price comparisons, that is correct.

Mr. PICKLE. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Watson.

Mr. WATSON. Thank you, Mr. Chairman.

Mr. Smith, when your industry puts forth these descriptive terms such as serving, cup, and so forth, is that just a desire on your industry's part to put something else on the can or the label, or is it an effort to help the shopper in determining just what he or she will get from that particular container?

Mr. SMITH. It would be the latter, Mr. Watson. We have responded to the request on the part of consumers, housewives over the years, to furnish a guideline which would be helpful to them in the feeding of their families—and this we have done with full knowledge of some of the pitfalls of the mandatory aspect—and suggested them as guidelines.

Mr. WATSON. And our population today is getting younger and younger. Of course, they might not be so experienced in how many servings would be in a No. 10 or a No. 3 can, and so your effort was to try to be of assistance to them and eliminate the confusion that they might have in trying to decide what size can?

Mr. SMITH. That is correct.

Mr. WATSON. That was the purpose of it, wasn't it?

Mr. SMITH. That is right.

Mr. WATSON. And I think it could be helpful, and I notice on one of the earlier packages that they listed 24-ounce servings that might be helpful to put some specific weight designation to the serving rather than using jumbo or midget or standard or what have you.

Mr. SMITH. Of course these terms are not terms that are used in our industry, the qualifying terms you just mentioned.

Mr. WATSON. Of course your industry is in the business to make money, and to make money by serving the public and meeting the public's need, rather than deceiving the public.

Mr. SMITH. That is correct.

Mr. WATSON. Is that correct?

Mr. SMITH. It certainly is.

Mr. WATSON. It is your position that the industry is trying to simplify this to a maximum degree compatible with meeting the needs of the new buying public today, that you are trying to simplify this?

Mr. SMITH. There is no question of this. As a matter of fact, Mr. Congressman, we have gone we believe, well beyond the provisions of the present law in order to give the consumer of canned products more information from which she can make an intelligent and rational choice. Our 1966 issue of our labeling manual which I hold in my hand, indicates the complexity of the subject and details the language terms, and so forth, to be used on labels of the many hundreds of different items that are canned. But this has been the basic premise behind our action, to be helpful to the consumer.

Mr. WATSON. And it is further your position that we have adequate safeguards now in existing law to protect the public against unfair or deceptive labeling?

Mr. SMITH. We sincerely believe that is so in the labeling and packaging area.

Mr. WATSON. And thirdly, it is your contention that the passage of this legislation would result in, as one earlier witness said, a low choice and a high cost to the consuming public.

Mr. SMITH. This would certainly be the end result, if it were enacted in its present form, particularly section 5, which goes to control of packaging.

Mr. WATSON. We appreciate the testimony. I guess I am a little old fashioned, but I have a lot of confidence in the consuming public. I think we are getting smarter every day, rather than dumber every day, and the Government doesn't have to tell us everything to do, and I don't believe the American public believes that, when they read a sign "Put a Tiger in your Tank" that we actually get a tiger in our tank. We ought to have a little more confidence in the American public.

I share the feeling of my colleague, who said that if we pass this legislation, we are going to find the housewife suddenly faced with the inability to buy the can or the package that she has been accustomed to. As the old adage is, we make our habits and then our habits make us.

This Congress is going to face the wrath of the buying public, the housewife, who is accustomed to buying one particular size, if she suddenly finds that Congress has said that that isn't the proper size for her. Now, you don't have to buy it by ounces. We want to tell you how many peas are in the can, and then you can buy the can and divide the peas yourself.

Thank you very much.

Mr. SMITH. Thank you very much. That squares with our philosophy.

The CHAIRMAN. Mr. Satterfield.

Mr. SATTERFIELD. Thank you, Mr. Chairman.

Mr. Smith, in listening to your testimony, and particularly your statement about standardizing the size of cans, is it not true that your industry, when it standardized can sizes, was in effect standardizing volumes of containers?

Mr. SMITH. Yes, it was in the beginning, you see. The canning industry grew up in various parts of the country——

Mr. SATTERFIELD. To get back to my question, I hate to interrupt you, but my time is short. Looking at can No. 10, you have 6 pounds and some odd ounces.

Mr. SMITH. Yes.

Mr. SATTERFIELD. I don't see where that relates to the can at all, whereas the cup size and the fluid quantity, being measurements of volume, do relate to the can, isn't that correct.?

Mr. SMITH. That is correct. Your statement is correct.

Mr. SATTERFIELD. It seems to me that in this hearing to this point we have been talking about three things basically. We have been talking about price, we have been talking about weight, and we must talk about volume.

I see a relationship between price and weight and between price and volume. But I would like to ask you, sir, do you know of any relationship used in the canning industry that would relate weight and volume?

In other words, if it were decided that products would be put out in specific standardized weights, could this be related in any way to the standardization of the size of the cans that you have already promulgated?

Mr. SMITH. Well, it could not and maintain equal weight, because of the various specific gravities or densities of the product being packed. You would have a proliferation of can sizes to pack all of these items to the same given weight.

Mr. SATTERFIELD. Based on something you said earlier then, if weight were to be the standard, then you would have a proliferation in the sizes of cans, would you not?

Mr. SMITH. That is correct, many, many fold.

Mr. SATTERFIELD. And this would increase tremendously the amount of cost of packaging products in cans.

Mr. SMITH. Fantastically. If you add this fact to the basic premise which Congressman Van Deerlin mentioned—if this were known to be firm—that this is the intent of the law as applied to our industry—we could come up with additional costs to the industry that would stagger this committee.

Mr. SATTERFIELD. I would like to ask you one other question in this connection with regard to statements that have been mentioned in connection with voluntary standards that might be agreed to by the industry. If it were made known to you by a publication in the Register that specific increments of weight of a product is to be the criteria, and you had the opportunity then to meet, in your humble opinion do you believe that you could arrive at any voluntary standard, insofar as cans are concerned, that would meet these criteria?

Mr. SMITH. As I said, it would be virtually impossible.

Mr. SATTERFIELD. I want to ask you one other question, sir. Under that circumstance is it your feeling that your industry would be operating voluntarily? I am talking about you being told to voluntarily come up with standards as to weight.

Mr. SMITH. Yes, I understand.

Mr. SATTERFIELD. Do you feel that that would be a voluntary action and would this mean that you could act voluntarily?

Mr. SMITH. Well, under the set of circumstances you have described, it certainly would not be the voluntary program we have now. I would think you would have to categorize this as moving toward a compulsory program. If after all the problems attendant to uniform weights they (the Government, after passage of the bill) still say, "You pack all foods in uniform weights, half-pound or 1-pound sizes," and we replied and said, "We cannot do this without the other proliferation of can sizes," and they said, "Go ahead and maintain the weights, one-half, 1-pound size," then we would not consider this a voluntary program and would resist it, of course, with every possible resource we have.

Mr. SATTERFIELD. This would really put you back where you were before you had your voluntary standards, as far as can sizes are concerned, would it not?

Mr. SMITH. Certainly, if there is any area now of misunderstanding and concern on the part of the housewife, it would be magnified manifold if we should go the other route. You have so many millions and millions of housewives buying canned foods every day, used to certain sizes for certain products, and suddenly she finds these products instead of in the one or two sizes she had been buying, she would find them in possibly 10 or 15 sizes.

In trying to resolve these two objectives of the bill, we really face almost insurmountable, if not insurmountable, problems.

Mr. SATTERFIELD. I have no other questions.

The CHAIRMAN. Mr. Gilligan.

Mr. GILLIGAN. Thank you, Mr. Chairman.

Following a little different line of inquiry from the one developed by Mr. Satterfield, who was talking about disorganizing what has already been organized in the food processing and distribution field. I am mindful of the statement I have heard, how true it is I do not know, that over half of the consumer products on the shelves today were developed within the last 10 years, and that there are new things coming on the market all the time. I am wondering about the impact of this kind of legislation on a processor or food packer or manufacturer who has a new product in mind. He thinks it might be attractive and useful to the housewife and wonders what he has to get over in order to put it on the market.

I am not sure I understand the legislation that is before me. I happily am not an attorney, so I have trouble with this language from time to time, but if I understand it correctly, let's take an example like this new cheese spray idea, the fellow who has the idea of marketing this new produce. He tests the market, buys the machinery, makes the investment, hooks up with the distributor, and so forth, and then he comes out on the market.

The promulgating authority is defined as the Secretary of Commerce in this instance. If he finds after a hearing in compliance with section 7 of the Administrative Procedure Act, not that there is not anything deceptive or dangerous or unhealthful about this packaging, but that it is likely to impair the ability of consumers to make price-per-unit comparison, assume for the moment this is the only brand of canned aerosol cheese on the market and it is difficult for the housewife in the opinion of the Secretary or one of his designated

subordinates to decide how to make a unit comparison of price between cheese packaged this way and cheeses put out in a wrapper on the market, he can then within 60 days issue resgulations designed to establish reasonable weights or quantities or fractions or multiples thereof in which such consumer commodity shall be distributed for sale.

Within 60 days the producer of the new product can ask for a procedure to be set up to come up with a voluntary standard.

Assume again for the moment that he is the only one who has got this product in the field. As I understand it, on this panel will be adequate representation of manufacturers, presumably including his competitors, distributors, and consumers. Maybe they do not want this product in competition to their older product. If he somehow manages to get over that hurdle and gets them to come up with some standards, he may not, at the same time they may not agree to a standard, they have 18 months to do it. Meantime, his item has been listed in the Federal Register as one found by the Secretary to be misleading or misbranded, and he may not, he has no assurance in advance that he is going to be able to get his product as presently packaged on the market.

I wonder how many people are going to undertake the investment and research and marketing and so forth necessary to bring a new product into the marketplace confronted by that kind of series of obstacles.

Mr. SMITH. I think that is an excellent question, Mr. Congressman. Our own industry point of view is that section 5 of the bill (and its various subsections) if it were passed would virtually stifle initiative in the field of innovation in packaging, including new sizes which innovation in the past has given the consumer an ever better product, an ever more convenient product.

The number of reasons that you mentioned underline it. Even if the item could be test marketed without prior approval, and there seem to be legal differences of opinion here, but let's assume that it could be, without any hearing, then it would not be difficult, as I have implied, for lots of complaints to be generated for various reasons. When these complaints come in, a hearing could be called. Then there is the required publication in the Federal Register, competition is immediately tipped off to the plans of the innovator; and without innovation in the food industry over the past decades I am sure we never would have grown to what we have today.

I believe you have hit a very, very key point. If this section were passed, it would certainly tend to standardize not only the container sizes, it would tend to take from the consumer, many rights she now has in the selection of products which she may well find even better than present products.

Mr. GILLIGAN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Adams.

Mr. ADAMS. Following up on Mr. Gilligan's statement, would you submit to us on behalf of your group whatever type of proposal you think could be lived with by your industry? You have had more experience in your industry than any other on premarketing, pretesting, and proposals for new products so you can best suggest how to do this once a mandatory standard was established?

Mr. Chairman, could we request the same from the Department, so we will know what they suggest as a system that could be used or whether such a system is even possible?

Mr. SMITH. Mr. Congressman, this pertains to new products now?

Mr. ADAMS. This pertains to the very thing Mr. Gilligan was talking about. I mean I do not think we can assume that every man who has created regulations or every Secretary is going to be absolutely unreasonable, but if you think that there is a specific system that could or should be followed as to new proposals which might violate the established standard, I would like to know what your proposal is and hear the same from the Department.

Now I want to inquire specifically from you on the terms of this bill. Do you agree that section 4 and all the way through section 5 to 5(c)(1), is nothing more than a labeling bill?

Mr. SMITH. Essentially, that is correct.

Mr. ADAMS. Now starting at 5(c)(1) there is nothing mandatory at all established in the bill, is there?

Mr. SMITH. The wording of the bill I am sure is intended to do this. Our interpretation of the end result is that we come out with the opposite.

Mr. ADAMS. So starting at 5(c)(1) or actually in section 5, you start with a series of possible regulations of the industry by a regulating authority; is that correct?

Mr. Smith. That is correct.

Mr. ADAMS. After hearings. Now is there any question in your mind but that your industry is protected in its present voluntary standards by section 5(e), which provides that any time there is a mandatory regulation, anyone in the industry can come in and request that the Secretary go into the voluntary procedures that are provided under section 401, next that you are protected under section 5(f), which provides that any customary—5(f)(3) on page 9—any customary can can be used, and under 5(f)(1), which says there cannot be a mandatory standard established which would vary from any voluntary product standard in effect when the consumer commodity was published.

Now do not these in an ironclad fashion, say that your system which you have developed is not to be tampered with by the Secretary?

Mr. SMITH. No. Any can size that we now have, any that you see here—if complaints are filed and there is a claim that there is deception, this could open the subject of further usage and a new can size could be designated.

Mr. ADAMS. As I understand it, it says "No regulation promulgated pursuant to subsection (d)(2) with respect to any consumer commodity may, one, 'vary from any voluntary product standard in effect with respect to that consumer commodity' which was published, (a) 'before the publication of any determination with respect to consumer commodity.'"

Mr. SMITH. At that time, that is correct—all that are now in existence.

Mr. ADAMS. Right.

Mr. SMITH. Those in use at the time the law went into effect would continue.

Mr. ADAMS. Right.

Mr. SMITH. But it may change subsequently.

Mr. ADAMS. You have had 40 years to develop this, and if we can get to the problem Mr. Gilligan raised on how we go on with innovations, your industry would not do anything except be required to do some labeling changes.

Mr. SMITH. Mr. Adams, let me cite a specific example of our concern: The proponents of this bill before both the Senate and House committees have mentioned a particular product. I will not mention it, in protection of the product. They have mentioned it again and again as being an example of deception in packaging, or in the minimum, confusion to the consumers, even though the net weight is clearly stated. The product is packed in different can sizes than any we have here, because this particular product adapts itself best to these sizes.

Now what they do not say, but they do know, because we have let them know the facts, is that the Government and industry worked together for 7 years, 7 years, to work out detailed standards of identity, standards of fill of container for this product. Seven years, and yet the proponents of the bill have specified this product as being guilty of these abuses when such is not the case. The critics are clearly in the wrong.

Now this is the thing that concerns us.

Mr. ADAMS. I agree that there have been some statements on some of these items, but as was pointed out by one or the other Congressmen in his questions, you deal with a volume concept. The liquor people deal with a volume concept, and we do have standardizations in that area, so that housewives can do it. I mean housewives know there are 2 cups in a pint and there are 2 pints in a quart and 4 quarts in a gallon and so on, and the industries have standardized on them, and I think under this bill are protected in their standardizations. You heard my example the other day with one of the witnesses of the feathers in the 1-pound box.

Mr. SMITH. Yes.

Mr. ADAMS. Now this is price comparison as it was with some of the others, and it has been pointed out there has been a revolution in packaging, dehydration, formulization, all of these things that create these new products.

Now what we are trying to do, I think, in this bill, and I want your comment on it, is to take the process and the system that has been developed in the canning industry under the voluntary programs for years, and apply it to these other industries to help them do in a year or 2 years what has taken you 40. Is that correct or not?

Mr. SMITH. Well, we would have no objection if they utilized our voluntary program as it is now utilized.

Mr. ADAMS. And that is provided for in the bill, is it not?

Mr. SMITH. No. In the bill there is no range—no flexibility. This is where the mandatory comes into force. The proposal adopts as of a given date what we now have, but does not provide for new containers to come in without their being subject——

Mr. ADAMS. Just a minute. It says on page 8 under (e), it says that if the Secretary goes out and promulgates, that he is going to put in some regulations on "X" commodity, it says "any time within 60

days, any producer or distributor" affected may request the Secretary of Commerce "to participate in the development of a voluntary product standard for such commodity under the procedures for the development of voluntary product standards established by the Secretary pursuant to"—And when that happens, then the Secretary must transmit a notice, and as I understand it in here, if a voluntary standard is agreed upon and can be done, then the mandatory standard must follow.

Mr. GILLIGAN. Would the gentleman yield for a question?

Mr. ADAMS. As soon as he answers.

Mr. SMITH. It tips off competition on the publication of the new product, you see.

Mr. ADAMS. No, no, I am talking about a whole commodity industry now.

Say some of the things that have been mentioned are detergents and a number of nonfood items that you have a great proliferation in certain items such as potato chips, and so on that have all of this variation.

Now what I am saying, if the Secretary says we are going to go in and regulate detergents, as I understand it any detergent manufacturer can come in and say "We want to establish a voluntary standard by industry," the Secretary cannot go ahead until they have had the chance to do this, and then if they cannot agree at the end, then he can do something.

Mr. SMITH. Or do nothing.

Mr. ADAMS. Or do nothing.

Mr. SMITH. And assuming going either way on this, one-quarter of the committee could then influence the Department as to the course of action.

In other words, the Department would still tend to control. It does not automatically have to issue the standard recommended by the three-fourths of the committee.

Mr. ADAMS. Right. But what we are doing, is it not, is telling these industries that they should do what your industry has done the best they can.

Mr. SMITH. But the point is that if they become stymied on this and they cannot agree——

Mr. ADAMS. Then the Secretary can go ahead.

Mr. SMITH. But if he does not go ahead, the FDA or the FTC will go ahead and then what was voluntary becomes compulsory.

Mr. ADAMS. Then we expect you, under the provisions of section 8, which says that they are to come in and report to us each year what they are doing, we certainly expect that somebody from your industry is going to be up here telling us to ask him when he comes in and reports why something has not been done.

Mr. SMITH. Regardless of the good intent and we do not question that, I have in my pocket right now a matter put on my desk this morning that is apropos to your comment. Here, too, the intent of the Government is one of full cooperation in issuing an amendment to a standard. We filed it in July of 1965. We are still pleading to get it in August of 1966. We desperately need the amendment on this commodity. The industry could suffer great loss in the interval, as another packing season is underway. There is indecision as to what to do.

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We have no assurance that the Government is going to be able to give us an answer on such points within a year, and even if they did and we could be guaranteed that, what loss has been sustained in the interval?

Mr. ADAMS. Then your problem is with administration and not with the substance?

Mr. SMITH. Administration is a very important aspect of this section 5, as you say.

Mr. ADAMS. I have one more question. Mr. Gilligan wanted me to yield.

Mr. GILLIGAN. If I may, sir, you pointed out on page 8, under (f):

No regulation promulgated may preclude the use of any package or of par- consumer commodity, may, one, vary from any voluntary product standard in effect with respect to that consumer commodity and so forth.

Now on page 9, (3) continues the sentence:

No regulation promulgated pursuant to subsection (d) (2) with respect to any ticular dimensions or capacity customarily used for the distribution of related products of varying densities except to the extent that it is determined that the continued use of such product packaged for such purpose is likely to deceive the consumers.

Mr. SMITH. That is the key point.

Mr. GILLIGAN. This is an open question. I do not know. Does that or does that not tend to contradict what was said by way of protection of the voluntary standards? If the determination is made that the customary package is deceptive, does this overrule the saving clause in 1?

Mr. ADAMS. I would ask you this question: That presently is illegal and can be moved against anyway, can it not?

Mr. SMITH. Yes.

Mr. GILLIGAN. What does deceptive mean in this case?

Mr. SMITH. The point is, though, that we are now not accussed of it being deceptive. What may be generated to declare something is deceptive if this were passed, coupled with the clause which Congressman Gilligan has just read, in my judgment, and it is shared in the industry, opens up all of these standards of the past, the voluntary standards, to question every can size.

Mr. ADAMS. Then do you suggest that in this bill we have a better definition of what deception is to mean?

Mr. GILLIGAN. If the gentleman will yield again.

Mr. ADAMS. Just a second, until he answers.

Mr. SMITH. There is already law covering this provision.

Mr. ADAMS. I mean in this bill is there some question in your mind that you want the Food and Drug regulations on deception——

Mr. SMITH. They already have it.

Mr. ADAMS. Or some other statement on what deception is written into this?

Mr. SMITH. They already have authority now to act where there is deception as to the container size. They have not acted. They have agreed and concur in what we are now using. This would not, however, prohibit in the future some of our can sizes here that have been used for decades being declared deceptive and having to go through all the procedures which have been outlined. Then these would become mandatory if Commerce is unable to agree that the size be continued.

Mr. ADAMS. So what we are saying is, you are subject to that risk today?

Mr. SMITH. On all that we have.

Mr. ADAMS. On all that you have?

Mr. SMITH. Yes.

Mr. ADAMS. And so this does not increase your risk. Now if it does, then say so and we will try to give you some relief or make it right. But I do not see that it makes any difference.

Mr. SMITH. I think it does increase the concern about it and no doubt does increase the risk, because as regards these sizes we have used for long periods, we have not been accused of deception in using them.

Mr. ADAMS. All right, so if you have not been——

Mr. SMITH. But we may well be.

Mr. ADAMS. That could happen anyway.

Mr. SMITH. No. Well, as far as the can size, this cannot be barred from our use. That is what we are talking about here. As far as deception now in two containers, the Food and Drug can act now if they feel that there is deception, but they have not acted. But under this bill, if passed on container size, there could be filed complaint after complaint which could be generated for various motives that would bring this into a hearing; and it could end up with this particular can size being barred from future use. There is a definite additional risk.

Mr. GILLIGAN. The one new element it seems to me that is added here is all that we are talking about, the promulgation of regulations and so forth, following from section 5(d), follows a determination that it is difficult for the consumers to make a unit price comparison.

Now read the word "deception" in terms of difficulty in unit price comparisons. This is not deception——

Mr. SMITH. That is right.

Mr. GILLIGAN (continuing). As it has traditionally been used. It is not an attempt to defraud by short weight or anything. This is deception in terms of confusion existing in the consumer's mind.

Now, all of this apparatus follows that determination, and therefore it seems to me that this section 3 and section 1 under (f) have to be read in that context.

Mr. SMITH. That is correct.

Mr. GILLIGAN. I say again I am not an attorney and happily so because I can speak freely on this subject.

Mr. SMITH. You make a very good point.

Mr. ADAMS. I would like, Mr. Chairman, to request that the Department supply us with their position as to the meaning of this section, whether it is as Mr. Gilligan stated or whether it is in terms of the present statute that we have existing in the form of deception.

The CHAIRMAN. I want to thank you very kindly, Mr. Smith, for coming before us to contribute your views.

Mr. SMITH. Thank you very much.

The CHAIRMAN. We have others whom we have to hear if we can. You have been very patient and you certainly have expressed your views for your industry in a very fair way, I think.

Mr. Schroeter, would you take the stand, please?

Mr. Schroeter was here yesterday and gave testimony, and he has to go back, and I just wondered if any members of the committee

want to ask him any questions. One of the gentlemen who did especially is not here.

I understand my friend from Ohio, Mr. Gilligan, has a question. Does anyone else have any other questions?

Mr. DINGELL. I have several questions I would like to ask.

The CHAIRMAN. All right, Mr. Dingell.

STATEMENT OF HARRY F. SCHROETER, VICE PRESIDENT FOR PACKAGING, NATIONAL BISCUIT CO.—Resumed

Mr. SCHROETER. Yes, Mr. Dingell.

Mr. DINGELL. Mr. Schroeter, in your statement you appear to oppose, on page 14, you appear to oppose section 5(e) of the bill. For example, on page 14 you say:

> The standardization rule requires that each package of each variety will weigh exactly eight ounces. Additional sizes will be needed.

Have you studied the provisions for voluntary product standardization by the Department of Commerce?

Mr. SCHROETER. You mean the Department of Commerce procedures?

Mr. DINGELL. That is correct.

Mr. SCHROETER. I have read through them. I have not studied them; no, sir.

Mr. DINGELL. Has your industry ever used the voluntary standard section which has been used by the milk products industry and——

Mr. SCHROETER. To the best of my knowledge, we have not.

Mr. DINGELL. Have you ever supported it?

Mr. SCHROETER. Up until this legislation was proposed, to the best of my knowledge we had no reason to.

Mr. DINGELL. Do you have an awareness that the industry can have a tremendous impact on the development of these standards through utilization of these devices in the legislation before the committee?

Mr. SCHROETER. Sir, when you said "standards," you are referring to standards of weight?

Mr. DINGELL. Voluntary standards.

Mr. SCHROETER. I am sorry to say I do not see the value to the consumer of standards in our industry.

Mr. DINGELL. Do you agree that under the terms of the bill and under the published procedures, technical matters involved in the manufacturing, packaging, distribution process are taken into consideration?

Mr. SCHROETER. Many things are taken into consideration; yes, sir.

Mr. DINGELL. As a matter of fact, the bill expressly requires these and other matters to be considered in adoption of the standards, does it not?

Mr. SCHROETER. That is correct. It requires consideration of many things, but as I understand it, ultimately the administrators could make the standards.

Mr. DINGELL. Now you have a number of transparent plastic containers there. Do you want to tell the committee what is the lowest and highest percentage of loose crackers in your present packaging practices?

Mr. SCHROETER. I am sorry, I do not understand the question.

Mr. DINGELL. Well, if you have a container of crackers or loose crackers packaged, are they 100 percent full or 50 percent full, or what are going to be the highest and lowest levels of fill in your industry?

Mr. SCHROETER. As I pointed out, sir, this is the line to which we now fill the package, and as my testimony showed, we need the remaining space for the machinery which closes the inner wrapper, and the machinery that then closes the top flaps.

Now if I may continue?

Mr. DINGELL. Yes.

Mr. SCHROETER. We dump these in at the rate of approximately 100 a minute, 100 packages, that is, and there is no time for the crackers to settle down, or if they do the package will bulge. Then, when the packages are later put together the crackers will break. As the packages are handled on the way to our local warehouse, and from there to the grocery store, and from the grocery store to the shopper's home, the crackers settle down. For many years we have carried a legend on the package which I would like to read:

> This package is sold by weight, not by volume. Packed as full as practicable by modern automatic equipment, it contains full net weight indicated. If it does not appear full when opened, it is because contents have settled during shipping and handling.

We package as full as practicable.

Mr. DINGELL. You are getting away from the question which I would ask you, but you are getting to another one.

Mr. SCHROETER. I am sorry.

Mr. DINGELL. That is perfectly all right.

The point I want to discuss with you now is why is it impossible for the industry to get together to establish voluntary standards which would be adopted by the Secretary dealing with precisely the points about which you complain in your very excellent statement of yesterday?

Mr. SCHROETER. As I understand it, the standards would be by weight. We operate by volume.

Mr. DINGELL. All right. Now let's look at this. On page 10 of the bill, subsection 5(c), appears the following language:

> The promulgation of regulations under subsection (d)(2), of this section, due regard shall be given to the probable effect of such regulations upon—

And then it gives a number of them, cost of packaging, availability of any product, reasonable range of packaging sizes to serve the consumer interests, materials used in packaging the products, and then (g)(4)—

> Weights and measures customarily used in the packaging of affected products.

Mr. SCHROETER. Yes, sir.

Mr. DINGELL. Now why does not (g)(4) adequately protect your industry and the interests of the industry that you speak about?

Mr. SCHROETER. Well, sir, as you can see, and as I have testified, these crackers come in a number of different flavors and a number of different shapes, and resultingly a number of different weights.

Mr. DINGELL. I am aware of that fact.

Mr. SCHROETER. Yes, sir.

Mr. DINGELL. But it says here "the weights and measures customarily used in the packaging of the affected products."

Mr. SCHROETER. I am trying to get to that, sir.

Mr. DINGELL. You handle wheat thins. Now obviously wheat thins have been packaged in that size package for some period of time, have they not?

Mr. SCHROETER. This is at least 15 or 20 years old.

Mr. DINGELL. Now they have been packaged in that size package and they have been packaged in that weight?

Mr. SCHROETER. Yes.

Mr. DINGELL. And in that size container.

Let's take the Ritz crackers over on the end. They have been packaged in that size I guess a long time.

Mr. SCHROETER. Thirty-one years.

Mr. DINGELL. Thirty-one years.

The next one I cannot see the name, but what is the name of that?

Mr. SCHROETER. That is a pretty new fellow. He is only about 4 years old.

Mr. DINGELL. Triangles, how old is he?

Mr. SCHROETER. Triangle goes back many years too.

Mr. DINGELL. Those have been packaged in substantially the same weight and substantially the same size package for a long time, have they not?

Mr. SCHROETER. That is correct.

Mr. DINGELL. All right now, let's get over to some of these others.

Krispy and Saltines. As I remember Krispies have been in a size pack for a long time, have they not?

Mr. SCHROETER. I am not sure.

Mr. DINGELL. There are some there that you are familiar with. Let's take Cream of Wheat. That has been packaged in a size package and by that weight for a long time, has it not?

Mr. SCHROETER. It certainly has; yes, sir, 14 ounces.

Mr. DINGELL. Ever since I have been a small boy, as I recall it.

All right, now let's read this again; "the promulgation of regulations under subsection (e) (2) of this section, due regard shall be given to the regulations," measurements customarily used in packaging of affected products.

Mr. SCHROETER. Yes.

Mr. DINGELL. Now, what makes you think, with that clear language, that the Secretary or any other agency of this Government is going to rush out and write regulations which are going to completely upset those long-established packaging practices of responsible companies in the industry?

Mr. SCHROETER. Sir, as I tried to show, there is a range of weight in this size package.

Mr. DINGELL. I am aware of that.

Mr. SCHROETER. Now the topmost weights currently are 9¾ ounces, and then wheat thins at 10½ ounces. We are constantly trying to find new flavors, new shapes, and new crackers. This particular line is now 15. It has varied in different numbers and in different individual flavors and crackers over the years.

If this bill is now established, if we now developed a cracker that weighed 10 ounces in this, I am not sure that there would be the protection of the weights and measures customarily used.

Mr. DINGELL. Let's take the Ritz crackers. You said it has been used 31 years.

Mr. SCHROETER. Yes, sir.

Mr. DINGELL. I cannot believe, and I have to confess I am a member of this committee that supports this, that you would not receive the protection of (g) (4) on page 10 which we have been discussing.

Mr. SCHROETER. Well, may I point out another situation here.

Our competitor of Ritz crackers chooses not to have the same weights that we have. We pack Ritz in 8, 12, and 16 ounces. He packs his brand in, I believe, it is 6½, in 10 and in 16 ounces.

Mr. DINGELL. You and your competitor occasionally discuss problems in the industry, not in a situation that would violate the antitrust laws, but you arrive at an understanding of mutual problems, not matters that fix prices which are antitrust violations, it it not so?

Mr. SCHROETER. I would assume that some of our people would meet some of the people from the others, yes.

Mr. DINGELL. Can you tell me why you and the other companies could not get together and arrive at some voluntary standards?

Mr. SCHROETER. Well, sir, which standard would we come to; ours or his?

Mr. DINGELL. It would be a matter of negotiation, I would assume, just as it would be a matter of negotiation between you and a material supplier.

Mr. SCHROETER. If we did that, sir, then it would come down to whose expense? All our machinery is geared to this stack pack, which I elaborated on in my testimony, to pack three individual units in a 12-ounce package. I do not have it here. He happens to pack——

Mr. DINGELL. You will concede that you have changed the volumes and the weights of the packaging of products that have been produced by your company over the years, have you not?

Mr. SCHROETER. Of the ones we have mentioned this morning, we have not. There are some others, yes.

Mr. DINGELL. But others you have?

Mr. SCHROETER. Yes.

Mr. DINGELL. And you have done it using the same machinery, have you not?

Mr. SCHROETER. No, sir.

Mr. DINGELL. You mean to say that you completely rip out all of the machinery to make the package change?

Mr. SCHROETER. We have had to readjust the machinery to fit whatever the dimensions are or buy new machinery.

Mr. DINGELL. But you can readjust the same machinery, can you not?

Mr. SCHROETER. Some machinery is readjustable, some is not.

Mr. DINGELL. But if you control the question of what type of packaging you were going to establish by your own voluntary agreement within the industry, this would be a matter which you could take care of, would it not?

Mr. SCHROETER. Sir, this would affect the entire competitive picture.

Mr. DINGELL. Pardon?

Mr. SCHROETER. This would affect the entire competitive picture of the biscuit and cracker industry.

Mr. DINGELL. I understand that, but you still would be able to consider the impact upon your packaging practices in the packaging machinery, would you not?

Mr. SCHROETER. We like to believe, sir, that our packaging is superior to our competitors, and we try very hard to keep it that way.

Mr. DINGELL. I am aware of this.

Mr. SCHROETER. Yes, sir.

Mr. DINGELL. But you still would be able to consider the fact of the impact on your machinery, the impact of keeping your long-established packaging packages practices just as they are; is that not correct?

Mr. SCHROETER. We could consider it and we would find it, I think, very unsatisfactory to change, except to meet consumer needs, demands, requirements.

Mr. WATSON. Will the gentleman yield?

Mr. DINGELL. Yes; I will be happy to yield.

Mr. WATSON. I am trying to figure out just what is deceptive or confusing or unfair in the proposition that Ritz packages in 6-ounce boxes——

Mr. SCHROETER. Eight ounces.

Mr. WATSON. Eight ounces or whatever it is and another company packages in 10 ounces, if you clearly label that one is 6 and another is 8. What is unfair about it?

Mr. DINGELL. Is the gentleman directing his question to me?

Mr. WATSON. Yes, sir.

Mr. DINGELL. I am not testifying, I will say to my friend. I do not have any particular objections as to whether Ritz or somebody else happens to label their packages a particular size, but I am aware of the fact that there are circumstances where he goes into a store, for example, to buy packages of certain kinds of cereal in the same size container, which will vary rather broadly in weight. I regard that as being a particularly pernicious practice and particularly deceitful toward the consumer. That is what this bill is aimed at, not——

Mr. SCHROETER. You see, sir, I have 11 ounces of one cereal and 14 ounces of another cereal, in identical packages and to the same fill.

Mr. DINGELL. Then let's get around to the point my good friend has raised.

Let's take cream of wheat. Would you say that it was fair to the consumer for cream of wheat to be packaged in the same size container in three different stores containing three different weights at the same price, or three different weights at different prices which gave a different per unit price? Would you advocate that as being a fair packaging practice?

Mr. SCHROETER. Sir, if that actually exists on a specific product, I think there would be something wrong and someone ought to find out the facts about it.

Mr. DINGELL. Would you then regard that as a reprehensible practice?

Mr. SCHROETER. I would like to know the facts about it before I would give an opinion.

Mr. DINGELL. Let's say that you have, and let's make it very clear that I know of no practices of this kind on behalf of the packagers of cream of wheat, but let's just say that three different stores carry it.

Mr. SCHROETER. This package.

Mr. DINGELL. That size package that you have in your hand there.

Mr. SCHROETER. Yes, sir.

Mr. DINGELL. Filled to different levels and marketed at either the same price or marketed at a different per-unit price. Do you regard that as an honorable packaging practice?

Mr. SCHROETER. If it is the identical product, which I think is one of your assumptions——

Mr. DINGELL. The identical size; yes.

Mr. SCHROETER. The content is the identical product; is that correct?

Mr. DINGELL. It contains the identical product; yes.

Mr. SCHROETER. Identical product and it is filled at different levels?

Mr. DINGELL. Filled at different levels, the price is the same, or the situation comes up with different per-ounce or per-pound price.

Mr. SCHROETER. As we have said repeatedly, sir, as you know, we cannot control or influence the price at which it is put on the shelf. That is in the hands of the grocery trade.

Mr. DINGELL. I understand.

Mr. SCHROETER. The manufacturer does control the fill of the package outside of machinery or other errors. The fill of the package ought to continue to be the same.

Mr. DINGELL. We are in thorough agreement and within a reasonable degree the price ought not to vary so widely because of variances in the fill of it.

Mr. SCHROETER. The price per unit would be the price of the package divided by the net weight marked.

Mr. DINGELL. Thank you, Mr. Chairman.

The CHAIRMAN. Are there any further questions?

Mr. GILLIGAN. One quick one, Mr. Chairman.

The CHAIRMAN. All right.

Mr. GILLIGAN. First, I wanted to compliment the gentleman on the testimony he gave yesterday, which I found quite comprehensive and quite enlightening. Second, I was interested in your relation of the fact that you have used the same package for instance for Ritz crackers over the years.

We had a witness last week before the committee who was from the California State Consumer Council——

Mr. SCHROETER. I was present.

Mr. GILLIGAN (continuing). Who made the allegation that the common practice engaged in by packagers of reducing the quantity while maintaining the same price has proved an effective way of disguising from the public the rise in prices of certain commodities, primarily food?

I wanted to ask, in light of your own experience in using this same size package for years, with presumably the same weight in it, how

common is it in your experience for manufacturers of food products to change the size of the package and keep the same price, in order to conceal a price increase?

Mr. SCHROETER. I do not know that it is done to conceal a price increase. If the costs rise, and I was present when this testimony was given, and as I remember it the first case, the first package was a 37-cent seller.

Mr. GILLIGAN. Yes.

Mr. SCHROETER. I think the complaint was that the price per ounce rose 36 percent. If costs rise——

Mr. GILLIGAN. Over less than 4 years.

Mr. SCHROETER. Over 4 years. When costs rise, a marketer has many choices. One would be to maintain the same package and raise the price. At the other extreme would be to try to maintain the price and reduce the weight, and, at the same time, changing the package size accordingly, which I believe was done in this instance.

The reasons for choosing one course over another will have to do with other factors in the market, what other competitors are doing. If I am not mistaken, that instance had to do with prepared potatoes, and as I saw it, over those years the company that marketed those products had chosen to maintain what we would call a 30-cent seller. In other words, they had fixed it so that the housewife could always buy a supply of mashed potatoes or whatever it was under 40 cents, and this is perfectly reasonable. It is one way of doing it.

It would be particularly desirable if the competitive products, which would include all the other forms of potatoes, including frozen or freeze dry or all the others, were in the 30-cent price range.

The first fellow who went up into the 40-cent price range would be a daring pioneer and he might make out very well, or he might not. This is the freedom of the marketing choice just as the housewife enjoys the freedom of purchase choice by choosing among the various ways in which the potatoes are available to her.

Mr. GILLIGAN. Thank you, sir.

Thank you, Mr. Chairman.

The CHAIRMAN. I would like to just make one comment.

In that packaging, the price of 100 pounds of potatoes went up to $30. Now if that is fair competition or fairly dealing with the consumer, I have not examined. The packages did not vary but a very little bit. They looked just about the same?

Mr. SCHROETER. I do not remember them clearly enough to comment on that, sir.

The CHAIRMAN. All I can say is what was said by the witness who was here and the amount was $30 per 100 pounds of potatoes the price had gone up in those 4 years. That is the thing we are trying to get at.

Mr. ADAMS. Mr. Chairman, could I just ask one question?

Do you agree that up to section 5(c)(1) this is a labeling bill, and beyond that the voluntary standards with all the things we went through with the prior witness apply?

Mr. SCHROETER. Section 5(c)(1)?

There is one in here, and, as another instance of labeling I would give you—page 7, section 5(c), No. 4 there, this requirement which I

discussed yesterday on information with respect to ingredients and composition.

As I explained on foods, manufacturers already put the ingredients on the package. My query is, What more is useful and what more would anybody want, and why give to administrators the opportunity to require information over and beyond that specified in law?

Mr. ADAMS. Thank you.

The CHAIRMAN. The committee will stand adjourned until tomorrow at 10 o'clock.

(Whereupon, at 12:40 p.m., the committee adjourned, to reconvene at 10 a.m., Thursday, August 4, 1966.)

FAIR PACKAGING AND LABELING

THURSDAY, AUGUST 4, 1966

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to recess, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order. We have the current hearing as you know on fair packaging and labeling bills. Our first witness this morning will be Mr. Robert W. Minter of Minter Bros., Bridgeport, Pa., appearing for the National Confectioners Association.

STATEMENT OF ROBERT W. MINTER, VICE PRESIDENT, MINTER BROS., BRIDGEPORT, PA., APPEARING IN BEHALF OF THE NATIONAL CONFECTIONERS ASSOCIATION

Mr. MINTER. Mr. Chairman, my name is Robert W. Minter. I am vice president of Minter Bros., Inc. We are confectionery manufacturers in Bridgeport, Pa. I am appearing in behalf of the National Confectioners Association, and as a member of the board of directors of that organization, which is the national trade association of confectionery manufacturers located throughout the United States. Our members are candy manufacturers and suppliers of goods and services to the industry. It is estimated that our manufacturer members produce approximately 85 percent of the confectionery manufactured in the United States.

This appearance is entered to express industry opposition to S. 985 and H.R. 15440, the proposed legislation, and in the alternative to urge an amendment in the event the committee should elect to report the bill notwithstanding our objections.

Reasons for opposition to S. 985 and H.R. 15440:

A. IN GENERAL

After careful study of S. 985 and H.R. 15440 and reading many statements by proponents of the legislation, we believe it is correct to state that the objectives of the bill primarily are twofold. One is to prevent fraud and deception, and the other is to authorize package size standardization—and in the case of H.R. 15440, to authorize standardization of shape and dimensional proportions.

Certainly every honorable person is opposed to fraud and deception and if there were not already adequate Federal legislation to deal fully

and effectively with fraud and deception, our industry along with all other industries would readily urge it. However, Federal law is already fully comprehensive to deal effectively with fraud and deception. Both the Federal Trade Commission Act and the Federal Food, Drug, and Cosmetic Act may be used to prevent fraud and deception. We are not convinced that the law has always been fully enforced, but it should be and certainly it could be.

The other objective of the bill seemingly is product package size standardization—and in the case of H.R. 15440, to authorize standardization of shapes and dimensional proportions. It is on this point that we are in disagreement with the objective of the bill. We are opposed to the Federal Government dictating package sizes, shapes, and dimensional proportions. It is contended that there are abuses by unscrupulous manufacturers. Whatever law may be in effect, there is little question that there will always be some individuals who will attempt to be abusive. Proponents of the bill frequently have been heard to say that most manufacturers are honest and scrupulous and that they along with the public should be protected from the unscrupulous. Legitimate, scrupulous, and honorable manufacturers who have a prime interest in operating profitable ventures and thereby pleasing the consuming public, are not voicing support for Federal legislation to attempt to reach such unscrupulous manufacturers, who all of us agree are few. This is because any sensible businessman knows that honesty is the best policy, that quality and value are what sell a product, and that there is no danger of an unscrupulous manufacturer being successful very long. The marketplace takes care of the unscrupulous.

It is urged by the legislation's proponents that package standardization is needed to enable the consumer to make a rational choice between various products. Such a contention presupposes that price and package size are the only elements which a consumer need consider in order to make a rational decision. Such a thought is a most depressing one to cast upon our free enterprise society. Standardization of package sizes, shapes, and dimensional proportions would be a tremendous wet blanket on packaging improvements, creativeness, and imagination. We subscribe wholeheartedly to the view advanced by Representative Catherine May that the Hart bill assumes the manufacturer's culpability, the consumer's gullibility, and the bureaucrat's infallibility.

B. AS PARTICULARLY APPLICABLE TO THE CONFECTIONERY INDUSTRY

Even though I have explained that the confectionery industry is opposed to this proposed legislation, if I am not successful in convincing you not to report the bill, and we are certainly hopeful that you will not report the bill, then we would like to ask you to consider amending the bill before it is reported.

As you know, there is a provision in both bills prohibiting the promulgation of a regulation establishing "any weight or measure in any amount less than 2 ounces." We believe that the problem of the confectionery industry regarding package weights may have had some bearing upon this provision being included. It is of very limited significance to the confectionery industry as now provided, but it

would be of genuine significance if it were provided that no regulation should establish any weight or measure in the case of confectionery in any amount less than 1 pound.

For many years in the lower priced confectionery items it has been the practice of manufacturers and the obviously strong preference of consumers, to purchase these confectionery items at retail for amounts compatible with our coinage system. I have reference to confectionery items retailing at 5 cents, 10 cents, or 15 cents. While the 2-ounce restriction in the bill at present would cover the 5-cent retail products, it would not be fully protective in the case of 10-cent or 15-cent items.

In order to sell confectionery items at 10 cents or 15 cents, manufacturers must adjust the weight of the item upward or downward from time to time to reflect differences in production costs. This is due primarily, but not entirely, to wide variations in raw material costs. For example, last year the price of cocoa beans was as low as 11 cents per pound. It has been in excess of 70 cents per pound. The price of sugar today is about 10 cents per pound. In 1963, however, it reached 16 cents per pound. I could also give you examples of wide price fluctuations in the case of almonds, filberts, walnuts, pecans, peanuts, and so many other ingredients used by the industry.

In our testimony before the Senate committee, we presented charts which indicated the wide price fluctuations over the years of many of the commodities that we use as raw materials.

In the case of an item in which almonds and chocolate are the principal factors, a wide variation in price of either of these raw materials necessitates a change in the weight of the item in order for the retailer to continue to sell it at 10 cents or 15 cents. If the item involves primarily sugar and peanuts, the price of these raw materials is critical in determining the weight if the retail price to the consumer is to remain at 10 cents or 15 cents. Most frequently, the changes in package weights are in terms of one-eighth of an ounce, although weight changes of one-sixteenth of an ounce are not uncommon. If the price of a raw material commodity continues to move in a particular direction, and for a substantial amount, then there may be successive one-eighth ounce package weight changes.

If there were to be an attempt at standardization of confectionery package weights for items weighing say less than 4 ounces, it is presumed that it would be in terms of 1 ounce or even one-half ounce. In either event, this would dictate a revising of the packaging practice of the industry which results in the products being priced so as to facilitate transactions because of the absolutely enormous amount of transaction involved in the retail sale of confectionery items priced at 10 cents or 15 cents. Let me elaborate. There are many millions of confectionery items sold annually at 5, 10, or 15 cents. Our customers are accustomed to using the exact change to buy these items in vending machines, at newsstands, cigar counters, drugstores, and many other retail outlets. It would not be conducive to sales, or convenient for the retailer or the customers, if these product prices instead of being standard 5, 10, or 15 cents were forced to be, because of package weight standardization, 7, 9, 11, 14, or some other odd cents price which would require the use of pennies in each transaction. It would just be too

much of an inconvenience to the consumers and to the retailers. Also, many more pennies would be required by our coinage system.

If our request for limiting package weight designations is not adopted, here is what could happen in the confectionery industry to the disservice of the consumer. Let us assume that confectionery items weighing less than 4 ounces but more than 2 ounces were ordered to be standardized in terms of one-half an ounce. Further let us assume that a particular manufacturer was currently producing an item weighing 2 ounces, his ingredient costs had become lower, and he would then under current practice increase the weight to 2⅛ ounces. If the commodity price decline continued, the package weight then might increase to 2¼ ounces, or 2⅜ ounces. However, if package weights were standardized at one-half ounce intervals, he could not pass this saving on to the consumer unless there should be a sufficient drop in commodity prices to allow him to increase the weight from 2 ounces to 2½ ounces.

An increase in certain commodity prices could also work to the disadvantage of the consumer. For example, assume that a particular item were packaged in a 2½-ounce weight and commodity price increases forced the manufacturer to reduce the weight of the item. He would not be permitted to reduce the weight one-eighth of an ounce or one-fourth of an ounce, but he could only reduce it from 2½ ounces to 2 ounces and he would be doing so to comply with a governmental edict and not because such a package weight reduction were justified from an economic standpoint. The consumer would be the loser, both on the upswing and on the downswing of commodity prices should we have product weight standardization.

I have a number of samples here which I would just like to take a minute to show you, all well known items, which I think will perhaps illustrate my point. Here is a 10 cent Mounds bar, which is currently 2$\frac{1}{16}$ ounces. If we had standardization, this would immediately have to go to 2 ounces. In this particular case the consumer would be the loser to the tune of one-sixteenth of an ounce. Here we have a 15 cent bar, 2¾ ounces. This would have to go to 2½ ounces. He couldn't make it 3 ounces without losing money.

Baby Ruth, 2¼ ounces would have to go to 2 ounces under standardization, and could not go to 2½ ounces unless there were a very, very substantial raw material price decrease to enable him to economically do so. He couldn't go to 2¼, 2⅛, 2⅜.

Here is a Payday bar, 2¼ ounces. It would have to go to 2 ounces and the consumer would be the loser.

I think here is a perfect example. You see here we are dealing with a different set of circumstances. We are not talking about a fellow making 7¼ ounces for 33 cents and another fellow making 9 ounces for 37 cents, and that is tough to figure out. We are talking about establishing retail price. It is 10 cents, it is 15 cents. It is not 9 cents and 11 cents and so forth. It is very easy under the established price system for the consumer to make weight comparisons and, therefore, to determine the value. Of course, there are other things in their determination other than the price and the weight.

But here is a perfect example to establish the fact that this is industry practice. I have here a number of 10 cent bag items made by

a well-known manufacturer. Now these all sell for 10 cents, every one of these. Yet, in this particular item the weight is 2⅜ ounces, in this other item it is 2½ ounces, and in this third item it is 2⅛ ounces. These are all different weights for each different item to reflect the different processing costs of the manufacturer. He gives as much to the consumer as he possibly can, because if he doesn't, let's assume that here he is giving 2⅜ ounces, and another manufacturer sees his way clear maybe to give 2½ ounces; well, the fellow is going to lose sales on this, because we have a very competitive industry, and the consumer is very perceptive we find in picking these things out rather quickly. But this does illustrate, I think, the fact that we do change weights based on our raw material costs.

Let me give you a little case history.

The CHAIRMAN. May I interrupt?

Mr. MINTER. Yes, sir.

The CHAIRMAN. I notice that in the case of your candy bars you had several different brands. I notice that in the case of these cellophane packages of candy that you have here, every one of them is a different type of candy.

Mr. MINTER. Yes, sir.

The CHAIRMAN. I don't believe this bill is trying to change present law where different brands are involved.

Mr. MINTER. Well, perhaps that is so, and I certainly believe that is the intention of the law.

The CHAIRMAN. I don't think it is the intent of this Congress or of the Committee on Commerce to have one brand conform to other brands.

Mr. MINTER. I think what is disturbing to us, that as we interpret it, there is the authority in the bill to standardize package weights. Now this might not be the intention of the committee or the Congress at this time, but I like to think of myself as a relatively young fellow, and I have a number of years hopefully left in the industry, and I would like to think that 10 years from now, when perhaps an administrative official hasn't had the benefit of this discussion, that perhaps he might take a different view, and I would hope that the authority would not be there for him to take a different view. The bill does grant this authority.

Just one further example if I may, to show the variations and to show that this is a case of industry practice. I have here a Hershey bar, a 10-cent Hershey bar. In 1957 the weight of this product was an ounce and three-quarters. In February of 1958 there was an increase in raw material prices. It went to an ounce and a half. But in July of 1960 it went up to 2 ounces, and in 1963, when sugar prices went so high, it had to go back down to an ounce and three-quarters, but presently right now it is back up to 2 ounces.

The same situation applies here with Mr. Goodbar. In 1957 it was 2 ounces, went to an ounce and a half in 1958, went to two and a quarter, up to two and a quarter ounces from an ounce and a half in 1960, then to two and an eighth and presently to 2 ounces.

Mr. FRIEDEL. All selling at the same price?

Mr. MINTER. All 10 cents; yes, sir. This is exactly our point. The price doesn't vary. It is always 10 cents or 15 cents.

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The CHAIRMAN. The consumer knows what he is buying when he buys the Goodbar.

Mr. MINTER. That is right.

The CHAIRMAN. There is no confusion.

Mr. MINTER. No, there is no confusion.

The CHAIRMAN. Go ahead.

Mr. FRIEDEL. You are only worried that the bill would prevent you from making such changes in weight.

Mr. MINTER. That is correct.

Mr. FRIEDEL. You are worried about that.

The CHAIRMAN. Go ahead.

Mr. MINTER. From this explanation you might respond by stating "under those circumstances perhaps confectionery items would not be standardized." Perhaps these items would not be standardized, but they could be standardized; and the best way to assure that standardized weights would not be decreed would be your not giving the authority to administrative officials.

Confectionery items selling at retail for 10 cents or 15 cents are not the only items which the industry packages in weights requested by retailers so they in turn may price the items to be attractive to retail customers. Another category is the 29-, 39-, 49-, and 59-cent bag items normally found in the supermarkets. The weights of these packages must be adjusted upward or downward if commodity prices vary to permit retailers to offer the packages to consumers on a basis which consumers find attractive. Just as consumers prefer to purchase the small-sized confectionery items, which for the most part are vending machine, drugstore or newsstand items, for 5, 10, or 15 cents, the housewife has shown a definite preference to purchase food store confectionery products, which for the most part are larger sized confectionery items, when priced at retail for 29, 39, 49, or 59 cents. So again we have established a constant price situation, not going all over the lot.

The following is another illustration of the type of problem which could occur: Let us assume that the Government should standardize candy packages in weights above 8 ounces at intervals of 2 ounces and that there is a product packaged for a specialty store weighing 12 ounces which the store likes to sell for a dollar. If raw material costs should increase or decrease, current practice would permit adjusting the weight of the package from 12 ounces to 11 ounces or from 12 ounces to 13 ounces, which the specialty house finds desirable rather than changing the price from a dollar to $1.10 or from a dollar to 90 cents. However, governmental dictation as to package weights would disrupt practices of this nature, which are popular with the retailer and the consumer.

I have with me today a confectionery package product by a well-known manufacturer weighing 10⅔ ounces. You will note that it was manufactured for sale by the Camp Fire Girls for fund-raising purposes. The package is priced at $1. This $1 price is virtually mandatory because the girls, in selling the box from door to door, understandably, are not equipped to make change such as would be required if the package were to be sold at 78 cents, 93 cents, $1.04, or some other odd amount. If confectionery packages were standardized in terms of even ounces, it is obvious what the result would be in this case.

The manufacturer is giving the Camp Fire Girls organization as much candy as he can afford to give the organization and still let the package be sold at $1. With the practical circumstances requiring this package to be sold at $1, if the Government should then require the product to be packaged in even ounces, then obviously it would be a 10-ounce package instead of a 10⅔-ounce package. Here again the consumer would lose.

Confectionery consists of a wide variety of products as you have seen in those 10-cent bag items. We have caramels, fudge, jellies, on ad infinitum. In addition to our other objections which I have outlined, obviously it would not be reasonable to standardize weight size for marshmallows on the same basis as peanut brittle and jelly beans or as gum drops, and yet if there were an attempt to adopt different package weights for each of the many different confectionery products, the proliferation would be almost endless.

The only amendment which we believe would cover problems of the type I have outlined would be one providing that provisions of the bill regarding package weight standardization should be limited in their application to confectionery. Both S. 985 and H.R. 15440 provide that no regulation promulgated with respect to any consumer commodity may "establish any weight or measure in any amount less than two ounces;". We proposed to eliminate the semicolon after the word "ounces" and add the words "or if it is confectionery less than one pound."

CONCLUSION

We will very much appreciate the committee's consideration of the industry position on this proposed legislation and are hopeful that our recommendation that the bill not be reported will be accepted, but if not, that the proposed amendment to which I have made reference will be adopted.

The CHAIRMAN. Thank you, Mr. Minter. I think you have been very enlightening. I have these candies here in front of me and I want to get them back down there. I can see what you are apprehensive about, but let me give you the main provision of this bill with respect to sizes and weights.

First, there must be a determination after full hearing and this is a hearing where everybody has a chance to have his say—that sizes and weights are so confusing that price comparisons are impossible. If it is determined after a full hearing, that the price comparisons are impossible, I think it would be fair to say that something must be done, and you would probably come up with some provisions like these, if you were in our shoes or maybe in the housewives' shoes. But we don't want to hurt the industry or the manufacturers at all. We want to be fair, but we have got to be fair to both sides.

Mr. MINTER. Yes.

The CHAIRMAN. Next, voluntary standards then are worked out with industry participation in Department of Commerce procedures. That is voluntary. In such proceedings, representatives of all the candymakers of the land would participate to develop standards to eliminate the confusion so that the consumers can make price comparisons.

Mr. MINTER. What I was trying to point out, sir, is that we have somewhat of a different set of circumstances here.

The CHAIRMAN. I know.

Mr. MINTER. In that there is not price confusion. It is 10 cents.

The CHAIRMAN. I agree.

Mr. MINTER. Or it is 15 cents, and if there were standardization, then——

The CHAIRMAN. We are not talking about standardization, not at all. We are talking about doing away with a lot of this confusion and being fair to the consumers of the land.

Mr. MINTER. Yes.

The CHAIRMAN. We are not trying to standardize.

Mr. MINTER. We certainly appreciate this.

The CHAIRMAN. Third, if efforts to agree on voluntary standards succeed, then it is hoped the industry will voluntarily comply with those standards. If industry, however, fails to adhere to the standards, then the agencies may adopt the standards as regulations and enforce them.

If efforts to agree on standards are unsuccessful, then the agencies conduct formal proceedings in which they will receive comments on proposed regulations. After studying the comments, they will adopt regulations which may be challenged in the courts to see whether they are legal. This gives every person the right under the Constitution to go to court and say, "I have been mistreated and wronged."

Mr. MINTER. I appreciate your explanation. I am sure the intention is that. Our concern is the fact that the authority is there to standardize weights, and I think probably we might agree that over the years administration officials do have somewhat of a tendency to accept the authority that is bestowed upon them.

The CHAIRMAN. Let me tell you that, in the case of every one of these labeling laws that has ever been before this committee, the same objections have been raised on all of them. Yet, they have been very successful, every one of them. If you weren't a different person, I would say you were giving the same speech that was given on every one of those labeling laws.

But they are working successfully, aren't they? They were enacted for the benefit of the people of this land. This committee is trying to be helpful to all. We want to protect the manufacturers' right and we don't want to standardize everything and insist that everything must be packaged the same. That is not at all our purpose, and it won't be done.

I have outlined the four steps in the procedure that must be followed and, finally, if you are not satisfied, you have access to the courts of this land. I think that you will never have to go there. If we pass the bill out and something goes wrong we can come back and take another look at it.

But the time has come, and I will tell you this is the feeling all over my district—I don't know about the rest of the Congressmen—but in my district they say, "Let's get something."

Mr. MINTER. Yes, sir, I have agreed in certain instances something is needed; there is no question about that. We are hopeful that our amendment will be adopted by the committee.

The CHAIRMAN. Your proposed amendment will be given consideration, exempting candy less than 1 pound.

Mr. MINTER. Yes, sir; "or if it is confectionery less than 1 pound."

The CHAIRMAN. We will give it consideration. I want to thank you for coming here and giving us the benefit of your views. I don't want to be left with this candy. I will give it back to your assistant if he will come up here.

Mr. Friedel.

Mr. FRIEDEL. Mr. Minter, I want to compliment you on a very fine statement. I was interested in your statement on the coin machines where the price is 5, 10, or 15 cents. My own belief is that I think you are unduly alarmed. I don't think this bill will affect you and maybe we will adopt your amendment, I don't know.

That is all I have to say, Mr. Chairman.

The CHAIRMAN. Mr. Divine.

Mr. DIVINE. No questions.

The CHAIRMAN. Mr. Jarman.

Mr. JARMAN. I have no questions.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. Thank you, Mr. Chairman. What percentage of the candies sold are from vending machines? Did you cover that in your statement? I missed part of it.

Mr. MINTER. No, sir, that isn't in my statement. I have here the publication "Confectionery Manufacturers' Sales and Distribution, 1965." Bar goods and 5 and 10 cents specialty items, according to this survey, which are the kinds of categories to which I was was referring in mentioning vending machines and cigar counters where nickles and dimes are mandatory, in 1965 comprised 44.5 percent of the total dollar sales of the industry manufacturers.

Mr. NELSEN. In other words, it would be very important that certain standard sizes be not made a rule, in view of the fact that there may be variations as to cost of items that go into a candy bar. In other words, you couldn't maintain a 5-cent or 10-cent or 25-cent level.

Mr. MINTER. Absolutely. That is my whole concern. We do have to vary weights because we deal with widely fluctuating raw material prices. On the upswing and on the downswing of these fluctuations, if we had weight standardization, the consumer would be the loser.

Mr. NELSEN. I see. Now it is mentioned by our good chairman that if action were brought, it could be challenged in the courts. I would agree if everyone was as fair as our chairman I wouldn't have anything to fear. I have had some personal experience with people in governmental positions, however, that are rather frightening at times. There is a very great appetite to exercise power, and this exercise can be abused.

Now I am still pursuing the cease-and-desist idea that I have been talking about. It is my understanding that if in the judgment of authorities involved they find that the regulation has been violated, you have recourse in the courts, of course, but you are ordered to cease and desist until you prove that you are not in violation, and the burden of proof is on the producer. I would like to refer to and introduce in the record a statement that was made at the 59th Annual Convention of American Wholesale Grocers. I have a copy of a telegram which

quotes from the March 15, 1965, Supermarket News, referring in part to a statement by a gentleman from Amsterdam, the Netherlands. He referred to this particular type of legislation and he said:

> Europeans still shudder at the effect of the planned economy which hampers private industry. Competition in the United States is fiercer than anywhere else but it has worked well. Don't hinder it. Just supervise it, and if the manufacturer or retailer is using improper methods, he will be discovered and soon out of business.

"We have no differences of opinion on this," Mrs. Peterson is quoted as having answered.

(The telegram referred to follows:)

[Telegram quoting from Supermarket News, Mar. 15, 1965]

"Mrs. Esther Peterson took special pains Tuesday to impress on the food industry that she is not an ogre. Speaking here at the 59th annual meeting of the National American Wholesale Grocers' Association, the Special Assistant to the President for Consumer Affairs stressed, time and again, that she has the highest respect for the industry's accomplishments, understands its difficulties, and has no intention of upsetting its applecart. Whether President Johnson's consumer adviser was able to persuade the crowded gathering of wholesalers and manufacturers of her good intentions could not be ascertained. Her remarks drew polite but not enthusiastic applause. On the other hand, it was obvious that whatever her intentions, many in the audience fear the consequences of her activities. This was concluded from the standing ovation which greeted a virtual plea for unfettered free enterprise made from the audience.

"Interestingly, this plea did not come from any of the American food executives attending, not one of whom objected to Mrs. Peterson's contentions during the question-and-answer period. Instead, it was made in a courtly manner by Robert Van Schaik, director general, Union Vege Europeenne, Amsterdam, the Netherlands, who had preceded Mrs. Peterson on the Speaker's rostrum. 'I don't know the power of your office,' Mr. Van Schaik said, 'But I implore you to use it as wisely as you've spoken. Europeans still shudder at the effects of a planned economy which hampers private industry,' he continued, 'competition in the United States is fiercer than anywhere else, but it has worked well. Don't hinder it, just supervise it. If a manufacturer or a retailer is using improper methods he will be discovered and soon will be out of business,' Mr. Van Schiak concluded. 'We have no difference of opinion on this,' Mrs. Peterson answered. 'Our tremendous distribution system has been responsible for the high standard of living in this country,' she said, 'I have no intention of stifling or changing anything.' "

Mr. NELSEN. I want to assure the gentlemen that this committee certainly wants to maintain the fierce competition in the United States, and I hope our legislation when we get through with it—I am sure the chairman would agree—won't disturb that.

I thank the gentleman for his testimony. I think it is very important, in view of the fact that the candy industry does a great amount of their business through vending machines, that there must be some flexibility to take care of costs that may vary, in order to maintain a standard price, as properly marked. Thank you for your fine testimony.

Mr. MINTER. Thank you very much, Mr. Nelsen.

(Off the record.)

Mr. MINTER. I might say, I, too, was greatly concerned with the testimony that I heard from the Federal Trade Commission witness. As I interpreted what he said, if he finds a violation now he has got to prove it in the court. The person is innocent until proven guilty. I assume this bill gives him authority to the effect that, "When I say

you are guilty, you are guilty and you have to come to me and prove you are innocent." I think this is a reversal of the standards in this country.

The CHAIRMAN. I might say that this committee wouldn't pass any legislation providing for arbitrary standardization. I would put the wisdom of these 32 members besides myself on the committee against any such proposal.

Mr. NELSEN. For the record, I am going to clear up a point which has been disputed up until now relative to an example that was shown which pointed out that the quality and the content of the two packages that were compared are not identical .

When Mrs. Helen Nelson, consumer counsel for the State of California, appeared before our committee, she listed the retail price, quantity, and price per pound charged for an unnamed instant mashed potato from before January 1962 through June 1965, a period in which four package changes occurred.

Mrs. Nelson's charges assume that all reductions in weight are for the purpose of masking price increases. In point of fact, the reductions of which she complains were part of a highly successful program to improve the quality of the product.

In the past, there were only two forms of instant mashed potatoes—granules and flakes. Serving declarations on products already on the market indicated a serving to be approximately one-half cup, the same size serving recognized by the U.S. Department of Agriculture as an average serving. Unfortunately, the granule-type product failed to please the consumer, as shown by the low sales volume. To correct this, several formula changes were made, adding emulsifiers and for awhile dry milk products and later an improved form of granule. Each change indicated an improved product but at different weight levels. Each package contained "eight servings" according to accepted definition, although the net weights varied, 7.2 ounces, 7 ounces, 6 ounces, and 6.5 ounces.

About a year ago, the research people came up with instant mashed potato puffs, a new form of instant mashed potato product which yielded a lighter and fluffier mashed potato, free of heavy lumps. These potato puffs are a lighter, less dense product than the traditional granules and flakes and as a result had different and improved properties. A smaller quantity by weight would make a lighter, fluffier serving as measured by the traditional ½-cup serving. Thus, a lower weight package of the new product provides the eight ½-cup servings declared on the package label.

Mrs. Nelson's position in this matter is typical of the great difference that exists between the consuming public and the thinking of people like Mrs. Nelson who purport to speak for the consumer. Mrs. Nelson thinks in the 19th century bulk grocery terms of cents per ounce and pound. To her, weight is all important. But the other 99 percent of the people, think in terms of total quality, which they do not equate with weight.

Mr. CHAIRMAN. Mr. Macdonald.

Mr. MACDONALD. I just have one question, Mr. Chairman. I think it applies to all the people who have come here to protest passage of this legislation. I think if you look carefully on page 7 of the bill,

section 5, it only goes, the standardization as the opponents of the bill keep saying, to that which is likely to deceive retail purchasers. Therefore, as was said before, I think you are looking for bogeymen under the rug that aren't there, because if the manufacturer—I know of my own knowledge that the candy industry is a very good one and a well-run one.

Unless there is intention to deceive, this bill would have no application, and, therefore, it seems to me that you are protesting something that doesn't exist.

Mr. MINTER. I certainly hope you are right, Mr. Macdonald.

Mr. MACDONALD. Just look at the language. That is what the language says.

Mr. MINTER. I believe our industry would rest a lot easier if our amendment were adopted, sir.

Mr. MACDONALD. I know that you have good counsel and I know you have got good representation, but if you just look at line 13 on page 7, I think that takes care of all your problems. Therefore, I don't see why you are concerned, because only those people who are packaging things in sizes, shapes and proportions which are likely to deceive—and I don't think this is true of 99.44 percent of the manufacturers of candy. Therefore, why should you protest something that isn't going to affect you?

Mr. MINTER. I might use another example to perhaps answer that question, sir. I have been talking about brand name items here by large manufacturers. Our industry is characterized by a relatively few number of large manufacturers, and many, many, many small manufacturers.

We are a small manufacturer. We don't have name brands. We don't have a big advertising budget. We don't have all kinds of promotional activities that can in a sense force the sale of our product at the retail counter. In lieu of that, we have to find a position for ourselves as do many other smaller manufacturers in the marketplace, through other means.

We have to use ingenuity. We have to use creativeness. We have to try new channels of distribution to try to get sales. I am sure that you recognize that constantly increasing sales are a must for any company today, just as profits are a must.

I think this answers somewhat your point. This product I have in my hand happens to be a product which we manufacture. Now there is no attempt to deceive here. As a matter of fact, this product is sold through a particular channel of distribution where it is presold. It is sold actually door to door by milkmen. There is nothing confusing about it. The consumer knows exactly what he is getting. The price is there, the weight is there, no question about it. This is 10 ounces.

I make no bones about the fact that it is priced higher for 10 ounces than a bag which went through a wholly or fully automatic process. But we had to develop this kind of product to find sales.

Perhaps hard candy might be standardized at a pound. If so, we couldn't make this product.

Mr. MACDONALD. I think everyone is going under the assumption that the FTC or somebody is going to be very unreasonable, and

certainly it is not the intent of this member of the committee, nor do I think of any others, to permit any agency to be unreasonable. Therefore, if you have to charge more because it is more attractively packaged, I think it would be unreasonable for the FTC to say, "No, you can't do that." I don't think they would do it. Certainly there has been no testimony that would indicate that that is what we want to do.

Mr. MINTER. The authority is granted to do these possibilities and we think we have a valid case to have our amendment fully considered.

Mr. MACDONALD. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Mr. Curtin.

Mr. CURTIN. Thank you, Mr. Chairman. Mr. Minter, I am very glad you have testified today because I must confess that the possible effect of this proposed legislation on the candy bar industry is something I, at least, hadn't considered at all.

Could you tell us what percentage of the candy industry is in the candy bar field as against the packaging of candy in 1- 2-, and 5-pound boxes?

Mr. MINTER. Yes. The bar sales and 5 and 10 cent specialty items comprise 44.5 percent of total sales. This is according to the survey I have here entitled "Confectionery Manufacturers' Sales and Distribution, 1965," by the Department of Commerce. It was 44.5 percent of the total.

Mr. CURTIN. You have indicated, I believe, that the candy bar industry has ascertained that these candy bars be sold in multiples of fives, that is 5, 10, 15 cents, something like that.

Mr. MINTER. Yes, sir.

Mr. CURTIN. Now I recall that in vended cigarettes, that sometimes the price is not in multiples of 5 cents, getting a package of cigarettes, but that the industry had pennies inside the cellophane packages in the form of change. Has that ever been considered for the candy bar industry?

Mr. MINTER. Fortunately, the cigarette manufacturers had a piece of paper on top of their package and overwrap them by cellophane and they put the pennies in between that. I think the Federal Food and Drug—we don't usually have a double wrap. We have a piece of candy in cellophane. I think perhaps the Food and Drug Administration would have something to say about our putting coins in the same package as the candy, not only because it would contact them, but maybe there is the danger of a child not recognizing there is a couple of cents in there and plunking the pennies in their mouths by mistake too.

Mr. CURTIN. So that if the weight was standardized in candy bars, which would result in a price of, say, 6 or 4 cents, it wouldn't be practical to put the change from 5 or 10 cents in the candy bar.

Mr. MINTER. I just don't see how we could do that.

Mr. CURTIN. I notice you have another box in front of you. It that a pound box of candy? Do you also package that type of candy?

Mr. MINTER. Yes. This is another item that we manufacture. Again, perhaps this might serve to answer Mr. Macdonald's question. The bill gives the authority to not only standardize weights but to designate package sizes, too. So let's assume that 1 pound of hard candy were standardized in a package 3 by 4 by 6 inches. Now this

is a pound of hard candy. I have here in my hand. It is a very attractive item we think. It is a table decoration at Christmas time which can be reused. It can be a nut holder or a card holder or a cookie holder.

Nobody is being deceived by how much candy is in here, and all the advance sale literature says it is a pound. But it is a lot bigger box than a pound of hard candy would normally go into. The authority is given to outlaw perhaps such packaging. This is the way we get business. We have to come up with ideas, because we can't compete on a brand name basis.

Mr. CURTIN. Is there a label anywhere on that package indicating what is the weight of the enclosed candy?

Mr. MINTER. Oh, yes, 1 pound net weight. This again is presold through flyers here, the price, the weight, and everything being clearly stated.

Mr. CURTIN. Thank you, Mr. Chairman.

Mr. FRIEDEL (presiding). Mr. Van Deerlin.

Mr. VAN DEERLIN. No questions.

Mr. FRIEDEL. Mr. Harvey.

Mr. HARVEY. Thank you, Mr. Chairman. Mr. Minter, are there any other comparable products that would be faced with the same problem as the confectionery products? Are there any other small items such as this? I am thinking in terms of this committee's consideration. Can you think of any other ones that are in small sizes that would all fall in the same category?

Mr. MINTER. I can't think of any right offhand, although I would say that possibly there are. Maybe snack items perhaps.

Mr. HARVEY. What?

Mr. MINTER. Snack items, peanuts.

Mr. HARVEY. Those that are dispensed in the vending machines, crackers with peanut butter perhaps?

Mr. MINTER. I don't know what their industry practice is. I am stating what the candy industry does, and this would be a very, very serious blow to our industry if we had weight standardization. I don't know if there are other industries that have the same kind of problem as we do or not.

Mr. HARVEY. Would crackers and so forth be covered by your exemption? They would not, would they? Are they considered to be confectionery items?

Mr. MINTER. No, sir.

Mr. HARVEY. They would not be covered by your exemption. So your exemption would not be broad enough to cover anything other than your own particular product.

Mr. MINTER. No, our amendment as suggested would say, "or if it is confectionery less than 1 pound."

Mr. HARVEY. Tell me, Mr. Minter, what share if any of this market do imported products have? In other words, are you faced with competition from European countries, from candies being imported and so forth?

Mr. MINTER. Yes, this is very strongly on the increase.

Mr. HARVEY. And how would this bill affect the manufacturers in foreign countries? Would they have to comply as well, shipping their products in the same sizes as we specify?

Mr. MINTER. If they ship here they would have to comply.

Mr. HARVEY. I have no further questions. Thank you.

Mr. FRIEDEL. Thank you. Mr. Mackay.

Mr. MACKAY. Thank you, Mr. Chairman. Mr. Fred Sealy, one of your members, of the Johnson-Fluker Candy Co. in my district, told me not to miss your testimony and I am glad I didn't because I learned something from him and from you, and that is the fact that the candy bar fluctuates up and down and not just down. I thought it was just shrinking on account of inflation.

Mr. MINTER. There is no question that happens when there are rising costs but I think the example I stated in the case of Hersheys, for example, when economics justify it, it goes up.

Mr. MACKAY. It seems to me that your testimony is a perfect illustration of the desirability of acquainting the committees of Congress with a particular industry problem, because as I see it, the coin vending factor in your business is unique and deserves very careful and special consideration.

Mr. MINTER. Thank you.

Mr. MACKAY. I would say, though, that my wife has explained to me that candy is very deceptive in terms of the number of calories. You had better look into this bill and see if it wouldn't permit labeling on that score.

Section 3 and section 4, Mr. Minter, seem to me to be the positive part of this bill. These sections require certain things to be done. Section 5, the additional regulation section, may be something that is going to be done. Could you state for your association whether there is anything in sections 3 and 4 of this bill, any requirement regarding labeling which you think is not justified or presents any particular problem to your industry?

Mr. MINTER. I can't say positively in regard to this. Our concern is with section 5, and I would have to reread carefully sections 3 and 4.

Mr. MACKAY. Since there are really two different approaches, it would be helpful to know whether there is any possible objection to the labeling requirements.

Mr. MINTER. I don't believe sections 3 and 4 are of primary concern. Our concern is with section 5.

Mr. MACKAY. As a practical matter it is pretty much of a restatement of existing law; isn't that true?

Mr. MINTER. Yes.

Mr. MACKAY. You are required to put the purchaser on notice as to content, weight, and so forth.

Mr. MINTER. Yes.

Mr. MACKAY. Now with regard to the 2-ounce feature, I suppose you refer to page 9 of the House bill, Mr. Staggers' bill, H.R. 15440.

Mr. MINTER. Yes, sir; subsection 2, line 16. Presently it is any amount less than 2 ounces. As I pointed out in my testimony, that covers nickel bars. It does nothing for 10-cent and 15-cent items.

Mr. MACKAY. And as I understood from Mr. Sealy and from your testimony, the objection to 2 ounces is that there are tolerances within 2 ounces, up or down.

Mr. MINTER. Yes.

Mr. MACKAY. Which would operate.

Mr. MINTER. Yes, a lot of these are hovering up and down around 2 ounces. For instance, here are two packages which retail at 10 cents each. I didn't mention this. These two packages are chocolate items and chocolate is the most expensive ingredient—these wouldn't be affected at all because they weigh less than 2 ounces, but yet all of the others would be affected. But, they are all 10 cents.

Mr. MACKAY. I am sure you followed this legislation through the other body, and I wondered if you could state what their case was for choosing this particular arbitrary figure of 2 ounces?

Mr. MINTER. I think probably it is involved with Life Savers. I think there is some reference in your proceedings there where they would outlaw the hole in the Life Savers. I think that point was considered, but unfortunately they only considered the nickel situation and didn't go far enough, because the larger unit items weren't considered.

Mr. MACKAY. Do you know what case the proponents advanced for the 2-ounce figure, why they would not establish any weight or measure in any amount less than 2 ounces?

Mr. MINTER. No, sir; I don't.

Mr. MACKAY. One other thing that interest me about the packaging of candy. You buy an attractive boxed candy such as you have there. Under an extreme interpretation of the regulation, and this is always possible, you might have an administrator who said you can't have any false bottom in your box of chocolates or you can't use the type of device you have there which is very attractive. You didn't mention that as a possible abuse of this.

Mr. MINTER. Yes, that is certainly possible.

Mr. MACKAY. It seems to me that the point you have made is very well taken and I would share Mr. Harvey's interest in knowing whether there are other people involved with the coin machine situation other than candy manufacturers? But we can ask the staff to look into that.

Thank you very much.

Mr. MINTER. Thank you, sir.

Mr. MACKAY. No further questions.

The CHAIRMAN. Dr. Carter.

Mr. CARTER. In your packages I notice you are fearful that the size of your packages which vary with the cost of the ingredients may be interferred with by this act. Certainly, I can understand that, but would you have any objection to a label on the package stating exactly the number of ounces?

Mr. MINTER. It is on there presently.

Mr. CARTER. Yes, sir. Of course, you vary that up and down you say according to the price that you pay for it.

Mr. MINTER. Yes, sir.

Mr. CARTER. And then, of course, the cost per ounce can easily be seen by the consumer, and as I gather it, that is the purpose of this act, the comparability feature.

Mr. MINTER. Yes.

Mr. CARTER. Thank you. That is all.

The CHAIRMAN. Mr. Farnsley.

Mr. FARNSLEY. Thank you, Mr. Chairman. I share your fear of standardization. I understand what you are talking about. Suppose

we passed your amendment and then adopted a part of this law or other laws which said on Mr. Goodbar for instance in the same typeface as "Mr. Goodbar" how many ounces. Would you have any objection? Hold up Mr. Goodbar and tell me how many ounces are in it.

Mr. MINTER. Two ounces.

Mr. FARNSLEY. Suppose it said "2-ounce Mr. Goodbar" in the same type face as Mr. Goodbar, would you object?

Mr. MINTER. Yes; I think we would. I think present labeling requirements do protect the consumer adequately. You don't have to hunt and search. This says clearly 2 ounces. I think we want to make packages as attractive as possible in the use of lithography, color, shape, size, and so forth. I think it would destroy the impulse appeal of the wrapper if you had to have a big 2 ounce the same size.

Mr. FARNSLEY. I should know what the present rule is about how big the ounces has to be and where it is on the package. Can you tell me what the present rule is?

Mr. MINTER. It has to be where it can easily and readily be seen by the consumer, and in the way it is normally displayed and offered for sale. It has to be of a type that he can readily see. It must contrast with the background. If you have a dark background you have to use white letters say. You can't use chocolate so he has to fish all around and see it. Present regulations require that it be easily read and legible—visible.

Mr. FARNSLEY. I have to confess that in buying from a vending machine I find it difficult to compare ounces. You would object to any larger designation of the ounces? In other words, you don't want it any bigger than it is now or any more standardized as to where it is on the package or the kind of type it should be?

Mr. MINTER. Presently it has to be so it is clearly discernible to the consumer. If it isn't, it is in violation.

Mr. FARNSLEY. Visible to the consumer holding it in his hand maybe. I have trouble in quickly comparing the ounces in a vending machine. Your objection to putting it the same size of the label is purely esthetic. You have touched my heart with this business about how the price goes up and down. You keep me posted on the price of sugar.

It seems to me the law says it has to be easily read; but it isn't easily read, and it isn't easily compared. Now you are not willing to go as far as making it as big as Mr. Goodbar or Hershey, and you are not willing to go any further than the present size or the present standardization as to location, is that right? Is there any compromise you would be for? Half as big as the label or something?

Mr. MINTER. The law requires that it be easily visible.

Mr. FARNSLEY. You have told me that.

Mr. MINTER. If it isn't so in a vending machine, then the size and the location needs to be increased.

Mr. FARNSLEY. I don't mean to be rude, but you have told me that twice. Now I am asking you a straight question. Are you in a position to say now whether you would compromise for a larger labeling or a more uniform location or one more easily read as to the ounces? Of course, my being for it doesn't make much difference. I am a "lame duck." But I am just interested in the position of the industry.

You don't want the number of ounces any bigger than it is now?

Mr. MINTER. I am not in a position to say what position the industry would take.

Mr. FARNSLEY. You are from a nice company and I know how hard it is to run a little company. How do you feel about it? Would you want it to be bigger?

Mr. MINTER. If it can't easily be seen at the present time I certainly would; yes, sir.

Mr. FARNSLEY. But the law says it has to be easily seen now. So you want to stay with the present rule.

Mr. MINTER. Enforce the law.

Mr. FARNSLEY. You have answered my question. Thank you.

The CHAIRMAN. Thank you. Mr. Adams.

Mr. ADAMS. I was quite interested in all the items that you have there, are what I would say in the candy business would be specialty items. For example, you compete between the Baby Ruth bar, Mr. Goodbar and so on, on a specialty basis. People don't buy ounces or a brand. They buy a confection.

I notice you don't have any of the pound boxes of candy or the 2-pound boxes. I will ask you this question. Do you vary the weights in the pound or 2-pound box?

Mr. MINTER. No; we have a different situation there. The weights stay the same. A pound box is always a pound. It is the price.

Mr. ADAMS. The price varies. Now do you have in your business a sampler or a standard size box that may not say one pound on it, but to the public they buy it as a 1- or a 2-pound box, or do you standardize right across the board that a pound box of candy is a pound box of candy?

Mr. MINTER. Well, a pound box of candy couldn't be for all manufacturers the same size. For instance——

Mr. ADAMS. Yes, I know it might vary, but let me get down to this. Take a Sampler. I am trying to remember which one, I think it is Whitmans puts out a Sampler.

Mr. MINTER. Yes, right.

Mr. ADAMS. It is a box that you go in and buy something for Valentine's Day; you have got two or three boxes.

Mr. MINTER. Right.

Mr. ADAMS. Is that a pound or a 2-pound box or is that a variable weight box?

Mr. MINTER. That is 1 pound.

Mr. ADAMS. OK.

Mr. MINTER. Or 2 pounds.

Mr. ADAMS. Or 2 pounds, all right. Now I want to know about the candy bars, the big bars, not little ones, where you buy the big Hershey bar. This varies in price. In other words, it may be 18 cents, 29 cents, and so on. Does the weight of that vary?

Mr. MINTER. I don't know which bar you are referring to.

Mr. ADAMS. I am referring now to the big bars that are beyond this, beyond the 10-cent bar.

Mr. MINTER. You are talking about the ones that have a constant price of 29 cents let's say at supermarkets, then the price wouldn't vary, but the weight would if the situation demanded it.

Mr. ADAMS. The weight would vary from time to time. In other words, that does not have a standard weight. You peg that to a price?

Mr. MINTER. That is correct.

Mr. ADAMS. Now the price can also vary on that, can it not among the stores?

Mr. MINTER. Generally not. There might be some specials, some promotions which an individual retailer might have from time to time, sure.

Mr. ADAMS. Now as I understand it, you in answer to Mr. Mackay's question, basically the labeling provisions, the mandatory provisions in 5(1)(c) are something you are not worried about. You are worried about the second section. Has your industry ever gone in under the voluntary products standards and attempted to establish in the Department of Commerce, attempted to establish any kind of standards?

Mr. MINTER. No, sir; not to my knowledge.

Mr. ADAMS. Either in terms of volume or in terms of unit prices or in terms of weights? Not at all?

Mr. MINTER. No, sir.

Mr. ADAMS. Why not?

Mr. MINTER. Let's go back to the 1-pound box, for instance. Let's take the Whitman 1-pound Sampler. We make chocolates but ours are different sizes. Whitman's—I think the 1 pound runs about 46 pieces to the pound—is an assorted box of chocolates. Our assorted boxes run 42 pieces to the pound, so it would require for a pound a different size box.

Or let's take miniatures. Now they run about 80 or 85 pieces to a pound. That would comprise a different size box.

Mr. ADAMS. Your industry has standardized in the fact that it has 1- or 2-pound boxes. What I am asking, in any place in your industry now is somebody relying on the familiarity of the box or the familiarity of their brand, taking the weight designation of 1 pound and just removing that and putting on it the proper label that this now contains 14 ounces or 14½ ounces on the brand carried? Has that been done yet?

Mr. MINTER. I don't know honestly whether it has or has not.

Mr. ADAMS. Could you find out through your association, and make it available to us, not today, but just submit it to us?

Mr. MINTER. I will certainly try to find that out.

Mr. ADAMS. Thank you. No further questions.

The CHAIRMAN. Any further questions? Mr. Springer.

Mr. SPRINGER. May I ask this. I think your statement is excellent. Nearly all of these who come in has a particular problem. Now as I run through it, you have problems but your big one as I gather it is in the candy field because practically all of the manufacturers of bars we will say are 5, 10, or 15 cents. Some of them I notice in the theaters are 25 or 35 cents, but mostly as you say, 43 percent of all candy is sold in bars.

Now, I have watched this and I notice especially the smaller bars go up and down as the products that go into it go up or down accordingly. Your problem is being sure that you are in the 5- and 10-cent range at all times, so that you can operate economically.

Mr. MINTER. That is correct.

Mr. SPRINGER. In other words, you have to operate at a profit to stay in business. The problem is, say on the day cocoa beans are selling at 10 cents, if cocoa beans go to 7 cents, which has happened at one time, would you have to lower or raise the size of the bar to keep it in the 5-cent range. We will say if it is a Heath bar, which happens to come from my particular area, not in my district I may say, a very fine candy company. That goes up and down as the price of the products go up and down that go into the bar.

Now if you have an ounce or 2-ounce bar——

Mr. MINTER. Heath?

Mr. SPRINGER. Yes.

Mr. MINTER. Heath is an ounce and three-quarters.

Mr. SPRINGER. In the 2 ounce range, if they set up a Heath bar at 2 ounces or an ounce and a half or an ounce and three-quarters, then each time they had a change I take it you would have to come back for regulation again? Is that your thinking of what would happen if you had these standardized practices?

Mr. MINTER. I don't know if that would be required or not. I don't believe it would, sir. If that were required, that would really be a problem. We would be in and out of——

Mr. SPRINGER. What do you think this bill does to the candy industry? That is what I am trying to figure out. It is my understanding from reading the bill, I have just reread these sections here on pages 6 and 7. It would be my understanding that they can define the size of this package.

We will assume that it is 2 ounces. We will say it is 2¾ ounces. It is 10 cents instead of a nickel. It is my understanding here that they can establish the net quantity of any product in terms of weight measure. That is a serving.

Now do you think under this bill they can set the net quantity of the contents?

Mr. MINTER. I think the bill gives them the authority to do so.

Mr. SPRINGER. That is what I understood. I believe that is all the testimony we have heard on crackers and canned goods here yesterday and the day before. If that is true, then do you think under this legislation if the Federal Trade Commission says that it must be 3 ounces, then you would have to come back when the cost of this article goes up, if you want to stay at 10 cents; is that correct? You would have to do that or raise it to 11 or 12 cents.

Mr. MINTER. That is correct.

Mr. SPRINGER. You would have to raise the price if it stayed at 2¾ ounces.

Mr. MINTER. At that one specific weight; yes, sir.

Mr. SPRINGER. Now this is a problem. I can see that the candy industry would find it extremely difficult if this is what you have to do. I want to be sure that your understanding of this is the same as mine. Does your counsel advise you that this is your interpretation of the bill?

Mr. MINTER. We interpret that it could be standardized, but in increments. For instance, we make an assumption here in our examples that let's say a candy bar could be standardized in half ounce incre-

ments or even ounce increments. Now we presently move in sixteenths and an eighth of an ounce increase, but under standardization it could be made in ounce increments.

If the intention is to remove the proliferation, and we presently go in one-sixteenth and one-eighth, then presumedly they would not limit it to less than half or maybe even an ounce.

Mr. SPRINGER. Another thing has bothered me a little bit is the quality of bars. Now I can take some bars, and I have recently done this, and tasted them since this hearing started, to get sort of a picture. It might be that I have a preference for certain types of candy, but it seems to me that there is a substantial difference in the quality of candy in bars. Is that true or not?

Mr. MINTER. Unquestionably, and certainly price and weight, especially in the candy field——

Mr. SPRINGER. If you are going to say that a candy bar must be in 2 or 2½ or 3 ounces, what this then does goes to the question of quality, where the man wants to stay in the same field, where a fellow who gives you this long a bar for a nickel and the fellow who gives you a smaller size, they are certainly not going to be the same in weight, are they?

Mr. MINTER. There is no question about it.

Mr. SPRINGER. This raises some real problems and I want to be sure the committee gets into this whole question of candy. There is another thing I am interested in and then I am through. Do you have any figures, and from your statement I am not sure, on what this will do to the question of costs to your industry if this standardization takes place? I am talking about what would be the effect on costs. You are in the manufacturing business; aren't you?

Mr. MINTER. Yes, sir.

Mr. SPRINGER. I assume you know something about it.

Mr. MINTER. Yes.

Mr. SPRINGER. What would this do on the question of costs? I am not talking about the wrapper. But what would this do on the question of costs?

Mr. MINTER. You mean our production costs?

Mr. SPRINGER. Yes, if we had standardization.

Mr. MINTER. I don't see that it would have any appreciable effect one way or the other.

Mr. SPRINGER. On the whole question of costs it would not. Your big question is the question of being able to adjust the bar to stay in the 5-, 10-, and 15-cent category.

Mr. MINTER. It would have a ruinous effect on sales.

Mr. SPRINGER. It would what?

Mr. MINTER. It would have a ruinous effect on sales if we couldn't maintain a consistent 5- and 10-cent package.

Mr. SPRINGER. If you had to go to 6, 7, 11, or 12 or 18 cents.

Mr. MINTER. It is an impulse item and people are simply not going to wait around for 2 or 3 cents in change. They are not even going to pick it up.

Mr. SPRINGER. This is your real problem.

Mr. MINTER. Yes.

Mr. SPRINGER. This is the impact of this legislation on the 5-, 10-, and 15-cent bar.

Mr. MINTER. Absolutely.

Mr. SPRINGER. You are pretty well convinced, your industry is pretty well convinced of this unanimously?

Mr. MINTER. Yes, I am representing the industry in this position.

Mr. SPRINGER. Have you had any sales tests on this?

Mr. MINTER. No. We honestly haven't. There are isolated instances, let's say where there is an ordinance in a resort hotel or something where they might get 6 cents for normally a nickel bar, but they don't sell many of them.

Mr. SPRINGER. This is rather irritating to me. For instance, I went to the Mayflower the other day and I bought a 5-cent bar and they asked for another penny. That is 20 percent more. I could have walked across to Peoples and got it three for a dime. It not only irritated me, but I think if I had known it was 6 cents I probably would not have bought it, that is very true. So here is the Mayflower on one corner and Peoples directly across the street which is selling three for a dime, the same bar that I bought in the Mayflower for 6 cents, but I think it was the fumbling around to get that extra penny which ordinarily I think if I had known it was 6 cents I wouldn't have gotten it. I understand your problem.

Mr. MINTER. Thank you, sir.

THE CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Florida. May I state I can see your problem, too, where you have a fraction over the ounce, and actually I presume the way you do it, it would work out to be a saving for the consumer, does it not?

Mr. MINTER. No question about that, sir.

Mr. ROGERS of Florida. Then, of course, you have all these machines now that so much candy is sold from that you can't very well change the machines to make them put in 12 cents or 6 cents. You would have to change all the machines.

Mr. MINTER. I suppose that would be possible. The cost would be frightening, No. 1, and No. 2, I don't think people are going to fumble with the pennies for the 12 cents.

Mr. ROGERS of Florida. So it would be helpful to the industry simply to increase this exclusion. They have agreed that they shouldn't cover 2 ounces and under.

Mr. MINTER. Yes.

Mr. ROGERS of Florida. You are saying a little over that would be helpful to the industry.

Mr. MINTER. Right, but 1 pound would then cover all instances. There must have been some reason for it in the first place to come up with 2 ounces. What I am trying to point out is to cover the situation fully the exclusion should be "if it is confectionery less than 1 pound."

Mr. ROGERS of Florida. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Farnsley.

Mr. FARNSLEY. Let me offer you a little free advice. Go back and talk to your people. I don't say you have to do anything, but it might be that you can suggest a larger amount as a compromise without destroying the esthetics of your product.

Mr. MINTER. The size type?

Mr. FARNSLEY. I don't want to destroy the candy business. I was in the legislature and in city hall. Everything is always going to destroy the industry. You realize that you are not the first industry to be destroyed. But it is possible that you could be noble and not really destroy yourselves by making the label a little bit bigger, I mean the pounds or ounces, and then you could say, "Well, Coca-Cola has to do it too." Make everybody else do the same. It can't hurt to kick that around a little bit. Thank you.

Mr. DINGELL. Mr. Chairman.

The CHAIRMAN. Mr. Dingell.

Mr. DINGELL. You say, sir, on page 3 of your statement that package standardization is urged by the legislative proponents. You indicate that there are other considerations. Do you want to catalog what the other considerations are?

Mr. MINTER. Certainly attractiveness. Package. The main concern, of course, is the quality of the product.

Mr. DINGELL. You say attractiveness of the package. It would be fair to say that the legislation here will affect only minimally the quality and attractiveness of the package; isn't that correct?

Mr. MINTER. No, I wouldn't say that is true.

Mr. DINGELL. The only thing this legislation requires is that the labeling indicates the costs, size, and weight of the package; am I correct? That is the only requirement that would affect the packaging; am I correct? Is there anything else? Is there any other requirement in the bill before us?

Mr. MINTER. The authority is given to standardize package sizes and weights.

Mr. DINGELL. Size and weights. But does it otherwise affect the paper you put on it, the colors or the patterns that you place upon it, the labeling?

Mr. MINTER. No.

Mr. DINGELL. It does not. All right, now this bill doesn't affect the quality, does it, of the contents?

Mr. MINTER. No, but it could affect the quality.

Mr. DINGELL. What do you think the industry should compete on most? Should it compete on the quality of the merchandise or should it compete upon the size of the package?

Mr. MINTER. On the size of the package?

Mr. DINGELL. Yes. Should it compete on the size of the package or compete upon the quality of the merchandise?

Mr. MINTER. I don't think that you can pin down what goes into a consumer's buying decision; there are so many factors involved.

Mr. DINGELL. I asked you which is more in the consumer's interest, for competition to be based on such peripheral matters as package, shape, and size or upon the quality and the consumer acceptance of the commodity packaged?

Mr. MINTER. The quality, I would say.

Mr. DINGELL. Let me ask you this: Are there any regulations in the industry applicable to candy that stem from the question of slack fill?

Mr. MINTER. Yes, sir.

Mr. DINGELL. There are? Are they by Federal or State or local agencies?

Mr. MINTER. Of course, you have the Federal.

Mr. DINGELL. I beg your pardon?

Mr. MINTER. We have the Federal legislation.

Mr. DINGELL. By the Federal. This is done under the Food and Drug Administration law.

Mr. MINTER. Federal Food, Drug, and Cosmetics Act; yes, sir.

Mr. DINGELL. I see. Well now, do you oppose action by the Food and Drug Administration with regard to reaching the problem of slack fill?

Mr. MINTER. Where it is deceptive, absolutely not.

Mr. DINGELL. Would you oppose congressional directives that slack-fill regulations be promulgated with regard to any food, drug, and cosmetic product where there is any evidence of substantial impact by slack fill on sales?

Mr. MINTER. No, sir.

Mr. DINGELL. Let's talk a little bit about the problem of slack fill in your particular industry. As the price of the candy goes up and down, the size of the bar is increased or shrunk, am I correct?

Mr. MINTER. Yes, sir.

Mr. DINGELL. But the packaging size of the bar often remains the same size, does it not, in spite of the fact that the contents are diminished considerably in size?

Mr. MINTER. It depends upon your definition of "considerably." A sixteenth of an ounce, I don't really think is considerably, no.

Mr. DINGELL. Let's just say that the bar size is shrunk, and the packaging size remains substantially the same. Isn't this a fact in many cases?

Mr. MINTER. Substantially the same.

Mr. DINGELL. Substantially or identically the same. In most instances it is not changed at all. It is simply that the size of the bar is shrunk, am I correct?

Mr. MINTER. I don't know if this is the case in most instances.

Mr. DINGELL. It is in many instances.

Mr. MINTER. I would not agree with that.

Mr. DINGELL. There is a cardboard backing put in there to maintain the stiffness of the package, am I correct?

Mr. MINTER. The function of the cardboard backing is to make sure that the product doesn't get cracked.

Mr. DINGELL. You also concede, however, that it provides a very useful service of also keeping the package stiff, so it doesn't collapse around the bar, am I correct?

Mr. MINTER. Yes.

Mr. ROGERS of Florida. Would the gentleman yield?

Mr. DINGELL. Just as soon as I have asked a couple of more questions, I would be very happy to. But the fact of the matter is this has a substantially deceptive effect on some of the purchases of the commodity does it not?

Mr. MINTER. I wouldn't say so, no.

Mr. DINGELL. You wouldn't.

Mr. MINTER. If it does, it works both ways.

Mr. DINGELL. Let's take somebody who looks in a machine. He has five or six bars and he wants to pick. Yesterday he bought a candy

bar that contained a certain weight. He sees the same size package, but because of a price increase or because of the wish of that particular manufacturer, the size and content of the package has shrunk. I am sure you will agree that this does occur from time to time.

Mr. MINTER. And increases, yes.

Mr. DINGELL. Yes, and increases too.

Mr. ROGERS of Florida. Would the gentleman yield?

Mr. DINGELL. I will yield to the gentleman, but I still have a couple of questions I want to ask of the witness. But then, let's take an 11- or 12-year-old child who is a big customer of these automatic coin operation dispensers. He goes in and yesterday he bought himself a bar at 5 cents. It contained one amount. Today it contains a lesser amount with the package exactly the same size.

Now let's say he buys that. He has every reason to assume he is getting the same size bar, does he not?

Mr. MINTER. I would say so, yes.

Mr. DINGELL. I beg your pardon?

Mr. MINTER. I would say so, yes.

Mr. DINGELL. He does? I have a difficult time hearing you. I wish you would speak up.

Mr. MINTER. I would say yes.

Mr. DINGELL. But he is not getting the same size bar because the contents have shrunk. He is actually getting less, paying more. He is paying a higher unit price, is that correct?

Mr. MINTER. Or he might be getting more, depending upon the situation.

Mr. DINGELL. He might be getting more, but under my particular supposition he is getting less. Do you regard this as being fully fair to this young person, when he might have an opportunity to choose between five or six bars? Some may not have shrunk by weight.

Mr. MINTER. The weight is clearly stated on the label, sir.

Mr. DINGELL. Obviously a 5 or 6 year old or an 11 or 12 year old or even an 18 or 20 or 60 year old isn't going to spend a great deal of time looking at that weight when he pulls that lever on that dispenser, is he?

Mr. MINTER. No.

Mr. DINGELL. The practical effects of this would be to confuse or deceive that person with regard to the actual amount of the commodity which he is receiving, isn't it?

Mr. MINTER. Then what would you have us do, continue to manufacture the item at a loss?

Mr. DINGELL. I am not making any suggestions to you. I am simply discussing the practical effect on the purchaser.

Mr. MINTER. Let me say that if the size changes appreciably, the size of the bar, the weight of the bar, then the package changes. If it doesn't, then it is slack and should be prosecuted.

Mr. DINGELL. It should be prosecuted. But you will concede that there are instances where this does have a substantially deceptive effect to the detriment of the purchaser, is that correct?

Mr. MINTER. No, I wouldn't concede that at all, no sir.

Mr. DINGELL. Do you state that this kind of practice does not go on in the candy industry then?

Mr. MINTER. I am denying that it is flagrantly deceptive.

Mr. DINGELL. Do you make the categorical statement that——

Mr. MINTER. No, I didn't say that. The practice exists.

Mr. DINGELL. Then you are not able to deny that it goes on. It is a pretty well known fact that this practice does go on in the candy producing industry.

Mr. MINTER. Yes, I would think so occasionally.

Mr. DINGELL. And it is rather extensively practiced. Very well, I will yield to the gentleman from Florida.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Florida. Mr. Chairman, I just want to point out to my colleague here, I think when we realize that here is an industry putting out a bar in a wrapping, that if you change it by say one-sixteenth of an ounce or two-sixteenths, I assume from the gentleman's argument he would want you to change all your wrappings and alter packagings for one-sixteenth. I doubt if you could even discern that in the changes that you would make to reflect it.

Mr. MINTER. The overall dimensions usually don't change in that instance. If it is a bar with a coating, with a center, and coated with chocolate, the increase or decrease in the weight is usually in the coating, and there are no noticeable dimensional changes at all.

Mr. ROGERS of Florida. The Administration says they don't even want anything done with 2 ounces and under. This is getting almost to an absurdity.

Now also, one reason for young people that you don't make the change is because you want them to go to a machine and use a nickel so that daddy doesn't have to give them 6 cents to put in. We have just got to be practical about this thing and not absurd.

Mr. MINTER. I agree.

Mr. ROGERS of Florida. I think your position is reasonable.

Mr. MINTER. Thank you, sir.

The CHAIRMAN. Any further questions? If not I want to thank you, Mr. Minter, for your coming here and giving us the benefit of your views. I think it has been enlightening. I thank you have been very fair, and the members of the committee want to be fair with your industry and with every other industry.

Mr. MINTER. Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you again.

Our next witness will be Mr. Edward Williams, National Association of Frozen Food Packagers.

Mr. Williams, will you come forward, please? I might say that you might put your statement in the record and summarize it.

STATEMENT OF EDWARD BROWN WILLIAMS, COUNSEL, NATIONAL ASSOCIATION OF FROZEN FOOD PACKERS

Mr. WILLIAMS. Mr. Chairman, I propose to read a shortened version of this statement. My name is Edward Brown Williams. I am counsel for the National Association of Frozen Food Packers, upon whose behalf I appear. The members of the association produce some 85 percent of the frozen foods marketed in the United States. In 1965, the total production of the frozen food industry was in excess of 9 billion pounds, with a retail value of over $4 billion.

The association is vitally interested in S. 985 and H.R. 15440, both on principle and because of the seriously damaging effects which we are convinced the enactment of either bill would have upon the frozen food industry. There are not just packaging and labels bills. Their effect would be in large measure to transfer from industry to Government basis decisions on marketing policy which we have seen no evidence that Government is qualified to make.

We believe that, when legislative proposals involve devices which would further shackle the economy with mandatory regulations, as these bills would do, the Congress should make certain that the burden of proof to justify them is satisfied by their proponents. It is our view that the question should be, in considering such legislation, whether such abuses in product marketing as are demonstrable justify the drastic remedy which is being proposed, in view of the inestimable contributions which industry makes to our economy under its present methods of operation.

We are satisfied that the need for the proposed legislation has not been demonstrated. It has already been pointed out that the proponents of the bills have failed to show that the cost of the legislation to industry and consumers would be justified by its alleged benefits.

It is our view that in lieu of enactment of new laws providing for, to borrow a word, the proliferation of present extensive regulatory structures, existing consumer programs, such as those of FDA and the FTC, should be improved by an increase of cooperation and understanding between the regulatory agencies and industry. The association maintains close contact with FDA, and has done so since its inception.

For example, through a Task Force on Labeling and Packaging, in 1963, the association reviewed and cataloged more than 3,000 frozen foor labels, and, in December of 1964, published a comprehensive Manual of Labeling Practices for the frozen food industry. The manual presents a system for uniform and consistent placement of information that is required on labels by present law, and includes as recommended minimum type-sizes for quantity declarations, the type sizes adopted by the National Conference on Weights and Measures.

Suggestions made in the manual, however, go well beyond legal requirements in order to encourage informative labeling. The manual has been widely distributed in the industry, and copies were sent to the appropriate regulatory agencies of the 50 States, to the Food and Drug Administration, and to the Meat and Poultry Inspection Division of the U.S. Department of Agriculture. Comments received from these agencies have been uniformly favorable. We believe that this kind of industry effort is a superior approach to the matter of packaging and labeling practices, especially in an industry such as ours, which has built a good record of compliance.

Packaging variations may be of the essence of competition and innovation, whether they make the package easier to handle than a competing one, whether the new package contains a quantity more suitable to particular needs than does another, or whether the new package is simply of a more pleasing design or shape.

When the frozen food industry introduced polyethylene bags for convenience in handling and for better protection for its products,

and provided the vacuum bag in which food may be heated without the loss of nutrients in the cooking water, there were no restrictions such as those which would be imposed under these bills to prevent or delay the use of these innovations.

We do not know to what extent such innovations would have been delayed, curtailed or rendered impractical as a successful marketing tool, by regulations imposing size, weight, shape or dimensional proportion limitations as authorized under H.R. 15440. But the new packages would be subject to regulation under the proposed legislation, and we can by no means be certain that it would not be found that, as now successfully used, they are likely to impair the ability of consumers to make price per unit comparisons with competing packages in a given product line, or that they are not of acceptable dimensional proportions.

Thousands of packages would be subjected to the proposed authority to standardize by weights and sizes, shapes and dimensional proportions. We are driven to wonder how selections of commodity lines for standardization can be made in this packaging labyrinth, without the discriminatory result of restriction upon packages in one commodity line, while leaving uncontrolled others which are in a different category, but which compete with the regulated ones.

FDA now has authority to define and identify a particular food, but under the bills under consideration, unknown numbers of packages selected for elimination could no longer be used, while unregulated packages of competing foods in a different product line would be undisturbed.

Again, under the bills, marketing policy would be determined by FDA, whereas today, it is being determined by the manufacturer. It might appear from some of the statements made in support of S. 985, the Senate bill, that the limitations in section 5(f) of the bill restrict the authority of FDA and FTC to make existing voluntary standards mandatory. They do not. Those limitations go only to the power of the agencies to establish mandatory standards which vary from the voluntary standards, with certain exceptions not relevant to the commodities generally.

Under such circumstances, the logical conflict of a concept of a voluntary standard and that of a voluntary standard made mandatory is obvious. Under such legislation the principal incentive to industry to propose an initially voluntary standard, if there were an incentive, would seem to be the hope that a more reasonable standard could be evolved through the procedures of the Department of Commerce than through those of FDA or FTC.

I should like to consider now the frailty of the foundation of such a hope. It can be demonstrated that the resort of the bills to voluntary product standards is unlikely to be truly meaningful. It is noted in the statement which you have before you that a voluntary product standard in effect when the legislation is enacted, may not be varied by a mandatory standard under such section 5(d), fixing the weights or quantities in which a commodity may be marketed.

In making that statement, I assumed that nobody would think that the voluntary standard made mandatory could never be amended to vary its terms when, for example, FDA makes a finding under section

5(d) of the bill that prevailing weights are likely to impair the ability of consumers to make price per unit comparisons.

It now appears, however, from what has transpired here, that my assumption was not valid. Certainly the bills would not be construed to prevent such amendments. The mandatory standard itself could not be changed, however, except by FDA or FTC, as the case may be, according to the procedures set forth in section 701(e) of the Federal Food, Drug, and Cosmetic Act.

It should be added that certain regulations under sections 4 and 5 of the bills may be promulgated without regard to any provision of voluntary standards which may be inconsistent with them. I have specified some of the provisions in question in the statement before you. The assurances that a voluntary standard is "grandfathered" by the bills should be read in this context.

The procedures of the Department of Commerce for developing voluntary product standards contain certain provisions which arouse real apprehension as to the effectiveness of the alleged safeguards for voluntary standards which have been so greatly emphasized by the sponsors of S. 985. These procedures provide for important roles in the development of such standards by State and Federal agencies, including FDA and FTC, industry, and consumers.

It is our understanding that in many instances these procedures have worked well in the past. There are two reasons why it may not safely be assumed that this will be so, if the proposed legislation is enacted.

First, under the proposed legislation, the Food and Drug Administration and the Federal Trade Commission will have a critical interest in intervening in the standard-making process before the Department of Commerce, to make certain that a standard does not conflict with their conception of the public interest, with the provisions of the statutes which they administer, or the policies which they have adopted, and that the standards are sufficiently inclusive to obtain the regulatory objectives of the agency.

The interest of those agencies would be perfectly understandable, since under the proposed legislation, once a voluntary standard is published, FDA and FTC may not vary its terms when it is made mandatory.

If a standard is proposed by industry, to which FDA or FTC has serious objections, we cannot doubt that those agencies could and would strongly and successfully object to the adoption of provisions which they considered inadequate or unsound. If because of their objections, no standards is published, or if a standard is not published within 18 months of its proposal by a producer or a distributor, a mandatory standard may then be established just as if no voluntary standard had been proposed.

Second, the increasing interest of consumers and consumer organizations in food standardization, labeling and packaging, and the burgeoning number and importance of official representatives and advisers in Federal and State Governments assure growing consumer participation and insistence upon such participation in the development of voluntary standards.

The spotlight of public interest will be thrown upon the voluntary standardmaking process as a result of the proposed legislation, if it

is enacted, as never before. The prospects of a consensus of industry and consumers, not to mention FDA, upon a standard is, we believe, extremely remote in any controversial matter. The experiences we have had with consumers appearing in FDA regulatory proceedings permit of no other conclusion.

Where no consensus is reached on a voluntary standard, FDA or FTC, as the case may be, are free to proceed with the establishment of mandatory regulations. We believe, therefore, that the effect of the proposed legislation will be to cripple fundamentally the voluntary standardmaking process.

One of the disturbing aspects of this legislation is the kind of promotion which it has received. Permit me to list examples of what I mean, in addition to the widely advertised truth in packaging slogan.

First, it has been estimated as an informed guess that the bill would save the consumer $250 yearly. In a population of 200 million people—there are actually some 197 million in the United States today, according to the Bureau of the Census—this would add up to a total saving of $50 billion per year or five-eighths of the $80 billion of all average family spending on kitchen and bathroom products covered by the bill.

In the recent Senate debate on the bill, the $250 savings figure was related not to the individual but to the consumer family. If we assume the proposed saving is per family rather than per individual, the same 48 million families in the United States would save only $12 billion.

The savings in question have been used as a basis for a claim that the bills are anti-inflationary. If either incredible figure, $50 billion or $12 billion, were within measuring distance of fact, it could hardly be denied that the bills would be anti-inflationary.

Second, the horrible example of 71 weights and sizes of potato chips has become very popular. This question was posed in the Senate debate. I quote:

> Where is the Senator who will stand here today and declare the American consumer has demanded that she be confronted with 71 different package weights [of potato chips] when she enters the market?

On its face this direct implication that upon entering the market one may be confronted with 71 different weights of potato chips is without substance. In a big supermarket, the consumer may be confronted with five or six different sizes, or perhaps more. I think we heard as many as 17 in some instances the other day. But certainly not with any number of sizes approaching 71.

Obviously, given the hygroscopic nature of the product, it is a convenience to the consumer to afford her the opportunity to purchase a package whose contents will be consumed before they become stale by the absorption of moisture. Different sizes of packages meet this demand.

Third, representation has been made by the sponsors of S. 985 that the proposed legislation is needed because present law is aimed primarily at preventing fraud and conscious deception. Anybody who is familiar with the Food, Drug, and Cosmetic Act, and the Federal Trade Commission Act, knows that neither fraud nor conscious de-

ception are necessary elements of proof of violation. If labeling is found to be either false or misleading, that fact alone is sufficient to support legal proceedings against that product under the Food, Drug, and Cosmetic Act.

Unfair or deceptive acts or practices are cognizable under the Federal Trade Commission Act, regardless of fraud or intent to deceive. The reality is, therefore, far removed from the statements which have been made with respect to the nature and requirements of present law.

Fourth, it was stated in the course of the Senate debate with respect to the status of voluntary product standards under S. 985 that:

> Only if a standard could not be agreed upon, or if agreed upon and the standard is not adhered to, could the promulgating authority proceed to the second stage [Section 5(d)(2)] of developing a standard which would be mandatory.

This statement was made in the context of a situation where a determination has been made under section 5(d) that the weights or quantities in which a commodity is being sold at retail are likely to impair the ability of consumers to make price per unit comparisons. We find no restriction in the bill which would require a finding that a voluntary standard has not been adhered to as a condition of establishing a mandatory standard.

Five. S. 985 has been put forward as a bill to implement the constitutional grant to the Congress of the power to fix the standards of weights and measures. A late reported expression of this theory is that:

> The plain fact is that this is a weights and measures bill, simply a modern-day Congress' way of fulfilling the responsibility of regulating weights and measures given in Article I, Section 8 of the Constitution.

It is a beguiling concept that these bills rest upon article I, section 8. But we have found no factual or legal basis to support it. In the first place, the bills obviously go beyond the matter of weights and measures.

Secondly, a standard of weights and measures, as distinguished from the standards contemplated by the bills, is an original specimen weight or measure sanctioned by the Government, such as the international metric bar, which was the original standard measure of the meter. Such standards are established on the basis of absolutes. Thus, the basic unit of the metric system, the meter, was originally defined as one ten-millionth of the distance from the Equator to the true North Pole. We must ask, therefore, whether the relationship between packages of various sizes or weights and the real concept of a standard of weights and measures justifies the claim that this is a weights and measures bill in the constitutional sense.

Six. We are told that industry is favored by the invocation of the voluntary standards procedure as a basic feature of the proposed legislation. None will maintain that business conditions or regulatory requirements remain static, so that amendments to regulations are never required. Yet, once either FDA or FTC has made a voluntary standard mandatory, as it may do, the standard may not be revised by the Department of Commerce as voluntary standards may be today. Such a standard may only be amended by FDA or FTC, as the case may be, according to the procedures prescribed in section 701(e) of the Federal Food, Drug, and Cosmetic Act.

Until the prescribed procedural steps have been taken, and experience teaches of the burdensome delays involved, innovation with re-

spect to the standardized package is stifled. Obviously, the end result may be negative for the innovator. This prospect truly would be an effective deterrent, in many instances, even to a proposal to a change.

We say that the examples of the kind of promotion used for S. 985 are disturbing because, if accurate, they would be persuasive of its virtue. Because such representations apparently have been persuasive in the Senate, we felt that it was necessary to straighten out the record to some extent.

In conclusion, Mr. Chairman, we should like to emphasize our conviction that the adverse economic effects of the bill would far outweight its alleged benefits; that the shifting of marketing decisions from experienced manufacturers to Government is not in the public interest.

We do not understand how two agencies, the Department of Commrce and the FDA, or that department and the FTC, can successfully fix the same standards of weights, sizes, and quantities of a commodity. Such a concept seems on its face to be impracticable and ill conceived. This is entirely aside from the untoward effect that the contemplated procedures will have, we believe, upon the voluntary standardmaking program of the Department of Commerce, for the reasons which have been stated.

Voluntary standards could be made mandatory at any time. They could then be amended only under the procedures available to FDA or FTC under section 6 of the bills. Baldly stated, the intended effect of the bills is to force an initial voluntary standard by the threat of a mandatory standard, then to permit the forced voluntary standard to be made mandatory, and thereafter to freeze out any future voluntary standard. We see this as an unfair concept. It is not made more palatable by the manner in which S. 985 has been promoted.

Aside from these unfortunate aspects of the bills, we are distinctly and basically concerned with the stultifying effects which we believe they will have upon the introduction of new types of packaging and the discriminuatory results which could come from standardizing one product line while leaving a competing line unregulated. This, we submit, would be bad business to consumers alike. Thank you.

(The prepared statement of Mr. Williams follows:)

STATEMENT OF EDWARD WILLIAMS, REPRESENTING THE NATIONAL ASSOCIATION OF FROZEN FOOD PACKERS

My name is Edward Brown Williams. I am counsel for the National Association of Frozen Food Packers, upon whose behalf I appear. The members of the Association produce some 85 percent of the frozen foods marketed in the United States. In 1965, the total production of the frozen food industry was in excess of nine billion pounds, with a retail value of over four billion dollars.

The Association is vitally interested in S. 985 and H.R. 15440 both on principle and because of the seriously damaging effects which we are convinced the enactment of either bill would have upon the frozen food industry.

We believe that, when legislative proposals involve devices which would further shackle the economy with mandatory regulations, as these bills would do, the Congress should make certain that the burden of proof to justify them is satisfied by their proponents. It is our view that the question should be, in considering such legislation, whether such abuses in product marketing as are demonstrable justify the drastic remedy which is being proposed, in view of the inestimable contributions which industry makes to our economy under its present methods of operation.

We are satisfied that the need for the proposed legislation has not been demonstrated. It has already been pointed out that the proponents of the bills have

failed to show that the cost of the legislation to industry and consumers would be justified by its alleged benefits. We are also satisfied that, if there were a demonstrable need for additional regulation the provisions of the bills would invoke regulatory action whose impact upon the economy of the country would be more destructive than remedial. These are not just packaging and labeling bills. Their effect would be, in large measure, to transfer from industry to government, basic decisions on marketing policy. We have seen no evidence that government is qualified to make such decisions.

THE ASSOCIATION'S LABELING PROGRAM

It is our view that improvement of some of the present consumer programs, such as those of the Food and Drug Administration and the Federal Trade Commission, would be more fruitful than the enactment of new laws providing for—to borrow a word—the proliferation of present extensive regulatory structures.

We are convinced that the most effective way of implementing present programs is by increase of cooperation and understanding between the regulatory agencies and industry. Our Association has maintained contacts with those agencies from its inception and continues its effort to promote fuller compliance by members of the frozen food industry.

In 1963, through a Task Force on Labeling and Packaging, the NAFFP undertook a comprehensive survey of frozen food labels. More than 3,000 labels, including private labels from food chains and frozen food distributors, were reviewed and catalogued by the Task Force and the Association staff.

In March of 1963 the Association, through the efforts of the Task Force, formulated and disseminated guidelines on minimum type sizes for quantity declarations.

In December of 1964 a comprehensive Manual of Labeling Practices was completed and published. This was a big job. The introduction to the manual states—

"This Program of Frozen Food Labeling Practices presents a system for uniform and consistent placement of information that is already required on labels. The program also provides a helpful guide on voluntary and informative labeling based on good commercial practice. Chapters III through VI deal exclusively with the requirements of the Food and Drug Administration. Chapter IX presents label profiles by commodity and product groupings for well over 200 kinds, styles, and types of frozen foods.

"The manual is recommended for your consideration as a dependable reference to follow in modifying present labels and in designing new ones."

Suggestions made in the manual go well beyond the legal requirements in order to encourage informative labeling to familiarize purchasers with the frozen product and the manner of its use.

The manual has been revised to include, as recommended minimum type sizes for quantity declarations, the type sizes adopted by the National Conference on Weights and Measures.

The manual has been distributed to the members of the Association and is available to non-members. It has also been distributed to interested allied industries engaged in the design and manufacture of labels and packaging.

In addition, copies of the labeling manual were sent to the appropriate regulatory agencies of the 50 states, to the Food and Drug Administration, and to the Meat and Poultry Inspection Division of the United States Department of Agriculture. The substantial number of comments received from these agencies have been uniformly favorable.

We firmly believe that this kind of industry effort is a superior approach to the matter of packaging and labeling practices, especially in an industry such as ours, which has built a good record of compliance. Certainly, with this background, the present broadly based controls of FDA are enough.

INTERFERENCE WITH INNOVATION

A fundamental objective of S. 387, the predecessor of S. 985, was, as stated by Senator Hart, "that the spirit and substance of the antitrust laws be extended to the relatively new form of nonprice competition represented by packaging." [1]

[1] Congressional Record, January 21, 1963.

S. 985 and H.R. 15440 are not presented under the banner of an attack on nonprice competition represented by packaging. But the same purpose is there—to require manufacturers to make the products look alike (H.R. 15440), weigh the same and appear in the same size packages (S. 985 and H.R. 15440). A principal form of nonprice competition is product differentiation. That is regarded as an iniquity, unless it involves a difference in quality.[2] Yet packaging variations may be of the essence of competition and innovation. We should not forget the usefulness of package diversity to the consumer as well as to the manufacturer. It cannot be gainsaid that purchasers sometimes demand uniqueness and sometimes they demand practicality of design. Who can say that the consumer is not benefited when he is given an opportunity to purchase a package which is easier to handle than a competing one, or which contains a quantity more suitable to his needs, or which is of more pleasing design?

When the frozen food industry introduced polyethylene bags for convenience in handling and better protection for its products, and provided the vacuum bag in which food may be heated without the loss of nutrients in the cooking water, there were no restrictions such as those which could be imposed under these bills to prevent or delay the use of these innovations.

We do not know to what extent such innovations would have been delayed, curtailed, or rendered impractical as a successful marketing tool, by regulations imposing limitations of size, weight, shape or dimensional proportion. But the new packages would be subject to regulation under the proposals and we can by no means be certain that it would not be found by FDA that, as now used, they are likely to impair the ability of consumers to make price per unit comparisons with competing packages in a given product line, or that they are not of acceptable dimensional proportions.

DISCRIMINATORY EFFECTS OF PROPOSALS

The enormity of the job of dealing with the standardization of the sizes and weights (and under H.R. 15440, of the shapes and dimensional proporations) of the thousands of products which would be subject to the new regulatory authority would mean necessarily that some established foods would be marketed without control while others, in a different category but competing with the unregulated ones, would be subject to restrictive regulations.

FDA and the Department of Commerce are simply not equipped to deal with a problem of such magnitude, in a manner which would avoid discriminatory treatment among competing products; nor can it reasonably be expected that they would be so equipped if the proposed legislation were enacted. The inevitably selective process which the agencies would be forced to follow would itself result in unfair competition between regulated and unregulated competitors. The courts have recognized the inequity of such selection of regulatory targets in case by case proceedings and have condemned it where there is a "patent abuse of discretion".[3] The potential for regulatory discrimination among competitors, however unintended, would be immeasurably greater in the vast labyrinth of package standardization than it is under existing legislation. Instead of discriminatory regulation of one competitor, the discrimination would run to manufacturers of entire product lines. FDA now has authority to define and identify a given food: but under the proposed legislation, that agency would be granted the power to exclude from commerce unknown numbers of sizes, weights, shapes, and dimentional proportions of packages of all manufacturers of a food. Again, the decisional power over marketing policy would be shifted from the manufacturer to the agency.

"VOLUNTARY" AND MANDATORY STANDARDS

In considering these proposals it is important to understand that an existing voluntary standard establishing weights (or sizes) or quantities in which a commodity may be marketed can be made mandatory by FDA or FTC *at any time*, subject to the hearing and other procedural provisions of the bills.

The limitations in Section 5(f) of the bills upon action by those agencies do not restrict their authority to make existing voluntary standards mandatory, as

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[2] Hearings on S. 387, pp. 374, 375.

[3] *Universal-Rundle Corp.* v. *Federal Trade Commission*, 352 F 2d, 831, 834 (C.A. 7, 1965); *Moog Industries* v. *Federal Trade Commission*, 355 U.S. 411, 414 (1958).

might be assumed from some of the statements which have been made in support of the proposed legislation. Those limitations go only to the power of the promulgating authority to establish mandatory standards which *vary* from the voluntary standards (with certain exceptions not relevant to commodities generally).

The repeated emphasis upon voluntary standards by the proponents of S. 985 must be read in this context. The logical conflict between the existing concept of voluntary standards and that of a voluntary standard—made mandatory, is wholly obvious.

Under such legislation the principal incentive to industry to propose an initially voluntary standard, if there were an incentive, would seem to be the hope that a more reasonable standard could be evolved through the procedures of the Department of Commerce than through those of FDA or FTC. I should like to consider now the frailty of the foundation of such a hope.

THE STATUS OF "VOLUNTARY STANDARDS" UNDER THE BILLS

As has been noted, under certain circumstances stated in Section 5(f) regulations establishing weights or quantities (Section (d)(2)) may not "vary" from an applicable voluntary product standard. The meaning of the term "vary" in this context would be a subject of lengthy disputation between agencies, consumers, and industry, if the invocation by the bills of the use of voluntary product standards were of real significance. That the resort to voluntary product standards is unlikely to be truly meaningful can be demonstrated. Some reasons for this conclusion are stated hereinafter—not necessarily in the order of their importance.

First, the prohibition of variations from the privsions of a voluntary product standard in effect when the legislation is enacted, extends only to a mandatory standard established under Section 5(d), fixing the weights (or sizes) or quantities in which a commodity may be marketed. In establishing mandatory regulations under Sections 4 and 5 of S. 985, however, FDA and FTC may disregard the provisions of a voluntary standard relating to the descriptive words or other terms used on packages and, under H.R. 15440, may ignore the provision of voluntary standards relating either to terms under or to dimension of packages.[4] The assurances that a voluntary standard is "grandfathered" by the proposed legislation must be read against this background.

Thus, under S. 985, provisions of voluntary standards relating to the "identity" of the commodity (Section 4(a)(1)) or to the use of qualifying words in conjunctnon with the statement of net quantity of contents (Section 4(b)) could be ignored in establishing mandatory regulations. Likewise, mandatory regulations under Section 5(c) could be established without regard to the voluntary standard, i.e., regulations characterizing the size of a package and regulations fixing the terms which may be used to convey information with respect to
fixing the terms which may be used to convey information with respect to ingredients and composition. As we have observed, there is even less restriction on variations under H.R. 15440, since under Sections 4 and 5 of that bill the promulgating authority may establish mandatory regulations without regard either to the provisions of the voluntary standard relating to terms or to those applicable to dimensions of packages.

Second, the procedures of the Department of Commerce for developing voluntary product standards contain certain provisions which arouse real apprehension as to the effectiveness of the alleged safeguards for voluntary standards which have been so greatly emphasized by the sponsors of S. 985.

These procedures provide for important participatory roles in the development of such standards by State and Federal agencies, industry, and consumers. Thus, initiation of the development of a standard for a particular commodity may be requested by "any State or Federal agency", as well as by groups of manufacturers, distributors, consumers, users, or testing laboratories (Section 10.1(a)). A proposed standard will be subjected to an impartial technical review by "an appropriate individual or [government] agency (* * * not associated with the proponent group)" (Section 10.2(b)) and circulated to inter-

[4] The Procedures for the Development of Voluntary Product Standards of the Department of Commerce (15 C.F.R. Part 10) contemplate that such standards "may cover terms, classes, sizes . . . dimensions, capacities, quality levels, performance criteria, testing equipment and test procedures".

ested parties for comment. A standard Review Committee reviews the proposed standard and upon approval of three-quarters of its membership recommends its adoption by the Department of Commerce. This Committee is composed of "qualified repersentatives of producers, distributors, * * * consumers or users of the product * * *, and any other appropriate general interest groups." (Section 10.3(a)). If any member of the Committee makes a showing that the recommended standard would be contrary to the public interest or inconsistent with law or public policy, it will not be distributed for acceptance. If distributed, the recommended standard must be accepted by a "consensus" of "producers, distributors, users, consumers, appropriate testing laboratories, and interested State and Federal agencies * * *" (Section 10.5 (b) and (c)). Prior to publication of the standard a Standing Committee, composed of "an adequate balance among producers, distributors, users * * * consumers and any other important interests such as State or Federal agencies * * *", is to be appointed to review proposals to amend the recommended standard, as well as to determine future amendment or withdrawal of that standard (Section 10.6).

It is our understanding that in many instances such procedures have worked well in the past. There are two reasons why it may not safely be assumed that this will be so if the proposed legislation is enacted.

(a) Under the proposed legislation the Food and Drug Administration and the Federal Trade Commission will have a critical and legitimate interest in intervening in the standard-making process to make certain that a standard does not conflict with their conception of the public interest, with the provisions of the statutes which they administer or the policies which they have adopted, and that the standards are sufficiently inclusive to attain their regulatory objectives. The interest of those agencies would be perfectly understandable since, under the proposed legislation, once a voluntary standard is published, FDA and FTC may not vary its terms if they determine that it should be made mandatory.

If a standard is proposed by industry to which FDA or FTC has serious objections we cannot doubt that those agencies could and would strongly and successfully object to the adoption of provisions which they considered inadequate or unsound. It is hardly conceivable that they would not participate in the formulation of a standard in which they are interested, as provided in the procedures of the Department of Commerce. If, because of their objections no standard is published or a standard is not published within 18 months of its proposal by a producer or distributor, a mandatory standard may then be established just as if no voluntary standard had been proposed. Moreover, the injection of two different agencies—FDA and the Department of Commerce or FTC and that Department—into standard-making may be expected to result, not only in uneconomic duplication of effort, but in the imposition of duplicate investigations or inquiries into industry practices and technology.

(b) The increasing interest of consumers and consumer organizations in food standardization, labeling, and packaging and the burgeoning number and importance of official consumer representatives and advisors in federal and state governments, assure insistence upon growing consumer participation in the development of voluntary standards. The spotlight of public interest will be thrown upon the voluntary standard-making process as a result of the proposed legislation, if it is enacted, as never before. The prospects of a consensus of industry and consumers (not to mention FDA) upon a standard is, we believe, extremely remote in any controversial matter. The experiences we have had with consumers appearing in FDA regulatory proceedings permits of no other conclusion.

Where no consensus is reached on a voluntary standard FDA or FTC, as the case may be, are free to proceed with the establishment of mandatory regulations.

We believe, therefore, that the effect of the proposed legislation will be to cripple fundamentally the voluntary standard-making process. The procedures for the development of voluntary standards state that the Department of Commerce "acts as an unbiased coordinator in the development of the standard" and "sees that the standard is representative of the views of producers, distributors, users and consumers" (Section 10.0(c)(1) and (4). This role, we submit, will not be a very effective one where, although the immediate goal of industry is a voluntary standard, the ultimate goal of other interested parties may, and doubtless in many cases will be, a mandatory regulation differing substantially from that of the industry group which made the initial proposal.

THE PROMOTION OF S. 985

One of the disturbing aspects of this legislation is the kind of promotion which it has received. Permit me to list examples of what I mean, in addition to the widely-advertised "Truth in Packaging" slogan.

1. It has been estimated as an "informed guess" that the bill would save "the consumer" $250 yearly. In a population of 200 million people (there are actually some 197 million today) this would add up to a total saving of 50 billion dollars per year or 5% of the 80 billion dollars of all "average family" spending on "kitchen and bathroom" products covered by the bill.[5]

In the recent Senate debate on the bill the $250 savings figure was related to the "consumer family." [6] If we assume the supposed savings is per family rather than per individual the same 48 million families in the United States would save only 12 billion dollars.

The savings in question have been used as a basis for the claim that the bills are anti-inflationary. If either incredible figure—50 billion or 12 billion—were within measuring distance of fact, it could hardly be denied that the bill would be anti-inflationary.[7]

2. The horrible example of 71 weights and sizes of potato chips has become very popular. This question was posed in the Senate debate: "Where is the Senator who will stand here today and declare the American consumer has demanded that she be confronted with 71 different package weights * * * [of potato chips] when she enters the market?" [8] On its face this direct implication that, upon entering the market, one may be confronted with 71 different weights of potato chips is without substance. In a big supermarket the consumer may be confronted with 5 or 6 different sizes but certainly not with any number of sizes approaching 71. Obviously, given the hygroscopic nature of the product it is a convenience to the consumer to afford her the opportunity to purchase a package whose contents will be consumed before they become sale by absorption of moisture. Different sizes of packages meet this demand.

3. Representations have been made by the sponsors of S. 985 that the proposed legislation is needed because "* * * present law is aimed primarily at preventing fraud and deception in the common law sense", and "The concern of existing la wis with the occasional intentionally deceptive practice which has the capacity to deceive the consumer" [9] and "* * * the existing law is premised on the theory that it outlaws conscious deception behind some practice . This requires proof of specific intent * * *" [10] and "S. 985 represents a significant step beyond the traditional policing of intentionally deceptive or fraudulent acts." [11]

Anybody who is familiar with the Food, Drug and Cosmetic Act and the Federal Trade Commission Act knows that neither fraud nor conscious deception are necessary elements of proof of violation. If labeling is found to be either false or misleading, that fact alone is sufficient to support legal proceedings against a product under the Food, Drug and Cosmetic Act. Unfair or deceptive acts or practices are cognizible under the Federal Trade Commission Act regardless of fraud or intent to deceive. The Food, Drug and Cosmetic Act is a stark, liability—without—fault criminal statute. As Justice Frankfurter said in the *Dotterweich* case: "Such legislation dispenses with the conventional requirement for criminal conduct—awareness of some wrongdoing * * *." [12] Hardship there doubtless may be under a statute which thus penalizes the transaction though consciousness of wrongdoing be totally wanting." [13]

The reality is, therefore, far removed from the statements above quoted with respect to the nature of present law.

4. It was stated in the course of the Senate debate, with respect to the status of Voluntary Product Standards under S. 985 that: "Only if a standard could

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[5] Senator Hart stated: "Various estimates have been made as to how much the consumer would save if this bill [S. 985] were passed. The most popular figure is $250 yearly". Congressional Record, July 8, 1965, p. 15290.

[6] Senator Mondale, Congressional Record, May 25, 1966, p. 10927.

[7] A lower figure of 4½ billion saving per family has also been given, based upon extrapolation from a survey of purchasing mistakes made by 33 homeowners. Idem, June 8, 1966, p. 12065.

[8] Idem, June 8, 1966, p. 12070.

[9] Congressional Record, June 2, 1966, p. 11544.

[10] Idem, June 8, 1966, p. 12072.

[11] Idem, June 2, 1966, p. 11503.

[12] *United States* v. *Dotterweich*, 320 U.S. 277, 281 (1943).

[13] Idem, at 284.

not be agreed upon, or if agreed upon and the standard is not adhered to, could the promulgating authority proceed to the second stage [Section 5(d)(2)] of developing a standard which would be mandatory".[14]

This statement was made in the context of a situation where a determination has been made under Section 5(d) that the weights or quantities in which a commodity is being sold at retail are likely to impair the ability of consumers to make price per unit comparisons. Contrary to the quoted statement, a voluntary standard published after such determination has been made may be made mandatory by FDA or FTC under Section 5(d)(2) without the necessity of a finding that the standard has not been adhered to. At least we find no restriction in the bill which would require such a finding. If, upon the basis of evidence adduced at the prescribed hearing (Section 6), FDA or FTC concludes that the voluntary standard would promote the ability of consumers to make price unit comparisons we can discern no statutory impediment to an order making the standard mandatory.

5. S. 985 has been put forward as a bill to implement the constitutional grant to the Congress of the power to fix the standards of weights and measures.[15] A late reported expression of this theory is that:

"The plain fact is that this is a weights and measures bill—simply a modern-day Congress' way of fulfilling the responsibility of regulating weights and measures given in Article I, Section 8 of the Constitution."[16]

It is a beguiling concept that this bill rests upon Article I, Section 8, but we have found no factual or legal basis to support it. In the first place, the bills obviously go beyond the matter of weights and measures. Secondly, a standard of weight or measure is an original specimen weight or measure sanctioned by the government, such as the international metric bar kept in Paris, which was the original standard of measure of the meter. Such standards are established on the basis of absolutes. Thus, the basic unit of the metric system, the meter, was originally defined as one ten-millionth of the distance from the equator to the true north pole. We must ask, therefore, whether the relationship between packages of various sizes or weights and the real concept of a standard of weights and measures justifies the claim that this is a weights and measures bill in the constitutional sense.

6. We are told that industry is favored by the invocation of the voluntary standards procedure as a basic feature of the proposed legislation. None will maintain that business conditions or regularity requirements remain static so that amendments to regulations are never required. Yet, once either FDA or FTC has made a voluntary standard mandatory—as it may do—the standard may not be revised by the Department of Commerce as voluntary standards may be today. Such a standard may only be amended by FDA or FTC, as the case may be, according to the procedures prescribed in Section 701(e) of the Federal Food, Drug and Cosmetic Act. Until the prescribed procedural steps have been taken—and experience teaches of the burdensome delays involved—innovation with respect to the standardized package is stifled. Obviously, the end result may be negative for the innovator. This prospect clearly would be an effective deterrent, in many instances, even to a proposal for a change.

We say that the examples of the kind of promotion used for S. 985 are disturbing because, if accurate, they would be persuasive of its virtue. Because such representations apparently have been persuasive we felt that it was necessary to straighten out the record.

CONCLUSION

We should like to emphasize our conviction that the adverse economic affects of the bill would far outweigh its alleged benefits; that the shifting of marketing decisions from experience manufacturers to government is not in the public interest. We do not understand how two agencies—the Department of Commerce and FDA or that Department and FTC—can successfully fix the same standard of weights, sizes, and quantities of a commodity. Such a concept seems on its face to be impractical and ill-conceived. This is entirely aside from the untoward effect that the contemplated procedure will have, we believe, upon the

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[14] Congressional Record, June 2, 1966, p. 11544.
[15] Idem., July 8, 1965, p. 15289.
[16] Senator Hart at a Consumer Conference at the Center of Adult Education, University of Maryland, February 9, 1966.

voluntary standard-making program of the Department of Commerce, for the reasons above stated.

Voluntary standards could be made mandatory at any time. They could then be amended only under the procedures available to FDA or FTC under Section 6 of the bills. Baldly stated, the intended effect of the bills is to force an initial voluntary standard by the threat of a mandatory standard, then to permit the forced voluntary standard to be made mandatory, and thereafter to freeze out any future voluntary standard. We see this as an unfair concept. It is not made more palatable by the manner in which S. 985 has been promoted.

Aside from these unfortunate aspects of the bills, we are distinctly and basically concerned with the stultifying effects which we believe they will have upon the introduction of new types of packaging and the discriminatory results which could come from standardizing one product line while leaving a competing line unregulated. This, we submit, would be bad for business and consumers alike.

The CHAIRMAN. I don't believe you mentioned the first step, that before anything can be done, that there must be a full hearing with all intersted parties to give their side, and to be questioned by counsel and everything else such as that, as to whether the size and the weights of the products are confusing, and so confusing as to make price comparisons impossible. That has to be done first, does it not?

Mr. WILLIAMS. Yes, Mr. Chairman. I referred to the fact that the provisions of section 701(e) of the Federal Food, Drug, and Cosmetic Act are invoked here.

The CHAIRMAN. That is right. Most people don't understand that. These hearings are free and the public and everybody has a right to come in and have his say, and if you can show that it is not confusing to the average person then nothing would be done.

Mr. WILLIAMS. Mr. Chairman, I would not like to have any such regulations as these promulgated without the access of industry to a public hearing.

The CHAIRMAN. That is right.

Mr. WILLIAMS. And the access of any other interested parties.

The CHAIRMAN. That is right.

Mr. WILLIAMS. But I should like to say to you that that is one of the problems which is involved from the standpoint of the stultifying effect of such a bill upon innovation. How can you possibly innovate, if it is going to take you maybe 6 years or 10 years to get an amendment to a standard?

I have recently participated in a standard-making procedure before the Food and Drug Administration which began in 1957 and which is just now ending. It hasn't ended because the briefs on the last hearing have just been filed.

The CHAIRMAN. What was that?

Mr. WILLIAMS. The Food and Drug Administration.

The CHAIRMAN. Will you tell my counsel up here a little later what this is, so we can look into it and see what is going on?

Mr. WILLIAMS. It is the orange juice standards.

The CHAIRMAN. Do this later. This is a function of the committee to look into it.

Mr. WILLIAMS. Yes, sir; I will be glad to. I can name others if you would like to hear it.

The CHAIRMAN. We might be helpful to you.

Mr. WILLIAMS. He might also look into the peanut butter standard, Mr. Chairman. It started July 2, 1959.

The CHAIRMAN. Maybe we can look at it. But I wanted everyone here present and this committee to know that you just don't abitrarily move in and say this is going to be done or else. That is not true, because there must be a finding that there is something going on that is confusing and wrong, and to make such a finding there must be a hearing, and it is an open hearing, as you know.

There is nothing hidden behind the boards that they are going to say, "All right, we are just going to put this on you," and then you have recourse to the courts, too, if this is done.

I just wanted it to be known that there isn't the purpose to put something on the industry without proper procedures and proper protection and everything. According to the bill there must be a formal finding that it is confusing so that the consumer cannot make hard-price comparisons. It is just not to start some innovation, and I don't think there is one member on this committee who would want that or would stand for it.

Mr. WILLIAMS. I don't think so either, Mr. Chairman. That is why I made the point.

The CHAIRMAN. Yes. Mr. Friedel?

Mr. FRIEDEL. No questions.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. The problem is this third one. There are two problems which are talked about, with candy, but there is another one that comes out here, and that is ability to compete. Now, I don't know whether this cost thing can be solved without the clarification of this committee, unless we can get into the problems of competition.

I had a statement here this morning which I can't seem to find, but I think Mr. Younger took that back upstairs with him, but the statement was by a producer of a certain type of margarine in 1-pound packages, where it didn't take any freezing.

You could put it in your refrigerator. They spent a couple of years in the marketing features alone on this question of being able to market margarine either in a tube or you could squeeze it out, but it would run. You didn't have to thaw it out in order to make it usable.

They found out that the only way in which they could make this attractive was in one-half pounds. But the startling thing of it was this competitive factor. This was the part that started me thinking.

They spent all this time getting into it, all this time working on it, and then they came out on the market with the one-half pound, and they were rather surprised at the results. They were even better than they thought they would be. But it wasn't but about 6 months until they had two or three competitors who were on the market with the same thing. But in the meantime they had this momentum under their particular product, and were carrying it forward.

But the thing that startled me was that if the Federal Trade Commission had set up a quarter of a pound or three-quarters of a pound, or so many ounces in a package it had to come in, they would have had to come in and get the regulations changed, in order to market this in a way where it would be salable, because it was a new product.

This was a product brought onto the market for the first time, but which proved to be not only a little cheaper but it was much more

facile and easy to handle by the housewife, because here was a revolutionary process.

But then, when they went on to define what they would have to do, to go in and produce all this information, in which they would ask for something that hadn't been marketed in that particular weight, and to spread this on the record is what they would have had to do, in which case, the two or four major competitors would have immediately grasped this idea and gone ahead with it.

Mr. WILLIAMS. They would not have had the jump on the market to which you referred. The one who initiated the half-pound would not have had the jump on the market, because we would have had to go to the Department of Commerce and reveal all of these things to the Department.

Mr. SPRINGER. All of these facts in reference to their product.

Mr. WILLIAMS. And to Food and Drug.

Mr. SPRINGER. This would immediately be available to their competitors before he ever sold a half-pound of margarine. Now these are situations, and I am wondering if you get into this, if you get into these involvements, whether we are going to continue to have the competitive feature, which I say has not only made our market more attractive and easier to use by the housewife in this packaging thing, which has been revolutionary since the end of World War II, but the question also of the competitive factor of coming with a cheaper product, not only a product that may be easier to use but a product that may be even cheaper.

But under his situation as he revealed there, had you had standardized packaging at the time he brought his article onto the market, he would have had to go in and petition for a new weight, in order to market his product; and thereby reveal all of his product to his competitors.

Now, this is one of the impacts of this bill, and I want to be sure we have got this on the record, so that the committee can see this crystal clear.

Now, this is just another problem which I got out of this man's own particular matter of trying to feel a new product on the market. I can visualize in the future, products coming on which would be only attractive or, as he said, only salable, after doing a year and a half of experimenting. This is the only way in which they felt they could make this product attractive and salable.

Mr. WILLIAMS. And, Mr. Springer, may I add to that that even if he had no trade secret to conceal, as did the manufacturere of whom you are speaking, if he had gone to the Department of Commerce and asked for a new weight, shall we say, or a new size or a new dimensional proportion, and his competitors did not want him to have it, or the Food and Drug Administration or the Federal Trade Commission, as the case may be, did not want him to have it, they could stall this thing for 18 months, and then he would have nothing, and Food and Drug could go ahead if they wanted to and set a different size.

Mr. SPRINGER. This is just one of the things I wanted to get out here on the record on this question of whether or not we are going to have new products. Now, I take it, looking into the future, and what startled me, I got to thinking what about the question of a brandnew

product or products which are going to be brought on the market in the future, where experimentation and research shows that only in certain sizes would it be salable or would it be salable so that they could make it work. This is just one of the things I wanted to bring out.

Some of those thing you have touched on, I have read the Senate record of debate, and I am familiar with some of those things which you mentioned, where there was practically a misrepresentation of what was in this bill that the Senate passed. Very obviously, those two or three Senators who spoke on those things, didn't know what was in the bill. Not even their staff had read it well enough to advise them what was in the bill.

I think your statement is very, very revealing. Thank you.

The CHAIRMAN. Mr. Macdonald.

Mr. MACDONALD. Thank you, Mr. Chairman.

I want to congratulate you, Mr. Williams, on a very fine presentation of your point of view. Some of it isn't quite clear to me, however.

On page 16 you talk abuot this bill not being a weights and measures bill in a constitutional sense. Are you saying by inference that this bill, if passed by the House and signed by the President, will become unconstitutional or declared unconstitutional?

Mr. WILLIAMS. Oh, now, sir. I think this bill is based on the commerce clause, and I have no doubt that it would be upheld in its basic and fundamental aspects.

What I was saying was that this is just another example of the beguiling representations which have been made with respect to it, that here is the provision of the Constitution, and we are merely carrying it out. It just isn't so, so far as I have been able to discover.

Mr. MACDONALD. If this committee were not carrying out the law as set forth by the Constitution, then we would be acting unconstitutionally, no matter that anyone said it in beguiling tones or terms or not.

Mr. WILLIAMS. But the commerce clause does not specify, does not make provisions for the establishment by the Congress of regulations such as those here provided. The commerce clause authorizes that, but the interesting aspect of the statements which have been made are that here is the Constitution saying you have the authority to pass weights and measures legislation. It is this simple. That is all we are doing. It is a neat little concept. It is a good sales gimmick, Mr. Macdonald. That is all.

Mr. MACDONALD. Even you would not dispute that we don't have the authority to pass a bill such as this.

Mr. WILLIAMS. No, sir; a bill such as this.

Mr. MACDONALD. Second, speaking of law cases, and you are talking about some case pending before regulatory agencies from 1957, you know as well as I do that either side can delay in coming to a final decision, by asking for more time, by asking for conferences, et cetera, and I am sure you would not want to be unfair and say that the whole delay from 1957 was because of the regulatory agency.

Mr. WILLIAMS. No, sir. The delay stems basically from the controversy involved, the fact that you are dealing with a controversial matter, and that is the point I was making, that in a controversial

matter, in a situation where there is great controversy, it will take maybe years to get an amendment to get one of these standards. It may take less on occasion. It may be simple to do under some circumstances.

Mr. MACDONALD. You would agree then, in the interests of saving time and not putting an undue burden on these regulatory agencies, that it is a pretty good approach, isn't it, to regulating an industry rather than by on a case-by-case basis?

Mr. WILLIAMS. No, sir; I wouldn't agree to that.

Mr. MACDONALD. Don't you agree that that would save time in the overall?

Mr. WILLIAMS. It might save time for the agency.

Mr. MACDONALD. Because it does save time for the agency, it therefore frees them to reach other matters.

Mr. WILLIAMS. It places a burden on the industry, which we believe is not a reasonable burden, where you are dealing, as in this type of situation, with 6,000 to 8,000 different kinds of packages.

We don't know how many they are going to attempt to standardize or how they are going to do it. The fact that we have no idea what they are going to do, because they have such broad authority, is one reason that it is so difficult to come up with cost figures. If they are willing to figure out in advance what they are going to do and come up with cost figures it would be very helpful to the committee.

Mr. MACDONALD. You, of course, are stating a very obvious fact, one which we went through when discussing the matter with the panel. I don't know if you were here or not. But I was also interested in whom you represent. You say you represent the National Association of Frozen Food Packers. Is that orange juice or is that vegetables, or is that everything?

Mr. WILLIAMS. Yes; that is primarily vegetables, frozen vegetables, frozen fruits, frozen juices, including orange juice, and frozen prepared foods.

Mr. MACDONALD. Like TV dinners?

Mr. WILLIAMS. Yes; that sort of thing.

Mr. MACDONALD. Have any of your members of your association had any difficulties with even the FDA or the FTC regarding regulations issued by either of those regulatory agencies?

Mr. WILLIAMS. I am not certain what you mean, Mr. Macdonald.

Mr. MACDONALD. What I am asking specifically is about this orange juice controversy. Did the FTC say you should stop doing certain things that some of your members might have been doing.

Mr. WILLIAMS. No, sir. As a matter of fact, in 1956 and 1957, Kraft Foods on the one hand, and the National Association of Frozen Food Packers on the other, proposed themselves standards for various orange juice products, because we felt that they were needed, and that it would be feasible for the Food and Drug Administration to deal with them. It was not a Food and Drug proposal. It was an industry proposal.

Mr. MACDONALD. And was it accepted by the regulatory agency, the proposal?

Mr. WILLIAMS. This year the last hearing was held. Briefs have been filed. No final order on this last proceeding has issued. An

order was issued on the principal proceeding, and I believe in 1964, which was so controversial that it had to be reopened.

MACDONALD. Did a part of this controversy go to the labeling of the cans or packages?

Mr. WILLIAMS. Yes, sir.

Mr. MACDONALD. As you know, this bill only goes to those people who label or stamp cans in such a way before they are sold in the retail stores, which are likely to deceive retail purchasers, and I am sure that none of your people, your membership, deceive consumers, do they?

Mr. WILLIAMS. I wouldn't be so sure that every frozen food packer is entirely virtuous, Mr. Macdonald.

Mr. MACDONALD. I thought your being their advocate, that you would perhaps think so.

Mr. WILLIAMS. I think we have a very good record.

Mr. MACDONALD. I am sure you do.

Mr. WILLIAMS. Rather better than most.

Mr. MACDONALD. But the fact that there are some people in that business who maybe take a shortcut here or there or maybe mislabel, or do not have the proper amounts in the cans, that that presents a problem for this committee.

Mr. WILLIAMS. Mr. Macdonald, I don't understand why it does, in view of the present authority which is available to the Food and Drug Administration, and which they exercise.

Mr. MACDONALD. In many ways this is more favorable to you. There is no seizure under this bill, is there?

Mr. WILLIAMS. Yes, sir.

Mr. MACDONALD. There is seizure?

Mr. WILLIAMS. Yes, sir.

Mr. MACDONALD. How can the Federal Trade Commission seize?

Mr. WILLIAMS. The Federal Trade Commission doesn't, but we were talking about labeling, which is under the jurisdiction of the Food and Drug Administration, which does have the seizure power.

Mr. MACDONALD. I have got news for you, that labeling comes under the Federal Trade Commission.

Mr. WILLIAMS. Will you explain to me just what you mean by that?

Mr. MACDONALD. I think it is perfectly simple. I just repeat the words that I said, that the Federal Trade Commission has jurisdiction over advertising and labeling.

Mr. WILLIAMS. The Federal Trade Commission, if you will permit me to say so, has jurisdiction over unfair and deceptive practices in commerce.

Mr. MACDONALD. That is correct.

Mr. WILLIAMS. To the extent that that—incidentally, that includes labeling. Perhaps they might indirectly control it, but in the advertising provisions of the Federal Trade Commission Act, the definition of advertising explicitly excludes the labeling from their jurisdiction. That is the Wheeler-Lee Act of 1938, which was a companion bill, in effect, to the Food, Drug, and Cosmetic Act.

Mr. MACDONALD. The only time that the Federal Trade representatives have been before this committee, including the cigarette period, that they were not correct in stating they have the authority without the special provision of Congress——

Mr. WILLIAMS. I am sorry, sir?

Mr. MACDONALD. They had the authority to label, to promulgate regulations of labeling.

Mr. WILLIAMS. I am sorry, Mr. Macdonald, they were talking about products other than foods, drugs, and cosmetics, and we, I thought, were talking about foods.

Mr. MACDONALD. Well, I don't know whether orange juice is food or not.

Mr. WILLIAMS. Yes, sir; it is.

Mr. MACDONALD. Who decided that?

Mr. WILLIAMS. I think it has been assumed for some time.

Mr. MACDONALD. It is an assumption that isn't shared by everybody, thinking of orange juice as a food. I would think it would be a drink.

Mr. WILLIAMS. It is a food under the definition of that term under the Food, Drug, and Cosmetic Act.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. Thank you, Mr. Chairman. I would like to mention, however, that in some of the packages of frozen foods there have been times that it is bigger on the cover than it is after opening the package.

Mr. WILLIAMS. Mr. Nelsen, I have no doubt that where such situations exist, they are within the present jurisdiction of the Food and Drug Administration.

Mr. NELSEN. I understand. Now I might make this other observation, too: That in examining packages that have come before the committee, I think that there could be a little bit better job done of marking quantity and price in a more readable way. Many times you have to hunt for it. I am sure this is something that could be done without passing any laws, and perhaps should be encouraged.

Now the thing that I would like to refer to is your statement on page 14 where you refer to "anybody who is familiar with the Food, Drug and Cosmetic Act and the Federal Trade Commission Act knows that neither fraud or conscious deception are necessary of proof of violation."

I have been pursuing the idea that under the enforcement proceedings of this bill, that the Federal Trade Commission Act comes into play. On page 12 it points out that section 5(a) of the Federal Trade Commission Act will be the section under which enforcement is brought into play. In this particular case, it points out the procedure, and finally sums it up by saying that with any person or partnership or corporation, they can order or require such person, partnership or corporation to cease and desist from using the method that they have declared to be in violation.

Now it is my understanding that under the terms of this bill, the rules are going to be promulgated by industry cooperation. But in the event they do not reach agreement, then the authority in charge will establish a rule, is that not true?

Mr. WILLIAMS. Yes, sir.

Mr. NELSEN. And then if they in turn decide under the rule that they established there is a violation of their rule, then they can, in turn, under section 5(a) of the Federal Trade Commission Act, bring action against you, causing you to cease and desist a practice which may be

an innovation in the merchandising field which could work great hardship, is that true?

Mr. WILLIAMS. Yes, sir; that is true.

Mr. NELSEN. And there has been some disagreement here in the hearing as to cease-and-desist authorities, and it seems to me it is quite clear, after researching it a bit, that the authorities would have the right to cease and desist. Then you would have to come in, in court, to prove that they are wrong and you are right, in order to continue a practice which you may have employed. Is that not right?

In other words, if an innovation comes along that your company or the company you represent becomes a practice which they have determined to be a violation, the only way that you could continue it is to go to bring action against them, really, or against the Government, to get permission to continue with it.

Mr. WILLIAMS. May I attempt to state what I think the effect of the bill is, Mr. Nelsen?

Mr. NELSEN. Please do.

Mr. WILLIAMS. The bill would authorize the Federal Trade Commission in this instance to establish regulations, shall we say, with respect to weights, sizes or quantities, in which the commodity may be sold in commerce. If the Federal Trade Commission finds that in its opinion there has been a violation of this regulation, shall we say, by the use of the weight other than those fixed by it, then they may issue a complaint against the respondent. The respondent will then come in, but all the Federal Trade Commission would have to do in such a situation is to prove that he did sell in commerce a commodity in a weight, with a weight which was not fixed by the Federal Trade Commission.

They would not have to prove that there was a violation of the Federal Trade Commission Act, but that there was a violation of the regulation, and that should be in most instances relatively simple, as you have pointed out.

Mr. NELSEN. One further question. Under the terms of this bill, weights would not be the only factor, is that not true? If we are seeking to get at deceptive packaging, would that not also be added to the rulemaking objective, which could also be punished under section 5(a) of the Federal Trade Commission Act? Doesn't it go broader than the old law, even with the additions this bill will provide?

Mr. WILLIAMS. Do you mean, does this bill go further than the present Federal Trade Commission Act?

Mr. NELSEN. Yes.

Mr. WILLIAMS. The Federal Trade Commission Act extends to unfair or deceptive practices and to false advertising.

Mr. NELSEN. Yes.

Mr. WILLIAMS. As defined in that act. This act would authorize affirmative standard-making dealing with weights, sizes, shapes, and dimensional proportions of commodities. I think Mr. Dixon made it clear that he was willing to attempt to deal with these matters, under his authority, or, rather, administrative provisions relating to rules which would be industrywide. Whether that would be supported in court, I don't know.

Mr. NELSEN. I am referring to page 12:

> Any violations of any provisions of this Act or the regulations issued pursuant to this Act with respect to any consumer commodity which is not a food, drug, device or cosmetics shall constitute an unfair or deceptive act or practice in commerce in violation of section 5(a).

In other words, a deceptive package, if it is deemed to be deceptive by the rule as established and promulgated, then under section 5(a) of the Federal Trade Commission Act, you would be punished as you have been punished for what the previous act provided, as I understand this bill.

Mr. WILLIAMS. Yes, that is correct.

Mr. NELSEN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Florida. Thank you, Mr. Chairman.

Do you have any members of your association that put out meat products, poultry products, and fish products, or not?

Mr. WILLIAMS. Yes, sir. There are a number that do.

Mr. ROGERS of Florida. Which?

Mr. WILLIAMS. Frozen meat pies, TV dinners.

Mr. ROGERS of Florida. Do they have to go before the Department of Agriculture?

Mr. WILLIAMS. The meat products are subject to inspection by the Department of Agriculture.

Mr. ROGERS of Florida. So they actually would not be covered under this bill?

Mr. WILLIAMS. As I understand it, they are excluded.

Mr. ROGERS of Florida. What about fish products? Is that under Interior? I presume you have some who have frozen fish products?

Mr. WILLIAMS. I don't believe that fish products are excluded. I would have to check that.

Mr. ROGERS of Florida. No, they are not excluded under the act, but don't you have to go to the Interior Department now for fish, just as you do to the Agriculture Department for meat?

Mr. WILLIAMS. I really am not familiar with that, Mr. Rogers.

Mr. ROGERS of Florida. I will take that up with someone else. Do you see that there is great overlap between this bill and the present law?

Mr. WILLIAMS. I do in section 4 and in parts of section 5.

Mr. ROGERS of Florida. In other words, Food and Drug, under some things that I could think of here, because there is such an overlap, they could enforce criminal penalties if they wanted to, because of the broad provisions of the present act, don't you think?

Mr. WILLIAMS. They would have to do it under present law.

Mr. ROGERS of Florida. Agreed, but it is simply an administrative determination which way they will proceed against you.

Mr. WILLIAMS. That is correct. And, under this, if I were in their position, I would just wonder which way to proceed, because some of the sense of the language here is different from some of the provisions in the Food, Drug, and Cosmetic Act, and the Federal Trade Commission Act. I would be in a quandary, frankly.

Mr. ROGERS of Florida. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Adams.

Mr. ADAMS. Would you, as I have asked with the canners and the others, submit your proposal as to what you think might be necessary to allow for an innovation or a variation from a standard? In other words, you have mentioned that you do not believe the present procedures would be adequate to allow a product to come on the market. Would you like a 6-month period that anything could be marketed first or some variation like that? Will you submit that for the record to us?

Mr. WILLIAMS. We will be glad to see what we can come up with.

Mr. ADAMS. Thank you; now, the second thing. I noticed that you did not bring in a number of packages and so on that some of the others did. Is there any standard, for example, on peas or beans that are frozen and come in those little packages?

Mr. WILLIAMS. There is no governmental standard except a voluntary standard which was worked out with the Department of Commerce in the 1950's. I believe 1950 was the last version of it.

Mr. ADAMS. Actually, the package sizes are standardized, are they not, with the weights varying?

Mr. WILLIAMS. I think that ordinarily vegetables are marketed in packages of 8, 10, 12, and 16 ounces.

Mr. ADAMS. Packages of 8, 10, 12, and 16 ounces?

Mr. WILLIAMS. The 16-ounce package is less usually seen today.

Mr. ADAMS. I have just got a minute, but I will ask you this. You went into quite a lengthy discussion with regard to the matter of publishing standards and how they would be established. Do you agree with this: that first there must be a hearing under the Administrative Procedure Act, before—this is a hearing not under the other provisions, but under the Administrative Procedure Act—before there could be a determination that there was something wrong in the industry?

Mr. WILLIAMS. You mean, before the mandatory standard proceeding could be instituted?

Mr. ADAMS. No, before they could even come out and promulgate that they were going to publish a determination that something was wrong in the industry.

Mr. WILLIAMS. You are talking about section 5(d), aren't you, Mr. Adams?

Mr. ADAMS. No, I am talking actually about the first part of section 5(d).

Mr. WILLIAMS. Yes, sir.

Mr. ADAMS. The first paragraph.

Mr. WILLIAMS. Yes, sir.

Mr. ADAMS. Is that correct?

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

Mr. ADAMS. Then they publish that there is something wrong. Then the standard comes in, and there is then a hearing to be held, but prior to the hearing, if there is a voluntary standard, they must follow that. And if there isn't a voluntary standard, then industry has a year to create one, isn't that correct, before there can be any mandatory regulation published?

Mr. WILLIAMS. If there is an application by——

Mr. ADAMS. By anybody.

Mr. WILLIAMS. It doesn't say anybody.

Mr. ADAMS. By anybody in the industry. Producer or distributor.

Mr. WILLIAMS. Producer or distributor; yes, sir.

Mr. ADAMS. So they have another year to put in the standards before they can publish any mandatory regulation. Then, after that, they can put in the regulation, but it is limited by (e), (f), and (g), which protect customary, under (d), it protects the voluntary products standard under (e), and it sets a series of limitations under (g), on weights and measures customarily used in the packages of affected products. So they are limited in doing that, aren't they?

Mr. WILLIAMS. That is correct.

Mr. ADAMS. And then, after all of that is done, if you still don't like it, you can come in under section 6 and review this in the courts.

Mr. WILLIAMS. I am not sure we have——

Mr. ADAMS. Regulations promulgated by the Commission under section 405 shall be subject to judicial review by proceedings taken in conformity with, and that is actually 21 U.S.C. 321 (e), (f), and (g).

Mr. WILLIAMS. At one time or another there is an opportunity to go to court; yes, sir.

Mr. ADAMS. All right. Now, out of this whole process, is it the position of your industry that this is going to end up with a series of very arbitrary standards?

Mr. WILLIAMS. I think it is likely that there will be considerable arbitrariness on the basis of the experience we have had, and one thing that worries us is the extent of the problem which faces the regulatory agencies under this bill, as distinguished from the kind of problems they are accustomed to dealing with.

And may I say that so far as my experience teaches me, I would be very much surprised if, in any controversial matter, there could ever be a standard in a year or 18 months, or 2 years agreed upon before the Department of Commerce by consumers, the Food and Drug Administration or the Federal Trade Commission and industry.

Mr. ADAMS. I agree. What about the broad area of noncontroversial matters, on such things as just a package size or a standard weight size which everybody agrees on.

Mr. WILLIAMS. Surely we don't need agreement if everybody is in agreement, Mr. Adams.

Mr. ADAMS. What I am saying though, is that you have substantial areas of agreement within the industry, and all we want to try to do out of this is get some basic standard so the public can see it, and you can fight about the controversial parts of the industry.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Before you leave, Mr. Williams; you referred awhile ago to orange juice and peanut butter. Doesn't that have to do with the quality standards?

Mr. WILLIAMS. No, sir. That was the standard defining the food, a definition and standard of identity.

The CHAIRMAN. And not to do with quality?

Mr. WILLIAMS. No, sir; it had to do with quality in a sense, in the sense that any definition must have some quality level in it. There must be some quality level.

The CHAIRMAN. This bill doesn't have anything to do with quality.

Mr. WILLIAMS. This bill?

The CHAIRMAN. Yes.

Mr. WILLIAMS. No, it doesn't have anything to do with quality.

The CHAIRMAN. It wouldn't cover those proceeding under this.

Mr. WILLIAMS. Unless, Mr. Chairman—perhaps, I spoke too quickly. I don't find it now, but there is one section here which I believe Mr. Dixon—perhaps I shouldn't attribute it to him.

The CHAIRMAN. No, he mentioned the word "quality" and then took it back.

Mr. WILLIAMS. Yes. Then he mentioned it again and said maybe he had been wrong the second time. I am thinking of section 5(c)(4). I believe that that is susceptible of interpretations which might encourage the agencies to go into the matters of quality——

The CHAIRMAN. That wasn't the intent of the bill. There was a difference in the proceedings.

Thank you so very much. You have been enlightening to the committee, and we appreciate your taking the time to come before us to give us the benefit of your views.

Mr. WILLIAMS. Thank you very much.

The CHAIRMAN. The committee will stand adjourned until next Tuesday at 10 o'clock.

(Whereupon, at 12:30 p.m., the committee adjourned to reconvene on Tuesday, August 9, 1966, at 10 a.m.)

FAIR PACKAGING AND LABELING

TUESDAY, AUGUST 16, 1966

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to call, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

Today we return to a subject which was sidetracked for a time by a matter of considerable importance. The airlines dispute seems somewhat elusive. I hope that this "truth in packaging" proposal before us will clear up more rapidly, as testimony sheds further light before us and the wherefores of the supercollosal containers and so forth are made clear.

The mathematical complexities of the fractions of a milligram involved in the comparing of costs of competing articles of merchandise may tie us into knots of puzzlement, but should hardly raise our blood pressure appreciably.

Perhaps most of us lost sight of the evidence presented to us during previous hearings on this subject, but it does not seem necessary to review that evidence at this point.

We will proceed with the matter at once and our first witness will be our colleague from the great State of Arkansas, Mr. E. C. Gathings. Mr. Gathings, will you please come forward and we are glad to have you. We are glad you were willing to take up your time. We know you are doing a good job in your committee for the Congress and for your people and we are certainly happy to have you appear before this committee.

STATEMENT OF HON. E. C. GATHINGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Mr. GATHINGS. I am grateful to you, Mr. Chairman, for permitting me this opportunity to come this morning and give my views with respect to this legislation. I don't pose as an authority on labeling, but I come as a layman and I want to say to you that for many, many years on Saturday my job is to do the marketing. I have done that for some 25 years, every Saturday. That is the only recreation I get and I enjoy it very much.

Now, there is a reason for this legislation being here, no doubt, because you folks are dedicated people and you are trying to see to it that the housewife is going to get just what she buys. What she looks

upon the label to see, she wants to get that inside, to be sure that the contents will reflect just exactly what that label says it will contain.

My experience in the purchase of food is the only thing that I will testify about this morning. When I go to the store, I compare prices as well as quality. In this hand is a bottle of Ritter tomato catsup. Ritter is a good brand and it sells for two for 41 cents. That is 22 cents for one bottle of Ritter catsup.

Now, Del Monte is two for 45 cents. They are both good—I have tried them. But Del Monte is a preference of mine and I will pay just a little bit more to get this piece of merchandise here which would sell for 23 cents or two for 45 cents. They are identical in size. They are both 14 ounces avoirdupois.

Now when it comes to asparagus, we have Ritter again. Ritter has a very fine asparagus for 29 cents. On here it shows net contents equals 15 ounces avoirdupois, cut spears, all green, tips included.

Aunt Nellie's comes along and this is distributed by the Giant people and I shop at Giant's every Saturday, along with other stores. I go to an A. & P. and Safeway regularly too—not every week—because there are certain products that I like at each store.

I used to go every so often to get my dog certain foods at Grand Union. In any event, Aunt Nellie's is 33 cents, and it is a competing product. This is all greeen asparagus too and it is a very fine product.

Now, let us look for just a moment at these items right here—canned tomatoes. This is Aunt Nellie's again, two for 39 cents. That is net weight 1 pound. There is a trace of calcium salt added and a picture of a tomato. You open that can, and that tomato will look just about like that, I will tell you that, except it does not have the green stem on it.

Now that is two for 39 cents. But if you want to buy the Del Monte, you go to 33 cents a can. That is just when you have company that I would want to get Del Monte. But they are both good products and they tell the story on the labels. The net weight is 1 pound.

Now, Mr. Chairman, the housewife is a smart individual and when she has a large family she wants to see to it that they get a bargain in what she buys. She wants that dollar to go as far as it will go. The system we have now assures good values for all of our people.

Here is a hominy, two for 29 cents. Van Camp, and that is a good name in foods, comes up with a hominy which is two for 39 cents. It is 20 cents for this large one here. That is compared to the small one costing 15 cents. But you get so much more hominy by buying the large can.

Last night's paper brought out the food bargains for the next 3 days, through Wednesday. On Thursday, the food section of both the Washington Post, and the Evening Star comes out. That is the time that the housewife starts to make her selections for the weekend. She does her buying for the weekend from the Thursday paper. These are early purchases here.

You can go to the A. & P. and get these bargains, this shoulder of veal roast for 49 cents and so on.

This is Libby's tomato juice, 25 cents for a 14-ounce package. Don't think that these housewives don't know where these bargains are, too. Chuck steak is 49 cents at Giant. That expires Wednesday night, I believe.

They have a good buy now on grapes, seedless grapes, and I bought some grapes last Saturday. Here is what I wanted to show you. They are opening up a new Safeway store so they put a full page ad in the paper last night. You can get boneless beef roast for 99 cents. That beef roast would cost you ordinarily, without a special on it, $1.29 a pound. Here is quite a saving.

So the housewife will go to that store if she is a beef buyer. She is going to buy at Safeway.

Now I wanted to call your attention to one item that is in this legislation that I wanted to touch on just for a minute. That is that I understand this legislation would prohibit the "4 cents off," or "10 cents off" on the package. It would be a prohibition, if this bill is passed, like it is now written. Chase & Sanborn has that on here. It puts this package on the market which says "4 cents off."

Mr. FRIEDEL. Off of what?

Mr. GATHINGS. It says "4 cents off."

Mr. FRIEDEL. But "off of what"?

Mr. GATHINGS. I will answer that right here. Here is a Maxwell House jar which is 2 ounces net weight and here is a Chase & Sanborn of 2 ounces net weight, and they are competing products. One coffee is about as good as the other. It is just a question of taste.

Now, Maxwell House is 49 cents for that 2 ounces. Chase and Sanborn is 4 cents off, and it says underneath, 45 cents. It tells the truth. It is 4 cents off. It is 4 cents off of the regular price of the same competing product, and when this special goes off I will say to Mr. Friedel, this product here will bring the same figure of 49 cents instead of 45 cents. This is an introductory offer. It aids the poor people.

Mr. FRIEDEL. In other words, the price there is 45 cents but it has a label on it "4 cents off." That is not 4 cents off the 45 cents?

Mr. GATHINGS. No, sir, it is marked on the bottom just what it will bring. But you will have to look next to it on the shelf and you will see why it is marked 4 cents off, because here is a price of 49 cents for another comparable brand.

The housewife knows that, and the housewife wants that dollar to go as far as it is possible for it to go.

So, Mr. Chairman, I just wanted to call to your attention that this merchandise, as it stands, tells what is inside. About one-third of that label on Del Monte peeled tomatoes is set aside for the purpose of saying to the consuming public that these peeled tomatoes have a trace of calcium salt, size of can is 303, net weight 1 pound, and cups approximately two, and servings three to four, and lightly seasoned with salt. It tells the story. You can rely upon it.

Now, in my way of thinking this legislation is not needed so far as food purchases are concerned. As to drugs and what is on the label of various merchandise in a drugstore, I am not too familiar with that. This bill will create new authority to deal with a question or issue that has solved itself.

The CHAIRMAN. Has the gentleman finished his testimony?

Mr. GATHINGS. That concludes my testimony.

The CHAIRMAN. I would like to ask you just two questions. As to the "4 cents off" on coffee, assuming a small store bought an oversupply and this runs into 10 years or 3 years or 1 year or half a year

and the price of coffee goes up meanwhile. It is still 4 cents off from where it goes off to, or it goes down and it is still 4 cents off, or what?

Mr. GATHINGS. Generally, Mr. Chairman, that merchandise is replenished every other day or every 3 days or quite frequently. The bargain item has a limitation as to time.

The CHAIRMAN. You mean to say they don't buy a supply for more than a day or so at a time?

Mr. GATHINGS. It won't take long for all of these "4 cents off" purchases to be made by the housewife and you have another leader coming along periodically.

The CHAIRMAN. I think we are going to have to go to these stores and find out how long these do have supplies. I think most of them buy supplies for a much longer period of time than that.

Mr. GATHINGS. Well, it could be, it depends on the product, but the bargains move pretty fast.

The CHAIRMAN. We had testimony in here of potatoes that went up over $30 a hundredweight in a period. I don't remember exactly the period but it wasn't long, a year or two. They were put up in the same kind of a box almost, but they were reduced a little bit in weight and then the price would go up or down. But ultimately they had raised $30 a hundred.

Do you think that that is truth in packaging?

Mr. GATHINGS. I am not familiar with the particular instance that you bring up.

The CHAIRMAN. Well, do you think that there are instances of cereals where the box was only so much filled? Do you think that would be deceptive if it was only two-thirds filled or not?

Mr. GATHINGS. I will tell you in many instances, Mr. Chairman, you will find in cereals that they will fill that box up fairly full when it is packaged, and by the shaking and packing down you will find that there will be some space at the top.

The CHAIRMAN. We had two similar packages. One was at the top and one was down one-third. Does this only happen in certain brands?

Mr. GATHINGS. The next time the housewife finds that it is too low in that package, she will say, "Well, let us try Kellogg's," or "let us try Post's next time."

The CHAIRMAN. Is it deceptive to the public? That is what we are trying to get at. We are trying to find out whether these things are being done to deceive the public.

Mr. GATHINGS. Well, that is the purpose of your hearing, and that is the purpose of going into all of these phases of the problem and hearing these witnesses. But I do know that there is no deceit in these packages here, because they are plainly marked what it is and what quantity of the item is in the package.

As to the weight of the cereal, if you weigh it you will find that it speaks the truth.

The CHAIRMAN. I would agree with you on a great percentage of the ones who supply this Nation's food, that there is no attempt to deceive or no false labeling. But there is some percentage where we find there are some deceptions. That is what we are trying to get at.

Mr. GATHINGS. I imagine that there are some deceptions, or this bill never would have been introduced in the Senate and the House, and passed the Senate as I understand.

The CHAIRMAN. I believe unanimously, but I am not sure.

Mr. GATHINGS. I think, Mr. Chairman, that there are very few instances where the public is being deceived. The percentage is very small.

The CHAIRMAN. Do you think that it is up to this committee to find out whether there is deception and try to cure it or let it go on?

Mr. GATHINGS. I am not a member of this committee, and that is up to you. You folks are reasonable people.

The CHAIRMAN. You are a witness to help us determine what we should do. You wouldn't be here if you were not here trying to influence our judgment here.

Mr. GATHINGS. That is right. I am telling you what I have found from my many, many years of experience in buying groceries.

The CHAIRMAN. If we find deception now and things not marked right, shouldn't we try to correct it as a Congress, or not?

Mr. GATHINGS. Now, you will find in every line of endeavor some rascality being practiced. You will find that there is nothing perfect. But now you will find this: That in many, many instances, as against maybe a few, there is no deceit.

The CHAIRMAN. According to that, because most of our citizens are law-abiding citizens, we don't need policemen.

Mr. GATHINGS. The thing about it is that you don't need to legislate in a field where everything is smooth and everything is going along smoothly.

The CHAIRMAN. You will agree most citizens are law-abiding citizens, and according to that they or I, we don't need any policemen at all.

Mr. GATHINGS. But I don't believe the housewife needs to be taken by the hand and told what is in a can or what is in a package of soup, or laundry soap. She is pretty well advised. She knows what she is doing.

The CHAIRMAN. There are many instances, we will agree with you, but you still say you think just because most of them maybe keep the law and don't try to deceive, we don't need any law?

Mr. GATHINGS. You might find an instance occasionally, but it will be a rare case.

The CHAIRMAN. I believe if you had heard some of the witnesses here that you would find that they are not so rare, and there are a lot of them that do occur. We are not trying to control the industry, but they are saying by giving them complete freedom they call it a license to do what they please. Those are the ones we are trying to find out. It is not the ones who are honest and sincere. We realize that.

Mr. GATHINGS. I realize that you are going to be reasonable.

The CHAIRMAN. We hope so.

Mr. FRIEDEL. I have no questions, but I would like to compliment my colleague and I am going to appoint him to do my shopping because evidently he is very well versed on the subject.

But we will agree that there are some "gimmicks" and the public is fooled by some of them. That is the thing we want to stop, and I think we can stop it. We know that all packages should state the weight. We don't want to try to hurt the industry that is trying to do the right thing.

But there are certain gimmicks in labeling and deceptive things which the public has to be protected against, and we intend to do that.

Mr. GATHINGS. I think the public ought to rely on it. When they see a label, they ought to know that after that can is opened, that label reflects the truth with reference to what is inside.

Mr. FRIEDEL. How about these cans that say "serves eight," or these packages that say have eight servings, and then they reduce the weight and they still say eight servings and reduce the weight again and still say they have eight servings?

Mr. GATHINGS. Do you have a growing boy at your house? He will require two servings. That is a 21-year-old boy. He is a man now. But it depends on who is going to be served.

Mr. FRIEDEL. If they have eight midgets, they will have eight servings. When they reduce the size, if they still say eight servings there is something wrong.

Mr. GATHINGS. They might have on a package of grits that if you put a half cup of grits in two cups of water, and stir it, that would serve two to three people, but it would only serve me, because half a cup is just about enough for me. I would eat enough grits for two.

Mr. SPRINGER. I am glad to hear the gentleman's statement for two or three reasons. You have gone into it from an examination of the products you use and you find that there is no deception. Now, there are two or three things that bothered me in this. I assume you could go out in any profession and find some people who were unethical. There isn't any denial that those people can be prosecuted under present law.

The Chairman of the Federal Trade Commission sat in the very position that you are and said that repeatedly to this committee, that he could prosecute anybody who was engaging in deceptive practives.

There isn't any question that can be done under Federal law.

Now, our distinguished chairman said here a minute ago, even though violations are few, you still need policemen. The Federal Trade Commission has enforcement powers and this is the thing that bothers me. You have a policeman and he isn't doing anything about it at the present time. He does have this excuse and I think it is well founded, that he doesn't have enough staff. If he had enough staff he could follow through. The present law is there, and he can prosecute violators. But this isn't what they want to do in this bill. They want to bring every business in under this thing, and set up standards because there may be 1 percent of these people violating the present law, and who aren't being prosecuted under present law. This is the propaganda aspect that disturbs me. You already have a law and the cop sits there and says, "I have the authority, there is no question about it." Yet he does not enforce it because he says he does not have enough hands to get the job done. This is the part that disturbs me. Yet they want to have the other 99 percent all regulated because of that 1 percent that the cop who is on the job hasn't prosecuted.

That is in essence the true situation as it exists. I did not know whether you knew that or not. There is plenty of law already on the books.

But let us come to the second point.

Mr. GATHINGS. I haven't gone into that phase of it. I am grateful that you have so well brought that point out.

Mr. SPRINGER. You have a law already to do the job and they aren't enforcing the law. If they enforced the law they would pick up all of these people engaged in deceptive practice. But this wants to go way beyond that, and in fact you already have a law, but you standardize everybody else because there is 1 percent of the people who are violating.

Now, you talk about the package not being full. Well, there are several things here. My distinguished colleague on my left here told me that he knew of a standing offer for a person to make a fortune if they could solve that one. If you put one thing in a box and it is riding for 200 or 300 miles, and if they found that would stay full he could make a fortune. It simply is not possible.

There is another thing that goes into this, which my distinguished chairman talks about. That was that there were at least two or three brands of crackers that are in the same size box, but one is 17 cents and one is 15 cents and one is 12 cents, and there are just 12 cents, and 15 cents and 17 cents worth of crackers in each one of them. But they are using the same size box because it is the cheapest way they can market it without coming up with two more packages, which increases the cost of marketing the product.

Now, all of these things don't get out on top of the table and I want to make sure my distinguished colleague who takes a position understands that there is something to back up what he is talking about.

A great number of these packages are honest, and they are done right. But the fundamental question, is, Shall we set up a standardization for the entire industry of packaging and labeling because 1 percent of them, as my distinguished chairman has said, violate the law? This is the question which you have involved.

Now, I have been raising a question which I think the gentleman ought to know about which he hasn't raised.

Here is a gentleman who writes from the west coast that "A standardization program in both of these bills would mean in our company alone * * *" and I never heard of this company and it isn't a very big one—"engraving and plating changes which would cost in excess of $560,000."

This is just one company, and this isn't any chain company. This is one company out in Mr. Younger's district. He would pass this on to the dealers who have no alternative but to pass it on to the consumer.

If there are some offenders in the packaging field, it seems wrong to change the whole industry to correct these few when the cost of such changes is passed on to innocent consumers whom you are trying to protect.

Now, this is half a million dollars for some little industry out on the west coast, to change this whole thing.

I haven't made up my mind on this legislation, and I am trying to keep it open to hear all of this, but I am glad to see that someone in this Congress at least has gone out and made a survey of their own and come in here with an opinion.

Mr. GATHINGS. I get enjoyment out of shopping because I like to spend money, anyhow. But you will find so many times that a can will be a little too full and when it is opened you will spill an awful lot out of it. You can fill it a little too full, and they want to consider that as well, when it is packaged.

Mr. SPRINGER. I thank the gentleman for a very delightful statement.

The CHAIRMAN. I just want to tell the gentleman that he is not the only Congressman who shops. I want you to know that.

Are there any other questions?

Mr. YOUNGER. Thank you, Mr. Chairman. As you know, we are very well acquainted and I have known of your very many sides, but this is the first time that I have known you as a weekly shopper. I think that you have added materially to the testimony here.

What bothers me in this legislation is that we are only trying to reach in this bill a few things. Fundamentally, in this bill we are creating a new department in the Government which is going to have vast powers and supervise all of the industry.

Now, we are getting into some economic troubles already. We have knocked the building industries in the country over the head, and the automobile business is way down.

Through this, rather than making amendments to existing laws, we are trying to create another department to probably supervise and knock in the head the general industry of foods and pharmaceuticals business. If we keep on in this kind of a process, your food and drugs are not only going to be more expensive, but we are going to come into a situation pretty soon where we will have a depression on our hands, if we keep meddling with economic situation.

I think that there are certain correctives which we have talked of with both the Chairman of the Federal Trade Commission, and the Food and Drug representatives. They want some additional power; namely, to proceed against an entire industry if it is an industrywide difficulty, and they want to proceed not only under the deception but where there is a confused situation and they feel that they cannot meet that.

I am perfectly willing to give them that power. But I cannot see the necessity, myself, as yet, and I haven't seen the testimony that necessitates it, to create another department to ride herd on our manufacturers.

Mr. GATHINGS. I want to say to the gentleman from California that when I was a kid we had in our little store a small soda fountain. In that soda fountain we got some Welch's grape juice to serve and that was many years ago. That grape juice today is identical in flavor. That Welch's juice is the finest product; it has a flavor all its own. Welch's means a lot to me—as do Campbell and Del Monte—these brands are good foods. These people stand behind them. Their whole future depends on the acceptance of their particular merchandise by the consuming public.

Mr. YOUNGER. I want to thank you very much and I am glad to know that you, rather than play golf or do something else, take your weekly exercise in the market.

Mr. GATHINGS. I really do enjoy it.

Mr. KORNEGAY. I would like to join my colleagues in welcoming our distinguished colleague and friend before the committee, and thank him sincerely for his interest in this legislation. I commend him for making this survey or tour of the stores he has made in connection with trying to find out what the situation really is.

I had known for some time that you were a connoisseur of fine foods, but I did not know also that you were an expert in shopping. We have heard a lot of talk here about the best buy and that sort of thing. Of course, it all gets down to a question of how to save money.

Time is money, and the thought occurred to me that if we are going into this area of standardization of these various products, maybe we also ought to give consideration to standardizing the location in these supermarkets of various things, because I am rather an infrequent shopper, and I spend more time trying to find what I am looking for than I do in trying to make up my mind after I find it, as to what is the best buy.

Now, my shopping is usually on Saturday afternoon, or times like that, and my time, I guess, is of relatively little value, but still it is of some value. In walking up and down massive aisles and looking for the soup and the corn flakes and whatever I am hunting, I spend more time really there than I do in getting what is the best buy.

Mr. GATHINGS. It is very difficult, there is no doubt about it, to find certain items in these stores. But I think that they do it for a purpose, Mr. Kornegay. I think that many women, and they are the ones who do the largest part of the shopping, like a change. They will even move a refrigeration department over on the other side of the store sometimes just to satisfy the whims of their public.

Mr. KORNEGAY. These stores will go out of their way to help the consumer. They will cash your check, they will sell you the identical package of merchandise for the same money and give you stamps, too, trading stamps, that is, in Virginia. It doesn't work in the District of Columbia, but they do in Virginia.

My point has been made somewhat facetiously, but what I am trying to do is to examine under a microscope exactly how you are going to save money. It is a very difficult decision to make and I wanted to point that out. That is another element in the whole thing.

I want to thank you, Mr. Gathings, for your testimony and your interest in coming here.

Mr. GATHINGS. I have found that in the packaging of frozen food, they have come up with an idea now of packaging these foods in large plastic bags for the big family. You get quite a good buy when you buy a large bag of frozen peas or frozen beans, or such foods. That is to take care of the needs of a large family and they give you a very good markoff on that particular piece of merchandise, as against a regular-sized package.

Mr. KORNEGAY. That was a point that I tried to make in the hearings the week before last. I live in Washington by myself at times, and when I go to the store I usually buy small cans of peas, and I know I am going to pay more for the peas than I would if I bought the family size which my wife does at home. But at the same time if I bought the family size and there is only one to eat out of it, the rest would go to waste. So in the end it would really cost me more for peas than I do if I buy the little can of peas. These are the difficulties that you are confronted with. We, as the legislators, are trying to get what is really the best buy, and in the final analysis I don't know but what, as you pointed out, it might be better for the individual to get that for himself because it is awful hard for me to get it for him.

Thank you very much.

Mr. GATHINGS. And the housewife is pretty smart.

Mr. NELSEN. Thank you, and I wish to compliment my colleague for his usual sincere and able presentation. It is a sensible one, I might add.

I would like to refer to a statement made on the floor—I am sure you were there when it was made—by Judge Smith, referring to a session of Congress, when he said that we are passing attractive labels in this Congress. As nearly as I can determine in the hearing thus far, the greatest violation in truth packaging is how this bill has been presented in my judgment with an attractive label, and actually the truth of the matter is that most of the arguments used in the sale of this bill can be taken care of in present law.

I am sure you would agree, after hearing the testimony.

Now, mention has been made, for example, of servings, and in the hearings it was made crystal clear that the Food and Drug Administration have the right to say how much solid oyster must be in a can of x number of servings. The courts have held that they have that right and the authority now under the law. For example, as to a can of peaches that was used as an example by the proponents, and by the administration representatives, it was admitted and it was proven that the authority was already in the hands of the Food and Drug Administration in the event there was too much liquid in the can and not enough solids.

Yet nothing was done by even the people who are complaining now and are asking for this bill.

In this instance of the canning industry, as to a can of peas, the standards have been developed. This can of peas is poured out, the liquid goes out, and the peas are poured back in the can. The can is then full. That is now an accepted standard, as far as fill is concerned.

As to some of the packages, for example, of cereal, if the package is completely filled, they tell me that they couldn't close the package without crushing the contents and that settles in the package, so there must be some space in there.

The thing that I merely want to point out is that I am sure that we have adequate laws at the present time.

Mr. GATHINGS. Thank you, Mr. Nelsen.

Mr. PICKLE. Mr. Chairman, I simply want to welcome the distinguished and colorful Arkansas traveler to our committee. He is an expert in this field, and we are happy to have him here.

Mr. GATHINGS. I enjoyed being in Texas, as your guest.

Mr. BROYHILL. I want to join my colleagues in complimenting Mr. Gathings on his statement.

Mr. SATTERFIELD. I have no questions, Mr. Chairman.

The CHAIRMAN. Doctor Carter.

Dr. CARTER. I just want to welcome the genial gentleman from Arkansas, and he is certainly one of the most distinguished colleagues in the House.

Mr. GATHINGS. Thank you very much. It has been a pleasure being before your committee today.

Mr. ADAMS. Mr. Chairman, I just want to thank him for the courtesy to me yesterday and I am glad you are here.

The CHAIRMAN. Our next witness is Mr. William P. Murphy, president of the Campbell Soup Co., Camden, N.J.

Mr. YOUNGER. May I say a word of welcome to Mr. Murphy because they have a very large mushroom plant in my district and we appreciate very much what you have done for the district, and what the district has done in producing good mushrooms for your plant in Sacramento, in making soup.

We welcome you.

Mr. NELSEN. May I likewise welcome the gentleman? They have a plant in our district which has been mushrooming very fast, and we appreciate it.

Mr. SPRINGER. May I say I don't have anything of Campbell's in my district at all, and the only thing I enjoy is a nice soup that I have on Sunday evening at a very moderate price. Thank you.

The CHAIRMAN. Mr. Murphy, I too, can say that I don't have anything in my district and we would welcome one of your plants in the second district of West Virginia.

We are very happy to have you with us as one of the outstanding food manufacturers in America, and to have the benefit of your views. I would daresay that your organization comes under no scrutiny from this committee or from the different departments. We are glad to have you though, here, to give us the benefit of your views on this legislation.

You may proceed.

STATEMENT OF WILLIAM P. MURPHY, PRESIDENT OF THE CAMPBELL SOUP CO., CAMDEN, N.J.

Mr. MURPHY. Thank you very much. I appreciate the opportunity to be here. I appreciate the nice remarks from Mr. Younger, and Mr. Springer, and Mr. Nelsen. We try to behave ouselves, as you well know.

We have been in business 97 years. For the last 33 years my primary concern of my business life and great interest has been the marketing and consumer attitudes relating to foods. I have a statement which has been submitted and I am not going to read it. I am going to excerpt it. There are certain parts which I did want to read and certain examples.

I am not going to deal with servings and I am not going to deal with "cents off." I am going to deal with some really vital things that get at the guts of our business.

One is the fact that we have to publish our private formulas so that anybody can copy them. This is provided in the proposed bill—the fact that we cannot innovate without at the same time telling our competitors what we are doing, and therefore, giving up all competitive advantage through initiative, engenuity, and innovation.

These are the really serious things, and I want to show examples of how this will work.

I am also going to give you an example of something that we have in the works now and I am going to give this even though our competitors thereby will know about it. To emphasize the great importance of this bill and the great harm I think it will do to our business.

There is no question that the housewife is entitled to full and undeceptive information about the product she buys. I don't think anybody argues about that. But equally important, she is entitled to make her own decision whether a particular product or packages are suited to her needs or not.

Let me tell you, if you want to see confusion, you watch a housewife in front of a Campbell soup section of 33 kinds of soup trying to make up her mind whether she is going to buy vegetable or vegetable beef, chicken gumbo or chicken noodle. This is what I call confusion.

The housewife is a very intelligent individual. We don't have to worry much about her being deceived, but she won't be a second time. This is the way to the business grave, to attempt deception. There have been attempts to deceive and the graveyard in the corporate food field is full of companies that tried to do this. It is a very tiny percentage. Some statement has been made about 1 percent. I put it at one-tenth of a percent.

I think it is a minimum. I agree that the Federal Trade Commission, if they just would do their job, could knock this in the head so fast it would make your eyes water.

These bills would take the decisions about buying out of the hands of the individual consumers and put them in the hands of the Federal administrators. This is not a bill for consumers. It will seriously hamper innovation designed to please consumers, and I want to give some examples.

I believe consumers would be deprived of the many new and desirable products that might otherwise be available to them, and she will have to pay more for those she would be able to buy.

This is so because control of packaging size, weight, and shape would stifle innovation. Let me give you just a few examples from our own business.

Consumers have found frozen prepared dinners useful and convenient. The business is in the hundreds of millions of dollars. We manufacture 25 different varieties of frozen dinners, sold under the Swanson TV brand trademark. This product is relatively new. At the time Swanson Co. entered this field in the early 1950's, with a now well-known three-compartment dinner tray. From this beginning, the present substantial industry developed. If Federal control of packaged size, of the weights and shapes, had been in effect then, it is entirely conceivable that the Swanson Co. would not have been willing to risk an investment in this new field. They got a terrific headstart on their competition, incidentally. Let us suppose for example that there had been a regulation saying that frozen poultry parts could be sold only in three package sizes—8 ounces, 12 ounces, and 1 pound. Eight ounces of poultry would have been too much for an individual dinner, so the only alternative would have been for the Swanson Co. to go to Washington for administrative approval.

By the time the problem had been discussed with a number of administrative officials and a new or amended regulation had been published in the Federal Register and made the subject of hearings, potential competitors all would have been fully informed and Swanson would not have derived the advantage of its innovation. So there would not have been much incentive to innovate and so a small company

like Swanson would not risk the investment that would have been required.

Similarly, it would have been difficult if not impossible for us. We acquired the Swanson Co. in early 1954, and introduced the innovations that have helped so materially in expanding this frozen dinner market from 3 dinners to 25.

For example, here is a three-course dinner we brought out 4 years ago. It not only has the basic dinner, but has the initial ingredient of a soup and a dessert.

Here is another one. Two years ago, to get a competitive advantage, we brought out this four-compartment dinner, an improvement on this one. Included in this section is cranberry sauce for the turkey dinner, a blueberry muffin, a brownie, and a pudding—an additional consumer value.

This obviously would require variation in the weight of the individual ingredients and the total weight of the dinner. If these proposed bills had then been law, and regulations controlling size, shape or weight were in effect, neither of these could have been done without the blessing of the Federal Government, thereby giving our competitors full advance notice.

If you don't think that hampers innovation, I will assure you, based on 33 years of experience in the food business, that it would.

Now, here is another example of a new product. There is a little product called Goldfish. This a Pepperidge Farms Goldfish. That is a division of our company. This package contains 250 tiny crackers. It says that all of the way around. Suppose there had been a regulation saying crackers could be sold only in boxes of a particular shape, containing only 4, 8 or 16 ounces of crackers, for example. You know that this package weighs 6 ounces. It would not have been possible to develop this original attractive package. To have made it 8 ounces we would have made the price less attractive. This is 39 cents. Eight ounces would have been 44 or 45 cents which is less attractive. If we had it in a box, instead of this attractive package showing the goldfish, I would say it would have had a far less chance of being successful.

At the very least we would have had to go to Washington to get an amendment, thereby advising all of our competitors what we had in mind and even then we could not be sure we would get the necessary amendment.

Now, what about soups? I guess this is the largest single selling item in the stores, if you took all Campbell soups together. What about these? This regulation is pretty important to soups. You say it doesn't affect soups? These are already standardized, and they are 10 fluid ounces, even though they say all kinds of different weights because of the avoirdupois requirement, which I abhor. But let us say that we were not in the soup business, and let us say that regulatory officials had exercised discretionary authority and concluded that canned condensed soups should be sold only in 12- and 18-ounce sizes. We would have to have six different can sizes, like these can I have here, running from this height to that height, in order to meet a regulation because of the various specific gravities. I don't think it quite is.

I want to give you one real basic reason and real basic fault with this legislation. I will tell you that we are trying now to develop a triple condensed soup.

This is the first time this has ever been disclosed outside of our company, triple condensed. This is a double condensed soup. Each additional can of water makes 20 fluid ounces of soup or a can of milk added to tomato soup makes 20 ounces of cream and tomato.

There are certain soups which we feel we may be able to develop in triple condensed form, which will be a tremendous saving in container, in label, in freight, all the way through, the container.

Can we do this? Can we do this? If this law passes? Without the Federal Government first clearing it, no, we cannot. I guarantee you this bill says we cannot do it and I would say that this changes America. This changes America. This means that Campbell Soup Co. cannot make important new products of great consumer advantage because of a piece of legislation that is shortsighted.

I will give you another example.

What do we want to bring out? Because of the changes in consumer markets, and consumer markets change, there are a lot more single people. This 10-ounce can makes 20 ounces of soup. This is too much for one except a growing kid.

I have eaten 20 ounces at times. Some people serve two people, some people serve three, some four. We don't care about the serving thing. The housewife knows how many servings she can get out of a can. But there are a lot of people living alone. What do we want to bring out?

An individual serving, what we will call an individual serving, let us say a 5-ounce condensed soup; under this regulation we will have to come down to Washington and get down on our knees and beg the Federal authorities to give us permission to do it.

Now these are the fundamental faults, the disclosure of private formula information, inability to innovate. These are the two points that to us just gut our company.

Now, I have some other things here, Mr. Chairman. We have other examples, but I think I have said enough, Mr. Chairman.

The CHAIRMAN. Mr. Friedel, do you have any questions?

Mr. FRIEDEL. Yes.

Mr. Murphy, are those six cans you have there all uniform size?

Mr. MURPHY. No. They are uniform in their avoirdupois weights. For example, bean and bacon soup has a greater specific gravity.

Say we had a 12 ounce. The net weight had been set up for soups. This is 12 ounces of oyster, too. This is 12 ounces of bean and bacon.

Mr. FRIEDEL. They all have different sizes.

Mr. MURPHY. I don't think this is our principal point I am making here, Mr. Friedel.

Mr. FRIEDEL. I thought you wanted to keep the uniform size.

Mr. MURPHY. We want uniform size, yes.

Mr. FRIEDEL. And give the specific weight on each package?

Mr. MURPHY. Yes. Well, I would love to have the Government say go to fluid ounces, because these are all 10-fluid-ounce cans.

Mr. FRIEDEL. They are 10-ounce cans?

Mr. MURPHY. All of our soups in this size can that are now on the shelf are either 10 fluid ounces, or 20 fluid ounces, or 46 fluid ounces,

or for the vending machines where it is ready to serve, not condensed, 8 fluid ounces, although it says here 8¼, which is avoirdupois, because the Government requires us to say avoirdupois.

It would be a lot less confusing to the housewife if we would go to fluid ounces instead of avoirdupois ounces. A lot of this quarter, half, three-quarter-ounce thing, is the fact that we are still on the antiquated avoirdupois-ounce basis for products that are really in fluid-ounce containers.

Mr. FRIEDEL. Each package has marked on how many fluid ounces?

Mr. MURPHY. How many avoirdupois ounces, the weight.

Mr. FRIEDEL. The weight?

Mr. MURPHY. Not the physical contents. Fluid ounce is physical contents. Avoirdupois ounces is weight. We also put on the number of grams. In Canada of course everything is 10 fluid ounces, just as it is in England, as it is in Australia, as it is in Mexico, but here under our regulations we have to use the antiquated and avoirdupois ounce setup, which we would like to get rid of, incidentally, but that is aside from the point.

Mr. FRIEDEL. Mr. Chairman, I will reserve any further questions for later.

The CHAIRMAN. I would like to ask, Mr. Murphy, if this bill, for instance, were amended to eliminate the provision to standardize weights and quantities and to substitute two prohibitions, first, against nonfunctional slack fill; second, against packages which appear to be the same as before, but actually contain less, would you still object to the bill?

Mr. MURPHY. Our objections to this bill are to section 5 (d), (e), (f), and (g), and the section which discloses the formula information.

The CHAIRMAN. Just answer this question.

If this were amended in this fashion would you still object?

Mr. MURPHY. Cents off, so what? We don't use them; very occasionally. Actually as to the history of the cents off, the grocery business is full of so-called deals. You know what I mean. For a limited period of time the direct customer, the wholesaler, or the chain warehouse, will be 25 cents a case off for a limited period for a specialty.

So many times that 25 cents never got to the consumer. It never changed the retail price because there is a wholesaler or chain warehouse between the manufacturer and the retailer and so often that didn't get through, and so there were two things done in order to try to get those special sales, what they call deals, special sales, through to the consumer.

One was coupon. Now, there is a lot of fault in coupon. There is faulty redemption. "Come into our store. We will give you cash for it. We will sell you anything on this 10-cent coupon." It is like an infectious disease.

It becomes big in a certain place. It became big in Omaha, you may remember, Mr. Cunningham, until the trade just kicked it out. It is now pretty big in northern New Jersey and certain part of New York City.

The other thing was the cents off, and there the manufacturer was relying on the retailer actually reducing the price and in our opinion in the main he did it. I think a higher percentage of the deal price

reduction reaches the consumer via the cents off than it does via the regular deal. So I don't consider this cents off thing critical.

I think we are not doing the consumer a big favor by knocking it out. I think we ought to prosecute fraudulent cases of it. I know it has been heralded, made a great big thing of, but I would hate to have this bill hang on the cents-off thing or the servings thing.

The servings thing can go out the window as far as I am concerned. The housewife decides what she is going to do in the way of serving.

The CHAIRMAN. Again I would like to ask if this bill were amended to eliminate those provisions that we talked about, to standardize weights and quantities and substitute these two prohibitions, first against nonfunctional slack fill; the second against packages which appear to be the same as before but actually contain less, would you still object to the bill?

Mr. MURPHY. Did you put in the exact way the formulation is, the exact weight of ingredients?

The CHAIRMAN. Amend the bill to eliminate the provisions to standardize weights and quantities. I think that is what you are objecting to, Mr. Murphy.

Mr. MURPHY. There is section 5(c)(4) which requires a manufacturer to disclose his formula. I mean it could require a manufacturer to disclose the exact quantity of each of the ingredients going into a can of vegetable soup and so anybody could copy our formula.

The CHAIRMAN. Do you have any language to substitute in place of this?

Mr. MURPHY. Yes, we do. We would like to list ingredients in order of size. We now do this on our products; in other words, the principal one, and the second principal one, third one, in order of size.

The CHAIRMAN. I know you do.

Mr. MURPHY. But if you have to put the weight on it you are disclosing your formula.

The CHAIRMAN. The reason I am asking you this is I believe that America as a whole is demanding some kind of a bill, if I read the sentiment correctly in this country, and I don't believe the intent of this committee is to hurt industry in any way, and especially organizations such as yours which is doing a good job.

I think nearly every member of this committee feels the same way, but I think that you in all fairness will agree there are some things going on that need attention, and that is what we are trying to get at.

Mr. MURPHY. I appreciate that, Mr. Chairman, and you know what our principal points are that we are concerned with.

The CHAIRMAN. Yes.

Mr. MURPHY. I do have language if you would like to substitute it for this formulation thing. We feel so deeply on this.

The CHAIRMAN. We would like to have it if you will submit it to the committee.

Mr. MURPHY. We will submit it.

(The information referred to above follows:)

Insert the following proposed amendments to Section 5(c) and Section 5(c)(4), which should be inserted in place of the existing provisions contained on Page 5, Line 24 through Page 6, Line 5, and Page 7, Lines 4 through 10, of H.R. 15440:

"Whenever the promulgating authority determines that regulations containing prohibitions or requirements other than those prescribed by section 4 are

necessary to prevent the deception of consumers [or to facilitate price comparisons] as to any consumer commodity, such authority shall promulgate with respect to that commodity regulations effective to—

"require [consistent with requirements imposed by or pursuant to the Federal Food, Drug, and Cosmetic Act, as amended] that [information with respect to the] *a list of the principal* ingredients [and composition of any consumer commodity (other than information concerning proprietary trade secrets)] be placed upon packages containing that commodity [; and], except that (A) each such regulation shall be consistent with requirements imposed by or pursuant to the Federal Food, Drug, and Cosmetic Act, as amended, (B) no such regulation shall apply to any consumer commodity for which a definition or standard of identity has been established and is in effect pursuant to a regulation promulgated under that Act, and (C) no such regulation promulgated under this paragraph may require the disclosure of information concerning proprietary trade secrets."

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. Would you read that?

Mr. MURPHY. Section 5(4), on page 7:

require that a list of ingredients of any consumer commodity be placed upon packages containing that commodity, except (a) each such regulation shall be consistent with the requirements imposed by or pursuant to the Food, Drug, and Cosmetic Act, as amended, and (b) no such regulation shall apply to any consumer commodity for which a definition or standard evidently has been established and is in effect pursuant to regulation promulgated under this act, and (c) that no such regulation promulgated under this paragraph may require the disclosure of information concerning proprietary trade secrets.

Mr. SPRINGER. In essence what you are asking is that it is all right to put in the formula, we will say, on the label, the mushrooms, flour, salicylic acid, and salt, whatever else goes into it, but not the quantity which would disclose your secret?

Mr. MURPHY. That is right.

Mr. SPRINGER. That is the first one. The third one I got, but I didn't get the second one. The third one I got.

Mr. MURPHY (reading):

no such regulation promulgated under this paragraph may require the disclosure of information concerning the proprietary trade secrets.

Mr. SPRINGER. That is the third one. There were three there. What is the other one? There are three things.

Mr. MURPHY. This bill does not cover meat products.

Mr. SPRINGER. I understand.

Mr. MURPHY. Or poultry products.

Mr. SPRINGER. But there were three things in that and I got two of them and I haven't got the third one. That is the one I didn't understand.

Mr. MURPHY. And (a) is that "except that each such regulation shall be consistent with the requirements" under the present law. And (b) is that "no such regulation shall apply to any consumer commodity for which a definition or standard evidently has been established." This is a legal language.

Mr. SPRINGER. All right.

That is all, just those two things then?

Mr. MURPHY. Actually the weight, the amount of the ingredients. Here is tomato soup. It shows "Prepared from tomatoes, enriched wheat flour, vegetable oil, onions, butter, salt, sugar, natural seasonings, and vitamin C."

We don't want to put in the exact weight of the butter, salt, sugar, exact seasonings or their exact weight.

Mr. SPRINGER. That is your formula?

Mr. MURPHY. That is our formula.

Mr. SPRINGER. I understand.

Mr. MURPHY. Under this present bill as written we could be required to publish it.

Mr. SPRINGER. Mr. President, I have been very much interested and I am trying to get out of each witness, because we are getting gradually a representative viewpoint, pretty broad, across the country, your dollar sales, under a million and in years, say.

Mr. MURPHY. Our what? Our sales?

Mr. SPRINGER. Yes.

Mr. MURPHY. We just finished our fiscal year July 31 and I think we are around $767 million or $770 million.

Mr. SPRINGER. You are between a half billion and a billion dollars?

Mr. MURPHY. Yes.

Mr. SPRINGER. You probably have some idea that this legislation is pretty imminent. You have made some loss figures, haven't you, on what this would cost?

Mr. MURPHY. Yes, sir, I have a lot of cost figures, but I am afraid to use them. Let me tell you why.

Mr. SPRINGER. All right.

Now, wait just a second. This is one of the important things that we want to know because this I have been raising with every single witness. We had a lot of people down here from the White House, the Trade Commission, all of whom are big propagandists for some kind of a consumer bill, and all they want is a consumer bill on the front of them.

I know what they are down here for, but the point I am trying to find out is when I asked each and every one of them if they had any idea what this was going to cost the country they hadn't even thought of it.

They hadn't even thought of the cost, let alone come up with any estimate or tried to see anybody in industry to ask them what this is going to cost, and I am asking you what it is going to cost you.

Mr. MURPHY. If we had a change in package size on a can of soup it would cost us a half million dollars a line and we have about 70 lines.

Mr. SPRINGER. Then you are talking about each time you would change it, if you change all your lines, it would be $35 million.

Mr. MURPHY. $35 million, yes, sir.

Mr. SPRINGER. You are going to absorb that yourself?

Mr. MURPHY. This is a minor cost.

Mr. SPRINGER. Is $35 million a minor cost?

Mr. MURPHY. Yes. Let me tell you the big cost. Supposing we bring out a triple condensed soup. What do you think that that would do to our business? It might give it a great big lift. Our business has been growing at a regular rate. It might give a great big lift to our business. It might represent a great big economy to the consumer.

And if some Federal administrator says, "No, you can't do that, can't do that," what is the cost of that? I think the cost of that would make the $35 million look small.

Mr. SPRINGER. Let us just pin this down a little bit more. He wouldn't have to tell you you can't do it. All he would have to do is tell you to put it in this size can.

Mr. MURPHY. And maybe that would be a can of a size that wouldn't sell.

Mr. SPRINGER. Couldn't market it at all.

Mr. MURPHY. Couldn't market it at all.

Mr. SPRINGER. When you get ready to market a new product it is my understanding from some of these witnesses that have come before us that they make pretty much of a test of this. They really go into the marketplace to find out when they have a revolutionary product just as we had one here.

I can't remember what it was. It was brand new. But they found out that it could only come in half a pound. They couldn't market it any other way but half a pound can. In fact the marketing was as big as the product was as far as sales were concerned.

Do you make a pretest in the marketplace to determine what you are going to sell?

Mr. MURPHY. Yes, sir. Our record is about 90 percent success on new products and we go through a complete series of tests in the home, in a few homes, in several hundred homes, then in several cities, and then in a region before we go out for whole.

We want to please the consumer. We have to. She has to want that product or we are licked.

Mr. SPRINGER. Let us just take $35 million and divide it among 70. That would be 5 percent the way I get it. That would be 5 percent of your total sales, wouldn't it, if you had to revolutionize the whole 70 cans? Isn't that correct? That isn't any insignificant cost.

Mr. MURPHY. I have indicated the cost per line which we know it would take for the change. I think it would be much more costly than that because I think it would hurt our total volume of sales and the cost would be very much greater than that.

Mr. SPRINGER. Do you absorb this?

Mr. MURPHY. What is that?

Mr. SPRINGER. Do you absorb this kind of cost?

Mr. MURPHY. Well, I don't think you can. I think you have to pass it on.

Mr. SPRINGER. This raises a point. I said to you a minute ago I enjoy Campbell soup on Sunday evening because it is soup at a modest price, but I certainly don't want it increased 2 or 3 or 4 cents by this legislation.

Mr. MURPHY. Neither do we.

Mr. SPRINGER. Do you have any answer to that?

Mr. MURPHY. Neither do we, Mr. Springer.

Mr. SPRINGER. This is a problem I am trying to get out here so this committee can understand if there is going to be increased cost or there isn't.

There have been people here talking about this most innocent woman you have ever seen who is in charge of consumers, who says it won't

cost much to just put a new label on; all you have to do is put a new label on and this gives you the whole picture. She didn't even understand what this legislation was about.

Thank you, Mr. Chairman.

Mr. FRIEDEL (presiding). Mr. Jarman.

Mr. JARMAN. Mr. Murphy, I have a question or two I would like to ask.

Assuming that Campbell Soup should come out with a triple condensed soup, as you mentioned, which would be in a smaller can than the regular size that Campbell now uses, what is there specifically in the bill before us that would prevent Campbell Soup from effectively bringing out the product in the new can?

Mr. MURPHY. The bill provides for establishing standards as to size, shape. If those standards are set and then a manufacturer wants to bring out a new size he must come and get approval for the new size.

Mr. PICKLE. Would the gentleman yield?

Mr. JARMAN. Yes.

Mr. PICKLE. What section of the bill do you make reference to in answer to the question that the gentleman from Oklahoma asked?

Mr. MURPHY. It is section 5(d)—

Whenever the promulgating authority determines, after a hearing conducted in compliance with section 7 of the Administrative Procedure Act, that the weights or quantities in which any consumer commodity is being distributed for retail sale are likely to impair the ability of consumers to make price per unit comparisons such authority shall—

And so forth.

In other words, there is the power given to a Federal official to stop a new size.

Mr. JARMAN. But under the bill before bringing out triple condensed soup in a smaller new container, you would have to come to Washington first on your own initiative and get the authority?

Mr. MURPHY. Yes. You know how fast news of that flashes to the rest of the trade? It is actually less than 24 hours. I will give you that because we know through our familiarity with the other agencies of Government where we deal with the chicken and poultry products.

Mr. JARMAN. Let me ask you to turn to page 9 of the bill if you will and to subparagraph (3) which provides—

preclude the use of any package of particular dimensions or capacity customarily used for the distribution of related products of varying densities, except to the extent that it is determined that the continued use of such package for such purpose is likely to deceive consumers.

Would you comment on whether you think that subsection would give you some protection on your triple condensed product?

Mr. MURPHY. If you have a broadminded administrator, you know, a man with great experience in consumer goods, there is no harm done, but what if you have the opposite kind of a person who decides he wants to run things. He can call it deceptive because it is different.

In other words, we are taking freedom of innovation and substituting for it Federal control. This is why I say we are not doing the consumer any favor here, because, you know, standardization sometimes costs a lot of money.

Diversification has made the modern supermarket the envy of the whole world. I haven't pointed out what this bill would do to us

internationally when our competitors in Japan and France can go their own happy way on our export market and we would be tied down by restrictions.

I haven't pointed that out, but this is another factor, but less important than the others I have tried to bring out.

Mr. JARMAN. I am sure all of us are interested in protecting the right of a great company like Campbell soup to bring out new products for the public.

Mr. MURPHY. We appreciate that, sir.

Mr. JARMAN. I am reminded, though, of what Secretary Connor said in part in his statement to the committee early in these hearings. He said that—

> Fears have been expressed that promulgating agencies could be unreasonable in exercising discretionary authority. This is, of course, an argument that could logically be made about every bill. But it should be noted that these regulations cannot arbitrarily be imposed. They must be based on public hearings, and opportunity for judicial review also is provided in the bill.

Let me ask you this. Do you feel that there is presently enough law?

Mr. MURPHY. Enough what?

Mr. JARMAN. Do you feel that presently we have enough law in this field to do the policing necessary if that law were enforced?

Mr. MURPHY. I don't think there is any question about it, sir, and I think that if we had adequate enforcement of existing law, the small amount of deception that might be practiced would be a very, very tiny part of the whole and a pretty small penalty to pay versus the other great penalty on the other side that would come through packaging controls.

Mr. JARMAN. Based on your long experience in this field do you feel that any additional legislation is necessary?

Do you have any recommendations for the committee?

Mr. MURPHY. I have no recommendations, sir. Incidentally, Secretary Connor is a great friend of mine. I was on his Board and I have worked with him in connection with the Business Council and I have great respect for his opinion.

However, he wasn't in the food business, and I have been.

Mr. JARMAN. We are going to be in the process in executive session of considering this bill in detail and I would simply say if you have any suggested language to recommend, for instance, in tightening up the subsection 3 to which we referred a moment ago, it would be very helpful to us.

Mr. MURPHY. We will be glad to submit our recommendations, sir, and I also say that any information you want from our company we will be very happy to provide you.

Mr. ROGERS of Texas (presiding). The gentleman from California, Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman, and thank you, Mr. Murphy, for a very fine presentation.

I have had another case called to my attention that follows along your same line of argument and that was the development of the soft margarine which was put into tubs.

I understand that there were several million dollars invested in that product to bring it to the point where they could market it. If this

bill as it is now written were passed and became a law very few companies are going to risk several million dollars in trying to develop something and then have to disclose their development to the public before they can get a chance to use it. Isn't that true?

Mr. MURPHY. I think that is true. You know, we had a jump on this TV dinner with the three-course dinner. We had about a 9-months jump on our competition on this product and almost a year's jump on our competition on this product.

You don't think that was helpful? It was terrifically helpful. And this is innovation and I think the housewife likes it.

Mr. YOUNGER. But you have to spend a lot of money to develop this before you can put it on the market.

Mr. MURPHY. And we don't want to spend the money and have all our competitors sharing the benefit.

Mr. YOUNGER. That is right. One other question.

Do you think that the meat products ought to be covered?

Mr. MURPHY. They are covered in a way that is perfectly all right with us.

Mr. YOUNGER. I know it, but I mean normally in the bill meat——

Mr. MURPHY. And poultry.

Mr. YOUNGER (continuing). And poultry is not covered.

Mr. MURPHY. No; but, you see, the meat and poultry regulations specify that you must show the ingredients and they also have levels of quantities.

For example, in bone chicken you have to have a certain definition, which is all right. That is fine.

Mr. YOUNGER. That is in law, too, agriculture.

Mr. MURPHY. That is right. This doesn't deter us in any respect.

Mr. YOUNGER. Yes. Do you think this provision should be in here, if they insist on this kind of a law, if the administration insists on it, to set up a new bureau with all of these standards? Do you think that that law should also impose the same standards on any comparable imports from any foreign country?

Mr. MURPHY. Well, I think that it would have to, but what are you going to do in Bermuda where you are competing with the French?

Mr. YOUNGER. There is nothing in the bill at the present time covering that, is there?

Mr. MURPHY. No, but I am thinking of our handicap we have in competing with our foreign competitors in a place where we are restricted here. They are not restricted. This is another element.

Mr. YOUNGER. That is right.

We are then passing along all the advantages not only in the product, but also in our balance of payments, so to speak?

Mr. MURPHY. Would you like to know how fast a Japanese company would make a line of soups identical with ours if this bill were passed as it is? They would be out with it in 6 months and copying our products exactly and swamping the whole export market with them.

They can't do that now because they don't have our formulas. If our formulas were published in accordance with this bill, we would have Japanese competition that would knock our export sales "galley west."

Mr. YOUNGER. It seems to me that if we are going to do anything we ought to proceed along the same lines that we have already set up, namely, in the Federal Trade Commission Act.

Mr. MURPHY. Meat and poultry.

Mr. YOUNGER. And in the Pure Food and Drug Act, with amendments, and not set up a new bureau. Isn't that your feeling?

Mr. MURPHY. That is my feeling.

Mr. YOUNGER. Thank you.

Mr. ROGERS of Texas. Mr. Kornegay?

Mr. KORNEGAY. Thank you very much, Mr. Chairman.

Mr. Murphy, I want to thank you for your testimony and say you certainly have done a splendid job in presenting your viewpoint in this matter and the effects of this legislation on your business and probably on the business of others.

Now, you have been questioned about certain features of this bill being eliminated and the bill ultimately included only two areas. These two would be slack fill and the deception with reference to the sizes, as I understand it. If it appears to be as big as it was before, but actually isn't as big a commodity as it was before, that is, by changing the shape of the container or by some other gimmick, that would leave the impression on the consumer or purchaser that he or she was getting the same quantity but was actually getting less, would it not?

Now, with reference to the first point, the FDA now has authority over slack fills and in fact has established standards of fill for certain commodities such as canned fruits, fruit juices, canned shellfish, canned tuna fish, canned vegetables and canned seafood.

Some of these standards are quite specific, that is to say, the standards of fill. Canned crushed pineapple is a fill of not less than 90 percent of the total capacity of the container. Other standards seem merely to remind you that the FDA expects industry to avoid unnecessary slack fill such as the standard of fill of the container for canned peaches is the maximum product of peaches that can be sealed in the container and heat processed without crushing or breaking.

Is that a fair statement of the present law as you know it?

Mr. MURPHY. As I understand it. I think a manufacturer worries more about slack fill. We have electronic devices so that every item that we make has to get not only a personal visual inspection, but also an automated inspection to make sure. We worry about a slack fill.

Mr. KORNEGAY. The machine kicks out slack fill, is that it?

Mr. MURPHY. Yes, sir. We are worried about that consumer. I don't know any food manufacturer that is crazy enough to deliberately slack fill. He is going to go out of business. I will guarantee it.

Mr. KORNEGAY. Let me ask you this: Do you feel that the present law covers all these problems or could cover them?

Mr. MURPHY. Oh, you know, there was a case of a candy—this was quite a point—I have forgotten the name of the candy, Delsey candy—that was cited as a great example of deception of the consumer.

Mr. KORNEGAY. You say candy?

Mr. MURPHY. The Government alleged that the mints were deceptively packaged because of paper dividers. The company maintained these were desirable to prevent breakage and for appearance. The Government lost the case. The Government had the power and could have issued regulations which would have been entitled to great weight by the court and would have made the Government's task of

proof easier, but for some reason it had not seen fit to issue regulations prior to the lawsuit. I understand the packaging in question was subsequently modified. This mint case has been held up as a reason for this bill. I do not think this is a valid reason because the Government could have issued regulations but didn't.

Mr. KORNEGAY. Maybe some others might come to light during the committee's deliberation on this problem and at the end of the hearings the proponents made out a case where it appeared to be necessary in order to protect the public that some action had to be taken in this total area.

Do you feel that we ought to pass out a bill such as we have under consideration as setting up a new department to handle it, or should it be done by way of amendment to the existing law?

Mr. MURPHY. I would amend the existing law, sir. This is gratuitous. You are asking the question. That would be my suggestion.

Mr. KORNEGAY. Thank you very much.

Mr. ROGERS of Texas. Mr. Devine.

Mr. DEVINE. Mr. Murphy, I have no questions. I just want to comment to you it is refreshing to see a member of the free enterprise system here very enthusiastic about the products of his company and having pride in what you are doing and you have gotten that through the great free enterprise system, not through Government regulations and control.

That is the only comment I have to make.

Mr. MURPHY. Thank you.

Mr. ROGERS of Texas. Mr. Pickle.

Mr. PICKLE. Thank you, Mr. Chairman.

Mr. Murphy, I don't think that it was the intent of the Federal Trade Commission and HEW, and the Food and Drug Administration to require that you show on your packages, cans, products, any private formula that your company has, and I don't think it was the intent of any of those groups to require that you be limited in any innovation.

Now, those seem to be the main two complaints that you have registered about this bill. I assume with respect to sections 3 and 4 that in general you think there are advantages to be gained and that they are not critical to the packaging industry, and that as such in general terms they would be acceptable.

Now, I want you to tell me just to be sure I understand it myself again. What place in this bill clearly says that you would have to give away your trade secrets?

Mr. MURPHY. That is page 7.

Mr. PICKLE. You are talking about 5(d)?

Mr. MURPHY. I am talking about 5(c)(4).

Mr. PICKLE. Now look then in that same section. On line 8 it says clearly "(other than information concerning proprietary trade secrets)."

Mr. MURPHY. What is a proprietary trade secret?

Mr. PICKLE. I would read the intent of that is to say that you don't have to publish your formula.

Mr. MURPHY. What is a proprietary trade secret, sir?

Mr. PICKLE. Let us get back to what you think would be the intent of the legislation. I think we can talk a long time about what would be a definition of proprietary secret.

Mr. MURPHY. As long as the present Secretary of HEW and the present Secretary of Commerce or sensible officials, but this is subject to Government discretion.

Mr. PICKLE. If the language were changed or made clear that you would not have to give away any trade secrets——

Mr. MURPHY. Why not use the language of the present regulations on meat and poultry?

Mr. PICKLE. Well, rather than going back to present language, either present language or any new language, if it is made clear that you didn't have to give away your trade secrets then this would go to the heart of that one complaint, is that correct?

Mr. MURPHY. If you just say list of ingredients in descending order and not require weights.

Mr. PICKLE. That section doesn't make any reference to weights.

Mr. MURPHY. Oh, yes, sir, it does. I beg your pardon, sir. If I am a real busybody Government regulator I can say, "Buddy, you have to put down the amount of salt."

Mr. PICKLE. I just don't see the word "weight" in section 4. You point it out to me.

Mr. MURPHY. But it says "with respect to the ingredients and composition," composition, the word "composition." See that word? That word means weight. It could mean a lot more. It could mean the nature. It could mean the actual, specific nature of a certain ingredient.

Mr. PICKLE. All I am trying to get at, Mr. Murphy——

Mr. MURPHY. Yes, I know.

Mr. PICKLE (continuing). Is that you would want the language made clear that you would not have to give away as a packager of food any kind of a trade secret?

Mr. MURPHY. Any kind of weight information. I am that specific, sir, because I was in the Government, you know, for over 3 years during the war when we had a War Labor Board and we had a Price Administration and believe me I ran into some pretty arbitrary decisions.

Mr. PICKLE. If you abject to any kind of mention of weight, would the same thing apply for, say, percentage?

Mr. MURPHY. Yes. If you have 10 ounces and you give percentage——

Mr. PICKLE. Let us use an example in the case of salad oil. Do you think that the consumer is entitled to know what percentage is olive oil and what percentage is cottonseed oil?

Mr. MURPHY. Why not simply declare the olive oil and the vegetable oil in descending order of importance? When there are essential differences in the oils as between olive oil and cottonseed oil, perhaps there is a need to distinguish on the label, but not when the oils themselves are fungible or interchangeable as is true of corn oil, soybean oil, and cottonseed oil. The latter are usually shown on the label merely as "vegetable oil."

Mr. PICKLE. I am not sure but what that might be a rather severe interpretation, but let us go on to another point here.

Where now does it say that you can't innovate, that you don't dare to bring out a new product?

Mr. MURPHY. This is covered, sir, under sections 5 (d), (e), (f), and (g).

This says in effect that, if standards have been set for a commodity and you want to bring out another product, another package, weight, size, shape, you have to come to Washington, get down on your hands and knees, and beg some Government official to approve it.

Mr. PICKLE. You made that statement earlier.

Mr. MURPHY. This is true, sir.

Mr. PICKLE. I think that is a figure of speech. I just don't interpret it that way. I don't think I like the section particularly, but I don't believe that is the intent of the legislation, Mr. Murphy.

Mr. MURPHY. I hope not. You know, this voluntary thing in here is a selling phrase like truth in packaging. This is not voluntary. This has been brought up in these hearings, and I have read all the hearings. Calling this thing voluntary is not the truth. This is not voluntary.

Mr. PICKLE. The authorities have testified, and I am talking about the HEW——

Mr. MURPHY. They are not food authorities. They know nothing about the food business. I raise the question that the Government officials that have testified here know very little bit about the food business. Secretary Connor knows practically nothing about it. The Secretary of Health, Education, and Welfare knows very little about it.

They know about as much as the average consumer. I can tell you what the effect is on a sizable consumer company that is trying to do a good job for consumers and I would say this bill is very harmful to consumers.

Mr. PICKLE. I think I understand your feelings on it and in general I share your concern if you were to have to give away trade secrets, if you were prevented from doing innovation, that this would be wrong, and I don't think the Government intends that and we shouldn't. We should not.

I don't know, though, that I read into it all that you have said, but I have enjoyed visiting with you about it. At least you gave us pointed answers.

Mr. MURPHY. I am delighted, sir, to hear you say that you agree that those two factors are important.

Mr. ROGERS of Texas. Mr. Nelsen.

Mr. NELSEN. Thank you, Mr. Chairman.

Reference has been made to the intent of the bill and I am sure that you have had some experience, as I have. I have served in our Minnesota Legislature for a number of years, and it frequently happened that a bill that we would pass having a legislative intent, because of power granted to some bureau we would find an abuse of that power, and it is pretty hard to write it exactly right and I am sure that we all must proceed on the theory that our intent must be clear in the bill. Would you not agree to that?

Mr. MURPHY. Exactly; yes, sir.

Mr. NELSEN. Under the terms of the bill we talk about these voluntary guidelines, but the Federal Trade Commission in their statement

said that they wanted to get away from this cumbersome case-by-case approach and wanted an industrywide application, and of course in this case it would be those voluntary guidelines which they would be sitting in judgment over.

On the innovations that you may wish to make, we will say that you do come up with a new package. I don't presume the bill says you must go to Washington for permission for its use, but if you proceed and they in their judgment find out or decide that it is not in keeping with their guidelines, then under the penalty clause in the bill, as I have pursued in other hearings on this bill, under the cease-and-desist legislation you are guilty until you prove you are innocent and you are called into court and you must prepare your case and your own defense, and you are guilty until you have proved they are wrong, which is a pretty tedious and a very expensive process, and in my judgment a dangerous one.

I would like to again bring forth this question about the present laws, as has been stated over and over again, the present laws under Federal Trade and under the Food and Drug.

In your judgment you have stated that they could be amended where there are imperfections to do everything needed in the food business, is that true?

Mr. MURPHY. That is true, sir.

Mr. NELSEN. Thank you. I have no more questions.

Mr. ROGERS of Texas. Mr. Satterfield.

Mr. SATTERFIELD. Thank you, Mr. Chairman.

I believe your statement has been quite clear and to the point, sir, but there are a couple of things that I would like to sort of recap if nothing else.

As I understand it, in packaging your soups for sale, today you use one size can for all soups.

Mr. MURPHY. No. We have this can which is called in the trade the No. 1 can. It is a 10-fluid-ounce can. We have been using that since 1898.

Mr. SATTERFIELD. Is that not the can that you say under this bill you will have to substitute six different sized cans?

Mr. MURPHY. No, no. We were using this as a hypothetical case in case we wanted to go into business. Let us forget that. We use this can. We also have a can double the size which is used in certain very fast selling items and it is twice the size.

We have another can that is used—this is ready to serve—which does not require any water or milk to be added for use in vending machines or in the drugstores.

Mr. SATTERFIELD. I understand that. Let me go back for a minute.

You have six cans over there that will hold the same weight product of different sizes because of the different density or specific gravity of the product?

Mr. MURPHY. Yes.

Mr. SATTERFIELD. As I understand it, those six cans if we went to an even weight for all soups would take the place of the single No. 101 can here?

Mr. MURPHY. That is right.

Mr. SATTERFIELD. In other words, you would require six cans to do the job if you had to package by weight rather than one can if you package by volume; is that correct?

Mr. MURPHY. That is right.

Mr. SATTERFIELD. So actually as far as this No. 101 can is concerned you are really concentrating on putting your product out by volume rather than by weight?

Mr. MURPHY. I would love to see the Government say go to fluid ounces.

Mr. SATTERFIELD. But you are at fluid ounces now, are you not?

Mr. MURPHY No, we have to use weight ounces.

Mr. SATTERFIELD. I realize you have to print that on the label, but in packaging your product you are packaging it in a can of constant volume, is that correct?

Mr. MURPHY. Yes, sir. Every other country in the world is fluid ounces. Here we use avoirdupois.

Mr. SATTERFIELD. Here you are putting your product out as far as soup is concerned on a volume basis rather than a weight basis?

Mr. MURPHY. Yes; 10¼, 10½, 11½, 11¼.

Mr. SATTERFIELD. As to your "Goldfish" example over there, if I understood you correctly the packaging of your product as you package it now is not set so much based on weight or size of package, as it is on price.

Mr. MURPHY. Well, we worked a lot with consumers in this product. We knew we could sell a lot more at 39 cents than we could at 43 cents and 44 cents, and it came out to exactly 250 "Goldfish." It is little trick of how to get exactly 250 in each package.

Mr. SATTERFIELD. The controlling factor here was not so much weight as it was marketability.

Mr. MURPHY. Marketability, attractiveness to the housewife.

Mr. SATTERFIELD. If this bill does as I think it will do and as apparently you suggest it will do, and, frankly, I think as the proponents of it have practically admitted is the purpose of it—require standardization of weight of products put on the market—then you are going to not only change all the packaging you now have, I think you testified, at least as far as the cans are concerned the additional cost would be somewhere around 5 percent of your gross sales at the present time, and you might suffer some relapse in your salability of products so that your sales might drop as a result, is that true?

Mr. MURPHY. Well, I would like to point this out, sir: That since this is an established size, this bill as now written would permit this size. This would not force us to change this size, but if we came out with a new group of products——

Mr. SATTERFIELD. That may be a standard size, but let me ask you this question. This gets to the voluntary thing you were talking about. This bill says you can't change any voluntary standard now in existence.

Mr. MURPHY. Yes.

Mr. SATTERFIELD. But your standard in existence today is a volume standard, is it not?

Mr. MURPHY. Yes.

Mr. SATTERFIELD. If they standardize and say you have to put this soup up according to avoirdupois weight, even then your standard isn't changed, but you are subject to a new standard?

Mr. MURPHY. In (e) if they say go by weight we go by can sizes.

Mr. SATTERFIELD. To tie down what Mr. Springer was talking about, if the increase in packaging of your cans according to weight would be roughly 5 percent of your gross sales, you have to pass it on. This means at least a 5-percent increase in the product to the consumer, does it not?

Mr. MURPHY. That is a one-shot cost, you see, 1-year cost.

Mr. ROGERS of Texas. Will the gentleman yield?

Mr. SATTERFIELD. Yes, sir; I will yield.

Mr. ROGERS of Texas. Then it would be a violation of the law under those circumstances for you to put that bean and bacon soup in the oyster soup can?

Mr. MURPHY. If the regulation provides it, that is right; yes, sir.

Mr. ROGERS of Texas. Thank you.

Mr. SATTERFIELD. Let me ask you this. You say it would be a one-shot proposition. Would this not require in addition to different size cans a change in your whole——

Mr. MURPHY. Think what it would be to our warehousing customs.

Mr. SATTERFIELD. Not only the warehousing but the machinery in which you package this product.

Mr. MURPHY. On the grocery store shelves.

Mr. SATTERFIELD. In other words, there is going to be a definite increased cost to the consumer if we go to the weight standard rather than a volume standard on soup?

Mr. MURPHY. We are on a weight standard now, sir, but we are able to vary the statement on the can so we can stick with the volume standard.

Mr. SATTERFIELD. Thank you.

Mr. ROGERS of Texas. Mr. Curtin.

Mr. CURTIN. Thank you, Mr. Chairman.

Mr. Murphy, I want to congratulate you on an extremely fine statement on this very controversial and involved problem.

Going one step further in the matter that was just being discussed, can you reduce to cents what would be the additional cost to the housewife if, for example, your tomato soup would be regulated into a can that was an inch smaller? Would that require a new label as well as a new can?

Mr. MURPHY. Oh, yes; new label, new can, new case.

Mr. CURTIN. That would require an initial cost outlay?

Mr. MURPHY. Yes.

Mr. CURTIN. What would be the increased cost in cents to the housewife for that initial changeover? You speak roughly of 5 percent.

Mr. MURPHY. The increased cost in our own plants would be, let us say, a cent to the consumer by the time it reached the consumer, say 1 cent a can, but what if the consumer didn't like that size can and the volume went down, and then our cost would really shoot up.

Mr. CURTIN. You would be required to expend $35 million, I believe you said, in making that changeover?

Mr. MURPHY. Yes.

Mr. CURTIN. So that if it develops that the new size can is not marketable, then that is $35 million down the drain?

Mr. MURPHY. Yes, but let us say your volume went off 20 percent. Just think of the cost of that, what it would do to your selling prices. It would make that 1 cent for the consumer very small.

Mr. CURTIN. Now, as I understand it, before you put a new size can, or new package, or a new product on the market you have had some research developed to try to determine whether or not it is going to be a successful venture; is that correct?

Mr. MURPHY. We put it in a small group of representative homes. Let us say we put in 2 dozen cans or 2 dozen packages and we let them use it. Then we come back after a month and find out what happened and we find things wrong and things right with it, and then we make changes.

Then we will put it in 200, 300 homes and do the same thing and then if everything looks all right we will go into a couple moderate-size cities like Columbus, Ohio, Syracuse, N.Y., and actually you put it on the shelves and try to sell it and see if the people will buy at the price and the weight we presented, and sometimes it takes off like a skyrocket.

We brought out a new spaghetti, Franco-American Spaghetti Gold. They just go through the ceiling. We happened to hit the consumer fancy. We brought out a few new things that didn't work. We tried to sell New England style fish chowder. If you ever try to do that in Chicago, believe me it doesn't sell, but up in New England it is a great thing.

Snapper soup sells in Washington, Baltimore, Philadelphia, New York. It won't sell at all in California or Illinois, although we get the snapping turtle meat from Mississippi bayous.

Mr. CURTIN. Assuming that this legislation which we are now considering was enacted into law, would it in any way interfere with that research?

Mr. MURPHY. It sure would. We would have to worry all the time about whether the Government would let us go ahead and we would have to weigh and consider whether the chances are great enough of their frowning on it for us to go and get approval ahead of time or whether we take a chance on it and spend the money and then come in after it was all set to go and say no.

They might hold it up for an indeterminate length of time if published. I don't know. This is a new way of life for us. We never operate this way and we are scared of it frankly.

Mr. CURTIN. I inquired of Chairman Dixon regarding that problem—how long one of these requests would lay in his commission before there would be action on it, either affirmative or negative—and, as I recall his answer, he said about 1 week.

Do you think he was optimistic in that estimate?

Mr. MURPHY. You mean a year and 1 week?

Mr. CURTIN. No; he said 1 week.

Mr. MURPHY. Oh, no. The Government does not move that fast, sir, on new things.

Mr. CURTIN. His theory was that you could go to them for some form of preliminary approval and that normally it would be given very quickly, or perhaps in 1 week.

Mr. MURPHY. Oh, no, no. Under this law it has to be submitted to a council first of representatives of different groups and they have to read about it and it would have to go into the Federal Register. It would be a long procedure, sir.

Mr. CURTIN. Have you had any experience with getting such approvals through any agency of the Federal Government on problems such as this?

Mr. MURPHY. We never had anything like this before in our lives.

Mr. CURTIN. I presume, then, you have no idea as to how much time would be lost before there would be action.

Mr. MURPHY. No, but I spent 3½ years or almost 3½ years during the war and I was in the War Production Board and next to my office was OPA and I know how long it took the company to try to get any kind of decision out of OPA, so I assume we would have the same problem here.

Mr. CURTIN. That is all. Thank you, sir.

Thank you.

Mr. ROGERS of Texas. Mr. Mackay.

Mr. MACKAY. Thank you, Mr. Chairman.

Mr. Murphy, does your company have any difficulty with the Federal Trade Commission or the Food and Drug Administration in the administration of existing law?

Mr. MURPHY. No, sir. We have inspectors, meat inspectors, poultry inspectors, in most all of our plants. This is according to law. Actually I think they use our plants as training grounds for some of the new ones.

Mr. MACKAY. You painted the picture of the possible abuse by the Government and I was just interested to know if you imply there is any abuse at the present time?

Mr. MURPHY. They are not trying to tell us what size and shape to put packages in.

Mr. MACKAY. You would give them good marks on their performance now?

Mr. MURPHY. Oh, yes.

Mr. MACKAY. Do you think section 3 adds anything to existing law or do you offer any objection to it? Everybody has been worried about this packaging part of the bill.

Mr. MURPHY. We are not worried about it. I think packages ought to be labeled to tell what is in them without revealing proprietary information.

Mr. MACKAY. I was interested in your suggestion we would do well to go to fluid ounces. What would be the advantages to go to that?

Mr. MURPHY. Well, you couldn't go to it in a cornflake package, I don't think. The advantage to us would be to the consumer. She wouldn't be worried about one can has 10¾ ounces, another has an 11¼ ounces. We run into this in a new country when we start to market.

Mr. MACKAY. You say the other countries do use the fluid ounces?

Mr. MURPHY. Yes. When our export sales are all in this, when we go into new markets, when we are allowed, we worry about one package size, 10¾, another one says 11¼, but the housewife in America never even looks at it. She knows what Campbell soup is.

Mr. MACKAY. Do you see any deception now or confusion by the manufacturers of soups, in particular, in marketing? Do you think the charge, that I certainly think is valid in certain commodities, applies in any way to any of your competitors?

Mr. MURPHY. I don't know of any. I think it is the death knell for a company or industry to kid the consumer. I suppose there is some attempt some places, but we would consider this really faulty management for anybody trying to kid that housewife.

You can put a product on the market. Let me tell you how smart this housewife is. We can make an improvement in the soup and say nothing about it in our advertising, just start to market it. Within 30 days the sales start to go up.

Mr. MACKAY. I would like to ask you to look at section 3 on labeling to see if you really offer any objection to it because it appears to me that no one who has come before us has objected to it.

Mr. MURPHY. May we furnish you any information we have on this.

(The information requested, when supplied, will be found in the committee files.)

Mr. MACKAY. Yes, sir.

Thank you, Mr. Chairman. No further questions.

Mr. ROGERS of Texas. Mr. Cunningham?

Let the Chair make this observation. We are going to try to finish with this witness even though the House is in session.

Mr. Cunningham.

Mr. CUNNINGHAM. Thank you, Mr. Chairman.

Mr. Murphy, I too was impressed with your testimony and I agree with the chairman that certainly we don't want to penalize companies such as yours. There have been some nuisances that I would like to get at such as the cents off, and the jumbo, and all that because that is annoying and confusing to the consumer, the housewife.

I think if we got rid of such practices as these we wouldn't need to pass legislation that would penalize industries such as yours that are really doing a good job in packaging, and selling, and merchandising. I know that you are concerned about making public your formulas as you mentioned, which is more or less sort of a copyright feature because it would tip off your competitors, as you testified, and it would seem to me, and I wonder if you agree, that if you had to make this public and all your competitors would grab your secrets that may tend to diminish competition?

Mr. MURPHY Yes, sir, I think it would, sir.

Mr. CUNNINGHAM. I was a member of the National Commission on Food Marketing and in our report we dwelled at length on the matter of competition. One of the most serious trends we feel in the food industry is the gradual elimination of competition.

We think that is not good for the consumer and so I certainly wouldn't be in favor of anything drastic that would lessen competition because that is the lifeblood of this economy and therefore I would not want anything in the way of a severe penalty placed upon industry who depend upon competition to market and sell their product and grow and prosper.

I presume that would be your feeling?

Mr. MURPHY. Yes, sir.

Mr. CUNNINGHAM. But we do have the little nuisances like cents off and jumbo quarts, and so on. I think if there are any inherent difficulties it is those little things and I think we can deal with those adequately in this bill without penalizing industries such as you represent.

Mr. Murphy, we have had witnesses who have presented or submitted to us various studies or surveys as to consumer likes, dislikes, et cetera.

I don't know if this really bears on this subject, but do you know of any survey that has been made which would indicate percentage-wise how many consumers shop directly in a grocery store and how many order their groceries by telephone for delivery? Do you know of any figures?

Mr. MURPHY. Yes, there are figures, Mr. Cunningham.

The percentage that shop by phone I believe is below 1 percent.

Mr. CUNNINGHAM. That do?

Mr. MURPHY. Very small.

Mr. CUNNINGHAM. I was thinking it might be larger. I think those people that shop by phone are only interested in good wholesome products and they are not too much concerned about what the size and shape is.

Mr. MURPHY. You know, most women consider it part of their daily lives. They consider it a lot of fun to shop in these stores and they will wander around and visit and pry in here and pry in there. I think that there would be a lot more shopping by phone if it wasn't such a pleasure to shop in a modern store.

Mr. CUNNINGHAM. They have become very attractive. I don't mind shopping myself, just for relaxation.

Thank you, sir. That is all the questions I have and again I say that I am very much impressed with your testimony.

Mr. MURPHY. Thank you.

Mr. ROGERS of Texas. Mr. Adams.

Mr. ADAMS. Mr. Chairman.

Mr. Murphy, I enjoyed your testimony. First, I would like to inquire, do you agree that up through section 5(c)(1) this is nothing more than a labeling bill?

Mr. MURPHY. Yes, sir.

Mr. ADAMS. Basically, isn't it?

Mr. MURPHY. Beyond that it gets into control.

Mr. ADAMS. We will get to that, beyond 5(c)(1), but up to 5(c)(1) this would have no effect on your industry other than a possible requirement that you add something to the label perhaps so you would have a comparison in fluid ounces?

Mr. MURPHY. Yes.

Mr. ADAMS. Basically?

Mr. MURPHY. That is right.

Mr. ADAMS. Second, your industry has been stabilized, has it not, through the efforts within the industry for approximately 20 years now, hasn't it?

Mr. MURPHY. Yes.

Mr. ADAMS. You have gone from about 200 varieties down to about 10, using the volume standard?

Mr. MURPHY. 200 what?

Mr. ADAMS. 200 varieties of cans and containers down to, well, I don't remember——

Mr. MURPHY. There were very many more than that, sir.

Mr. ADAMS. We have a very limited number now and the industry has stabilized on certain volume containers that are well known in the industry and to a very great degree you market those, do you not?

Mr. MURPHY. Something like 10, sir.

Mr. ADAMS. I mean you are down to a limited number of categories?

Mr. MURPHY. In the soup business, yes.

Mr. ADAMS. The can business?

Mr. MURPHY. How many are there in the can business? There must be a hundred sizes.

Mr. ADAMS. Actually your industry has been used as an example of what might be done under other provisions of this bill to really assist some other industries to avoid a proliferation. I don't know whether you were here during some of the other testimony.

Mr. MURPHY. I read all of the testimony, sir.

Mr. ADAMS. This has been done. I want to get to a couple of points you mentioned; first on formulas.

I would like to know why or where you think in this bill there is anything that would require you to do any more than is in the present law in terms of disclosing your private formulas.

Mr. MURPHY. The word "composition."

Mr. ADAMS. All right. On page 7 of this bill it states under (4)—this is 5(c)(4)—

> Require (consistent with requirements imposed by or pursuant to the Federal Food, Drug, and Cosmetic Act) that information with respect to the ingredients and composition of any consumer commodity (other than information concerning proprietary trade secrets) be placed upon packages containing that commodity.

Isn't that a clear exemption that covers the specific problem of your formula?

Mr. MURPHY. No, sir.

Mr. ADAMS. All right.

Mr. MURPHY. May I explain why?

Mr. ADAMS. I will read you the present statute and you tell me why you think that this is more difficult for you than the present statute.

The present one says this and this is 21 U.S.C. 341:

> Whenever in the judgment of the Secretary such action will promote honesty and fair dealing in the interest of consumers, he shall promulgate regulations fixing and establishing for any food, under its common or usual name so far as practicable, a reasonable definition and standard of identity, a reasonable standard of quality, and/or reasonable standards of fill of container.

Now, where does this bill, with the exemption that I mentioned, make it harder on you to protect your formulas than under present law?

Mr. MURPHY. Under this bill this word "composition" and the definition. What an administrator might consider a proprietary secret might be different from what we consider a proprietary secret, No. 1; No. 2, the word "composition."

Mr. ADAMS. All right, the word "composition." We do have a specific exclusion on formulas. Would you agree that these sections

are regulation producing sections? First the Administrator must come in and put the proposed promulgation of a regulation in the Federal Register and there state that a practice will impair the ability of consumers to make price unit comparisons. He has to first publish this in the Federal Register before he can do anything.

Would you agree that that has to be done first?

Mr. MURPHY. Yes.

Mr. ADAMS. Then after he does that any industry can come in and say we would rather use voluntary standards and the industry can demand time to use voluntary standards before the promulgating authority can do anything?

Mr. MURPHY. Mr. Adams, we don't even talk to other members in our industry and we won't.

Mr. ADAMS. All right.

Mr. MURPHY. Law or not. We are not going to talk to our competitors.

Mr. ADAMS. You have already.

Mr. MURPHY. We have overriding legislation. No, we have not, sir. We don't have any voluntary standards on soup with our competitors.

Mr. ADAMS. Oh, but you do have.

Mr. MURPHY. No, we don't.

Mr. ADAMS. You have the standard in can sizes.

Mr. MURPHY. No.

Mr. ADAMS. You do not?

Mr. MURPHY. No. On soup.

Mr. ADAMS. No; standardized can sizes.

Mr. MURPHY. We don't. We don't talk to our competitors about anything.

Mr. ADAMS. All right.

Mr. MURPHY. I revealed two things today here and I did it because of the great importance we consider this legislation and it is going to cost us something but we will take that cost on the hope that it makes an impression.

Mr. ADAMS. All right.

Now, do you have a standardized can size that you use for your soup, your No. 1 can?

Mr. MURPHY. We make soup in certain can sizes today.

Mr. ADAMS. It is the same size that you sell?

Mr. MURPHY. This is our can size today.

Mr. ADAMS. Does you competitor have a can size?

Mr. MURPHY. We have dozens of competitors.

Mr. ADAMS. All right, dozens of competitors. Do they have a can size that is comparable to that?

Mr. MURPHY. Sure. They use the same can size and other can sizes.

Mr. ADAMS. A housewife can come in and she sees your can size and she sees the 12 other can sizes and she can compare can sizes and thus prices, can't she? This is what we are talking about in terms of your getting together with your competitors and talking over what you are going to do. This you have accomplished within your industry many years ago, and is something that is very good. In effect we believe it is a good model for some others.

In addition, we have a whole series of exclusions in this bill that prevent regulations going against the voluntary standard, will prevent the Secretary doing anything to a customarily used container and will not allow it to vary from a voluntary product standard, or to allow a Secretary to go in and preclude the use of any package of particular dimensions or capacity, customarily used for distribution of related products of varying densities, which would specifically cover soup.

Mr. MURPHY. What do we want to do with triple condensed soup? What is our procedure there?

Mr. ADAMS. Is there anything in this bill that prevents you from putting out in triple condensed soup?

Mr. MURPHY. Not if the Federal Administrator says it is OK.

Mr. ADAMS. No; I mean without any requirement.

Mr. MURPHY. I say if this is passed.

Mr. ADAMS. What if it is passed and you have your present voluntary standard in effect, which is in effect?

Mr. MURPHY. It is voluntary providing the Federal Administrator approves it.

Mr. ADAMS. You can use it as a protection under all of the things that are presently written into the bill. Now, what in that present situation prevents you from taking your No. 1 can and putting triple condensed soup in it?

Mr. MURPHY. Nothing, nothing, but let us say that this would not be successfully marketed in the No. 1 can.

Mr. ADAMS. Now this brings me to what I would hope that your counsel perhaps could do, and I have asked others to do this.

It may be necessary to have an exemption for innovations and you may want to have 1 year on the theory that this is the time it will take to put in a new innovation in size, shape, weight, and so on.

I would like to know what your proposal is or what your marketing people who know about these problems would propose that you feel you need or should have as a protection.

I ask you that on the assumption that most of the industry witnesses have said that those proposing the regulation are going to be absolutely arbitrary and unreasonable. I don't believe it but let's assume the secretary is going to be a complete failure as an administrator. We will say he is completely arbitrary.

If you want something written in as a legislative protection against this potential administrator, I would like to know what it is.

Mr. MURPHY. Let us say that we had 6 months. We were able to do what we wanted for 6 months and then the administrator says stop it.

Mr. ADAMS. What we are saying is that you set up a procedure that you can vary standards, do it for 6 months, then for him to come in. In other words, this gives you your competitive jump.

Mr. MURPHY. Then he comes in and says yes or no?

Mr. ADAMS. Then you come in or the industry comes in——

Mr. MURPHY. Not the industry, sir. We are not going to do it on an industry basis. We are going to do nothing on an industry basis.

Mr. ADAMS. A demand is made that this product impairs the ability of the consumer to make this price comparison. Someone comes in to regulate.

Now, you have this jump on the market and you have 18 months more that you fight through this before the regulations are effective and the administrator can act. You have judicial review after that to check the arbitrariness. Don't you have enough checks? Don't you think that you have pretty good insulation?

Mr. MURPHY. Absolutely no. You have made all the expenditure, including all the marketing innovation, and then the administrator can knock it into a cocked hat.

Mr. ADAMS. After he has been through court and after he has been 18 months——

Mr. MURPHY. I don't care. He still has the right under this law to knock it into a cocked hat by an arbitrary decision.

Mr. ADAMS. I will follow up on Mr. Mackay's question.

Have you had this experience?

Mr. MURPHY. We have never had anything like this before.

Mr. ADAMS. Well, you have had standards required in 341 where they can control fill.

Mr. MURPHY. Fill?

Mr. ADAMS. Or they can control quantity and quality designations presently under the law.

Mr. MURPHY. They establish certain quantity designations——

Mr. ADAMS. They can go right down and say, for example, that you have to put 5 ounces of oysters in a No. 10 can.

Mr. MURPHY. They cannot, sir.

Mr. ADAMS. I would say to you, Mr. Murphy, that the ninth circuit has said that they can—and they have—and they did in the *Willapoint Oyster* case. You have never had to do any of this. You have had such items standardized and you have things operating very well so your——

Mr. MURPHY. There has never been any attempt to control package shape, size, or never been any attempt to have you guilty until you are proven innocent in this manner.

Mr. ADAMS. Is that what you believe this bill does?

Mr. MURPHY. In section 5, yes.

Mr. ADAMS. I have one last question and that is do you agree that there are some products in the supermarket where, because of weights, sizes, compositions, price comparisons by a housewife in terms of per unit cost are very difficult and almost impossible to compute unless you carry a slide rule?

Mr. MURPHY. Yes, sir; but I will tell you that this bill as now written would only correct a very minor portion of those products. I will just take our items. We have three different prices.

Tomato soup is one price; vegetable soup is another price; beef soup is another price, because of the cost of the ingredients. This may sell four cans at 45 cents. The vegetable soup may sell seven cans for a dollar. A beef soup may sell three cans for 50 cents.

Believe me you need a slide rule to figure this out, don't you?

Mr. ADAMS. I agree with you, I think the average housewife——

Mr. MURPHY. Should we have regulations that say that retailers must price everything according to certain prices? How are you going to get rid of the confusion unless you follow through all the way?

Mr. ADAMS. Well, let me just follow through with your example. On each of those she has a standard container size. She has to divide, I agree, to figure out the price of each can and I completely agree that she is going to decide whether she likes split pea soup or tomato soup or something else. However, I would give you an example I used the other day and I won't go through it all with you again, but assume two packages of feathers, which are identical type feathers and in an identical box, and because of difficulties in the industry, and I think this is something improper in industry—I don't think they are trying to do something fraudulent, but on these identical feathers, one package, as I remember was 15 3/11 ounces at 56 cents and the other was 1 pound, 5 3/10 ounces at 71 cents. Which is the better buy?

Mr. MURPHY. What kind of feathers are in them?

Mr. ADAMS. Identical feathers, but one of them is going to cost you almost 6 cents a pound more. I think what we want to do or what we are trying to do basically in this is just have simply a weights and measures and labeling bill. I am not trying to tell everybody they have to fit into a certain square box, but just help the housewives a little bit.

Mr. MURPHY. As far as putting on packages exactly what is in them, and I think this is great, and as far as this business of jumbo, and super, and this thing, we wouldn't even touch them with a 10-foot pole. We deliberately understate in our advertising, in our product illustrations, so the consumer finds out it is better than it looks.

We deliberately do this. This is better advertising and so forth. But if we are going to try to have a Government do the shopping for our housewives, boy, we have a job on our hands. We really have a job on our hands.

Mr. ADAMS. I agree completely with you, Mr. Murphy, and I think that the members of this committee do, too. We are not going to try to tell everybody that they have to have absolutely standardized containers and absolute weights and all of this thing, but what we are trying to do is do what governments have been doing since Biblical times, simply get a weight and measure standard that makes it possible for people who are buying products to make some comparisons, not perfect ones, but some comparisons.

Your industry has done it. By your industry I am using that——

Mr. MURPHY. You mean the canning industry?

Mr. ADAMS. The canning industry has done this and this is an example of techniques that can be applied elsewhere, not to every specialty item, and I would be very willing if somebody wanted to come up and offer an amendment on specialty items—in other words, when you are packaging in soft packages and things of the type where people want to buy goldfish crackers or, as somebody brought in the other day, the doodads, or another specialty item then these are bought on a specialty basis. But the housewife that wants to go in and wants to compare the price at which she is buying instant coffee in one container as opposed to another and what she is getting in the different sizes and varying weights and varying compositions. We just want to give her a little better chance. That is all.

Thank you, Mr. Chairman.

Mr. ROGERS of Texas. Thank you, Mr. Murphy.

Mr. CURTIN. Mr. Chairman, before you excuse this witness I wonder if I may ask him one other question.

Mr. ROGERS of Texas. The gentleman is recognized.

Mr. CURTIN. Mr. Murphy, I meant to ask you a question on the problem of having printed on the package the number of servings contained therein. This seems to lead to some confusion because conceivably one person's idea of what is a serving is different from another person's.

Mr. MURPHY. Why don't you knock it out altogether?

Mr. CURTIN. I wondered what your feeling was on that.

Mr. MURPHY. We used to do that way back in 1906. But what is a serving? The Congressman that was here before, serving for him was different from the serving of a strapping 21-year-old, and our youngest son who is now overseas in Korea eats a can or a can and a half. My wife and I have some left over with a can. So this serving thing is for the birds.

Mr. CURTIN. Then you feel the question of putting estimated servings on the label could be eliminated without any great harm?

Mr. MURPHY. I don't think the housewife pays any attention to it.

Mr. CURTIN. Thank you.

Mr. NELSEN. Mr. Chairman.

Mr. ROGERS of Texas. Mr. Nelsen.

Mr. NELSEN. Mr. Murphy, I have here the "Organization Procedures, Rules of Practice, and Statutes" for the Federal Trade Commission, and they have in their procedures what is known as the Division of Trade Practice Conferences and Guides, and this division administers the trade practice conference programs under which trade practice interpretive rules are promulgated for particular industries and prepares and recommends to the Commission appropriate guides dealing with legality of widely used trade practices.

It is my understanding that many of the rules and regulations that have come up have been voluntarily agreed upon and have been set up as standards and, as you have pointed out in your testimony, the great percentage of the food processors are moving along and doing a very fine job and only a small percentage have been guilty of malpractice.

Now, as I understand your testimony you feel that actually the practices that we have been using will be interfered with by this bill and the practices that we have been using have been widely successful, is that not true?

Mr. MURPHY. We will be under one set of regulations for our poultry and our beef products and completely another set of regulations for the products that are not poultry and beef.

Mr. NELSEN. Thank you, Mr. Chairman.

Mr. ROGERS of Texas. Thank you very much, Mr. Murphy.

The committee will stand adjourned until 10 o'clock in the morning.

(Whereupon, at 12:25 p.m. the hearing was recessed, to reconvene at 10 a.m., Wednesday, August 17, 1966.)

FAIR PACKAGING AND LABELING

WEDNESDAY, AUGUST 17, 1966

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to recess, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

The committee is still considering the fair packaging and labeling bills, and we have as our first witness this morning one of our distinguished colleagues from the great State of New York, Mr. Lester Wolff.

Mr. Wolff, will you take the stand, please? I want to congratulate you for taking the time to come over and give us the benefit of your views. You may start right in with your statement.

STATEMENT OF HON. LESTER L. WOLFF, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. WOLFF. Thank you very much, Mr. Chairman. I certainly appreciate the opportunity of your permitting me to come here and testify this morning on a bill that I think has great interest throughout the Nation. Let me congratulate you and the committee for the effort you are making on behalf of the consumers of the Nation in holding these hearings.

Although I cannot personally agree with all aspects of the legislation now under consideration, you are making a long-needed start toward bringing to public notice certain practices that raise consumer costs and reward deceit.

Before coming to Washington, I spent 20 years in the food marketing field and during that period I developed a great faith in the American housewife as purchasing agent for the families of the Nation. Although many of us here today may have a certain expertise in marketing, I doubt if we could quote correctly the price of a pound of butter or a quart of milk; yet any housewife could give you the price to the last fraction of a cent.

However, in the nonperishable items sold in packages, the housewife must rely upon the good faith of those from whom she purchases. And it is in the best interest of the retailer to see that she gets what she pays for. She may be taken in by deceptive packaging or labeling initially, but she will not be deceived forever.

A major source of marketing deception, in my opinion, is the use of such adjectives as "large," "economy," "family size," "giant," et cetera,

in describing a product. What do these terms mean in describing a product when no standards exist as to what constitutes small, medium, or large? Such adjectives are patently deceptive and should not be permitted to appear on any package.

Another purposely misleading practice is the "cents-off" deal. An item may be advertised as 5 cents off the regular price. But, what is the regular price? The consumer isn't told. "Cents-off" deals are misleading and sometimes amount to outright deception. Retailers should be required to indicate the regular price of items when "cents-off" deals are claimed. No area of merchandising, however, involves as many deceptive and misleading practices as does the widespread use of trading stamps in retail sales.

Trading stamps today are connected with close to $50 billion in retail sales, and the consumers of the Nation pay the stamp companies an estimated $1 billion annually as a tie-in to their retail purchases. In one recent year, a major stamp company printed three times as many trading stamps as the Federal Government printed postage stamps.

One survey showed that 1,000 trading stamps are issued annually to every man, woman, and child in the United States.

In times of rising prices such as we experience today, we must examine every area that contributes to the price spiral.

Earlier this year, an official of Safeway Stores, Inc., one of the Nation's largest chains, testified that his company considers stamps to be merchandise, and by the way, I have a recording of that testimony if you would like to hear it, Mr. Chairman. He states in there categorically, the fact that trading stamps are merchandise and are sold just as any other item in the store.

If stamps are merchandise, they are also labels, and come within the purview of this committee's inquiry.

Therefore, I am today offering to this committee a truth-in-trading-stamp amendment to prohibit the claims made by stamp companies and retailers that stamps are "free" or a "gift."

In *Sperry and Hutchinson* v. *Hertzberg* (69 N.J. Eq. 264, 60 Atl. 368) the court said:

"The stamp is practically a negotiable order for merchandise. It is a mistake to regard it as a gratuity."

Yet, stamp companies persist in claims that their operations are "a bonus for paying cash," "interest on the money you spend," "equivalent to cash in your pocket," or a "reward for patronage."

My amendment would prohibit such fraudulent claims. Trading stamps are neither free nor are they gifts. Rather, they are an added cost, tied in and tacked onto the family's weekly bill.

The closer one studies trading stamp operations, the more questionable practices come to light. For example, most companies charge top retail prices for the premiums they offer to stamp savers. Comparing normal retail prices for articles with the cash value of the stamps required to redeem the same articles from the stamp company redemption center can be a real eye opener.

A local Washington group (the Greater Washington Service Station Association) compared the advertised prices of a number of items in a local department store with the stamp catalog value of the same products. They multiplied the number of books required to buy an

item by the $3.60-per-book rate service stations must pay for the stamps they "give" to their customers. A toaster advertised by the department store at $9.99 cost the equivalent of $25.20 in S. & H. green stamps.

A blender sold retail at $29.88 cost $57.60 in stamps.

A hair dryer advertised at $24.99 cost $43.30 in stamps.

The authority of this is an article that appeared called "Looking Into the Green Stamp Business," in New Republic, October 16, 1965, on page 9.

Stamp companies never relinquish title to their stamps—a fact which allows them to manipulate at will the number of stamps required for redemption of specific articles, or even drop the item from the next catalog thereby depriving a housewife of an item for which she has been saving for a considerable time.

Therefore, I am further offering an amendment today to require that the companies set forth on the face of each stamp they publish the true value of that stamp in cents or any fraction thereof, and that any catalogs or advertising of the company state the monetary value of the premiums offered.

This amendment could at least secure for the housewife who saves stamps a fair return. She has already paid for the premium tacked on in the tied-in groceries she has purchased.

Mr. Chairman, when trading stamps were a new gimmick and only a few stores carried them, their cost to the retailer was undoubtedly absorbed in the extra volume of business the stamps generated. But today, when nearly every retailer carries stamps, their costs are passed on to the consumer in increased prices.

Such sharply increasing consumer prices are causing increased concern throughout the Nation. The recent report of the National Commission on Food Marketing cites trading stamps as a factor in rising food costs.

The Secretary of Agriculture has recently voiced similar charges.

In my inquiry into all aspects of trading stamp operations, a study which I have been conducting for the past 18 months, the conclusion became inescapable that trading stamps are a significant factor in rising consumer costs, and I view it as our duty to look into the possibility of remedial legislation.

One billion dollars in the form of trading stamps are sold each year in the United States. The public sohuld not be deceived or misled as to what they are paying for, what the true cost is and where the benefits lie.

We here today have an opportunity in these proceedings to correct a few of the many wrongs today afflicting the consumer through trading stamps.

Adoption of these truth in trading stamps amendments will help us to fulfill our obligations to those whose interests we represent. They are entitled to the truth, the whole truth, and nothing but the truth.

I have an amendment here for you, sir, if you would like me to offer it to you.

The CHAIRMAN. Yes, we would like to have it.

Mr. WOLFF. The amendment, on page 3, after line 2, insert the following:

"No person shall distribute or cause to be distributed in commerce any trading stamps unless such stamps and their issuance are and have been in conformity with regulations prescribed by the Federal Trade Commission which shall provide that—

"(1) each trading stamp issued by a trading stamp company set forth on its face its value in cents or any fraction thereof, as fixed by such company.

"(2) any written or printed statements relating to goods, services, or other things of value made available by a trading stamp company to redeem stamps issued by it state the monetary value of such goods, services or other things of value, as fixed by such company, and be available for redemption of stamps issued by it having an aggregate value as set forth on their face, equal to the value of such goods, services, or others things of value, and,

"(3) the terms 'free' and 'gift' shall not be used on or in connection with trading stamps or such goods and services, or other things of value or in any catalogs or advertising used in connection with them."

On page 5, line 12, immediately before the period, insert the following: "and with respect to trading stamps."

On page 12, line 18, immediately after "or cosmetic," insert the following: "or with respect to trading stamps."

On page 13, line 7, immediately after "consumer commodity" insert the following: "or with respect to trading stamps."

On page 13, line 23, immediately before the period insert the following: "and regulation of trading stamps."

On page 17, after line 2, insert the following:

"The term 'trading stamp' means a stamp or similar device which is made available to a purchaser in connection with the retail trade transaction involving any goods, services, entertainment, or other things of value, and which purport to entitle the recipient or other holder thereof on presentation for redemption, to receive any goods, services, or other thing of value; but does not include any coupon, ticket, certificate, or other similar device which may be redeemed only in connection with another purchase.

"The term 'trading stamp company' means any person which engages in the business of selling trading stamps or which issues trading stamps and redeems such stamps with goods, services, or other things of value, if such stamps are (*a*) sold or issued in commerce; (*b*) made available in connection with the sale in commerce of any goods, services, entertainment, or other things of value; (*c*) are redeemed with goods, services, entertainment, or other things of value in commerce; or (*d*) are made available in connection with the sales of any person in or affecting commerce."

The CHAIRMAN. Thank you, Mr. Wolff. Are there any questions?

Mr. WATSON. Thank you, Mr. Chairman. I want to commend our colleague for a very fine statement. I might just add parenthetically that when I was a member of the general assembly in South Carolina we, at one time, thought that we would do something about this trading stamp business. I believe it was shortly after the Reader's Digest article which I am sure you are familiar with.

Someone introduced a bill to outlaw trading stamps in South Carolina. We thought that this would be in the interest of the consuming

public, and it would help the housewife. It so happened that we were wrong on that assumption. I don't know who it was that made the statement, but they said in the great American system everyone has a right to be a fool.

Shortly after this bill was introduced, which I looked upon with considerable support at the time, we deluged with about 5,000 telegrams from housewives throughout the State of South Carolina. While the idea was good, I am sure that you can certainly appreciate the fact that the legislation was quickly abandoned.

So, while I share your concern in this particular field, and I, too, believe that certainly there needs to be some guidelines in regard to the use of trading stamps, but at the same time I would caution that you are really getting into a possible hornet's nest in trying to deprive these ladies of these little extra fringe benefits.

I have a question on your amendment. I believe you said your amendment would specify that the cash value as fixed by the company must be placed on the stamp. Well, how are you going to avoid deception or how are you going to help the housewife when you leave it to the company to determine and put the value of the stamp on the particular item?

Mr. WOLFF. Mr. Watson, I appreciate the comments you have made. It shows you have had experience in this field, and there are a few points I would like to make in answer to your statement. No. 1, I do not hope that this amendment or any type of legislation will ever outlaw trading stamps. I think the American public has the choice to make and they should not be deprived of that choice.

The amendment seems to clarify certain misconceptions, however. The idea basically here is the same way that you are considering legislation to eliminate deception in the tie-in sale, that the stamp be clearly marked with a price that is the value the company sets upon it. This value then in turn would tie in to the catalog, and I should hope that the companies would be then in a position that they must either offer the consumer a choice that she could have either cash for that stamp or she could get a premium for that stamp.

The idea is not to eliminate the stamp, but to give the customer a further choice. With food prices being what they are today, there are many women who would like to save the cash instead of saving the stamps.

The idea basically here is to give the housewife the opportunity of taking that money and using it in her own free choice, in going out to either buy these premiums with the money that she has saved, or to redeem it for the premiums that she would want from the trading company.

Mr. WATSON. I applaud your effort. I am reminded of an experience of a businessman, or rather a little groceryman. He related it to me while we were in the throes of this discussion down there.

He said that he had reduced an item from 50 to 49 cents, but one lady came in the place of business and really raked him over the coals. She said the only reason he reduced it 1 cent was to deny her an extra trading stamp.

He said, of course, the stamp is only one-tenth of a cent and he had given her a penny discount. He said regardless of how hard he tried to prevail upon her that she was getting a better bargain and getting

the 1-cent discount, he never did convince that determined lady that she was getting a better bargain.

While I applaud your effort, I think that you should look carefully into this particular field.

Mr. WOLFF. There is something similar to that, if I may, Mr. Watson. Having been in the grocery field for a long time before coming to Congress, I recall a pricing situation similar to what you have illustrated here. It was the fact that there had been times when an item has sold for 20 cents and the retailer had put a two for 41-cent price on it and sold about five times as many as he did at 20 cents apiece.

Mr. NELSEN. I noted one of your comments that the American public has a chance to make a choice. I also note the second paragraph in your statement in which you point out that the housewife "will not be deceived forever."

I quite agree with you that the great emphasis is certainly in seeking a bargain in the market, for an informed person to take a look at what she is buying, and most of them do.

Now, you made reference to the giant size and economy size. This point is a basic point that you make in your testimony. However, you do not deal with many other phases of this legislation.

A great portion of the testimony that we have received here from witnesses, even representing the administration, point to things that are already covered in the law. It is as if we were now bringing in a new bill that will require that a package indicate weight and ingredients. This, however, is required under present law.

Almost the great bulk of the testimony would leave me with the impression that we don't do these things at the present time. I am sure that you having been in the business are well aware of the fact that packages are marked as to weight and content. There are some tricky terms I am sure that fool some people, but not too often.

Thank you very much.

The CHAIRMAN. We appreciate your testimony, Mr. Wolff, and the presentation of your views. I think you have hit on one spot, and I don't know what the solution is. As Mr. Watson has said, it is certainly a deceptive practice in many ways.

Thank you.

Our next witness is Mr. Fred J. Greiner, chairman of the Dairy Industry Committee and executive vice president of the Evaporated Milk Association of Chicago, Ill.

STATEMENT OF FRED J. GREINER, CHAIRMAN OF THE DAIRY INDUSTRY COMMITTEE AND EXECUTIVE VICE PRESIDENT OF THE EVAPORATED MILK ASSOCIATION, OF CHICAGO, ILL; ACCOMPANIED BY HIS COUNSEL, BENJAMIN G. HABBERTON, OF THE FIRM OF FISTERE & HABBERTON, WASHINGTON, D.C.

Mr. GREINER. I would like to have join me at the table Mr. Ben Habberton, of the law firm of Fistere & Habberton, Washington, D.C., counsel for the Dairy Industry Committee.

My name is Fred J. Greiner, and I am executive vice president of the Evaporated Milk Association in Chicago, Ill.; and I am chairman of the Dairy Industry Committee.

I will try to confine myself to those things which we feel in the dairy industry are inimical to us. This is a consolidated statement representing 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.

Our opposition is based on these facts as we see them. First of all, present laws at all levels of government offer adequate and extensive protection to consumers today. This is especially true in the dairy industry, in the case of dairy products as I will point out later.

The marketplace which reacts with "hair trigger" agility gives no indication that consumers are dissatisfied or confused or deceived in the case of dairy products.

The proposals would place additional administrative straitjackets upon ingenuity and creativeness in the marketing of dairy products. The dairy industry is highly regulated and is particularly sensitive to this point. If you will scan the list of dairy products you will note that it includes practically all of those marketed in the United States.

I would like to indicate what this means to you in the percentage of food industry affected by these measures.

Throughout its history the dairy industry has been consumer oriented. Milk and dairy products are one of the most important of the four food groups basic to the health and well-being of all Americans.

Consumers spent about 17 percent of their food dollar on dairy products, excluding butter. This is from USDA statistics. Thus we speak for the industry providing that 17 percent of the food dollar covered by this proposed legislation.

The regulations which these bills authorize to be promulgated are unnecessary as applied to the products of the dairy industry. They would create confusion and would be a step in the wrong direction. The dairy industry—one of the most basic in the food industry and, as indicated, one of the most highly regulated at all levels of government—now finds itself facing the possibility of another layer of regulations imposed by the Secretary or the Commissioner which we fear may be all too often ill conceived.

The Secretary has sufficient authority in the Food, Drug, and Cosmetic Act. Additional regulation-making power is not needed. The experience in the dairy industry is that whenever one of our manufacturers has products or labels examined by a Food and Drug inspector and found to be misbranded, the mere process of inspection and resultant discussion corrects the deficiency.

If there is an honest difference of opinion between Food and Drug and the manufacturer, we believe that such differences should be adjudicated in the courts on their merits. Specifically, we believe that the Food and Drug Administration should be required to prove that the practice is deceptive.

In addition to the misbranding section (sec. 403) of the Federal Food, Drug, and Cosmetic Act, the model law and regulation of the National Conference on Weights and Measures has been adopted in most States.

Administrative rules and regulations governing the placement of the net-weight statement and the prominence of displaying that state-

ment, type size, et cetera, on the principal display panel have been adopted in a number of States and are under active consideration in others.

Every pound of consumer-packaged cheese, every box of instant nonfat dry milk, every can of evaporated milk, every pound of butter, and every carton of ice cream where this model has been adopted must comply with these provisions.

Gentlemen of the committee, please consider these facts:

(1) Congress itself has established statutory standards for butter (21 U.S.C. 321(a)) and nonfat dry milk (21 U.S.C. 321(c)). These statutes provide that the standards therein are established for the purposes of the Food and Drug Act. Thus, they are brought under the full weight of the misbranding section of existing law.

(2) Evaporated milk, the food with which I am identified, was one of the earliest foods for which a definition and standard of identity was established. That standard requires complete label identification of the product as well as 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.

(3) In 1960, after almost 20 years, and I want to emphasize again that that was 20 years of public hearings, studies, and deliberations, the Secretary of Health, Education, and Welfare promulgated definitions and standards of identity for ice cream, ice milk, sherbet, and water ices. These definitions and standards prescribe what ingredients the products must contain, what ingredients they may contain, and require elaborate label declarations with reference to flavoring ingredients.

The standards and findings together comprise 16 small-print pages in the July 27, 1960, issue of the Federal Register.

Frankly, we wonder, can it be possible that now only 6 years later it is necessary for Congress to pass new legislation enabling the Secretary to promulgate additional elaborate and far-reaching regulations applicable to the packaging and labeling of ice cream and other frozen desserts.

(4) In the case of the cheese industry, definitions and standards of identity have been established for 66 different kinds of cheese. Where necessary in the judgment of the Commissioner of Food and Drugs these standards require specific labeling declarations.

(5) The products of the fluid milk industry—the fresh perishable products of our industry—are presently subjected to regulation not only by the Food and Drug Administration, but also come under extensive regulation by municipalities and States. The U.S. Public Health Service plays a major 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 decisions affecting packaging and labeling of these products.

Turning to specific sections of these bills, let me point out at least three sections that either duplicate existing legislation today or that would present an impractical or impossible situation for the dairy industry.

I refer first to section 5(c)(2) in which power is granted to "establish and define the net quantity of any product (in terms of weight,

measure, or count) which shall constitute a serving * * *." This has been discussed before this committee.

What is meant by the "serving" of a food? Certainly it 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.

We submit that regulations designed to define a "serving" will be almost impossible to delineate using sound medical and nutritional information.

Section 5(c)(4) in S. 985 and H.R. 15440 both require that information with respect to ingredients and composition be placed upon packages containing that commodity. The two proposals differ considerably in their approach, however.

The authority conferred upon the Secretary by the Food, Drug, and Cosmetic Act, amended, has been regarded as adequate and effective for this purpose.

Scores of food standards have been established under section 401 of the act and hundreds of labels on supermarket shelves today meet all the requirements of these standards. We reiterate our opposition to these measures, but if in its judgment this committee, nevertheless, decides to report one or the other of these bills, we suggest deleting the comma in line 7, page 7, of S. 985 and, after the word "Act", adding the following: "or established by Act of Congress." This will clarify section 5(c)(4) in S. 985 as to its applicability to food products for which a standard of identity has been established by the Secretary or by act of Congress.

I might parenthetically say that the amendment placed in the bill in the Senate does take care of those products with standards adopted by Food and Drug, but it is clear as to whether or not they apply to those standards passed by act of Congress.

I believe it is the intent of the Senate to have it that way, but I would ask that you consider such an amendment.

Our third point concerns the provisions of section 5(c)(5) of H.R. 15440 preventing the distribution of a commodity for retail sale in packages of sizes, shapes, et cetera, which are likely to deceive. This section is not a part of S. 985 as passed by the Senate and we urge its deletion from H.R. 15440, again if in the judgment of this committee a bill is to be reported. This section raises the serious question of prior approval by a Government agency of package design before entering the marketplace. It would place additional administrative straitjackets upon ingenuity in the marketing of dairy products.

In conclusion I submit that the massive body of statutes, ordinances, rules, and regulations at all levels of government today regulating and packaging of dairy products are burdensome and that less rather than more regulation in this field would enable the dairy industry to better serve the American public. Accordingly, we believe that these bills should not be enacted in any form.

Mr. FRIEDEL (presiding). Thank you, Mr. Greiner. My first opinion is that I don't think you will be affected by this bill. You make recommendations on page 6 in the next to last paragraph, you think

you would like to have the clarifying section of "5(c)(4) of H.R. 15440 preventing the distribution of a commodity for retail sale in packages of sizes, shapes, et cetera, which are likely to deceive" established by the section.

In other words, you recommend an amendment.

Mr. GREINER. Is that at the top of page 6?

Mr. FRIEDEL. You say:

We suggest eliminating the comma in line 7, page 7 of S. 985 and after the word "Act" adding the following: "or established by Act of Congress."

Do you think that amendment would clarify this section? I think that you are unduly alarmed about it.

Mr. GREINER. It would clarify only one small portion of what we are "unduly alarmed" about, and that would be the ingredient labeling provision of this act. It still would not in one iota take away our opposition to the bills.

Mr. FRIEDEL. You are also worried about the size, shapes, and so on in packaging?

Mr. GREINER. That is right.

Mr. FRIEDEL. Well, every milk bottle you have does have the amount, a quart or four-fifths of a quart or a pint. Isn't that done today?

Mr. GREINER. Yes, sir; milk is sold in a standardized container or containers—pints and quarts and so on.

But I think that the problem here is who knows what may hold in the future? One of our real objections is to the regulatory-making power which is given, in the case of food, to the Commissioner. We can come to the Congress and before this committee when you have an act before you, and lay our case before you, and say "This is how it will affect us, and we either think this should or should not be passed." But once you pass on to the Commissioner the power to regulate, all we can do then is go to the Commissioner and then it depends upon one man's single judgment.

Once it becomes a regulation, we are lost, regardless of what our feeling is. We have the right to go before the Commissioner and he has to notify us by notice in the Federal Register and follow all of the procedures of the Administrative Procedures Act, and so on. But we feel basically we have a better day in court here, so to speak, when it comes to basic law which you are really talking about here, rather than giving all of this regulatory power to the Commissioner.

Mr. FRIEDEL. You still have the right under our bill, to have judicial review?

Mr. GREINER. But judicial review only upon the merits of whether or not the regulation which he made is in accordance with law, and not upon the merits of what the regulation might contain.

Mr. FRIEDEL. I thank you.

Mr. SPRINGER. Mr. Greiner, you are familiar with the language, all of the language of this bill, are you not?

Mr. GREINER. I have read the bill several times.

Mr. SPRINGER. Is this your counsel here with you?

Mr. GREINER. Yes, sir.

Mr. SPRINGER. Now, you can answer this or your counsel can answer it, but the proponents of this bill are saying that this does not regulate quality. Do you have any answer to that?

Mr. GREINER. Quality of product, you mean?

Mr. SPRINGER. Yes.

Mr. GREINER. I will turn to my counsel and ask him, but my answer is that it does not regulate quality per se. There are some sections dealing with composition.

Mr. SPRINGER. There is a whole lot of difference between quality and quality per se, that would be a matter of law, that did not affect it. What I am trying to find out is whether or not this bill has any regulatory power over quality.

Mr. GREINER. My counsel said that my original answer was essentially correct, unless you can call it to our attention where it is different.

Mr. SPRINGER. I know that the Federal Trade Commissioner made a slip in this testimony, and you will see it if you read it, and he used the word "quality." It is in the record. I asked him if this bill supposedly did not regulate quality. Then he modified his answer, and I am not using his exact language. And then he went back to modify this.

But there wasn't any doubt in his mind that he thought that there was power in this bill to cover a portion of quality.

Mr. GREINER. Well, No. 1, I am not familiar with the language that would affect quality.

Mr. SPRINGER. I examined him on certain sections of this bill, and I wish I had the bill in front of me now, because I read this very, very carefully, and I am not so sure that when you get into that that there are not certain powers which he would have regarding quality.

Mr. GREINER. We have found over a long period of time, that a law sometimes is stretched considerably by regulatory authority when it comes to regulation-making power.

Mr. SPRINGER. What you have said here, as I understand it, is when notice is published in the Register with reference to your own products, you already do regulate some quality, don't you?

Mr. GREINER. Oh, yes.

Mr. SPRINGER. They already have the power to regulate some quality.

Mr. GREINER. They have complete power to regulate quality.

Mr. SPRINGER. Now, this is what I am trying to find out. I think that you are a quality-regulated field, but some of these fields are not quality regulated, as you well know. They have no power to do it unless it is an unsafe food. But what I am trying to find out is whether when you used the word "quality" you were probably saying the truth. I know what "persuade" means, and as a matter of law it does regulate quality.

Maybe it doesn't in your case, because apparently you are already quality regulated.

Mr. HABBERTON. May I just say a word?

Mr. SPRINGER. Would you identify yourself, please?

Mr. HABBERTON. Benjamin G. Habberton, of the law firm of Fistere & Habberton, counsel for the Dairy Industry Committee. Under section 401 of the Federal Food, Drug, and Cosmetic Act, it is provided that the Secretary of Health, Education, and Welfare, if he finds that it will promote honesty and fair dealing in the interest of consumers,

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he may establish a standard of identity, a standard of quality, or a standard of fill of container for any compounded food. All the Secretary has to do is to make this finding, that it will promote honesty and fair dealing in the interest of consumers, and he may establish all three standards of this kind, not only a standard of identity, but a standard of quality and a standard of fill of container.

Mr. SPRINGER. Then he already has the power to do it in some industries, doesn't he?

Mr. HABBERTON. He has, indeed.

Mr. SPRINGER. Let me go to just one other question, and I will have my 5 minutes. This is awfully important, because I have been asking every single industry members and I don't want to come up here with a bill which isn't going to add anything to the power which the Food and Drug Administration already has. There isn't any dispute by him or any other witness who appeared before this committee but what he has the power to prohibit deceptive practices now. Is that correct?

Mr. GREINER. That is correct.

Mr. SPRINGER. What you are doing here is attempting to standardize. I don't see that you are increasing any powers that they have to prevent deceptiveness because you already have it and he says that he has the power and he has admitted it before this committee. He says he doesn't have the staff, and you would have to have a staff for this bill. Why not give it to him for that?

There is one thing I want to find out. What is going to be the increase of costs, and what are going to be your cost problems if you go under this kind of a procedure?

Mr. GREINER. Well, I would say there are two answers to that question. First of all, it would be virtually impossible for us to determine what our cost factors are going to be until we know what kind of regulations this Commissioner may well adopt.

But second, generally speaking, we have not made an attempt to put a price tag on this bill insofar as the dairy industry is concerned. There just wasn't time, Mr. Springer.

Mr. SPRINGER. Let me say this: If you are very much interested in whether this bill is enacted, you will make that cost and get that in this record before these hearings conclude, because that is going to be, I think, the most important deciding factor in whether this bill is enacted.

I don't think anybody is going to vote in this committee if it shows that there is going to be a sizable increase in the cost of the product, when you aren't increasing the forcibility at all. Do you see what I mean?

Mr. GREINER. Yes, sir.

Mr. SPRINGER. It took a long time for me to get out of the president of the Campbell Soup industry what the costs are going to be. He said $35 million, and this is only changes in packaging, but then he said if you want to take the whole question of concentrates which they are working on and if they get a triple concentrate, and they can't get it in the sized can, they can't tell how much it is going to cost.

Mr. GREINER. We could make some estimates, but as I indicated earlier, one of the real problems is this: In ice cream, if we had to label for every ingredient, there are literally hundreds of combinations of

ingredients in ice cream, depending on the sources of the butterfat, the nonfat solids, and so on.

This one is fantastic, to think of the cost accrued to the dairy industry of having a series of cartons for all of these various types of ice cream, if we had to list every ingredient.

Mr. SPRINGER. This is a highly competitive industry, isn't it?

Mr. GREINER. Very much so.

Mr. SPRINGER. It is one of the most competitive industries in the country, is that right?

Mr. GREINER. Yes.

Mr. SPRINGER. So that you are not going to absorb these costs, are you?

Mr. GREINER. No, sir.

Mr. SPRINGER. You are going to pass these costs on to whoever you sell to, the wholesaler or the retailer and he is going to pass on to the consumer. What we are interested to know is what this is going to cost the consumer. I am not going to support any bill at this point in history which is going to increase costs to the consumer, of any substantial increase.

Mr. GREINER. I would say to the Congressman that we will make an attempt to find in our industry what the costs might be, depending upon certain circumstances.

Mr. SPRINGER. Instead of sending it to this committee, will you please send a copy of that to each member of this committee, so that they can have it in hand?

Mr. GREINER. We will make every effort, sir.

Mr. SPRINGER. Thank you, Mr. Chairman.

Mr. FRIEDEL. Mr. Satterfield.

Mr. SATTERFIELD. I have no questions.

Mr. NELSEN. Thank you, Mr. Chairman. I notice on page 3 you point out specifically you believe that the Food and Drug Administration should be required to prove the practices deceptive. I have been pursuing the line of questions throughout this hearing that under the terms of this bill the penalty provisions would put you under the Federal Trade Commission and under the penalty clause. The processor would be restrained from a practice and he in turn would be guilty until he is proved innocent.

So in effect what you are saying here is that you wish to continue under the present practice where it is on a case-by-case basis. The Food and Drug Administration should bring the persons in who are—in their judgment—in violation, and I would agree with that statement. I compliment you for calling attention to it.

I would like to point out, also, that under the terms of the bill, the ingredients of a product are supposed to be listed on the package. I am advised that under the law in the manufacture of butter, for example, there is artificial coloring in butter, and there is no requirement in the law to state this fact on the package.

The public does not generally understand that butter naturally produced will vary in color. For example when cattle are on dry feed, there will be a variation of color. To make an attractive color there is a desire on the part of the manufacturers to have a uniform coloration.

Under the terms of this bill, it is my understanding that this color matter would enter into it because ingredients of the package must be listed. Have you given some thought to that?

Mr. GREINER. This has been our real fear, Mr. Nelsen, that many of the practices that we have adopted down through the years, under the present standards of identify for all of these products, including butter, which as I indicated has a standard set by Congress, that here we would have a situation where these products would suddenly find themselves in a complete state of chaos, almost, dependent upon the whim of the Commissioner. If he should decide that he now had the power to require all of this listing of ingredients which he didn't have before, or which he didn't exercise before, then we would have our problems in trying to comply.

Mr. NELSEN. Now, in the area of new products, I know that the margarine people who are our competitors—and I say "our" since I am a dairy farmer myself—they are fearful of the power in this bill because of innovations in different types of packages. I presume that the dairy industry would have an equal concern. I can imagine the frustration of the housewife going into the grocery store and seeing uniform packages all over the lot. I am sure that she enjoys a little variation also.

Mr. Chairman, I thank the gentleman for his very good statement. I am a dairy farmer in Minnesota, and I am glad to have testimony from the industry.

Thank you.

Mr. GILLIGAN. Thank you, Mr. Chairman.

I listened a moment ago, and I want to get the reference again to section 401.

Mr. HABBERTON. That is section 401 of the Federal Food, Drug, and Cosmetic Act.

Mr. GILLIGAN. Could you repeat again the language of that act, not verbatim, but in general?

Mr. HABBERTON. I think the language that I gave before is substantially correct, but I can read it from the act itself:

> Whenever in the judgment of the Secretary, such action will promote honesty and fair dealing in the interest of consumers, he shall promulgate regulations fixing and establishing for any food under its common or usual name, so far as practicable, a reasonable definition and standard of identity, a reason and standard of quality, and/or reasonable standard of fill of containers.

Then it goes on for several paragraphs after that, but this has the relevant portion of the section which I have just read.

Mr. GILLIGAN. Thank you. I have no further questions.

Mr. FRIEDEL. Mr. Curtin, do you have any questions?

Mr. CURTIN. No, thank you, Mr. Chairman.

Mr. FRIEDEL. Are there any other questions?

Do you have any questions, Mr. Carter?

Mr. CARTER. On your packages of butter, you have no objection, and of course it is there at the present time, to state the weight, or even the unit price. Would you object to that?

Mr. GREINER. I don't believe there is anything in the act that would require a unit price declaration. I suspect that we would object to a unit price declaration.

However, I wouldn't care to comment officially on that.

Mr. CARTER. Why would you object to that? That is one of the purposes of this bill, to have comparability, so that a purchaser can compare prices of the different items.

Mr. GREINER. As a practical matter, as you are aware, Congressman, butter is traded on the market and values change almost daily. That is one thing. Secondly, it is sold in a standardized container, so that there is really no problem in making comparisons. I don't think the consumer has a problem in comparing one pound of butter with another pound of butter.

At least, I don't, in doing shopping. So, therefore, it isn't going to serve any real useful purpose to put into law something that is already being done, with a standardized container, and with the price placed on there now by the supermarket.

Mr. CARTER. I understand there is a problem about amounts and so on, but certainly I see no reason why a price couldn't be placed on the package. I doubt the advisability of putting in the number of market changes. But you can say for 1 pound or a quarter of a pound, whatever it might be, what the price is.

Mr. GREINER. Well, I would say this: We certainly feel that price should be declared on the package as it is presently being done in all supermarkets today to my knowledge. It is 69 cents a pound or 79 cents a pound or whatever the price might be, but it will be stated on a standardized container which is the pound package, generally.

If I may add, there is very little difficulty on the part of the consumer in making a price comparison between two or three brands of butter that she might see in the supermarket in the dairy case.

Mr. CARTER. There is no problem then about cheeses? Is it the same way about cheeses, the weights and the prices are placed upon the different packages?

Mr. GREINER. The weights and prices are both placed upon packages; yes, sir.

Mr. CARTER. They should be easily comparable. That is all I have, thank you, sir.

Mr. FRIEDEL. Mr. Watson, do you have any questions?

Mr. WATSON. Thank you, Mr. Chairman. I, too, appreciate the statement of the gentleman. I think he has made a significant contribution to the hearing. Contrary to the opinion expressed from my dear friend, the acting chairman now, I think that your industry would be affected by this legislation should it pass. I think off-hand immediately that the housewife no longer will be able to buy a half gallon of milk because fractions are no longer permitted, or a half pound of cheese or a half dozen eggs. I don't know whether eggs come under your purview, but I can see that now the consuming public is going to have to figure out some new ways in their buying habits.

I really feel the proponents of this legislation have indicted our educational system, that we today are so dumb that we are not able to buy in accordance with our needs.

I notice on page 1, you state the marketplace which reacts with hair-trigger agility gives no indication that consumers are dissatisfied or confused or deceived in the case of dairy products.

Now, we tried quite exhaustively to ascertain from Mrs. Peterson and from Chairman Dixon and others some specific examples of deception and untruth in advertising, and in marketing of products.

Frankly, we were able to get nothing more than generalities. I remember Mrs. Peterson waved her arm and said, "All you have to do is ask any of these ladies out here."

I assume that you would be the first one, your industry, to hear complaints from the consuming public, that you have been deceptive.

Since we have been trying to establish a basis for this legislation, how many complaints has your industry received from the consuming public that you engaged in deceptive or misleading labeling or misleading advertising or marketing of your product?

Mr. GREINER. To my knowledge, none of the organizations, nor the companies that they represent have had complaints of that nature. I state it to the best of my knowledge because obviously we haven't surveyed them, but there have been none brought to my attention and it has been a well-known fact among people in the industry that I was to present testimony here today, and thus I would have heard of them if they had been brought to their attention.

But we have had no complaints insofar as dairy products are concerned.

Mr. WATSON. So perhaps this legislation is the result of a great propaganda campaign to go out and convince the American buying public that they have been misled and may have been deceived all along.

Would you care to comment on that?

Mr. GREINER. Well, not without a great deal of passion, perhaps, but I feel quite strongly that it would be rather indiscreet for me to comment upon other industries and some of their problems. I can speak for ourselves. We don't know of any problems in our area, in the case of dairy products.

If anyone has any I wish they would bring them to our attention and any one of the agencies involved could bring them to our attention. Certainly the Food and Drug Administration, under whose jurisdiction now practically all of these products fall, should be aware if there are any, and I am certain they have the power, and they have more than enough power to take care of any indiscretion that may come on the part of industry where products may be mislabeled or the industry doing something that they shouldn't.

If I may say this, Mr. Watson, the Food and Drug Administration deemphasizes greatly the salutary effect of their inspections and things that go on whenever an inspector picks up a product for examination, or visits a plant for an examination of the plant facilities as well as the labeling and so on of the dairy food products involved.

My experience with our people is that they aren't scared to death, but they toe the line, so to speak, and they have a complete consciousness of what the law is, and they are trying, as Mr. Murphy stated yesterday, to be good citizens and do what they should.

Mr. FRIEDEL. The time of the gentleman has expired.

Mr. Adams, have you any questions?

Mr. ADAMS. No, Mr. Chairman.

Mr. FRIEDEL. I want to thank you, Mr. Greiner.

The next witnesss will be Mr. James F. Hoge.

STATEMENT OF JAMES F. HOGE, ON BEHALF OF THE PROPRIETARY ASSOCIATION

Mr. FRIEDEL. Mr. Hoge, you may proceed as you wish.

Mr. HOGE. Thank you, Mr. Chairman. With your permission I would like the appendixes to my statement to appear in the record at the conclusion of my presentation.

Mr. FRIEDEL. Without objection, that will be done.

Mr. HOGE. Mr. Chairman and members of the committee, before I take my seat, let me say on behalf of my client and on behalf of myself, that we appreciate, very much, the opportunity to discuss this legislation with you.

Mr. Chairman, my name is James F. Hoge. I am a member of the bar of the State of New York and also of the State of North Carolina, where, until 1930, I was engaged in practice at Greensboro. In 1930 I moved to New York and since that time have been in the active practice there. I am now senior partner of the firm of Rogers, Hoge & Hills, whose address is 90 Park Avenue, New York City.

My client here today is the Proprietary Association, and I have had the privilege of being its general counsel for 32 years. I began in 1934.

The address of the association is in this city at 1700 Pennsylvania Avenue NW. The association was organized in 1881 and has been in continuous existence since. It has 98 active members. Their business is the manufacture and distribution of proprietary medicines, medicines which are completely compounded, packaged, and labeled for use by consumers.

These medicines are classified as over-the-counter items to distinguish them from prescription items. Illustrative of such articles are many well-known products, such as Vicks Vapo-Rub, Listerine, Bayer Aspirin, Bufferin, Anacin, Alka-Seltzer, Castoria, Murine, Phillips Milk of Magnesia, and so on.

The association also has associate members, 140 of them. They do not manufacture or distribute these articles, but they are interested in the manufacture and distribution by virtue of furnishing services and materials.

Let me say, Mr. Chairman, the association is entirely in sympathy with the stated purpose of these bills, the prevention of unfair and deceptive methods of packaging or labeling of consumer commodities. I may say for my association that we believe that it is not good business to engage in unfair or deceptive methods of packaging or labeling. We believe that medicines are now adequately covered in these respects by existing law, so adequately covered that they need not be included within the application of these bills.

So, our position is not one of opposition but of amendment; really, of further amendment and clarification. For in the Senate, by amendment, prescription drugs and drugs composed wholly or partly of insulin were exempted. Both S. 985 and H.R. 15440, at section 10(a)(3), on page 15, line 3, in both bills, provide that the term "consumer commodity" shall not include "any drug subject to the provisions of section 503(b)(1) or 506 of the Federal Food, Drug, and Cosmetic Act."

Section 503(b)(1) is the section which establishes prescription drugs and defines them. It was added to the law in 1951 by the so-called Durham-Humphrey amendment. Section 506 relates to drugs composed wholly or partly of insulin.

Mr. Chairman, it may be that other drugs are exempted. On page 15, at line 3 to line 5, you will see that sections 503(b)(1)——

Mr. FRIEDEL. Are you reading the Senate bill?

Mr. HOGE. Yes, but I think it is exactly the same, Mr. Chairman.

Mr. FRIEDEL. What bill are you reading from, the House bill or the Senate bill?

Mr. HOGE. I will read from the House bill. It is identical with the Senate bill at this point. It reads: "Any drug subject to the provisions of sections 503(b)(1) or 506 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)(1), 355, 356 and 357."

Mr. Chairman, 353(b)(1) is the code reference for the food and drug section, 503(b)(1), and that is the prescription drug; 355 is the code reference for new drugs. That would be 505 in the Food and Drug Act, which is not mentioned in lines 4 or 5. Section 356 is 506 in the Food and Drug Act. That is insulin. Section 357, which shows in the parenthetical citation but does not show above it, is section 507 of the Food and Drug Act which includes all antibiotic-containing drugs. So, the parentheses at this point would seem to exempt not only prescription drugs and insulin but "new drugs" and all antibiotics.

Well, the exemption should include all of those drugs. It should, in our opinion, include all drugs. For the articles and their labeling are so extensively and minutely regulated under the Federal Food, Drug, and Cosmetic Act as to leave neither need nor room for the further regulation of packaging and labeling which these bills provide.

Drugs subject to the "new drug" controls, section 505 of the Federal Food, Drug, and Cosmetic Act, or section 353(b)(1) of the code, and drugs containing antibiotics (section 507), whether sold on prescription or over the counter are strictly regulated as to packaging and labeling. The same is true with respect to antibiotics.

It is true, of course, that prescription drugs are not always displayed in consumer packages, but they are often sold in them. More frequently, prescription drugs, of course, reach the consumer under the pharmacists' labels. But they go into commerce and into the profession under the manufacturers' labels which must clear Federal controls.

And so must the labeling of "new" and antibiotic drugs whether sold on prescription or over the counter. So, they, too—unless already exempted by the parenthetical citation I just discussed—should be exempted from these added controls.

The fact is that all drugs are subject to such wide and minute control by statutes and regulations that the particular restraints sought by the subject bills are adequately assured without further drug legislation. An outline of the elaborate Federal controls presently pertaining to the packaging and labeling of drugs is hereto attached as appendix I. Unless you desire, Mr. Chairman, I will not read it. You have already said that it may be made a part of the record.

When I read over that appendix—and what that appendix is is an outline of the controls presently pertaining to the packaging and

labeling of all drugs—I see that it is not entirely complete. I have even left out a few controls. But there are plenty there to back up the statement which I just made to you, that drugs are so thoroughly regulated now as to need no further regulation in these particulars.

We, therefore, respectfully recommend that the subject bills be amended to provide that the definition of the term "consumer commodity" (sec. 10(a)) shall not include "any drug subject to the packaging and labeling requirements of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.)."

Acceptance of this amendment would remove drugs from the bill and make unnecessary the following comment. If it is not accepted, then—in the alternative—there should be clarification of section 5 (c)(4) which authorizes regulations to require information with respect to the ingredients and composition of consumer commodities. Such regulations, says the bill, shall be "consistent with requirements imposed by or pursuant to the Federal Food, Drug, and Cosmetic Act"; and such regulations shall not require the disclosure of information concerning "proprietary trade secrets."

The Senate Committee Report No. 1186, dated May 25, 1966, which accompanied the bill, refers to these provisions and repeats the qualifications but does not explain or apply them. The report does specifically contemplate disclosure of proportions and percentages, for it says on page 6, in the last paragraph on the page:

> Here, the committee is primarily concerned with the ability of consumers to make price comparisons among competing products with varying proportions of active or costly ingredients.

Mr. Chairman, in the early days of the hearings before this committee, Secretary Cohen, Assistant Secretary of HEW, was asked why he hadn't proposed amendments to the food and drug law instead of coming in with this bill. Mr. Cohen answered on page 195 of the transcript of those hearings:

> Of course, this bill is the product of a lot of consideration. I think amendments to the Food and Drug Act are desirable and we have been stressing them. But I don't see any reason why the language in this bill, which does give increased procedural and other authority, is inconsistent. It is not inconsistent with anything in the Food and Drug Act.

I call your attention to the use of the word "inconsistent" which appears in section 5(c).

Mr. Goodrich, the Assistant General Counsel of HEW who advises the Food and Drug Administration on food and drug matters, appeared before you and at page 216, lines 2 to 5 of the transcript, said:

> There is some new authority in 5(c). The principal reach of the authority is in 5(d) but I would want it clearly understood that there is some additional authority in 4 and 5(c).

It is 5(c) to which I am addressing myself now.

Well, Mr. Chairman, unless Mr. Goodrich was right in that statement, that there is additional authority at this point, then as to drugs section 5(c)(4) is simply surplusage, because the food and drug law now is very specific with respect to ingredient disclosure of drugs. Prescription drugs must show all the ingredients and the quantities or percentages. Other drugs show the active ingredients and the quantities of certain named ingredients.

So, this section, as it is in the proposed law, is meaningless as far as drugs are concerned unless further authority is contemplated for the administration.

When I prepared my statement, I said presumably, the Senate Committee on Commerce intended, by the wording of section 5(c)(4) and by the language of the report, to limit the disclosure of information respecting ingredients and composition of drugs to that disclosure determined by the Federal Food, Drug, and Cosmetic Act.

As I study it further and listen to and read some of these proceedings, I am not so sure. Maybe I should put it this way, that perhaps the Senate committee did intend by that wording and by that report, to respect the requirements of the Food and Drug Act and not to go beyond them. But now I am not so sure that the bill presented, if enacted, would do just that. I am not so sure but what it would now permit the Food and Drug Administration to go beyond the Food and Drug Act.

Our concern is that the bill or the legislative history be made clear in that respect by this committee. It is not now as clear as it should be for the future. The phrase "consistent with" may not negate the possibility of the Food and Drug Administration expanding upon the provisions of the Federal Food, Drug, and Cosmetic Act with respect to ingredient disclosure.

Definitively, "consistent with" means no more than "in harmony with," or "compatible with." I have gathered some notes from the law books which I won't prolong my statement to get into, Mr. Chairman. Black's Law Dictionary, for instance, gives the word "consistent" as meaning "not contradictory, compliable, accordant." It takes that from a case in the Oklahoma high court, 113 Oklahoma 130.

The California court defined "consistent with" to mean "in harmony with." That quote comes from *Shay* v. *Roth*, 64 Cal. App. 314.

The seventh circuit held that "consistent with the public interest," which was a phrase that was before it in a case under the Bankruptcy Act, was to be read as meaning "compatible with the public interest."

In a case from the ninth circuit, "consistent with the public interest" was construed to mean that the consolidation, which was then under consideration, should be "compatible with the public interest."

The Uniform Commercial Code at section 2–202, with respect to parol or extrinsic evidence would permit evidence of "consistent additional" terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

Mr. Chairman, I have noted the words "proprietary trade secret" in section 5(c)(4), but we can't take much comfort in those words either. "Trade secret" is a term without exact definition or fixed application. The courts rarely try to define it in any more helpful language than that of the Restatement of Torts which at section 757 says that "an exact definition of a trade secret is not possible"; that "Some factors to be considered in determining whether given information is one's trade secret are: (1) The extent to which the information is known outside of his business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of measures taken by him to guard the secrecy of the information; (4)

the value of the information to him and to his competitors: (5) the amount of effort or money expended by him in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others."

You see from that that what is a trade secret really involves a hearing or an adversary proceeding, almost, to determine whether what one claims to be a trade secret is—in law—one or not.

The Restatement of Torts at the point from which I read was cited with approval by the Circuit Court of Appeals for the Second Circuit in 1962 in *Speedry Chemical Products, Inc.* v. *Carters Ink Company*, 306 F. 2d 328, 331. As Mr. Justice Holmes said in *E. I. Dupont de Nemours Powder Company* v. *Masland*, 244 U.S. 100, in a typical expression of the great Justice, "The property may be denied, but the confidence cannot be."

It may be presumptuous to explain what Mr. Justice Holmes meant, but I think a few other words from the case do make it clear. Incidentally, in that case two great legal luminaries appeared, George Warton Pepper, of Philadelphia, and John G. Johnson, who was the law partner of Justice Roberts of the Supreme Court.

Mr. Justice Holmes said "The word property as applied to trademarks and trade secrets is an unanalyzed expression of certain secondary consequences of the primary fact that the law makes some rudimentary requirements of good faith. Whether the plaintiffs have any valuable secret or not, the defendent knows the facts, whatever they are, through a special confidence that he accepted."

It was at that point that he then said "The property may be denied but the confidence cannot be." Following along that line of judicial reasoning, protection of what are loosely called trade secrets is rather quasi-contractual and/or a quasi-tort enforcement of a duty of confidence as between two parties who have some specific sort of relationship to each other. The protective clause, section 5(c)(4), is founded upon a property concept definition of "trade secret" which is not established in the cases.

In the absence of an exact definition, a "trade secret" becomes a question of fact rather than of law. And one who asserts a trade secret has a difficult burden of proof. In *Sarkes Tarzian, Inc.*, v. *Audio Devices, Inc.*, 166 F. Supp. 250 (S.D. Cal. 1958) (affirmed, 283 F. 2d 695), the court denied the existence of a trade secret alleged in the production of a silicon rectifier. The court's attempt at an exact definition of the term "trade secret" demonstrates the vagueness of the meager results of litigation:

"What is a trade secret is difficult to define. However, on the whole, it must consist of a particular form of construction of a device, a formula, method, or process that is of a character which does not occur to persons in the trade with knowledge of the state of the art or which cannot be evolved by those skilled in the art from the theoretical description of the process, or compilation or compendia of information or knowledge" (257–258).

Further case references are hereto attached as appendix II.

What we ask is that—if drugs are not excluded—the bill and the legislative history expressly preserve the integrity of section 502(e) of the Federal Food, Drug, and Cosmetic Act. That section requires the label of over-the-counter drugs to declare the names of the active

ingredients of the article and the names and quantities of certain named ingredients such as alcohol, bromides, ether, chloroform, etc. As to ingredients other than those specifically named, the quantities or proportions are not required and even the names of inative substances need not be disclosed.

Section 502(e) thus recognizes that the proprietary interest in over-the-counter drugs is often related to the therapeutically inactive ingredients. Those ingredients have an important part in the manufacture of an end product that will accomplish its intended purpose and appeal to the consumer.

Much depends on the characteristics and degrees of both the active and inactive ingredients; quality, viscosity, solubility, particle size, source, coloring, and flavoring agents; also the nature and identity of the vehicle, binders, fillers, and excipients.

These are things in the proprietary industry that go into the niceties of manufacture and make for what is often referred to as "pharmaceutical elegance." They definitely contribute to commercial success and therapeutic effectiveness. They are essential elements of competition in the proprietary industry.

Section 502(e) has recognized them as such since 1938. The manufacturer considers them to be his "proprietary trade secrets," but he needs assurance that—if these bills become law—the FDA and the courts will concur.

Accordingly, we ask that it be made clear that section 5(c)(4) of the bills does not contemplate the disclosure of "ingredient" and "composition" information of this type.

The conclusion of the matter is—as stated at the outset—that the packaging and labeling of drug products are so thoroughly regulated now that this additional legislation is not necessary as to them. The existing regulation is fitted to the nature of drugs and to the circumstances pertaining to the making and marketing of them. The pattern of it should not be altered or complicated by administrative regulations made pursuant to other laws.

If, as may be asserted, these bills are, to some extent, of the same or similar subject matter as the existing law, then to that extent they merely duplicate or superimpose similar regulation. And the question persists whether or not the proposed legislation is necessary with respect to drugs.

That question is lighted up by the principle that laws should be enacted only on the basis of substantial public interest and demonstrable need. In all the hearings in the Senate, there was no showing of any inadequacy of the drug provisions of the Food, Drug, and Cosmetic Act to deal with the practices to which these bills are directed. Nor, is there anything on the subject in two very comprehensive bills now pending before this committee to amend the Food and Drug Act, H.R. 13885 and H.R. 13886, the latter of which has already been under hearings by the Subcommittee on Public Health and Welfare.

In the Senate, drugs were conspicuous by their absence in the discussion of so-called abuses to which this legislation was addressed.

Therefore, Mr. Chairman, I respectfully request that drugs be excluded from the application of H.R. 15440 and S. 985, and related bills.

Thank you.

(The appendixes referred to follow:)

APPENDIX I

OUTLINE OF PRINCIPAL FEDERAL CONTROLS PRESENTLY PERTAINING TO PACKAGING AND LABELING OF DRUGS

1. The definition of terms in Sec. 201 of the Federal Food, Drug and Cosmetic Act are broad and elastic:

(a) "Drug" means, among other things, articles used in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals.

(b) "Label" means matter displayed on the immediate container.

(c) "Labeling" means matter accompanying the article.

(d) "Misbranding" includes not only representations expressly made but the failure of labeling to reveal facts material in the light of representations contained in the labeling or material with respect to consequences which may result from use of the labeled article under the conditions of use stated or under such conditions as are customary.

2. The elements of misbranding are comprehensive and the requirements are broad and precise.

(a) Labeling must not be "false or misleading in any particular." (Sec. 502(a))

(b) The package must bear a label containing the name and place of business of the manufacturer, packer or distributor and an accurate statement of the quantity of the contents in terms of weight, measure or numerical count. (Sec. 502(b))

Elaborate regulations, going into much detail, affect label compliance with the statutory provisions. (21 CFR 1.102)

(c) Information on labels and in labeling must be prominently placed "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." (Sec. 502(c))

Elaborate regulations, going into much detail, affect label compliance with the statutory provisions. (21 CFR 1.103)

(d) The label must bear the "established name" of the drug and, if it consists of two or more ingredients, the established name (and in some cases the quantity) of active ingredients. (Sec. 502(e))

Elaborate regulations, going into much detail, affect label compliance with the statutory provisions. (21 CFR 1.105)

(e) If it is a drug the name of which is recognized in an official compendium, it must be packaged and labeled as prescribed in the compedium. (Sec. 502(g))

(f) If a drug has been found by the Secretary to be liable to deterioration, it must be packaged in such form and manner, and its label bear such precautions as the Secretary shall by regulation require as necessary for the protection of the public health. (Sec. 502(h))

(g) The container must not be "so made, formed or filled as to be misleading"; the drug must not be an imitation of another drug; it must not be offered for sale under the name of another drug. (Sec. 502(i))

(h) Under the "Drug Abuse Control Amendments of 1965," it must not be a "counterfeit drug" which is defined (Sec. 201(g)(2):

"The term 'counterfeit drug' means a drug which, or the container or labeling of which, without authorization, bears the trademark, tradename, or other identifying mark, imprint, or device, or any likeness thereof, of a drug manufacturer, processor, packer, or distributor other than the person or persons who is fact manufactured, processed, packed, or distributed such drug and which thereby falsely purports or is represented to be the product of, or to have been packed or distributed by, such other drug manufacturer, processor, packer or distributor."

(i) All depressant and stimulant drugs subject to the "Drug Abuse Control Amendments of 1965" (Sec. 511) must bear prominently on the principal panel of the label the following symbol or modifications:

(j) The advertising and labeling of prescription drugs pursuant to the 1962 Amendments, must contain the established name "printed prominently and in type at least half as large as that used for any trade or brand name thereof,"

the ingredients and "such other information in brief summary relating to side effects, contraindications, and effectiveness as shall be required in regulations." (Sec. 502(n))

(k) A drug which is not safe for use other than on prescription must be labeled "Caution: Federal law prohibits dispensing without prescription." (Sec. 503 (b)(4))

(l) Regulations require, when appripriate, such statements as "For prescription compounding"; "Caution: For manufacturing, processing or repacking"; "For investigational use"; "Diagnostic reagent—For professional use only." (21 CFR 1.106 (j), (k), (l))

3. Packaging and labeling are subject to review and approval under the provisions of Sec. 505 as to "new drugs." The Act provides for the submission of labeling material and the regulations make detailed requirements (21 CFR 130, et seq.).

4. Sec. 507 requires certification of antibiotics and extensive regulations prescribe numerous labeling and packaging requirements (21 CFR 141 et seq.).

5. Sec. 510 requires registration for the manufacture, processing or repackaging of drugs and requires factory inspection at least once every two years.

6. Sec. 704 provides for inspection of factories including the materials therein and the labeling pertaining to them.

7. Sec. 801 forbids importation of any drug article which is misbranded. It permits exportation when labeled on the outside of the shipping package to show that it is intended for export.

Appendix II

Cases on "Trade Secrets"

Regardless of the lack of substantial definition of the term, "trade secret" has been used extensively in statutory limitation upon the publication of Federal inquiries. However, research has uncovered no case where the term was applied to the ingredients or composition of goods, disclosure of which would have been harmful to the manufacturer. The point has not been contested.

15 U.S.C.A. § 46 gives the Federal Trade Commission power to make public information it obtains under the Act, except trade secrets, etc. The only case defining the term under this section is *Federal Trade Commission* v. *Tuttle*, 244 F. 2d 605 (2nd Cir., 1957). Defendant, Tuttle, alleged both that its sales records were trade secrets and that as such, they were within the exceptions of the Act. The court agreed without defining "trade secret", but held that the statute permitted the subpoenaing of trade secret information by the Commission.

15 U.S.C.A. § 78a explicitly deprives the Securities and Exchange Commission of the power to require the revealing of trade secrets or "processes" in any application, report, etc. Language in the case of *American Sumatra Tobacco Corp.* v. *Securities and Exchange Commission*, 93 F. 2nd 236 (App. D.C. 1938) and 110 F. 2d 117 (App. D.C., 1940), allows a great deal of discretion in the power of the Commission to "weigh the respective equities" as to whether the disclosure will "more likely result in harm to the registrant than in benefit to the public." However, that broad language has to do with the lists of gross sales and cost of goods sold which were submitted by the corporation, not the contents of the goods themselves. Otherwise, the case is void of a definition of "trade secret".

15 U.S.C.A. § 1263 refers to the labeling of "Hazardous Substances" and prohibits the private use, to one's own advantage, of any information acquired by the Department of Commerce concerning "any method or process which as a trade secret is entitled to protection." There have been no cases on point under this statute.

Finally, the Federal Criminal Code (18 U.S.C.A. § 1905) prohibits the disclosure of confidential matter, including trade secrets, by public officers and employees. The case of *United States ex rel. Norwegian Nitrogen Products Co., Inc.*, v. *United States Tariff Commission*, 6 F. 2d 491 (App. D.C. 1925), defined trade secret as follows: ". . . an unpatented, secret, commercially valuable plan, appliance, formula, or process, which is used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities." (at 495) However, the plaintiff in the case did not even claim that the subject of the case, the publication of the costs of production, involved a trade secret, so the discussion is pure dicta.

In total, the past inclusion of the term "trade secret" in the laws of the United States does not fully establish it for the purposes of these bills.

Mr. ROGERS of Texas (presiding). Thank you, very much, for your statement, Mr. Hoge.

Mr. Rogers, have you any questions?

Mr. ROGERS of Florida. In the Senate bill, prescription drugs are excluded. Why, under the present law, would there be any more control needed over the other drugs under the present law, since the comparison is made between prescription and other drugs?

Mr. HOGE. Mr. Rogers, the suggestion was made when the bill was in the Senate that prescription drugs were frequently sold under the druggists' label, the manufacturers' having been taken off, so that the prescription drug therefore was not on display on the counter where the consumer was to see it.

Of course, that is quite true. Most of the time perhaps that is it. But prescription drugs can be and are frequently sold in the manufacturer's package, and certainly they are shipped in interstate commerce in the manufacturer's package.

Mr. ROGERS of Florida. Do prescription drugs have to have all of the ingredients?

Mr. HOGE. Yes, sir; they have to have all of the ingredients and the percentages, too.

Mr. ROGERS of Florida. This is not required with over-the-counter drugs?

Mr. HOGE. No, sir. With respect to drugs other than prescription drugs, we are required to state the active ingredients and the proportions of some 10 or 11 named ingredients, alcohol, bromides, and so forth.

Mr. ROGERS of Florida. The testimony that we heard was that this proposed bill was to go to confusion, not necessarily to deception, which is covered under the law, or misleading, which is covered under the law, but to confusion, so that the housewife would not be confused.

For instance, on a cents-off sale, are any of these drugs that are not prescription drugs packaged or sold for cents-off sales?

Mr. HOGE. There are some that are. I think they are the exception, Congressman Rogers. It does occur sometimes, yes.

Mr. ROGERS of Florida. That is all. Thank you.

Mr. ROGERS of Texas. Mr. Devine?

Mr. DEVINE. I have no questions, Mr. Chairman.

Mr. ROGERS of Texas. Mr. Gilligan, have you any questions?

Mr. GILLIGAN. No, Mr. Chairman.

Mr. ROGERS of Texas. Mr. Nelsen.

Mr. NELSEN. Thank you, Mr. Chairman.

I note that your testimony concerns itself with adequacy of protection of the public as to pharmaceutical supplies and supplies of proprietary items. It seems to me that the sales pitch on this truth in packaging bill is that the public should have an opportunity for price comparison.

We will say that a bottle of aspirin is put up in a bottle that appeared to be greater in size than a standard bottle, so the public, by virtue of the size of the bottle, assumes they are getting more than in any other package.

This seems to be the objective of this bill to regulate packaging for price comparison. In what way would this bill interfere with your industry in that area?

Mr. HOGE. It probably would not interfere in that area. I would like to say this: One of our chief troubles with this bill, sir, is that we don't know at all the points at which it will apply to us and just how it will, because all of this is to be done by regulations made from time to time; whereas, now the law is pretty well set as to what we must do in these respects.

Most of the regulations now applicable to us in the area of the bills under discussion are what are called interpretative regulations. The food and drug law since it was passed in 1938 has had a very strict provision that a drug will be misbranded if the package is so made, formed, or filled as to be misleading. I can tell you—and I was here when the law as passed—that when the law was put into application, almost every drug represented by packages on the shelf went through a complete repackaging job in order to comply with this provision of the law.

Mr. NELSEN. You state in your testimony you are in favor of the objectives of this bill but you feel that the industry that you represent should not be included in its application. It would seem to me that since other phases of our domestic economy are affected by this bill and that since you feel its application would be disastrous to your industry, you should likewise be concerned whether or not its application would be disastrous to other phases in our economy.

Would you care to comment on this observation?

Mr. HOGE. I don't want to go beyond my qualifications such as they may be. My appearance here is for an association of drug manufacturers. I have wondered, sir, as I have watched this thing go on now for the last several years, and have read the press comments and reports of the hearings, just how great the need was for so drastic a piece of legislation.

With respect to drugs, let me say this: You used the term disastrous. I am not prepared to say that it would be disastrous to us. I repeat what I said a moment ago, that I don't know exactly what it would do to us. That is part of my concern, and particularly with respect to section 5(c)(4) which I was talking about, where our law is so specific now as to what we have to do, and where it is apparent from the record that additional authority is considered vested by that section.

I am uneasy as to what it is going to do. I can't use the word "disastrous." I can say that there would be more inconvenience and probably more expense in complying with it. Every law involves expense and inconvenience in complying with it.

Mr. NELSEN. I am in complete agreement that the Food and Drug Administration has adequate authority. My point is that if this bill is bad as far as giving the public a facility of price comparison as far as the food and drug articles are concerned and if it is bad for them, it could be bad for other people.

I want to be sure that we look at this not from just individual segments of our domestic economy, but all of them. In my judgment, the greatest mislabel here is the way this bill has been presented because the great bulk of the arguments that have been presented in

this hearing have been presented in a manner that would lead the public to believe that there is no protection in the areas that are adequately protected under existing law.

The bill goes very far as far as penalty provisions are concerned. It seems to me that industry is put in a position of being guilty until they prove themselves innocent. The great free enterprise system that has worked so well in our country is going to be hampered because of it.

I hope you will join with everyone else in a concern over the total application of this measure.

Mr. HOGE. I do join, Mr. Nelsen, but I think I ought to say this. I don't think I ought to try to work my own clients out by working anybody else in.

Mr. NELSEN. I think I understand your point.

Mr. HOGE. I am not as conversant with the problems of the other industries as I may be with the drug industry. I think I will also say this, because this is about as real as it can be: the drug industry is now on a rising tide of regulation. Every day brings a new bill or bills, new hearings.

Your distinguished chairman has introduced two very sizable bills, H.R. 13885 and H.R. 13886. Those two bills, if enacted in the condition they are in now, would completely re-do the labeling of all drug products.

The new drug provisions are, in effect, licensing. I don't like licensing. I think it is better to state the obligations and then hold a man liable under certain sanctions for complying with them. But there are exceptions to every rule, of course. We have acceded to the exception that for new drugs there should be a form of licensing. We have subscribed to it, since 1938. There are other areas in which we have to make exceptions to the rule. But the result of all of this is that the drug industry today is so completely regulated—and on our horizon are these bills for still further regulation—that every company will have to have a staff of lawyers, doctors, and chemists to keep up with the regulations as they change from day to day.

The code requires two volumes about 3 inches thick just to hold the regulations which now pertain to food and drugs. This bill would mean another set of regulations because this bill would be effectuated entirely by regulations made from time to time.

Mr. NELSEN. I compliment the gentleman for his fine presentation relative to the people he represents. I will be equally diligent in my concern over butter.

Thank you.

Mr. ROGERS of Texas. Mr. Adams.

Mr. ADAMS. Mr. Hope, I hope you will bear with us since it is difficult to keep moving from section to section in the code in order to keep track of the various industry proposals. Your amendment proposed on page 3 would take in all of title 21, United States Code, section 301, as opposed to simply allowing an exemption for those drugs which are subject to title 21, United States Code, section 351 et seq., which is the actual drug and device control section. Isn't that true?

Mr. HOGE. If you make a point of that, I will accept 351.

Mr. ADAMS. That is what I want to ask you about. I want to make this clear. I want this to go into the record and then perhaps you can

help correct your amendment. Maybe we should adopt it, but I will ask the Department to come up with what they say, too.

If you bring in 301 et seq., then you bring in the definition of the term "drug," and the term "drug" under 321(g) says:

"The term 'drug' means (1) articles recognized in the official United States Pharmacopoeia, Official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clauses (1), (2), or (3) of this subsection; but does not include devices or their components, parts, or accessories."

That is a very broad definition of drug, and I don't think you want to write that exemption into this statute.

Mr. HOGE. You accepted that in the bills before you. That is the definition in your bills.

Mr. ADAMS. That is the definition of the exemption. I am talking about the definition of a drug. I agree that this is all right as a definition of a drug. But the exemption you are proposing would be that we would use this type of a definitional exemption, I wanted to rather have your industry, because you are skilled in this, and perhaps the Department, pick out the sections in subchapter IV, which is 321 et seq., that you feel are necessary to establish a proper exemption.

I agree with you that there may be some confusion because section 503(b)(1) and 506, at least as I read them, would not cover section 357, which is the new penicillin, streptomycin, the so-called antibiotics.

I think that if you want to propose how this might be corrected, the committee would certainly consider it.

Mr. HOGE. Mr. Adams, I hope you haven't misunderstood me. The citation I put, 301, is the approved way of citing the Food and Drug Act in its entirety.

Mr. ADAMS. I agree.

Mr. HOGE. My point was that drugs which are subject to the Food, Drug, and Cosmetic Act should be exempted from these bills. Your first sentence, I think, related probably to the adulteration and misbranding sections of the act as they apply to drugs.

Mr. ADAMS. No, the first section that I read to you is the definitional section of a "drug," and therefore, if we were to say any drug subject to packaging and labeling requirements of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301, we would carry with it in that exemption this definition of a "drug" and we would exempt—or the courts could so interpret—under the definitional section as well as under the actual regulating section.

Mr. HOGE. I don't know how we can get at it, Mr. Adams. If you are going to exempt a drug, you have to define a drug. Your bill defines a drug.

Mr. ADAMS. Then I would suggest that you go to the provisions of subchapter V, starting at section 351, and pick out in those sections the actual labeling and packaging sections. It perhaps has not been done in the bill. I think there was an attempt on page 15, in section 3 of

the bill to do that. I gather from your testimony that you may or may not be satisfied that this does the job.

What I am saying to you is I don't think we should accept what you have proposed, but I do think there may be something you can propose under those sections that will cure your problem. I could suggest for example, why don't you say, "We will use section 352, which is misbranded drugs and devices for an exemption," in other words, you could use this labeling section, which perhaps would give you coverage as adequate as your suggested amendment?

Mr. HOGE. I would have no objection to that.

Mr. ADAMS. What I am asking you is not give or withhold an objection, but to give us your help.

Mr. HOGE. I would be happy to help, too.

Mr. ADAMS. In other words, you have spent many years, obviously, in this field, so I would assume that you and your cocounsel could draft a proposed amendment with the proper sections in it that you believe would handle the problem without moving too widely.

Mr. HOGE. Mr. Adams, I would be delighted to try. I have had the pleasure of many years of working with Mr. Borchardt, who is sitting at the end of the table. I would be delighted to try. You will find my appendix I includes the definition which you just read, which is the definition from the law. Then you will also see that I tried to extract the labeling requirements pertaining to drugs. As I said, although I thought I had all of them, I missed two of the most important ones. I missed the requirements that we must have adequate warnings generally and warnings for habit-forming drugs specifically (secs. 502 (b) and (d)).

Mr. ADAMS. That is why I wanted you to do it rather than our doing it.

Thank you, Mr. Chairman.

Mr. ROGERS of Texas. Mr. Curtin.

Mr. CURTIN. I have no questions.

Mr. ROGERS of Texas. Mr. Broyhill.

Mr. BROYHILL. Mr. Hoge, you mentioned briefly that there was other pending legislation before the Congress which would tend to complicate this whole area. Briefly, I think you said that the members should look at this closely, as to what effect this legislation will have in relation to the pending legislation. Would you want to comment more on this problem?

Mr. HOGE. Mr. Broyhill, the other bills that are pending would not touch the subject matter of the bills under present discussion. I made the point that the other bills, as vast as they are, do not deal with any supposed derelictions of the drug industry in the areas that the bills before you now are addressed to, my point being that if there has been any need for new laws pertaining to drugs in these fields, I would have thought that these very comprehensive bills that have now been introduced would have touched upon them.

But they are absolutely silent; not a word in them. They are H.R. 13884, having to do with cooperation between Federal and State bodies in the enforcement of State and Federal drug laws, a very good bill—we have no opposition to it whatever—and H.R. 13885, called the drug safety bill, which would deal with a great number of subjects.

It would require records and reports not only of drugs which are under the new-drug sections but of all drugs—reports of side effects, contraindications, and everything pertaining to the use of them. It would require certification of all drugs—not just antibiotics, as the law now is, but certification of all drugs if the Secretary thought that the public interest would be served by doing that. It and, yet another bill—H.R. 13886—would rewrite the labeling provisions of section 502(f) completely; would give FDA the authority to prescribe in the greatest, most minute detail everything that should be put on packages and everything that shouldn't.

Mr. BROYHILL. Let me break in right there. What you are saying is that there is a possibility of conflict between this proposed legislation and this legislation?

Mr. HOGE. I don't know whether it is conflict, Mr. Broyhill, or whether it is just multiplication of regulation. Out of multiplication I suppose we will get conflict, incompatibility, and inconsistencies of all kinds.

May I just say at this point that if there is anything wrong with the food and drug law with respect to the matters dealt with by these bills, it would be far more sensible to propose yet another amendment to the Food and Drug Act addressed specifically to what is considered the evil at that point, rather than put drug people under this new, broad, regulatory control which has to do with price comparison, sales promotion, and that sort of thing.

We are governed by laws primarily relating to health. The Food and Drug Act as it applies to us is an economic act, it is true. It is embraced in the broad field of unfair competition. But primarily and predominantly it is the health of the people that it is directed to. The bills now before you are directed primarily, avowedly, to price comparisons.

Mr. BROYHILL. Thank you, very much.

Mr. ROGERS of Texas. Thank you.

Thank you, Mr. Hoge, for your statement.

It appears to be close to noon and we have legislation coming up on the floor of the House this afternoon. Therefore, the committee will stand in recess until 10 o'clock tomorrow morning.

(Whereupon, at 11:50 a.m., the committee recessed to reconvene at 10 a.m., Thursday, August 18, 1966.)

FAIR PACKAGING AND LABELING

THURSDAY, AUGUST 18, 1966

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to recess, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

The subject today is the continuation of fair packaging and labeling bills, H.R. 15440 and related bills.

Our first witness this morning will be Mr. Edward J. Hekman of Keebler Co., Elmhurst, Ill.

Come forward and take a chair, please. I don't know how long your statement is, Mr. Hekman, but I am just wondering if you can insert it in the record and summarize it.

Would that be possible, or do you care to read it?

STATEMENT OF EDWARD J. HEKMAN, PRESIDENT, KEEBLER CO., ELMHURST, ILL.

Mr. HEKMAN. I have some markings on the paper, Mr. Chairman, and I will shorten it.

The CHAIRMAN. Fine, thank you.

You may proceed.

(Mr. Hekman's full statement follows:)

STATEMENT OF EDWARD J. HEKMAN, PRESIDENT, KEEBLER CO.

Gentleman, my name is Edward J. Hekman, President of Keebler Company with headquarters in Elmhurst, Illinois. Keebler, which was known as United Biscuit Company of America until a few months ago, markets its products, principally cookies and crackers, in 43 states. It may be better known to some members of your committee under such regional brand names as Strietmann, Hekman and Supreme.

On behalf of Keebler Company and myself, I want to thank you for this opportunity to voice our concern over pending packaging legislation. We sincerely fear this legislation would ultimately hurt the consumer through higher prices and a reduced variety of wanted products. It will certainly also affect our Company, its 6,500 shareholders and 6,700 employees.

We believe the proposed legislation will raise prices of our products with no increase in value, will force us to drop products from our present lines and will seriously limit our ability to develop and market new products. This can only mean lowered employment among our 6,700 employees and reduced earnings for our 1,500 sales people.

Our Company, with sales last year of approximately $138,000,000, is actually small in comparison with the total food industry, which is the nation's largest business. Our Company accounts for about 15 per cent of the nation's cookie

and cracker business. Our net earnings last year amounted to less than two cents on a dollar of sales; it should be obvious that any increased costs due to this legislation would have to be reflected in higher prices to consumers.

Although we have employees in 43 states, most of our employment is concentrated in the states where we have large bakeries. Keebler's major bakeries—some of them still known better by their historic names of Strietmann, Hekman and Bowman—are in Cincinnati, Ohio; Macon, Georgia; Grand Rapid, Michigan; Philadelphia, Pennsylvania; and Denver, Colorado. In addition, we have a cone bakery in Chicago, Illinois; a specialty bakery in Michigan City, Indiana; and a candy plant in Greenville, South Carolina.

Lest there be any misunderstanding, I want to say publicly that I assume that all those who have introduced and supported packaging legislation are motivated by a sincere concern for the consumer. In turn, I must ask those who have supported this legislation to assume that those of us in the food industry who have opposed this legislation are not on the side of deception.

Unfortunately, through the popular use of the phrase, "Truth in Packaging" to describe this proposed legislation, those of us who oppose the bills under study are cast in the role not only of plotters but even as masters of deceit.

I assure you that I personally, as well as others in my Company and in our industry, and hosts of others in the food business, have supported legislation which is aimed at making deception illegal.

I know of no responsible executive in the food industry, and I know hundreds, who does not feel that deception is immoral. Despite these convictions, however, I realize there still would be a major problem if there remained a constant temptation to deceive the public. Those who may assume that such a temptation exists overlook the fact that in the food business, perhaps more so than in any other, deception is not good business. The food business depends on repeat purchases; nothing would destroy a company like ours more quickly than deception of the consumer on whom we depend for tomorrow's sales. Consumer confidence in the integrity of a food company is not just something nice to have; it is absolutely essential; it is priceless.

Very candidly, I am puzzled by the inclusion of many of the provisions of both S–985 and HR–15440. Although I am not a lawyer, the provision of the Federal Trade Commission Act prohibiting all "unfair deceptive acts or practices" seems clear enough even for a layman.

As a businessman, moreover, I submit that legislation that duplicates and overlaps other legislation is costly to business, principally in causing delays. Any measures which unnecessarily increase costs ultimately mean higher prices with no increase in value for consumers.

Meeting the consumer's needs and wants, gentlemen, is our business. How well we do meet them determines our success.

Just because that is our business, we in our Company and our competitors in theirs are tuned in to the consumer in a way in which, I respectfully submit, no agency of government could ever be.

In our Company, for example, we do extensive market research and make numerous consumer surveys, and there are hundreds of food companies who are likewise spending as much as they can afford to determine what consumers need and want.

Even more important, I think, is the unsolicited communication from the consumer.

There are at least two reasons why I have always taken a direct, personal interest in what consumers tell us.

The first is that I do not recall the time when the importance of pleasing the consumer was not being drilled into me.

While still a young boy my father would translate for me from the Holland language the maxims of my grandfather who entered the baking business in this country in the kitchen of a rented house in Grand Rapids, Michigan. My grandfather peddled his cookies from house to house and built his business by listening to what the housewives said about his products. In later years, I tagged along with my father into grocery stores, for wherever we went as a family we always stopped to visit with the grocers on the way to find out what they and their customers were saying.

A second reason for my personal interest in knowing what the customer needs and wants, is that my first job with this Company 31 years ago was as a salesman going from store to store. The years I spent as a salesman, living on the

commissions I made on my sales, taught me the importance of repeat sales and the importance of finding out what the consumer demands.

I have injected these personal references to explain why I still take an intense personal interest in all consumer comments and suggestions. Our 1,200 salesmen and 300 sales supervisors are expected to report all comments and suggestions which are compiled into a weekly report which I never fail to read. I visit buying offices—not to sell, but to listen. Like my father, I too stop in at grocery stores and ask questions. Every letter with comments and suggestions which I receive—and many do address their letters to the company president—I answer personally.

In a way of speaking, we in business are as responsive to our constituents as you are to yours.

But this is amazing—in all my 31 years with this Company, in all the mass of information I have received directly or indirectly from consumers, I have received one communication indicating that they want our Company to move in the direction in which it could be compelled to move under the provisions of this Bill. The one exception was an anonymous postcard I received after testifying before the Senate Commerce Committee in 1965 on S. 985. The postcard simply said the sender supported the Hart Bill.

What does the consumer want?

The publicity given to those who have spoken in behalf of this legislation would indicate the primary purpose of the bill is to remove the "confusion" that faces the shopper in the supermarket. Much has been said about the 8,000 items in a typical store. Standardized weights and quantities in which products may be sold is the provision which has perhaps received the most publicity.

(From some of the publicity I have read, the principal purpose of the proposed legislation seems to deal with the reported 71 sizes in which potato chips are sold. If any of you is tempted to vote for this bill because of potato chips, I suggest you visit a typical super market and see for yourself first-hand what is involved and whether the selection available is reasonable.)

The consumer wants reasonable prices, and do not underestimate her ability to judge prices. Even very minor adjustments are immediately reflected in sales results. While I cannot for competitive reasons cite specific examples, I can assure you that often in our experience a very modest increase in the price of a product has resulted in a net loss in sales dollars. The typical shopper is an astute judge of values.

However, we also know that price is just one of the factors that determine her purchases.

To illustrate the point, I have brought with me five of our products, purchased in a retail store with the retail prices plainly marked.

Our Chocolate Fudge Sandwich cookie is a pound package which retailed at 39 cents in the store in the Chicago area where the package I have was purchased.

By comparison, here is another one of our sandwich cookie products, Lemon Creme Sandwiches, also retailing at 39 cents, but containing 20 ounces, or 25 per cent more product for the money. Obviously, if price comparison were the primary aim of the shopper, the 20-ounce package would far outsell the 16-ounce package at the same price.

Yet, the more expensive product outsells the less-expensive product by almost four to one.

To illustrate the point further, I have with me a 24-ounce package of Empire Sandwich cookies, which retailed in this store at 49 cents. Note this contains 50 per cent more product than the Chocolate Fudge Sandwich by weight and the cost of the package is less than 25 per cent more. If the consumer were primarily interested in price, the Empire Sandwich should far outsell the Chocolate Fudge Sandwich cookies. Yet, in the marketplace, the consumers buy almost three times as many of the product which is obviously more expensive.

There is a simple explanation for this; these products are purchased not only on the basis of price but on other factors as well. Flavor and personal taste appeal, and the desire to please the family with variety and with products the family likes are also taken into consideration by the consumer. Price, obviously is just one factor in the consumer's total concept of value.

Even more convincing of this point, I believe, is the fact that the largest selling sandwich cookie in America, made by one of our competitors, is higher priced than any of the three I have shown you.

Another aspect of price comparison is illustrated by these two packages of our Zesta Saltine crackers. Product protection in the two-pound package is just

as much as in the one-pound package. The one-pound package, however, based on our prices to the grocery stores, costs about 10 per cent more on a weight basis than the two-pound package. For a very definite and simple reason—convenience—the one-pound package outsells the two-pound package on a dollar basis of about seven to one, and on a unit basis about 14 to one.

Rational price comparison is easy and the price differential is obvious. No law is needed to "protect" anybody, and the fallacy of assuming that standardized weights would result in savings per se to the average household should be readily apparent. The consumer is interested in more than price; in this case, convenience in the cupboard.

Whereas those who support this bill talk primarily of price comparison, the typical housewife is more interested in what I would call "total value"—made up of many things.

I would dare say that the books you buy and the magazines to which you subscribe are really no different as buying decisions than those faced by the shopper in the grocery store. None of you, I submit, would suggest that books should be published in certain multiples of pages or that magazines should be printed in uniform dimensions with standardized column inches of editorial copy for easy price comparison. While price is one consideration in buying a book or subscribing to a magazine, for you as well as for the housewife, it is but one of many considerations.

The choices in the grocery store were not imposed on consumers; this variety was, and is, dictated by consumers. As a casual chat with any grocery buyer would prove to you, no product gets on the shelf unless there is a reasonable belief that it will be in demand; if the demand does not materialize, the product is removed. This demand, very obviously, comes from the consumer. The shopper dictates the number of choices she wants. If the store she visits does not have what she wants, she will shift her buying to the store that does.

This almost endless variety of choices has been under attack by many who support the proposed legislation. There are those who feel that the consumers who have dictated this multitude of choices somehow do not know what is good for them.

By coincidence, when I entered this business in 1935 the revolution in grocery marketing was just beginning. At that time the consumer had relatively few choices. In the cookie and cracker business at that time it was not unusual for a store to carry the products of only one baker and to carry not more than a dozen or two of his products in the little glass-covered boxes that many of you may remember.

With the vast increase in the variety available as stores became bigger and bigger, something else happened. The competition for space on the shelves became keener. It is no coincidence that this change in marketing of grocery products spurred a comparable revolution with the companies that manufacture food products. Innovation, convenience, protection, quality control and, yes, price competition have been stimulated to a degree which I for one never dreamed of when I became a cookie and cracker salesman 31 years ago. With all the vast forward strides that have been made, including doing for the housewife what she once had to do herself in food preparation, the percentage of the spendable dollar required for food has steadily gone down.

This intense competition has also brought about a built-in protection for the consumer against even unintended deception. A major food company today must be prepared to submit its products to the scrutiny of scores of sophisticated buying specialists in store headquarters across the country.

At the outset of my testimony I indicated that we in our industry fear this legislation because we believe it will result in higher prices with no increase in value, a reduced variety of products for consumers lower sales and reduced employment.

This fear stems from the provisions of HR–15440 to authorize standardization of package sizes, shapes and dimensions and the provisions of S–985 which I interpret to say that industry may be compelled to "voluntarily" standardize weights and sizes.

Approximately two-thirds of the sales of Keebler Company are generated by products which are packaged in multiples of quarter-pounds. However, these products, accounting for two-thirds of our sales, comprise less than half the items we market.

It is the remaining one-third of our sales accounted for by more than half the products we sell about which we are concerned and which would be jeopardized by either mandatory or compulsory-voluntary standardization.

Any measures which may be taken to enforce standardiaztion on these items would result in any one of the following alternatives:

1. Installation of new equipment and additions to bakeries to accommodate the equipment, with both building and equipment used at a fraction of the capacity, thereby increasing the price of products.
2. Discontinuing all products with sales volume which could not reasonably justify additional equipment and space.
3. Altering the quality of products to meet a standardized weight.
4. Fewer product and packaging innovations.

Higher prices, discontinued items, altered quality, and fewer product and packaging innovations—all would result in lower sales and lower employment. None of these would benefit the consumer.

Moreover, all would result in substantially less competition in the food industry. The ability to cope with package standardization, by whatever method it might be imposed, is directly related to the size of the business. I am baffled by the fact that some legislators who are concerned about the bigness of some businesses have found it reasonable to support at the same time legislation which would make the chances of survival for smaller businesses difficult or even impossible.

I have cited four alternatives which would result from standardization of weights and quantities in which products are sold. These alternatives, which will hurt our employees and the consumers of our products as well as our Company itself, are easy to document from our company experience.

First, increases in prices because of the installation of new equipment and building additions which would be used under capacity.

Two days ago, our Company introduced to consumers a line of six new snack crackers. Different regional brand names appear on the samples shown here since we are introducing at the outset no more than three varieties in each of our nine sales regions.

Of the six, two are packed with eight ounces of product; three with seven and one-half ounces and one with seven and one-quarter ounces. The packaging machinery required to pack these items represents an investment of approximately half a million dollars, not including bakery space required for the equipment. All six of these sell at the same price.

These six packages are being produced in our Cincinnati bakery, where the equipment required had been used at less than full capacity in producing five other products in our line.

Very obviously any legislation, either by decree or by imposing so-called voluntary standards involving the production of these items in quarter-pound multiples would mean that only two of the six items could be produced on existing equipment. In addition to the building expansion which would be required, the remaining four would require an expenditure of at least one million dollars in equipment alone. Significantly, instead of enabling us to use our equipment more efficiently, the new equipment would be underused and the cost would have to be added to the selling price of our product. This is but one example of many which I could cite in which any standardization, regardless of how imposed, would be reflected in increased cost of product with no increase in value to the consumer.

In introducing these six new items we are making a deliberate attempt to capture some of the market for snack crackers in which our major competitor now holds a substantial share of total sales.

Here are are some samples of these competitive items. You will note that the packages are somewhat different in size, and that the weights on the packages are somewhat different than ours. I am confident that the packaging lines for these competitive products are comparable to the half-million-dollar cost for our packaging line.

By comparison with the provision of HR–15440 which would allow for mandatory regulation of weights and quantities, the provision of S–985 for voluntary industry agreement on a compulsory standard of weights and quantities sounds rather reasonable.

Yes, the "voluntary" approach to mandatory standardization of weights and quantities sounds reasonable until one confronts the practical problems of how

competitors could really and equitably reach agreement "voluntarily" on whose packaging would prevail. With the packaging of just two competitors among dozens, almost impossible problems of reaching agreement are apparent. Regardless of whose packaging size would be made mandatory, or if neither, the only consequence which could result would be substantially higher costs which ultimately would have to be paid by the consumer with no increase in value.

Second, another alternative would be to discontinue those products with sales volume which could not reasonably justify additional equipment and space.

I have here our one-pound carton of graham crackers, which in terms of packaging equipment also involves several hundred thousand dollars of investment.

Because we have this equipment on hand, we have been able to use it to produce a product which I hope none of you is required to use. It is this—a completely salt-free cracker, the only one to my knowledge marketed through retail stores.

I assure you that unless you are required to have a completely salt-free diet, you would not willingly choose this product.

The lack of salt in this product affects more than taste, however. Salt is an important ingredient in controlling the dimensions of a cracker. Because this product is completely salt-free, it is possible to pack only 13 ounces in the same size carton using the graham-cracker packaging equipment.

Any standardization requiring us to pack this product in either 12-ounce or 1-pound packages would force us to withdraw this product from the marketplace. Standardization of packaging sizes would unquestionably be enhanced by reducing by one the variety available to the consumer. Who would benefit? Nobody. Who would be deprived of a product both needed and wanted? Many.

Third, another alternative would be to alter the quality of products to make them fit standardized sizes.

One of our popular products is known as Caramel Cremes. It has a weight of 12 and one-half ounces.

From the consumer's point of view, I am sure the weight of this package is compared with others at an even 12 ounces. Like many other products in our line, this product is packed at an unusual weight because the quality of the cookie we wanted determined the final weight in the packaging equipment available.

As any experienced baker can tell, if quality is not paramount, weights can be juggled at will.

The same is true with another popular item in our line—our Deluxe Grahams. These are packed at 14 and one-half ounces. Despite the competition of many comparable competitive products, we are continuing to enjoy a steady sales growth on this product. We believe this success is due to one fact alone—quality of the product determined the finished weight.

As with the Caramel Cremes, so with Deluxe Grahams, if quality became a secondary consideration, it would be possible to reduce the weight of the same size package to 12 ounces. As I indicated, weights can be juggled, but the consumer suffers in reduced quality.

Fourth, another alternative would be to restrict severely product and packaging innovations.

A few years ago we developed a new product, Cinnamon Crisp, which was completely different than any other cracker on the market. Because we had on hand the graham-cracker packaging facilities, we were able to introduce this product at a reasonable price and its success has been outstanding. However, because of the ingredients involved, with the sugar and cinnamon topping, this product in the one-pound graham package actually weighs 14 and one-fourth ounces. When this product was introduced, and continuing since, literally hundreds of people have written us in appreciation of this development.

Yet, since I was directly involved in the decision whether to attempt to market such an unusual product, I can tell you that if a standardized package of either 12 ounces or one pound had been required, the equipment investment required would have effectively prevented this product from appearing on the market.

More recently, within the last few months, Keebler Company has pioneered in a convenience innovation which would have been impossible had standardized weights and quantities been effective. Typical of the items involved is this package of Iced Cocoanut Shortbread cookies, which you will note includes two

plastic serving trays. As a result, the packaging involved, which is standard for several items in our line, dictated the weight of the finished package at 15 ounces. This innovation has been extremely well accepted by consumers, but I must point out that it would have been impossible to incorporate the serving trays in this package had standardization at quarter-pound multiples been in effect.

None of the four alternatives—higher prices, discontinued items, altered quality or unnecessary restraints on innovations—serves the consumer's interests. All would affect the livelihood of our employees.

As a consumer myself and as the representative of Keebler Company and the 6,700 people whose livelihood depends on its success, I urge you to reject *any* provision imposing standardized packaging.

At the outset of my testimony I said I believe that those who have advanced this legislation are sincerely concerned with the consumer's interests.

I respectfully submit that the threat of higher prices with no increase in value, the reduction in items which the consumer either needs or wants, the very real possibility of unemployment in the food industry and the curbs on innovation in products and packaging are not in the consumer's interest.

If you would visit the cookie and cracker department in your neighborhood grocery store, you would find that almost all the items packed in weights other than quarter-pound multiples are at three prevailing price levels. You would easily see how convenient it is to judge price-weight relationships by comparing weights against a uniform price. You would find intense competition not alone in price but also in variety and convenience.

Fortunately, we are of one mind in considering the importance of meeting the consumer's need and wants. I want to thank you for the opportunity to present our sincere belief that any provision for standardization of packaging will impede rather than help in our ability to meet the desires of the consumer.

Mr. HEKMAN. Thank you.

My name is Edward J. Hekman. I am president of the Keebler Co. with headquarters in Elmhurst, Ill. Keebler had been known for many years as United Biscuit Co. of America. We changed our name a few months ago.

We operate in 43 States under regional names that are perhaps better known to members of the committee such as Strietmann, Hekman, and Supreme.

On behalf of the Keebler Co. I wish to thank you, Mr. Chairman, for this opportunity to voice our concern over this pending legislation because we sincerely fear that this legislation would ultimately hurt the consumer through higher prices, reduced varieties of wanted products, and it will certainly affect our company, its 6,500 shareholders, and its 6,700 employees.

We believe that the proposed legislation will:

(1) Raise prices of our products with no increase in value.

(2) It will force us to drop products from our present lines.

(3) It will seriously limit our ability to develop and market new products. And this can only mean lowered employment for our 6,700 employees.

Our sales last year, just to give you a picture, were roughly $138 million, and we comprise about 15 percent of the biscuit business, but in terms of the total food business we are a very small factor.

We operate in 43 States with principal bakeries in Cincinnati; Macon, Ga.; Grand Rapids; Philadelphia; Denver; Chicago; Michigan City, Ind.; and a candy plant in Greenville, S.C.

Mr. FRIEDEL. I don't see Baltimore on the list.

Mr. HEKMAN. Lest there be any misunderstand, I would like to say publicly that I assume that all those who have introduced and supported this legislation are motivated by a sincere concern for the

consumer, and I in turn must ask those who have supported this legislation to assume that those of us in the food business who have opposed this legislation are not on the side of deception.

I assure you that I personally, as well as others in my company and in our industry, and hosts of others in the food business, have supported legislation which is aimed at making deception illegal.

I know of no responsible executive in the food industry, and I know hundreds, who does not feel that deception is immoral and illegal, and nothing would destroy a company like ours more quickly than deception of the consumer on whom we depend for tomorrow's sales.

Meeting the consumer's needs and wants, gentlemen, is our business and how well we do it determines our success. And just because this is our business we in our company and our competitors in theirs are tuned in to the consumer in a way that I respectfully submit no agency of Government ever could be.

In our company, for example, we do a great deal of extensive market research by using, first of all, our own employees at the plant level, and in our corporate office on panels and with controlled conditions, and then moving into consulting firms that consumer-test for us, and then having major consumer tests by mail, amounting to as many as 500 families, regional market tests, and, finally, national marketing.

But even more important than this type of information I think is the unsolicited communication that we get from the consumer. My own experience in this industry, Mr. Chairman, dates back 31 years, and even as a young man going around with my father to grocers our concern was to find out through the grocer what the ultimate consumer wanted in the way of new packages or new products, all the things that go to make up our business.

I was a salesman for a number of years and called on the trade and lived off the commissions I was able to earn by the sale or biscuit products.

I have interjected these personal references to explain that I still have an intense personal interest in what the consumer wants in the matter of biscuits. We have 1,200 salesmen, 300 sales supervisors, for a total of some 1,500 sales people that are out 5 days a week and each week they compile a report of comments which are summarized and is on my desk each week and I can assure you that each week I very seriously look at this.

I did it as recently as yesterday. I think in a way of speaking we in business are as responsive to our constituents as you gentlemen are to yours but the amazing thing to me is that in 31 years with this company and being exposed to all of this communication with consumers I have never received a signed communication that indicated to me that our company should move in the direction of standardization of our cookie and cracker products.

Well, if she doesn't want standardization, and that is my conviction, gentlemen, then what does she want? Publicity given to those who have spoken in behalf of this legislation would indicate that the primary purpose of the bill is to remove the confusion that faces the shopper in the supermarket.

Much has been said about the 8,000 items. Standardized weights and quantities in which products may be sold is the provision which

has perhaps received the most publicity in this bill. I just interjected here parenthetically that if any of you have feelings about the 71 brands or sizes of potato chips a trip to a supermarket I think will convince you that the selection that is available is not excessive and it is reasonable.

Anyway, continuing, we feel that the consumer wants reasonable prices and I would like to state that we should not underestimate her ability to judge prices.

It has been my experience honestly, and I don't want to indicate where this was, where just a very small increase in the price of the product had an almost immediate effect on the sale if it was up and I can also state that where we lowered the price even a small amount the sales increased.

I think this is true of all of us in the business. However, I would like to state further that price is just one of the factors that determines the purchases that are made by the consumer. To illustrate that, I have some packages here that I would like to put in the record.

First of all, I have here a package of our supreme chocolate fudge sandwiches. This package sold at a retail store, and the marking is on here, 1 pound, at 39 cents.

By comparison I have a package here marked 1¼ pounds. Now, this package, gentlemen, also sells for 39 cents. Obviously if price comparison was the primary aim, this 20-ounce package would outsell the 1 pound. Actually the more expensive package outsells the other one about 4 to 1.

To illustrate it further, I have this package at 49 cents. It is a pound and a half for 49 cents. Compared with this package, there is 50 percent more product for about 25 percent more in price and yet the 1-pound package outsells the 1½-pound 3 to 1.

Now, there is a simple explanation. These products are not purchased on the basis of price. There are other factors, flavor, personal taste. Perhaps I could note that the largest selling sandwich cookie in the United States is produced by one of our competitors. It is not a pound for 39 cents, but 12 ounces for 39 cents, again proving that in choosing what to serve her family, how to please her children and her husband, the consumer takes into account what I like to refer to as total value.

Now, another aspect of the same thing, we have here a package of our 1-pound saltine Zesta crackers and we also market the very same product in a 2-pound box. The protection in the two packages is identical. This one has 16 interwraps and this one has 8. The protection is within the package in the packets, as you see them described here on the package.

But despite the fact that the 2-pound package is a better value by over 10 percent, the 1-pound package outsells it on a package basis of 14 to 1 and on a pound basis of 7 to 1. The difference there obviously isn't flavor. The only difference there is convenience. The 2-pound package is sold almost exclusively in rural areas where the cupboard shelves are larger and where there is more room to put the product and where trips to the grocery store are less frequent.

Rational price comparison is easy and the price differential is obvious. No law is needed in our opinion to protect anybody and the

fallacy of assuming that standardized weight would result in savings per se to the average household should be readily apparent.

The consumer is interested in more than price; in this case, convenience in the cupboard. The choices in the grocery store were not imposed on consumers. This variety was and it is directly dictated by consumers and, as a casual chat with any grocery buyer would prove to you, no product gets on the shelf unless there is a reasonable belief on the part of the buyer that the demand will be there to move it off the shelf.

The shopper dictates the number of choices she wants. By coincidence, when I entered the business in 1935 the choices available to a consumer were considerably less than they are now. With the vast increase in the variety available as stores became bigger and bigger something else happened.

The competition for the shelf became keener and it is no coincidence that this change in marketing of grocery products in the stores themselves spurred a comparable revolution within the companies.

This brought in innovation, convenience, protection, quality control, and I might add increased price competition. I think it is noteworthy, gentlemen, that this intense competition has brought about a built-in protection for the consumer against even unintended deception.

A major food company today, such as ourselves, must be prepared to submit its line of products to very sophisticated buyers at the large stores, chains, and these are scrutinized very closely first by the buyer and then by a committee.

So besides what we do in our own offices, there is this additional built-in protection. At the outset I indicated in my testimony that in our industry we fear this legislation because we believe it will result in higher prices and that is the point I would like to get to now.

Approximately two-thirds, Mr. Chairman, of our sales are generated by products that are packaged in quarter-pound multiples like this and like this and like this and this and this.

However, these products, accounting for two-thirds of our sales, comprise only half of the items that we market. Now, it is the remaining one-third of the sales and over 50 percent of the items for which I have a great deal of concern and I would like to indicate four alternatives that are open to us.

What can we do if the bill is passed in its present form? I would say we can do four things and I would like to spend just a little time on the four and I have some cost figures to document them.

The first thing we could do would be to install new equipment and the additions to our bakeries to accommodate the equipment.

Second, we could discontinue those items where the volume did not warrant the additional equipment.

Third, this may sound a little strange, but I will try to explain it. We could alter the quality of the product to meet the standardized weight.

The fourth thing we could do, I submit, is have fewer product and package innovations.

Parenthetically here, but I think important, it seems a bit strange to me, Mr. Chairman, that some of the people who have supported this

type of legislation are the very ones who are concerned about the fact that business is getting bigger and corporations are getting larger and there is this fear and concern for the smaller company. I would like to state that in my opinion the ability of a company to comply with this legislation is going to be directly related to the size and the financial strength of that company.

Putting it another way, in our opinion this bill as presently written, proposed, is going to be much more disastrous—well, perhaps that is too strong a word—much more difficult to comply with for a small company than for a company of some size and I think that is fairly obvious, but I will be glad to entertain questions on it.

On these four alternatives, the first one is the increase in prices because of the installation of new equipment and building additions that would then be used undercapacity.

Now, just to tell you a little about our business and the industry in general, roughly one-third of biscuit sales are in the cracker category, like those products on this end of the table.

Two-thirds of our business, our dollar volume, is cookies, and that is true of our competitors. Those are industry percentages. Now, when I was here, Mr. Chairman, 2 weeks ago, I heard some questions from the members of the committee asking the gentleman who was testifying at that time to come in with specifics, how much capital cost, how much annual cost, how much per package, and continuing cost. I have tried to do that.

I had just 2 weeks, but the day after I got back I set up a task force and got with it. Obviously I could not go through all of our lines of some 200 items, but what I did was to take this cracker part of our business, which is one-third of the total by dollars, and I took off all the items there that were in anything except quarter-pound weights.

That added up to a little over $13 million of sales out of a grand total of our sales as I gave you of $138 million. In other words, you are talking about 10 percent of our business, of the total business, and then I made some assumptions which I had to do based on the bill.

For example, I assumed that sales would not fall, even though a price went up, which of course isn't really an expected thing to happen but you have to start someplace.

Just to show you how it works, I have here six new snack items—Bacon, Lettuce, and Tomato Tickles; and Onion Funions; and Sesame Sillys; and the like of that—six items that are just coming on the market to compete with one of our major competitors who markets a similar line in a slightly different package.

Of these six items, two are packed 8 ounces; three, 7½ ounces; and one is 7¼. Now, the packaging equipment to put the crackers in these boxes, in these cartons, for one line of equipment is $500,000 and this compares very favorably or very closely with the figures given previously by Mr. Schroeter of the National Biscuit Co.

These products come off the 300-foot ovens at the rate of approximately 5,000 pounds an hour and it takes some very sophisticated, high-speed expensive equipment to form the inter bag and the carton, fill it, close it, and then to bundle it in six cartons for shipment to grocery stores.

Now, this isn't the oven or the input equipment. Just the gear to package these. One line costs a half million dollars. What I have tried

to do then is to take all of this, and I did this to all of the items on our price list that are in the cracker section that are in anything except quarter-pound multiples.

I won't read all of them, but it is such things as Bridge Mix, Butter Flavored Thins, Cheezo, Cinnamon Crisp, and others. This adds up as I said to about $15 million. To do that would cost us in terms of capital expenditures $3,927,000 and an annual increase in operating cost of $867,770.

If you convert that to the number of packages that this 10 percent represents it would figure out between 2½ and 3 cents per package.

Now, that is the best that I could do in coming up with what I feel are conservative figures. I could read the statement that we drew up but I will just put this in the record, Mr. Chairman, which is this restatement of what I just said of how we figured this.

(The cost summary follows:)

Cost summary if all products are continued

Capital expenditures:	
Additional packing lines (9 lines at the cost of)	$2,912,500
Additional building space for packing lines	924,500
Rebuilding of existing equipment	90,000
Total, capital expenditures	3,927,000
Annual increase in operating costs:	
Maintenance and depreciation on additional equipment	379,170
Freight	17,000
Loss of packing efficiency	313,600
Excess cost of cartons to be purchased	158,000
Total, additional annual operating cost	867,770

Mr. HEKMAN. Continuing then, I have here some samples of competitive items. Here is a product from the National Biscuit Co. known as Sociables. Here is their Merry Makers, both fine products I might add. But you will notice that the package is somewhat different from ours as to size.

You see, one is higher and theirs has more depth to the package. The bill the way we see it here talks about voluntary standards; in other words, working this thing out.

Now, we are just two companies. I can tell you that the other people in the business have still another size, but I just like to raise the question of how the authorities would go about deciding which size to use.

If they choose our size we would be very happy, but I am sure the National Biscuit would have to spend $500,000 per line just to stay in this type of business.

On the other hand, it is obvious we wouldn't be very happy if they told us after we had discussions and all, and it would have to come out some way, that we would have to go to their size.

As I indicated, there are four alternatives to our problem and the second alternative would be to discontinue those products with sales volume that could not reasonably justify additional equipment.

One of the biggest selling items in our line is our Honey Graham Crackers. We use this same equipment for a number of products,

for the Cinnamon Crisp, and also for an item that frankly I hope you never have to eat because this item is salt free and I don't think anybody that didn't have to eat it would eat it. Frankly it doesn't eat very well, but salt, as those of you who are bakers know, besides performing a flavor function in a product, controls the function of controlling fermentation. It just so happens that without salt in the product the product has different characteristics and instead of getting a pound in here we get 13 ounces in this packet.

So if you told us we had to make this either 12 or 16, I can tell you categorically that we would drop the item, which wouldn't hurt us too awfully much but it would disappoint a lot of people, because to the best of my knowledge this is the only entirely salt-free cracker being offered in grocery stores.

The third alternative is to change the quality of the product. You might say we wouldn't want to do that. Actually this is how it comes out.

We have this tray, we call this a tray, and, when we developed this item known as Caramel Cremes, we found this, making the cookie of just the quality we wanted: In other words, we just start out, we have the tray which we use for several other items, and we put the cookie the way we think the consumer wants it in that tray and this comes out to this odd weight of 12½ ounces. That is the way it happens to come out.

Any baker can tell you that if you told us we had to go to 12 ounces on this it wouldn't be too difficult to do. But the cookie wouldn't be exactly the same. It wouldn't be the way we feel it ought to be.

Here is perhaps still a better example. We have some equipment that is semiautomated to form this tray which is a split tray, and this is our Deluxe Graham. It is a graham cracker. It is coated with a delicious coating and the coating runs about 50 percent of the total weight. This is 14 and a fraction ounces.

If you told us that we had to make this 16, there would be a way to do it, but it would also be a way to make it 12. All you have to do is make the cookie a little thicker so that the percentage of coating drops from 50 to 40 percent and you accomplish it.

In other words, I am not saying that is the course we would take, but what I am saying is that as we develop a product, if we have to be figuring that we have to do it within the standardized context then we are forced to change the product from the way we think as bakers it ought to be to fit a package and frankly there has been a maxim in our company that we don't do business that way.

The fourth alternative is to restrict severely our product and packaging innovations. We have a product here, gentlemen, known as Cinnamon Crisp. It is one of the bestselling products we have. This product is packaged you see in this same box, in the same one as the graham cracker. We developed this product about 10 years ago and we have literally sold hundreds of millions of pounds of this product.

It comes out 14½ ounces. It is plainly shown on the label. The reason it does is because the characteristics of this product are somewhat different from the graham cracker and they are certainly different from the salt-free cracker.

When we developed this we had no idea how successful it would be, so we took the equipment that we had. We had a several hundred

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thousand dollar investment in packaging gear and we took the equipment that we had and in that equipment we put this product.

Now, had we been at that point forced either into 12 ounces or 16, I submit that it is quite unlikely that the decision would have been made to go ahead because the decision would have entailed a very considerable capital outlay which under our present arrangement was not necessary.

The same thing was brought out, I think, very well by the testimony the other day of Mr. Murphy of the Campbell Soup Co. I will just mention this. It is in the report.

We developed these trays. There are two trays in here. Actually there are four, but they are tied together in here and this has been very well received by consumers, but again by having a tray within a bag there is still more of a problem of meeting any type of standardized weights.

Finally, I respectfully submit that the threat of higher prices with no increase in value, the reduction in items which the consumer either needs or wants, the very real possibility of unemployment in the food industry, and the curbs on innovation in products and packaging are definitely not in the consumer's interest.

Fortunately, I think all of us are of one mind in considering the importance of meeting the consumer's needs and wants. I thank you for this opportunity to present this material and to share with you our real concern for some of the provisions of this bill.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Hekman.

Listening to your testimony I would like to ask you these two questions.

If this bill were amended to eliminate the provisions to standardize weights and quantities and if we were to substitute two prohibitions—first against nonfunctional slack fill; and second, against packages which appear to be the same as before, but actually contain less—would you still object to the bill?

Mr. HEKMAN. Obviously, Mr. Chairman, I directed most of my remarks to the standardization features of the bill because, being a "baker"—and if I can put that in quotes—this is the thing I know a little bit about.

The CHAIRMAN. That is the reason why I asked you.

Mr. HEKMAN. I am certainly not a lawyer. The standardization features of the bill as I see it are certainly the most objectionable to our company.

Now, as to the other items in the bill, I didn't bring it all out here but our lawyers tell me that there are some things—and some of the other witnesses brought them out—that would still be very definitely a problem.

I didn't read all of my statement, but in the statement that is printed that we feel that present legislation covers all types of deceit and that statement has been made here by members of the committee.

I think that you gentlemen are certainly experts in the matter of legislation. I have some knowledge of the baking business. I frankly wouldn't know too much about some of the other features. I would rather leave that to our attorneys and certainly to you gentlemen.

I would like to direct my remarks the way I have with the statement that our lawyers tell me that the present laws if enforced are adequate to stop any type of deception plus the fact, as I have indicated, we don't think it is good business.

The CHAIRMAN. I would like to ask: What about the cents-off provision of the bill? Do you object to it?

Mr. HEKMAN. Mr. Chairman, we never use cents off.

The CHAIRMAN. I know you don't.

Mr. HEKMAN. Because from a marketing standpoint for our company, for our type of product, and especially as it relates to our delivery system, for us it doesn't make sense.

I would just like to make this comment, that I think, although understand we don't use it, it is a device that permits a smaller company to make an entry into a field against a larger company that has a large share of the market. I think we ought to recognize that this is somthing that is definitely going to help a large company a lot more and it is going to hurt a small company a lot more than it is the large ones and that is easy to document.

The CHAIRMAN. I think some of the larger companies in the land are using it.

Mr. HEKMAN. Yes, sir; they are.

The CHAIRMAN. What about the ingredients provision? Do you object to that?

Mr. HEKMAN. I share the concern of Mr. Murphy the way he stated it 2 days ago regarding the very real possibility of disclosure of formulation.

The CHAIRMAN. It doesn't say that in the bill. It says "other than information concerning proprietary trade secrets." We don't want those, not at all.

Mr. HEKMAN. He made the point, Mr. Chairman—and again I am not a lawyer—putting it in one sentence, we understand the present law and we put the products on here in descending order of importance.

Now, that was the discussion of Mr. Murphy: If the bill is going to force us to say flour by weight is so much of this package and salt is so much and chocolate and cocoanut and all the other items, if that is the meaning of the bill, then we are giving our formulas, which is certainly one of our biggest assets, to our competitors.

The CHAIRMAN. I think that was clearly set forth in his testimony. I did notice that most of your testimony was on the fact of weights and quantities.

Mr. Friedel.

Mr. FRIEDEL. Mr. Hekman, I was very much impressed with your statement and your exhibition here of different packages and I can understand your concern.

You spoke of the principle of the bill, but you don't want to have to increase costs so the consumer would have to pay more.

If the amendment were offered as our chairman has stated about the sizes of packages I think that would correct a great many of your objections to the bill and I think would take care of the packaging that you are so alarmed about.

I am looking at six packages there and you feel that, under this bill if we didn't amend it, you would have to put six different sizes on those six packages?

Mr. HEKMAN. We would have to have one size for the 8 ounce which we have now and would have to have another size for the 7½, and another for the 7¼.

Mr. FRIEDEL. Those that you are just touching all have different weights; is that correct?

Mr. HEKMAN. No; they don't have all different weights.

Mr. FRIEDEL. They all have the same weight?

Mr. HEKMAN. No, sir. I can read them here. It would probably be easier. There are three sizes, 7¼, 7½, and 8.

So, instead of having one line we would have to have three and each one of them is $500,000. That is only part of the cost. That is the capital outlay per line.

Mr. FRIEDEL. That seems to be your principal objection.

Mr. HEKMAN. Obviously I have gone through the whole matter of the bill in limited time, but I would agree with you, Congressman, on that. The standardization features of the bill are a very substantial concern and for that reason I directed the principal part of my testimony against the standardization features of the bill.

Mr. FRIEDEL. I can assure you that this committee does not want to cause any havoc with the manufacturing of your product as the chairman just indicated about a certain amendment.

I think if that amendment is adopted you would have no cause for alarm.

Mr. HEKMAN. That would certainly be reduced.

Mr. FRIEDEL. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Devine.

Mr. DEVINE. I wasn't here during the key part of his testimony but I was just impressed by the ease with which he immediately identified the weight on each of those packages. You are not trying to conceal the weight. You have the figures 7 and 7½ and 7¼ marked on the product, have you not?

Mr. HEKMAN. Yes, sir. Every one of our packages has the weight on the front panel.

Mr. DEVINE. There is no attempt to deceive anybody then by concealing what the contents may be or what they weigh?

Mr. HEKMAN. No. If we were to change that we would hear from consumers and we would hear from dealers and it wouldn't be right. This is the right place for it, the front panel.

Mr. DEVINE. Thank you.

I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. Macdonald.

Mr. MACDONALD. Sir, how many different lines do you have, not different brand names, but how many sizes of packages do you presently put out?

Mr. HEKMAN. Well, in grand total, I mean everything we make, this doesn't quite all go through stores in the form of packages, but the grand total is 227.

Mr. MACDONALD. In other words, you make up 227, if I understand you correctly——

Mr. HEKMAN. Different products.

Mr. MACDONALD. Yes; but I am talking now about different sizes of the boxes in which you package your products.

Mr. HEKMAN. I want to be sure I have your question. You mean packages now?

Mr. MACDONALD. Yes.

Mr. HEKMAN. In other words, if we packaged this in 8 ounces, 1 pound, and 2 pounds, then how many is that is your question?

Mr. MACDONALD. What I am saying is, and it is very simple or it seems simple to me anyway, how many different size boxes do you put out?

Mr. HEKMAN. I would have to count them. I have a price list of our company here and I could sit down and count them or I would be glad to hand it to you.

Mr. MACDONALD. I think that you could just supply it for the record.

My point is that you have a great variety of size of packages now. I don't really see the terrible hardship that you contemplate if the thing is standardized. I am not saying I am for standardization, but I just don't understand the basis of your complaint.

Mr. HEKMAN. Well, as I indicated, and I will stand by what I submitted in the record, in the cracker section of our business which is one-third of our business, in the cracker section, the items that are not standard in terms of the bill, the items that are not standard are $13 million, which is 10 percent of our business, and this is the cost.

Now, if you ask me what about the two-thirds of the business which are all these cookies and what the effect would be there to standardize all of those, I frankly wouldn't know. I would guess that it would take me about 2 months to find out because it involves 6 bakeries, 96 distribution points, and the mix between the bakeries and these distribution points in terms of freight.

On this I figured the freight. The freight factor on this cracker deal was $17,000. Now, what it would be on cookies I don't know.

Mr. MACDONALD. I thought you said that each line would cost you $100,000 for capital investment to change over to a standard size. Am I incorrect in that?

Mr. HEKMAN. I am not about to tell a Congressman that he is incorrect. I will give you the breakdown despite the fact that one of my competitors is here. I will just break it down on just this section of it here, just the six boxes you are looking at.

I gave you the total, right?

Mr. MACDONALD. Yes.

Mr. HEKMAN. Just on these, and that is obviously the biggest part of it, the annual cost would be $425,000, annual cost just to do that, to do what has to be done in this area, and incidentally the capital costs on that compare very closely to what Mr. Schroeter gave in this committee a few days ago, 2 weeks ago.

Mr. MACDONALD. No more questions.

Mr. FRIEDEL. Will you yield?

Mr. MACDONALD. Yes, I yield.

Mr. HEKMAN. Have I answered your question?

Mr. FRIEDEL. Let me ask you this question.

Mr. HEKMAN. I would like to try again.

Mr. FRIEDEL. Under this bill if you were to package soda crackers in 1-pound packages and 1 pound of graham crackers in a package would they both be the same size?

Mr. HEKMAN. Oh, no. Right here is the difference. Graham crackers are an entirely different type of product and there are 144 of these in a pound and 128 of these in a pound. These are a different shape. They take different type packing and protection and are entirely different.

Mr. FRIEDEL. In other words, graham crackers are heavier than soda crackers?

Mr. HEKMAN. Quite a bit.

Mr. FREIDEL. There would be a big difference in the size of the package?

Mr. HEKMAN. You put soda crackers in this package and you would have, I would estimate, almost a pound and a half, but you would have a different product, too.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. Thank you, Mr. Chairman.

One point you made that I thought was very important was when you mentioned that this bill under its present provisions would make it almost impossible for a small operator to meet its requirements because of the lack of capital. I think that point is certainly a very valid one.

Now, slack fill comes into discussion so often, and does that not directly tie into the point that you make, that if you were to change a line that it would cost a half million dollars?

Now, you want a certain weight of a product, but because the assembly line was set up for a certain size package you wouldn't always fill the package, not because you are attempting to fool somebody but because of the additional cost that it would take to set up another assembly line that would provide the size of package that would result in a full box. Is that a true observation on my part?

Mr. HEKMAN. We fill all of our packages to the very best of our ability. It is true that if we had to live with the provisions of the bill we would have to have many different sizes of packages to make them standard and still avoid slack fill. You have to start there.

You can't have slack fill. That is illegal and it should be.

Mr. NELSEN. It is illegal now.

Mr. HEKMAN. And it should be.

Mr. NELSEN. Witnesses have been asked whether they would support this bill if it were amended so that package size was not a part of it. Other questions have been asked as to whether witnesses would support the bill if formula exposure were not required. It seems to me that if we are moving in the direction of adding all these amendments, about all we have left is the title. Rumors have been floating around: "Just give us a bill. We don't much care what is in it."

So to me this is deception on the public politically speaking, and the bill is labeled by some in my judgment for political reasons.

Getting back to the cost, you mentioned that it would take a half million dollars to change a packaging line—that standardization would cost you a half million dollars.

Do I understand that your figure of $3,900,000 was for equipment? Now that was for what? I didn't quite understand what this was.

Mr. HEKMAN. That would take, Mr. Congressman, all of the nonstandard items in the cracker area of our business.

Mr. NELSEN. As I recall, you estimate that the operating cost would be $867,770 for those additional lines that you would have to put in for standardization?

Mr. HEKMAN. Annual cost.

Mr. NELSEN. Yes. And the cost would be from 2½ to 3 cents per package additional cost to the consumer?

Mr. HEKMAN. We could not absorb $867,000. In our case we would have to pass it all on because we would have no choice.

Mr. NELSEN. You mentioned also that 13 percent of your products were not standard size. Do I understand that correctly?

Mr. HEKMAN. No, in the cracker area, in the cracker area only. It is $13 million out of a total sales of $138 million, so roughly 10 percent.

Mr. NELSEN. Yes. I am interested in why you find it to the advantage of your company to have packages other than standard size. Am I right in my assumption that there are different sizes and quantities that the consuming public wants to buy and not always a larger size? Is that right?

Mr. HEKMAN. Yes, sir; that is a very valid point. We feel that these crackers are served at largely, let us call them "sociable" occasions. They are not feed so much to children. These are, let us call them, cocktail-type crackers. There are six of them. They are usually served on a tray, as you see here, and usually three or maybe even four different kinds would be placed around neatly arranged on a tray.

You are not giving these to children as they come home from school. You give them a graham cracker or saltine, but these are served in a different type situation and the weights would definitely have to be smaller because nobody would want to package these, I can assure you in larger packages.

Mr. NELSEN. In shopping, of course, habits will vary. For example, Mrs. Nelsen is out in Minnesota at the present time so I have been doing a little batching at home. I just love peas and I buy the smallest can that I can get because I don't care to have them standing in the refrigerator.

I know the cost may be greater per ounce, but it happens to be what I want under those circumstances. I presume that is part of the reason why you have to go off standard size on packages and also because, with some of the products you serve, you don't want to open a package and leave it open too long. It may absorb moisture and it will not be as palatable. That is possible.

Mr. HEKMAN. Yes, sir.

Mr. NELSEN. Thank you, Mr. Chairman. I have no more questions.

The CHAIRMAN. I would like to say to the gentleman from Minnesota and to everyone here that no one has approached me on this bill about taking anything out of it. I have asked some questions because I begin to get the trend that the only objection that has come to this committee is these two points.

I don't believe in bringing politics into it because if you take it back home you will find that whether Republican or Democrat that the people in the States are going to demand some action here on these matters.

Mr. NELSEN. Mr. Chairman, in rebuttal I might say that they are not getting it as far as the sale of this bill is concerned. Testimony

from administration witnesses indicates they are asking for things in this measure that are presently in the law and there is deception as to the sale of it.

The CHAIRMAN. No, there is not a deception. I disagree with you because we are trying to get something that will be understood by everybody and not case by case.

Mr. NELSEN. Thank you. Mr. Chairman, I don't agree with you.

The CHAIRMAN. That is all right, and I don't feel that it is a political thing. It is not. It is for the people of the country.

Mr. Dingell?

Mr. DINGELL. I have no questions, Mr. Chairman.

The CHAIRMAN. Mr. Curtin?

Mr. CURTIN. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Kornegay?

Mr. KORNEGAY. Mr. Chairman, I don't know that I have any particular questions.

I thank Mr. Hekman for his testimony and bringing these exhibits which certainly help to educate me to your marketing process and point out some of the problems that you would have under some of the provisions of the bill that is introduced.

In order that I might see if I fully understand, you have six boxes of so-called cocktail crackers there and all the boxes are the same dimension, is that correct, sir?

Mr. HEKMAN. Exactly.

Mr. KORNEGAY. But none of them weighs the same or has the same weight of the content? Maybe some of them did have the same weight. I am not sure. That is what I wanted to find out.

Mr. HEKMAN. That is two in one size, three in another, and one in one.

Mr. KORNEGAY. That is brought about by the very density or specific gravity of the crackers in boxes, is that true?

Mr. HEKMAN. That is right, correct, and the configuration of the cracker.

Mr. KORNEGAY. And also the configuration of the cracker to determine how many crackers you were able to get in the box, is that right?

Mr. HEKMAN. That is true.

Mr. KORNEGAY. So if you were compelled by the law to put 7½ or 8 ounces of crackers into each box then you would either have to reduce the size of the box or increase the size, is that correct?

Mr. HEKMAN. Correct. Yes, sir.

Mr. KORNEGAY. That is the area wherein you compute a part of the cost that you give us here on this slip of paper?

Mr. HEKMAN. Yes, sir. That is where the capital cost goes in, buying that equipment and then of course the annual cost in operating it.

Mr. KORNEGAY. Is this the only size box that you have for these particular type crackers?

Mr. HEKMAN. It is the only size box we have. I think the answer to that would be "Yes." That is the only one we have near there.

Mr. KORNEGAY. In other words, you don't have small, medium, and large size in this particular type of cracker?

Mr. HEKMAN. Well, we have a larger size that we use for our Town House cracker, but——

Mr. KORNEGAY. I am talking about these specific crackers.

Mr. HEKMAN. Oh, no. The only size, the only size.

Mr. KORNEGAY. So you use the same basic container for each type of cracker?

Mr. HEKMAN. Exactly.

Mr. KORNEGAY. If you had to go to standardized weight in each box you would have to have at least three different sizes of boxes?

Mr. HEKMAN. Correct.

Mr. KORNEGAY. In order to put the same weight in each box, is that right?

Mr. HEKMAN. Correct.

Mr. KORNEGAY. And that is the basis for the increase in cost?

Mr. HEKMAN. Exactly.

Mr. MACDONALD. Will the gentleman yield?

Mr. KORNEGAY. Yes.

Mr. MACDONALD. Are you familiar with the bill, sir?

Mr. HEKMAN. I read the bill.

Mr. MACDONALD. I call your attention to page 7, section 5, which is talking about regulations and merely goes to those people who would be covered, that the FDA or the FTC would "prevent the distribution of that commodity for retail sale in packages of sizes, shapes, or dimensional proportions which are likely ot deceive retail purchasers in any material respect as to the net quantity of the contents thereof (in terms of weight, measure, or count)."

I am sure you are a very reputable concern representing this number of companies, and I don't see why, if your packages are labeled correctly and they have no intent or they are not likely to deceive retail purchasers, why you would be affected one iota?

It just wouldn't affect you, and, therefore, I don't understand the large protest that is being put up by reputable manufacturers. I would think they would be supporting the bill.

Mr. HEKMAN. I talked to our legal people about this, as you can gather, and they tell me that this section will permit standardization by weight, measure, or count. This section permits it.

Now, I am not one to predict all the things that can happen, but this permits it.

Mr. MACDONALD. You said you are a baker, not a lawyer, but you can read the English language, I am sure, and am I incorrect in stating that on line 13 that the ingredient is the "sizes, shapes, or dimensional proportions which are likely to deceive retail purchasers." And, therefore, if you have packages that aren't likely to deceive, I don't see why you are hurt, and if you have some other feeling about it I wish you would explain it to me, because I don't understand your position.

Mr. HEKMAN. Again I am not a lawyer, but my lawyers tell me that this has to be read in connection with page 5, line 24, "Whenever the promulgating authority determines that regulations containing prohibitions or requirements other than those prescribed by section 4"—and here is to me the heart of it, "are necessary to prevent the deception of consumers or to facilitate price comparisons as to any consumer commodity, such authority shall promulgate with respect to that commodity regulations effective to—" and then skip over if I may suggest, to 5.

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To me it is very plain from this that whoever heads this thing can tell me I have to do just exactly what I have been talking about for an hour.

Mr. MACDONALD. On the contrary, section 5 protects you completely because it says "regulations effective to * * * prevent the distribution of that commodity for retail sale in packages or sizes, shapes, or dimensional proportions which are likely to deceive."

Are you saying that your packages are in such sizes, shapes, or dimensional proportions that they are liable to deceive the retail purchaser?

Mr. HEKMAN. I will stay with what I said, Mr. Congressman, that deception is outlawed now. We are living within the law, so from that you can judge that our packages do not deceive, and if that is the case then why not take the whole thing out.

If all we are talking about is deception, I submit—and that has been submitted in this room, deception is already outlawed, but what I am fearful of——

Mr. MACDONALD. Yes, on a case-by-case basis, not on an industry basis. That is the entire point of this bill. We have heard testimony from everybody, manufacturers, retailers, the people who comprise the panel, and Mr. Dixon specifically said that the main reason he wanted the bill was that he wouldn't have to go after these cases that involve deception, case by case, but could put out regulations for the entire industry, and I see nothing wrong with that, do you?

Mr. HEKMAN. I am not for deception.

Mr. MACDONALD. You are for the flag and motherhood as well, I am sure.

Mr. HEKMAN. And I am against sin.

Mr. MACDONALD. Right.

Mr. HEKMAN. Right.

Mr. MACDONALD. And therefore should not be against this bill.

Mr. HEKMAN. I am not for the bill for the reasons that I stated, Mr. Congressman. This bill permits and makes available to the regulating authority the standardization of packages and it does that and everybody in the industry, every reputable lawyer that I talked to in our industry, tells me it does.

That is the way it reads to me and that is what it is going to cost us.

Mr. MACDONALD. I am a lawyer and I hope I am reputable and I disagree with your lawyers because I can read the English language as you can. If the packages will not deceive the retail purchaser, they are not hit under this bill.

Mr. HEKMAN. Well, again, under (d), page 7, "Whenever the promulgating authority determines, after a hearing conducted in compliance with 'such and such' that the weights or quantities," the weights or quantities, "in which any consumer commodity is being distributed for retail sale are likely," are likely, "to impair the ability of consumers to make price per unit comparisons such authority shall" and there it goes.

To me that is very plain that the bill permits it.

Mr. KORNEGAY. I don't know about that situation or not, but, Mr. Chairman, permit me to make this one statement. I think that possibly under the authority of this bill where one company is putting

out a cracker in a different size or different weight, slightly different, say a half ounce more or half ounce less or 2 ounces more or 2 ounces less, if in the opinion of the FTC the variance in size of package, contents of the package, and the cost would make it difficult for the average person to make a price comparison, then I confidently feel they would have the authority under the present bill to step in and say in order to determine which is the best buy and the easy way to do the arithmetic every package should contain the same quantity.

Thank you very much.

The CHAIRMAN. Mr. Van Deerlin.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

I was a little interested in your reference to trade secrets, more as a point of curiosity I think. We find it very difficult to keep secrets within this committee more than 10 minutes after a discussion has ended.

I was wondering if in a plant with several hundred workers there are actually trade secrets which it is possible to maintain from competition in regard to ingredients and systems of baking and so forth.

Mr. HEKMAN. If I understand your question correctly, very definitely there are in the business trade secrets as relates to formulation, types of equipment, processing, temperatures, length of bake, just a host of things that go to make a product.

Mr. VAN DEERLIN. Things that are known only to one or two key employees or supervisors, not to employees at large?

Mr. HEKMAN. Obviously the people that work in that one area know about it, but that is not information that even if it was available to a competitor would give him the whole picture.

In other words, I wouldn't want to take all your time, but on some of these items we do certain things to bring out the flavor, such as in Potato Piffles and Sausage Scrambles. Now, we wouldn't like to let people know just how we do that and I don't think that even the people in the plant understand fully how we do it except a few people in our research department and I think that is true of our competitors, too.

I would like to know how they do a few things.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

Mr. MACDONALD (presiding). Mr. Pickle?

Mr. PICKLE. Thank you, Mr. Chairman.

Mr. Hekman, on page 7 of the same bill which you were telling Mr. Macdonald about, line 21, where the words are used "are likely to impair" how would you feel if the language were changed to read "would clearly"?

Mr. HEKMAN. Before I would answer that I would want to talk to our attorneys. If it would have anything to do and bring out any type of standardization like we are talking about here into our industry, I will stay by my testimony.

I might add I have some material here and I think it is worth remembering that this whole matter of price comparison is built around the idea that price is the important factor.

Now, I have tried to show that there are many, many other factors, but just assuming that price is the only factor, unless you do something beyond the manufacturer I submit that the alleged confusion

that is being talked about by some of the proponents of the bill would not be eliminated. It is very easy to illustrate.

For example, if I have a package here let us just assume of 15½ ounces and my competitor's package is 15 ounces. Under the terms of the bill this is confusing, you can't figure out the per pound very well on 15½ ounces, so we are told it has to be 16 ounces or 12 or some multiple, well, in the confines of our office we figure that we are going to go to 16 ounces.

Instead of being let us say a 39-cent package the package then becomes let us say 41 cents, but it is the full pound.

All right.

Our competitor kind of got it figured out that we are going to 16. He knows he has to change, but he is going to go to 12. So instead of easy comparison of two packages at 39 cents, one of them 15½ and the other within 15, now you have two packages, and one of them sells for around, oh, let us just pick a figure, 41 cents and the other figure being less weight sells for let us say 33 cents, so where there was at least some measure of easy figuring, you now have confusion.

I think you are familiar with the fact of how meat is sold. On each package of meat there is the weight of the package and the price and then what this particular package costs. It seems to me that if grocers in their thousands of daily contacts with customers had been led to believe that these customers wanted other things marked in the same way they would have been doing this thing a long time ago, but there has been no demand from customers and consumers for this sort of thing and the housewife knows what she wants and she asks for it.

And in my book she has not asked for any type of standardization.

Mr. PICKLE. Mr. Hekman, I appreciate your comments. I believe we are straying a little bit from the question I asked you and I assume that you do not wish to comment on whether you would be agreeable to the change in the wording "would clearly" in the place of "are likely to" without talking to your lawyer.

Turn over to the next page please, where it states, beginning on line 1 "and (g) regulations effective to establish reasonable weights or quantities, or fractions thereof."

I assume that here again you would want to talk to your lawyers, but the words "weight or quantities" is what scares you and what you assume might lead to standardization of the packages?

Mr. HEKMAN. That is right.

Mr. PICKLE. If the language were to read that they could, after these administrative procedural hearings establish certain regulations that would "clearly eliminate any deceptive labeling," would that suit you? Would that be agreeable to your company, to your people?

Did you hear the question?

Mr. HEKMAN. Yes, sir. I would say that anything having to do with standardization we would be opposed to. Whether I would be in favor of just what particular wording, I would have to see the wording, read it, and discuss it with my attorneys.

I am awfully sorry that I am not acquainted in the law.

Mr. PICKLE. And I am not a lawyer, and I can understand when you make the statement that you would be against anything that would lead to standardization. I assume everybody on this committee would

take the same position, but that doesn't leave this committee anywhere with respect to finding an answer to this problem.

That is all, Mr. Chairman.

Mr. MACDONALD. Mr. Satterfield?

Mr. SATTERFIELD. Thank you, Mr. Chairman.

I want to compliment the gentleman for bringing to us at least some definitive figures with respect to what the increased cost might be if standards of weight are promulgated.

However, sitting as close to the table as I am I notice on the six packages you have a statement all that I can read from here is "5-cent coupon inside" and I wonder if you can explain to me, sir, since some question has been raised about coupons, just what the coupon is inside of those boxes?

Mr. HEKMAN. I just hope this isn't a sample without one in. That could just be. But the coupon is just a coupon that is delivered to the store and it is good for 5 cents.

Mr. SATTERFIELD. 5 cents in coin?

Mr. HEKMAN. Yes. Yes, on the next purchase.

Mr. SATTERFIELD. Could I take that coupon to the store and get a nickel back?

Mr. HEKMAN. You could take a coupon to the store and on your next package of "Keebler Potato Piffles" you would pay 34 cents instead of 39 cents.

Mr. SATTERFIELD. Thank you, sir.

Mr. MACDONALD. If I may interject, in other words, when it says 5-cent coupon, it doesn't really mean that? You don't get 5 cents? You have to buy something else to get it?

Mr. HEKMAN. It doesn't say that, sir.

Mr. MACDONALD. I can't read it. Mr. Satterfield's eyes are better than mine. I take his word for it that it does say "5-cent coupon."

Mr. HEKMAN. It says "5-cent coupon inside good on your next purchase."

Mr. MACDONALD. As I can now see from here, the large print says "5-cent coupon inside" and then the small print says "on your next purchase."

Mr. HEKMAN. Mr. Chairman, I would say it is smaller print. I wouldn't say it is small print. I don't think there is any effort on our part there to try to fool people.

Mr. MACDONALD. I didn't insinuate that you would try to fool people. You said how reputable the firm is and I take your word for it, but it just seems to me that when you see "5-cent coupon inside" one would have a natural instinct to think that once you opened it up you would have something that was worth 5 cents.

You have explained that you have to buy another package in order to have it.

Mr. Gilligan.

Mr. GILLIGAN. Thank you, Mr. Chairman. I have no questions.

Mr. MACDONALD. Mr. Adams.

Mr. ADAMS. Mr. Hekman, how many changes in packaging have you made in the last year?

Mr. HEKMAN. I don't think, Mr. Adams, I could make a satisfactory answer to that unless we defined more clearly what we mean by change.

Mr. ADAMS. Well, I notice in your testimony on page 16 that there is going to be a great increase in cost to your organization and to others if some standardization is required and you are required to make changes.

What I am trying to get at is from your testimony it appears to me that you make a great number of changes in packaging every year now, which already costs a great deal of money, time, equipment, labeling, and so on.

Mr. HEKMAN. In the cracker end of our business we have expensive sophisticated packaging gear and I can't think of any changes during the past year in any of the major packaging gear in the cracker end of our business.

In other words, we haven't changed this package, we haven't changed this package or this package, the shape of those packages I don't think in 20 years.

Mr. ADAMS. That is right. So you have really two parts to your business and this comes through again and again with industry witnesses.

You have two parts to your business, one of which is already basically standardized as you point out in your testimony, quarter pound, pound, 2 pound.

For example, your saltine crackers and your others have been packaged this way for years and you are pretty well standardized, are you not, on them?

Mr. HEKMAN. We are standardized on saltines; yes, sir.

Mr. ADAMS. Right. Then you get over into this other area and that is what I was going to ask you about.

On page 16 you indicate that if this bill were to pass there might be some increases in cost because of the bill, and yet you point out in the next line that, for example, 2 days ago your company introduced to consumers a line of six new snack crackers, with different regional brand names, and then you go on to point out that, of the six, two are in 8 ounces, three in 7½ ounces, and one in 7¼ ounces, and the packaging machinery required to pack these items represents an investment of approximately a half million dollars.

The question I am asking you is, in line with these innovations, aren't you constantly spending this money and changing, anyway?

Mr. HEKMAN. Well, I think you made my speech, but we had this equipment and it was underused. We were packaging and still do package an oyster cracker, 7-ounce townhouse cracker and a cheese cracker on this equipment. We have had equipment.

We spent almost 2 years developing this line of products to use this very equipment that we had at our Cincinnati bakery.

Mr. ADAMS. All right. So you do have in this line some standardization already I assume——

Mr. HEKMAN. You mean the cookie line now?

Mr. ADAMS (continuing). The crackers and specialty item type lines, a great many types of packages and sizes and you are constantly changing them, are you not?

Mr. HEKMAN. We are coming out with new items, but again, Mr. Congressman, we are not changing the equipment. This high-speed bulk fill equipment that we use here has not been changed since we bought it.

Mr. ADAMS. All right. So you really have as far as the size of container is concerned then a standardized set of sizes?

Mr. HEKMAN. That is right; yes.

Mr. ADAMS. So your sizes are standardized according to your equipment and I assume your competitiors' probably are, too.

Mr. HEKMAN. Well, his are a little bigger. His standard is bigger. He packs all of his in this box.

Mr. ADAMS. All right. You either have a whole series of different equipment changes you are making all the time, or you have a set of sizes that you don't change and I gather from your testimony that you don't change them though you may change the labeling and you may change the coloring on the box and so on? Is that correct?

Mr. GILLIGAN. Will the gentleman yield for a minute?

Mr. ADAMS. Yes, sir.

Mr. GILLIGAN. I can't find the reference in the testimony of the president of the National Biscuit Co., but I think when we are talking about standardizing we have two things: standardizing within a given company, and if I remember that testimony correctly he pointed out that saltines, the four biggest varieties, were not standardized as between competitors.

Each used his own standard package, but there were four different size packages. I may be incorrect on that, but that is my memory of the testimony.

So when we are talking about standardization we can talk within the plant or within the industry.

Mr. HEKMAN. I would like to state, if I may, sir, that this statement made by Congressman Gilligan is correct. I mean that is what was stated.

Mr. ADAMS. All right.

Now, I won't go back with you over 5(f)(3) and so on which is a section to take care of this problem because I only have a minute and I want to ask one more question.

You mentioned on page 10 that you believe that the largest selling sandwich cookie in America, made by one of your competitors, is higher priced than any of the three you have shown.

Would you agree to this: That probably one of the major factors in the sale of these types of products now is the amount of advertising money that is spent on them? In other words, I think if you want to talk about that, particular product it starts its ads out with "Oh Boy," and I won't go into the rest of it, but they spent umteen million dollars on television just stressing that one product. Isn't it the advertising to the housewife who is affected by this rather than price, quality, or almost anything else that sells it?

Mr. HEKMAN. I don't want to say something complimentary about my competitor's product, but I will say it is a very fine product, and I can tell you this about our product that I can speak about, that with these sandwich cookies that I set out here I am trying to set out the point that price isn't everything, that price is just one facor out of many in the housewife's choice, and on the packages that I have given you here, none of them carry any advertising.

Mr. ADAMS. All right.

Mr. MACDONALD. The time of the gentleman has expired.

Mr. Jarman.

Mr. JARMAN. Mr. Hekman, the main theme of your testimony as well as other testimony the committee has been hearing on this proposed legislation, is your fear that if the legislation is passed it will result in higher prices to the consumer, and you mentioned that your own company accounts for about 15 percent of the Nation's cookie and cracker business.

Don't you believe that competition in the marketplace, competition of the products that account for the other 85 percent of the cookie and cracker business, competition itself in the marketplace, will hold that price down to the approximate levels of today even though this bill were passed?

Mr. HEKMAN. Well, this whole matter of cost, Mr. Congressman, is of a great deal of concern. Our earnings in United Biscuit Co. for the first 6 months of this year were $850,000, so you can see that an increase in annual cost of approximately the same amount would have cut our earnings in half.

Now, I submit that as the president of this company I would have to take some action and the action I would have to take would be to reflect that in the price of our products. In fact I would have no choice.

Mr. JARMAN. Do I remember you indicated your margin of profit is 2 percent?

Mr. HEKMAN. Our margin of profit last year was less than 2 percent on sales, 1.9 I think.

Mr. JARMAN. Thank you, sir.

Mr. MACDONALD. Thank you, Mr. Hekman.

Mr. DINGELL. Mr. Chairman, I would like to ask a couple of questions.

Mr. MACDONALD. Mr. Dingell.

Mr. DINGELL. I was wondering if you have any objection to having the consumer advised as to the unit cost? Let us take two or three packages there before you and you may choose them at will. Take the package of Chippers. How many ounces are in that package over on your extreme left?

Mr. HEKMAN. This is National Biscuit, sir.

Mr. DINGELL. All right. Then pick two packages of yours. Now let us take the one in your right hand, the cookies. Those are what?

Mr. HEKMAN. These are 1¼ pounds and they sell for 39 cents.

Mr. DINGELL. All right.

Identify the other two packages by name. You have one at 1¼ pounds; they sell for 39 cents. What else do you have there?

Mr. HEKMAN. The brand name here is Strietmann but let us just make it Keebler Co., Vanilla Creme Sandwich, 1¼ pounds, and in this particular store this merchant chose to sell it at 39 cents.

Mr. DINGELL. We have afforded the individual retailer the right to fix those prices?

Mr. HEKMAN. Oh, yes.

Mr. DINGELL. In his own tradition and with the antitrust laws and other things that we have. With regard to the other two packages, the one that I have had you hold in your left hand there, what is that?

Mr. HEKMAN. That is B.L.T. Tickles.

Mr. DINGELL. B.L.T.?

Mr. HEKMAN. B.L.T. That means bacon, lettuce, and tomato Tickles.

Mr. MACDONALD. Is that pickle or tickle?

Mr. HEKMAN. Tickles, T-i-c-k-l-e-s.

Mr. DINGELL. How many ounces in that?

Mr. HEKMAN. Seven and a quarter.

Mr. DINGELL. Beg pardon?

Mr. HEKMAN. Seven and one quarter.

Mr. DINGELL. Seven and a quarter ounces?

Mr. HEKMAN. Yes, sir.

Mr. DINGELL. How much does that sell for?

Mr. HEKMAN. Again the sale price is up to the merchant, but I would say that perhaps 80 percent of them would be sold for 39 cents.

Mr. DINGELL. Thirty-nine cents. Now the other package that you have there. Those are graham crackers.

Mr. HEKMAN. Yes, sir.

Mr. DINGELL. How much are those and how many ounces to that?

Mr. HEKMAN. The weight is 1 pound. The price of these varies so. Maybe it would be easier to take one on which the price wouldn't vary quite as much. Shall I do that? Would that help you?

Mr. DINGELL. Would you say that again, sir?

Mr. HEKMAN. The price on this one varies quite a bit, the retail price, not the wholesale. The retail price varies, but let us say 37 cents.

Mr. DINGELL. Thirty-seven cents. Now, the point that I want to discuss with you deals with a little different example, perhaps, than the one that we have before us, but you will concede that the unit price of each one of these is different. Am I correct?

Mr. HEKMAN. The unit price?

Mr. DINGELL. The unit price.

Mr. HEKMAN. Is 39 cents, 39 cents, 37 cents.

Mr. DINGELL. But the unit price per ounce varies?

Mr. HEKMAN. Oh, yes.

Mr. DINGELL. In one case it is 39 cents for 20 ounces; in the next case it is 39 cents for 7¼ ounces; and in the third case you said it varies but we can say 37 cents, as it isn't that important, for 16 ounces. Am I correct?

Mr. HEKMAN. Yes.

Mr. DINGELL. Let us take the case where you have the same exact kind of commodity. Let us take honey grahams, since there are a number of manufacturers of honey grahams. They are graham crackers. Am I correct?

Mr. HEKMAN. Yes, sir.

Mr. DINGELL. Obviously they are substantially similar in quality and content. There are differences, but generally they are substantially the same, are they not?

Mr. HEKMAN. Substantially.

Mr. VAN DEERLIN. Will the gentleman yield?

Mr. DINGELL. I will in just a minute.

There obviously are small differences, but they are relatively minor in the mind of any person who purchases them. Am I correct?

Mr. HEKMAN. I wouldn't say ours is the same as our competitors. I would be a pretty poor businessman if I said that.

Mr. DINGELL. I would say you would be a pretty poor businessman if you didn't say your product was the best. I don't think anybody on this committe would deny you your right of asserting that, but in the mind of the purchaser there is small difference, really, between them.

He might have a long established preference for one line or another line, but generally at the dinner table one is substitutable for the other with precisely or generally the same results. Am I correct?

Mr. HEKMAN. Let us say that you are saying it and not me.

Mr. DINGELL. Beg your pardon.

Mr. HEKMAN. Let us say that you are saying it and I am not saying it.

Mr. DINGELL. I am not trying to get an admission from you that is going to hurt your sales, but in general it is fair to say that if I were to go into a store, I could buy any of a dozen different kinds of graham crackers and put them on the table with substantially the same effect.

My family might prefer your very excellent product or might prefer another product, but generally Honey Grahams are Honey Grahams and if you have a recipe for pie crust or something that required graham crackers you put those graham crackers in, right?

Mr. HEKMAN. I won't buy that, but you said it.

Mr. DINGELL. Obviously professionally you wouldn't say it. I yield to my friend from California.

Mr. VAN DEERLIN. I was very disappointed in the witness where he came very nearly to conceding your point.

I am an inveterate consumer of graham crackers at bedtime and I have been very upset with Mrs. Van Deerlin when she has varied her husband's preference of the product because they are not the same and I would take a blindfold test on that.

Mr. MACDONALD. The time of the gentleman has expired.

Mr. DINGELL. I have a couple of more questions I would like to ask. I haven't asked a question yet today.

Mr. MACDONALD. You are entitled to 5 minutes and you have had your 5 minutes, Mr. Dingell.

Mr. DINGELL. I would point out that this is the second time. I have not yet had a chance and I deliberately waived any opportunity to question the first time around.

Mr. MACDONALD. It is still the 5-minute rule and you used up your 5 minutes.

Mr. DINGELL. Then I will insist on an additional 5 minutes at a later time.

Mr. MACDONALD. Mr. Devine?

Mr. DEVINE. Just in order to correct the record, I was curious about this 5-cent coupon inside the box for the next purchase. It was in there.

Mr. HEKMAN. Thank you.

Mr. MACDONALD. If there are no further questions——

Mr. DINGELL. There are further questions, Mr. Chairman.

I have some.

Mr. MACDONALD. I would just point out to the committee, and I do it with all good intentions, that we do have four other witnesses, some of whom have been waiting for 2 weeks to be heard, and if you insist on further questioning of this witness obviously you are within your rights, but I would like to expedite the hearing.

Mr. DINGELL. I intend to, but I have some questions I want to ask this witness and I intend to ask them.

If you will sit down, sir; I have a couple of more questions to ask you.

The point I am coming around to here is that it is possible to buy, let us say, graham crackers from six or eight different producers. Am I correct?

Mr. HEKMAN. Yes, sir.

Mr. DINGELL. A large number. It is possible to buy those in different-sized packages and different weights. Am I correct?

Mr. HEKMAN. Yes, sir.

Mr. DINGELL. It is also possible to buy them at different unit costs? In other words, because of different-sized packaging and different weight content, it is also possible to buy these different graham crackers at different unit costs, in other words, different costs per ounce. Am I correct?

Mr. HEKMAN. Yes, sir.

Mr. DINGELL. And if there are phenomenons like slack fill, it is possible for the consumer to purchase these graham crackers under misapprehension as to the unit costs or as to the exact amount of the graham crackers which he is purchasing.

Am I correct?

Mr. HEKMAN. Would you repeat that part about slack fill?

Mr. DINGELL. I said it is possible for a consumer to purchase these graham crackers with a misapprehension as to the total amount of graham crackers which he is purchasing or as to the unit cost of the graham crackers which he is purchasing, sometimes because of, but not necessarily always because of, a phenomenon like slack fill.

Am I correct?

Mr. HEKMAN. I don't think so.

Mr. DINGELL. Now let us take two or three different boxes of graham crackers. Are you going to make the flat statement that graham crackers manufactured by one in the country are sold at the same unit costs, same cost per ounce?

Mr. HEKMAN. No.

Mr. DINGELL. As a matter of fact, not infrequently they are sold at very radically different unit cost.

Am I correct?

Mr. HEKMAN. The unit cost between a 1-pound package and a 2-pound package is different. It is bound to be.

Mr. DINGELL. We will treat that. Obviously, between a 1 pound and 2 pounds there is a difference in cost. Am I correct?

Mr. HEKMAN. Correct.

Mr. DINGELL. Ordinarily one would expect that the 1-pound unit cost would be higher. Am I correct?

Mr. HEKMAN. As it relates to the 2 pounds; yes.

Mr. DINGELL. All right. So we will concede that. But it is recorded that on occasions 2-pound packages have had a higher unit cost than 1-pound packages.

Am I correct on that?

Mr. HEKMAN. I won't buy that.

Mr. DINGELL. Not letting the consumers have the protection of lower unit costs?

Mr. HEKMAN. I won't buy that.

Mr. DINGELL. You won't buy that?

Mr. HEKMAN. No, sir.

Mr. DINGELL. The Senate records happen to be full of it.

Mr. HEKMAN. What is it full of?

Mr. DINGELL. Of evidence where the large-sized package was sold at a higher unit cost, higher per ounce cost, than was the 1-pound package.

Mr. HEKMAN. I don't pretend to know everything that goes on in the grocery field, but as it relates to crackers the answer is, "No."

Mr. DINGELL. The point I am coming around to is a very simple one. Are you prepared to make a flat categorical statement to this committee that there are no packages in the industry, the industry that you are representing here today, which result in either confusion to the purchaser or that are sold under circumstances which are actually deceitful to the purchaser with regard to unit cost, in other words, cost per ounce—of Honey Grahams or any other particular kind of commodity that might be sold in the cracker or the cookie industry?

Mr. HEKMAN. I don't pretend to know what is going on in all my competitors.

Mr. DINGELL. You can't come in here as an expert and speak with great expertise on those points which you choose to speak on and which happen to favor your particular point of view and then turn about and wrap yourself in a cloak of ignorance on other questions.

I just simply asked you a very simple question. Are you prepared to make a categorical statement to this committee that packaging crackers in your industry does not result in any confusion or deceit upon the American purchaser?

Mr. HEKMAN. I don't think they do.

Thank you, Mr. Chairman.

Mr. MACDONALD. Thank you very much, Mr. Hekman. You are excused.

Our next witness is Mrs. Anita Mott of Cosmetic Career Women.

Mrs. Mott.

STATEMENT OF MRS. ANITA MOTT, COSMETIC CAREER WOMEN, INC.; ACCOMPANIED BY FULLER HOLLOWAY, COUNSEL, TOILET GOODS ASSOCIATION

Mrs. MOTT. My name is Anita Mott. I appear here today as a representative of Cosmetic Career Women, Inc., an organization of more than 200 women employed in the cosmetic and toilet goods industry in various executive capacities.

I am replacing Irene Subtelny who was not able to return to Washington for this hearing. Therefore, I would appreciate it if Mr. Fuller Holloway, representing Toilet Goods Association, with whom Cosmetic Career Women is affiliated, could make an opening statement.

Mr. HOLLOWAY. Mr. Chairman, I am Fuller Holloway, a member of the bar of North Carolina and District of Columbia. I am a member

of the Washington law firm of Hamel, Morgan, Park & Saunders. My firm has been counsel for the Toilet Goods Association for the past 20 years. The association members manufacture more than 90 percent of the cosmetics in America.

We associate ourselves with the statement of Mrs. Mott. I will just take this opportunity rather than appearing at a later time but may file a statement otherwise. I do want to submit myself to any questioning right now.

Mr. MACDONALD. We are glad to have you here, sir.

Mr. KORNEGAY. Mr. Chairman, may I simply take one moment to welcome Mr. Holloway to the committee. He is a friend, a constituent of mine, and an outstanding attorney in Washington, D.C., who is quite well known in North Carolina. We are glad to have you here Mr. Holloway. Thank you.

Mrs. MOTT. For the past 5 years I have been president of Menten & Mott, Inc., 65 East 55th Street, New York City, a design company specializing in the graphic design of cartons and labels and industrial design of component parts—such as bottles, caps, aerosol valves—for cosmetic manufacturers.

I have been actively employed for 10 years previously in the cosmetic industry—for the first 6 years in the purchasing area of Revlon, Inc., then purchasing agent and package designer for Daggett & Ramsdell, Inc., and as director of purchasing and packaging for House of Fragrance, Inc., a division of Genesco, Inc.

I have learned much about what American women want in cosmetics and the packages in which they are contained. No cosmetic house would stay in business very long if it did not satisfy its customers. We devote a great deal of research in order to determine what is wanted by women both in their cosmetics and their packages.

A woman purchases a cosmetic for what it does for her. The beauty of the container does something for her too. When a woman buys a cosmetic package it is with the thought of display—not something to put away in closets or cupboards to be brought out only when used.

A woman's perfume and cosmetic packages are her easily affordable ornaments—for purse or dressing table. Cosmetic packages are bought to be seen; the lady insists on beauty of design and the artists who fashion the shape and the artwork must create with her in mind or her custom is not to be won.

Do not be deluded that American women are ignorant dupes—they are shrewd and careful buyers. They recognize quality and value. Any attempt to deceive can succeed only once. Business is built on repeated purchases.

Those of us who have the responsibility of catering to and satisfying the desires of American women with respect to cosmetics are quite concerned about the provisions of this bill which may well inhibit customer satisfaction.

Section 4: Section 4 of the proposed act does not seem to offer any particular problems since that section merely tells us to do that which we already do under existing Federal and State laws. In fact, we are now conforming our net content disclosure practices to recent changes required under the laws of various States.

We are pleased that the authorities in the States are cooperating in uniform regulations. We do hope there will be no variation between

any requirements you gentlemen impose from those of the State regulations.

Section 5: Section 5 of the proposed act, however, could very seriously restrict our abilities to satisfy our customers. Paragraph 3 of subsection (c) has to do with regulating how we are to show our special price reductions, or advantages of "economy size."

Inhibitions in this way seem to me to take away from women shoppers the advantage of special price reductions—something which especially women look forward to. The "cents off" or "half price" deal is particularly liked by women purchasers who oftentimes seek out this type of promotion.

It is also customary in our industry to offer price advantages for the larger size packages. It is really very difficult to understand why customers should be deprived of economy purchases.

Paragraph 4 of subsection (c) suggests that a woman can make price comparisons between different cosmetics on the basis of information with respect to ingredients and composition on the label.

A woman buys a cosmetic because of its odor, its color, its convenience of use, its dependability qualitywise, its packaging—what it does especially for her. She buys a perfume or cologne because its particular odor pleases her when applied to her person.

That perfume has been compounded by an expert "nose" and highly skilled technicians. A particular perfume may be out of her price range so she finds one within her price range to purchase. Any disclosure on the package of any of the 75 to 100 ingredients in such perfume has absolutely no relevance to her purchase.

She buys the lipstick because of its particular color and texture as applied to her lips. She discriminates by way of color, not by way of trying to make price discriminations among the ingredients. The same thing is true of rouges, eye shadow, fingernail polish, and all other makeup items.

It is the esthetic quality which is being purchased. She makes her price comparisons as between brands based upon her own ideas of beauty to be imparted by the particular cosmetic—not by some comparison of ingredient prices.

She also buys her creams and lotions for what they do for her hands, her face. She has all the opportunity in the world to make price comparisons among various brands—her selection depending on cost of the product and what each does for her.

When she wants an orange-red lipstick, she has no interest in looking at a label for price comparison of ingredients. It would tell her nothing to find that it is composed of beeswax, ozokerite, carnauba wax, ceresin wax, lanolin, lanolin absorption base, isopropyl myristate, castor oil, eosine, antioxidant, color, and perfume. Would she, for price considerations, compare such lipstick composition with the composition of another brand? She would not.

Her hand creams and lotions are generally comprised of emolients, humectants, emulsifiers, preservatives, perfume oils, and coloring agents, which basic categories, in any one lotion, may be formulated from a dozen different chemical compounds.

Selection can only be made on the basis of the quality of the complete lotion, its cost, and the personal satisfaction to the user, not relative costs of inert ingredients.

The report of the Senate committee, with reference to subsection 5 (c) (4) states:

> Here the committee is primarily concerned with the ability of consumers to make price comparisons among competing products with varying proportions of active or costly ingredients.

Under existing requirements of the Food, Drug, and Cosmetic Act a cosmetic is also a "drug" if it contains an active ingredient, and such active ingredient has to be shown on the label. If a hand lotion contains, in addition to the above-described materials, a healing agent then the lotion is also a drug and the healing ingredient must be stated on the label.

"Active" isn't defined in the act or in the Senate committee report on S. 985, but if the term has the same meaning as in the Food, Drug, and Cosmetic Act, subsection 5(c)(4) of S. 985 is surplusage applied to cosmetics and drugs. Otherwise it is confusing.

Our industry is engaged in constant research to improve our products. Package design, artwork, label imprinting, must precede marketing of a product and once design and information dies are cast we order for long-term use in order to keep costs from being prohibitive. We must, therefore, be certain of label requirements long in advance or greater cost to the consumer inevitably results.

Trade secrets are valuable to cosmetic manufacturers and we understand that subsection 5(c)(4) does not require disclosure of trade secrets. Any regulation with respect to "composition" must necessarily affect more than one manufacturer's product if comparison is to be made.

Vexing problems are immediately apparent. The agency must predetermine whether or not compositions involve trade secrets and in hearing procedures the very "trade secret" involved may have to be disclosed.

We are also troubled by paragraph (5) of section 5(c) of H.R. 15440. Our packages are designed through long experience with customer preference. We know what American women will select in the way of packages.

For her cosmetic packages she wants beauty as well as utility. We, in response to customer preference, put our cosmetics in a variety of shapes—from the shape of a Grecian urn to slim, attractive compacts, or shapes easily held, such as for shampoos in the shower. Subsection 5(d) may also cause serious problems.

Costs can ofttimes be cut down by using the same size jars for different products, which products may have varying densities. Thus the same size jar may hold varying weights, depending on the product. You cannot standardize both weight and volume.

Such legislation can seriously undermine the particular business of creative design which vitally involves a sizable segment of the industry. We are now limited as to area of contents and legal information—and rightly so—as well as to type size of this information.

Were we now to face the prospect of limitation of shapes and sizes of containers, as designers we would find ourselves confined to so small an area in which to create the kind of package expected by the female consumer, that we consequently would have no reason to be.

The inclusion of ingredients listing, as well, on the small area of a cosmetic package, would further inhibit any creativity. Where we

have faced these specifications in such industries as insecticides, chemicals, and fertilizers, we have agreed with no thought of protest since we were working with a larger labeling and packaging area and were preparing a utilitarian hard-sell product. Not so in cosmetics—here we are working in a very limited physical packaging area and are preparing an illusory product. We are selling beauty, femininity, and hope. Please don't inhibit beauty of design of our packages.

Thank you very much for hearing me out. I hope I have helped you not to allow regressive approaches to women's cosmetics and packages, as well as your own.

Mr. MACDONALD. Thank you very much. I just have one question.

I understand most of your testimony, but I thought you said that you were selling hope.

Mrs. MOTT. Yes.

Mr. MACDONALD. How do you package hope?

Mrs. MOTT. We do it every day. When a woman buys a cosmetic product she feels that it is going to beautify her in some way and that is hope.

Mr. MACDONALD. In some cases I am sure you are right.

Mr. Jarman?

Mr. JARMAN. Yes, I have one question about an area of pricing that I would like to have a comment on. You mentioned that women purchasers ofttimes seek out the "half price" or "cents off" promotion sale. How can the manufacturer, with the printing on the bottle of perfume, or the package, have a price as a promotional feature when it can't control the price at the retail level?

Mrs. MOTT. I don't understand your question. You mean how can it afford to be sold at this price?

Mr. JARMAN. What justification there is for your company as the manufacturer showing a half price on the box if you can't control what the price is going to be at retail level.

If it is entirely up to the store itself whether it sells a bottle of perfume at $5 or $5.50, you can't as the manufacturer guarantee what his price is going to be.

Mrs. MOTT. Usually what will happen in this kind of situation is that an item which is perhaps overinventoried or which will sell a larger quantity in a certain season will be put aside and they will run a carton and on the carton will be written "half price."

The store really has no control over this. The retail store must sell for what the carton or the sticker on the carton says. These get to be regular practices.

Women look forward to, oh, let us say every spring having certain companies produce dollar summer colognes, let us say, which fragrances in other seasons would sell for $2, and women look for just that particular area, and the stores sell that much more that they wouldn't want to display it at regular price.

Mr. JARMAN. Don't you have instances where your company advertises a promotional approach of that sort where the retailer has the decision in his own hands as to what he will actually sell it for on the market?

Mrs. MOTT. I don't really think so because I think that the retailer can sell so much more and take so much more advantage of the adver-

tising that it would be detrimental to his own sales to sell it at the regular price when everybody around him was selling it at an advertised special.

Mr. ADAMS. Will the gentleman yield?

Mr. JARMAN. Yes, I will yield.

Mr. ADAMS. What is it half of?

Mrs. MOTT. The price for which it normally sells.

Mr. ADAMS. And what is the price for which it normally sells?

Mrs. MOTT. The price that is established by the manufacturer as a result of his cost and markup.

Mr. ADAMS. Well, what Mr. Jarman is asking, and I was going to ask the same thing and that is why I asked him to yield, is that you go in a store, for example, and they will either put two packages together or it will say "cents off" or it will say "half price" and what we are asking is, Is there no established price and what is to prevent anyone in the retail area setting a two-thirds price, three-quarters price, or half plus 5 cents?

In other words, it really is half of no established price. It is cents off no established price, so therefore it is just a gimmick, isn't it?

Mr. HOLLOWAY. May I help?

Mr. ADAMS. It is Mr. Jarman's time, but I thank you for letting me inquire.

Mr. HOLLOWAY. I think that, as Mrs. Mott was saying, if the manufacturer puts on the package a special half price deal, and many of them do during the course of the year, and in the event they get overinventoried, or some of them on an annual basis, I know my own secretary looks forward to some of these things. She deliberately goes to the store to buy them at that time.

She knows what the price has been of that item all along. If you can't control the retailer from a legal standpoint, you can sure control him from a practical standpoint. If he doesn't actually reduce that price to half of what he had been selling it for that customer is going to walk out on him, and he is getting the advantage of the reduction in price himself from the manufacturer and therefore it is to his advantage to go along with the deal all the time.

Mr. JARMAN. Are you saying that the customer actually knows or remembers the price of that item well enough to know whether it is a two-thirds price or one-third price?

Mr. HOLLOWAY. She can see it advertised in the newspapers and if she hadn't been in the last week to buy a bottle of Guerlein or Chanel perfume, she can see it advertised in the newspapers regularly and if you are querying whether there are chances of variations I would have to say "Yes", but those chances of variations are minor in comparison to the full value of these things, both to the consumer, the retailer, and the manufacturer.

Mr. JARMAN. I will finish, Mr. Chairman, by just saying this. The concern I have in my own mind is that if the manufacturer cannot guarantee to the consumer, and he can't because the retailer sets the price, that the product on which he puts the label "half price" or "cents off" is going to sell for that to the consumer, then I am troubled by the concern that this really would come under the heading of misleading and deceptive advertising to the public.

Mr. HOLLOWAY. I don't think so. The retailer, by putting on the shelf the sale of what is half priced, is the one that is doing the misleading there. Perhaps what you are saying is that the manufacturer may have encouraged him to do it, but the retailer has the control of what his price was last week and if the package says "half price" this week he has control of that, too.

However, it is right there for the public to see and if he doesn't follow it then he is the one making the deception.

Mr. MACDONALD. The time of the gentleman has expired.

Mr. Nelsen.

Mr. NELSEN. Mr. Chairman, I want to compliment Mr. Jarman on his question and it troubled me a little bit in the previous witness' testimony, where it is suggested there be a price comparison, if in all cases the manufacturer does not put the price on, which I am sure most of them don't in other products.

It is stamped on in the grocery store, so it would be pretty hard to effect the result that some might like to attain, and my only comment as to the witness today is I would suggest, Mr. Chairman, the witnesses are becoming much more attractive than some we have had before.

Thank you.

Mr. MACDONALD. Mr. Dingell?

Mr. DINGELL. Thank you, Mr. Chairman.

You indicated, m'am, in your statement at the top of page 3 that you were greatly concerned with the following language, which is section 5(c), page 5 of the bill:

> Whenever the promulgating authority determines that regulations containing prohibitions or requirements other than those prescribed by section 4 are necessary to prevent the deception of consumers or to facilitate price comparisons as to any consumer commodity, such authority shall promulgate with respect to that commodity regulations effective to—

and then—

> establish and define standards for characterizing the size of a package—

and then—

> define the net quantity of any product—

and—

> regulate the placement upon any package containing any product, or upon any label affixed to such product—

and so forth, and then (4) to require—

> information with respect to the ingredients and composition of any consumer commodity—

and (5)—

> prevent the distribution of that commodity for retail sale in packages of sizes, shapes, or dimensional proportions which are likely to deceive retail purchasers in any material respect as to the net quantity of the contents thereof.

Now, you indicate that this is a matter of particular concern to the cosmetic industry?

Mrs. MOTT. Yes, it is. For one thing it concerns the design element of the package considerably. With a small esthetic package were we to need all of this information on our package we wouldn't have very much room for design.

Mr. DINGELL. All right. But you are aware that this happening and the issuance of these regulations can only be triggered by the pomulgating authority determining that regulations "are necessary to prevent the deception of consumers or to facilitate price comparison—by any consumer—as to any consumer commodity"; in other words, only where he finds that there is deception or where it is necessary to facilitate price comparisons.

This is the only thing in which you might wish to consult with your counsel. This is the only event in which that can take place.

Mr. HOLLOWAY. Mr. Dingell, may I try to help?

Mr. DINGELL. Certainly.

Mr. HOLLOWAY. First, I think, if I recall, you read down two or three of these subparagraphs. One of them was paragraph (4) on the information on the label with respect to composition of ingredient. Should I speak to that first or the packaging, (5)?

Mr. DINGELL. All right. Let us concede that for the sake of the argument, but you will notice there that that provides for protection of proprietary trade secrets, which is obviously something with which your industry is greatly concerned?

Mr. HOLLOWAY. Yes.

Mr. DINGELL. In addition to that, it says that the requirements shall be consistent with the Food, Drug, and Cosmetic Act as amended. That act, I am sure you know, provides for an abundance of protection again for trade secrets and matters of this kind.

Now, getting back to that, as I read the statement here, you are concerned about regulations which would be directed at preventing deception of consumers or which would deny the consumer the opportunity to make intelligent price comparisons.

Mr. HOLLOWAY. Mr. Dingell, I went over the record quite thoroughly in the Judiciary Committee and the Senate Commerce Committee listened to the proponents of the bill at this table. I have not yet heard one of them explain what they mean by "information with respect to ingredients and composition of any consumer commodity."

The only thing that was said in the report, looking at the legislative history on it as is set forth in Mrs. Mott's statement which says:

> Subsection 5(c)(4) authorizes the agencies to require that information with respect to the ingredients and composition of any consumer commodity be placed on packages containing that commodity. Here the committee is primarily concerned with the ability of consumers to make price comparisons among competing products with varying proportions of active or costly ingredients.

So far as we are concerned this matter of confusing words of art like active leaves us where we don't know where we are.

Mr. DINGELL. Is that your principal objection then with regard to section 5?

Mr. HOLLOWAY. My principal concern with paragraph (4), section 5, is you send down words, and I respectfully submit, sir, that you are going to be legislating this paragraph in a vacuum. You send it downtown, and somebody is going to say you had something in mind, what was it? Then we are going to start having problems.

Mr. DINGELL. This committee is not going to lightly report out legislation with language undefined or unclear in this Congress.

But what I am asking you is 5(c)(4), the principal objection which you assert?

Mr. HOLLOWAY. If I have to grade them, this is the principal objection; yes.

Mr. DINGELL. And you don't have any objection to the balance of that section?

Mr. HOLLOWAY. Oh, yes, I do.

Mr. DINGELL. What is your objection?

Mr. HOLLOWAY. Take the next one, 5. And by the way——

Mr. DINGELL. Let us see. You studied this bill rather carefully, did you not?

Mr. HOLLOWAY. I have been over it quite thoroughly.

Mr. DINGELL. Are you aware of the fact that this bill provides specific exemptions for certain small size packages? Am I correct?

Mr. HOLLOWAY. Only in one area, not in this area, you—the small package is still subject to everything that is in paragraph 5(c) (1), (2)—well, the serving doesn't make any difference to this industry, of course—(3), (4), and (5). The only thing you have got taking out of the small packages is in your subparagraph (c) which has to do with this when it says you cannot "establish any weight or measure in any amount less than 2 ounces."

This is a very small area that we are talking about.

Mr. DINGELL. Most of the products that your industry deals with, though, are in packages of less than 2 ounces, are they not?

Mr. HOLLOWAY. No; I wouldn't say that. I don't know the proportions. Lots of them are 3 ounces, 4 ounces, 1 pound.

Mr. DINGELL. You don't manufacture 2-pound blocks of lipstick?

Mr. HOLLOWAY. No, sir; but we manufacture 8-ounce bottles of cologne.

Mr. MACDONALD. I am sorry, but the time of the gentleman has expired.

Mr. Kornegay.

Mr. KORNEGAY. Mr. Chairman, I have no questions.

I would like to thank the witnesses for coming and giving us the benefit of their testimony.

Mr. MACDONALD. Thank you.

Mr. Satterfield.

Mr. SATTERFIELD. No questions.

Mr. MACDONALD. I just have one, Counsel.

If I understood correctly the testimony it would seem to me that the antitrust laws in your field must be different than in other areas?

Mr. HOLLOWAY. I doubt that.

Mr. MACDONALD. It just surprised me to hear that the manufacturer can tell the retailer what they have to sell a product for.

Mr. HOLLOWAY. I don't believe that I made that statement, sir.

Mr. MACDONALD. No, you didn't, but it was made and I just thought we ought to clear up the record.

Mr. HOLLOWAY. I think Mrs. Mott made it in the area that when the manufacturer puts something on a bottle that the retailer from a practical standpoint must reduce prices accordingly or he himself is in trouble.

Mr. MACDONALD. Then actually the thrust, as I understood, of Mr. Jarman's and Mr. Adams' questions went to half off of what?

Mrs. MOTT. May I say something?

Mr. MACDONALD. Yes, ma'am.

Mrs. MOTT. We are in a greatly advertised industry. Almost every product that sells to any extent is advertised regularly and prices are usually advertised with the product. Women are very aware of what a particular brand sells for.

Mr. MACDONALD. I know one woman that isn't, but I will yield to Mr. Adams.

Mr. ADAMS. The advertising that takes place on particular products in the cosmetic line you will agree is generally specialty advertising indicating that you are going to get a good price on that particular item, is it not?

Mrs. MOTT. Oh, no, sir.

Mr. ADAMS. You look in the newspaper and you see a series of ads that come down and they will say these today, bang, bang, bang, bang. These are all special, aren't they?

Mrs. MOTT. I am not talking about specials. I am talking about a specific product.

Mr. ADAMS. All right. Tell me this.

Does the price, for example, on lipstick, deodorant, lotions, and shampoos vary from year to year? It has been going up every year for about 5 years, hasn't it, a cent or two a year.

Mrs. MOTT. I suppose in relation to everything else going up, yes.

Mr. ADAMS. Here the price of each one of these products is basic, is it not? In other words, if you bought X deodorant a year ago and you buy X deodorant today there is a difference because of the cost of ingredients. There has been a difference in price without any relationship to "cents off" or anything else.

Mrs. MOTT. Yes, but these prices have been advertised and these people are aware of it.

Mr. ADAMS. I believe you mentioned you worked for Revlon for a while; is that correct?

Mrs. MOTT. Yes.

Mr. ADAMS. During any period of time that you were there did the price of Revlon lipstick increase? I think you were there 10 years.

Mrs. MOTT. I was there for 6 years and I think I can safely say that it did not increase except in an area where perhaps we used a different or more elaborate lipstick case.

Mr. ADAMS. All right, but all of these things, elaborate case, ingredients, and so on, can cause the price to change over a period of time?

Mrs. MOTT. Yes.

Mr. ADAMS. Now, you say it is in advertising. Where is the standardized price in Revlon lipstick advertising?

Mrs. MOTT. I think in any national magazine.

Mr. ADAMS. So a national magazine will say what? That this tube of lipstick will cost you—I don't see those ads. All I see is the beautiful girl with the lipstick and she is looking at you like that and all of this sort of thing.

I didn't see any place in those ads, but you say there is one that says——

Mrs. MOTT. With all due respect, there is the hope Mr. Macdonald was talking about before and women do notice that, yes.

Mr. ADAMS. You mean in that ad someplace there is a price?

Mrs. MOTT. Yes, sir.

Mr. ADAMS. I have never seen a nationally advertised price of any cosmetic or lipstick in a national magazine, but I am asking strictly for information. You tell me that someplace in that ad it will say that this lipstick is worth $1. I would be (1) terribly surprised, (2) impressed, and (3) I am glad to get the information.

Mrs. MOTT. I think you will find it is usually "Found at your nearest department store" or that kind of thing.

Mr. ADAMS. You also agree that all of the present supermarkets that carry products, and I know they don't carry a number of them, and chain drugstores will without exception vary that national price and sell a certain number of cents below it because nearly all of their items will sell below, comparable to other store prices, so that you have a flexible and differing price in the supermarket and in the major drugstore.

Now, when you come in, as Mr. Macdonald said, you see "half price" or "5 cents off." Is it still your testimony that the housewife knows the price of that item, knows what she bought it for before, and now knows exactly that she is getting half off?

Mrs. MOTT. I think for the most part, yes.

Mr. ADAMS. When she reads the ad in the paper that says X cosmetics 79 cents, 62 cents, 54 cents, which are specialties for that week, you believe that she still knows that there is a fixed selling price.

The ad she knows is not the price. Then the half price that she goes in to get it for applies to a standard rather than the specialty ad that she has seen?

Mrs. MOTT. I will say to a brand extent. Women in cosmetics particularly will stay with the brand. They will be very loyal to a brand because they sometimes become confused as to complementary colors in somebody else's line and she buys one brand. She will know the difference in price in one area over the other or what she expects in a discount store, because she is serving herself, whether or not it is cents off.

So she is probably getting a better price. As far as her buying the strange brand is concerned, I will go along with your statement.

Mr. ADAMS. In other words, when you get into the off brands she, well, in effect pays her money and takes her chances as to whether or not she is getting either a comparable price or cents off or half price or any of these because there are no standards.

By standard I don't mean an absolute listing of beeswax and all these things cost this much and therefore you get that, but I mean that she has any real knowledge of whether or not she is getting a price benefit when it says on the container that she is.

Mr. MACDONALD. I think I will bang the gavel on that.

Mr. ADAMS. I have no further questions. I appreciate the witness being here. I want to compliment the clerk on the quality of the witnesses today.

Mr. HOLLOWAY. Mr. Macdonald, I suppose you are about to close. May I have just 2 minutes on this trade secret things?

Mr. MACDONALD. Indeed.

Mr. HOLLOWAY. First, the word "composition" has been thrown around a little bit by the committee members as though the term didn't mean formula. I would have grave doubts that if this went downtown with the word "composition" in it that it would not be considered as permitting the requirement of formula, either qualitative or quantitative. This may even be by some reference to a manufacturing process or to what not only went in, but what comes out when you mix the chemicals together—you may get different compositions from that. If there is no intent to permit FDA to require formula on packages, I hope you will make that clear.

Second, and getting over to the trade secret thing, as I understand the way this thing will operate, the Food and Drug Administration will make an announcement in the Federal Register that it is about to do something with respect to a certain line of products and put their proposition in there and then industry has an opportunity to come in and be heard.

Now, the Holloway Cosmetic Co. comes in and the Macdonald Cosmetic Co. comes in and the Adams and the Kornegay Cosmetic Cos. all come in. I don't know how in the world you are going to prove that you have a trade secret unless you tell them what it is.

None of these hearings are in camera. They have to be disclosed to prove your point. And I just don't see any real protection of this trade secret thing at all and it is very well to send something downtown along this line hopefully that what the agency will do or Dr. Goddard will do about it——

Mr. MACDONALD. May I just ask you a question for my own information?

Are there many trade secrets in the cosmetic business? It seems to me that they are pretty much the same.

Mr. HOLLOWAY. I have been working with them for about 15 years. If you go and talk to perfume manufacturers about their perfume or what is in it, sir, you are going to have one of the darnedest court fights you ever saw. He is not going to tell you for a minute what is in that perfume.

Mr. MACDONALD. He can tell you what is in it, but it is the question of ingredients. Isn't that about it, how much of what? All perfumes more or less are made out of the same stuff, aren't they? Isn't it a question of mixtures?

Mr. HOLLOWAY. There may be 150 ingredients in one little bottle of perfume. True, it may say that it is essence oils or it is the fragrance of a particular flower that is grown in Alsace or some province of France——

Mr. MACDONALD. Grasse, yes.

Mr. HOLLOWAY (continuing). But the composition of them, putting them together, is what is the important thing. Right now and on that very line, if the chairman please, the Food and Drug Administration under the direction of Dr. Goddard is having his scientists meet with the scientists in this industry in which we are working very hard to get together to try to make arrangements to make sure that we have safe cosmetics.

If you start putting things down here which say that cosmetic manufacturers have to list ingredients on packages and explain, as the

Senate did, the requirements in terms of "active ingredients," we don't know where we are again and this is going to interfere with this dialog with respect to safety that is going on at FDA.

I just urge you to at least find out what the proponents are talking about here because we don't know, but the words they are using are disturbing to this industry.

Mr. MACDONALD. Thank you very much.

The committee will stand adjourned until Tuesday at 10 a.m.

(Whereupon, at 12:28 p.m. the hearing was recessd to reconvene, Tuesday, August 23, 1966, at 10 a.m.)

FAIR PACKAGING AND LABELING

TUESDAY, AUGUST 23, 1966

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to recess, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

Mr. FRIEDEL (presiding). The meeting will now come to order.

This is a continuation of the fair packaging and labeling bills and our first witness will be Mr. Lyle C. Roll, of the Kellogg Co.

STATEMENT OF LYLE C. ROLL, CHAIRMAN OF THE BOARD AND PRESIDENT OF THE KELLOGG CO., OF BATTLE CREEK, MICH.; ACCOMPANIED BY NORMAN BRISTOL, GENERAL COUNSEL AND SECRETARY

Mr. ROLL. My name is Lyle C. Roll and I am president and chairman of the board of the Kellogg Co., and I have with me Mr. Norman Bristol, general counsel and secretary of our company.

As many of you know, the Kellogg Co. manufactures cereal products. Our company has 4 plants in the United States, and 17 plants in other parts of the world.

We process and sell approximately 1 billion pounds of cereals per year in about 150 countries. Our revenue is derived chiefly from the sale of ready-to-eat cereals.

I am here today to express my concern about the fair packaging and labeling bill—H.R. 15440—which is now before the House Committee on Interstate and Foreign Commerce.

From the time the first packaging control bill was introduced in the Senate some years ago, Kellogg Co. has been strongly opposed. We opposed the original bill because of the adverse effect it would have on the food industry as a whole, and our company, in particular.

We also opposed it because such drastic Federal controls are an outgrowth of a philosophy which is very disturbing to us—one which distinctly encroaches upon the fundamental principles which have stimulated the growth of our economy and allowed American citizens the freedom to enjoy the highest standard of living experienced anywhere in the world.

Objections voiced by our company and others in the food industry are already on record. Parallel objections to legislation which hampers commerce and stifles competition can also be found in statements made by some of the leading proponents and supporters of the free enterprise system.

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Our present objections are stronger than they were originally, for in the years which have ensued since the "fair packaging" banner was first waved before the eyes of the voters under the mask of "consumer protection," we have come to see that the present bill is not so harmless as it seemed at first glance.

Under the guise of helping consumers, the proposed legislation would give a Government official the power to decide which packages should be marketed and, in many instances, at a cost higher than is required when consumers have the right to make this decision themselves.

Our company is consumer oriented and we think most successful marketing companies are. I mean by this that our company is interested primarily in what consumers want or are likely to want. We make serious studies of their wants and buying habits, because their continued enthusiasm for our products is necessary for our survival. We know that the millions of consumers who buy our products are highly perceptive and eager to buy products in the quantities which best serve their needs.

It is disturbing to me to hear it said that our customers are being confused and deceived by labels. They should not be and they are not; yet the proponents of the mislabeled and so often misquoted truth-in-packaging bill seem to think that the average housewife is so gullible that she is unable to understand what kind of a purchase she has made even though she may have been purchasing the product week in and week out during the past.

I believe truth in packaging is an essential part of any marketing program. I am not alone in this. There must be thousands of salesmen who would be willing to testify that any form of deceptive labeling is bad business and will not build repeat sales.

Our company makes every effort to package top-quality products in the most convenient and economical containers we can design. We present our packages to consumers in an honest forthright manner by pointing out exactly what they are getting when they buy our products. This approach is basic with us. It always has been.

If my appearance here in opposition to the fair packaging and labeling bill—the so-called truth-in-packaging bill—seems inconsistent with my determination to serve the best interests of consumers, believe me, it is not. I am here to voice objection to a bill which has been presold to many people by a title—a label—which leads them to conjure up thoughts of goodness and light, but which, in truth is something altogether different.

Let us consider what this bill really is. To me—and those who have devoted long hours to a study of its implications—this is a Federal packaging control bill—one that will boomerang. It is a bill, which if enacted, will boost the prices consumers pay for food. The items principally affected will be groceries and—to my immediate concern—our products.

I call this bill a dangerous, inflationary bill because the standardizing of products by weights is a departure from good processing and packaging principles; a departure which will require costly changeovers.

In this day and age food products are purchased by the package more often than by the pound. They are purchased to serve the

family's needs and preferences—not simply because of the weight marked on the package—and not always or necessarily because they are the cheapest.

Competition encourages food processors to upgrade their products and packages whenever it is economically feasible. At Kellogg's we adhere to high-quality standards and package our products in attractive containers with as many conveniences as we can to keep our products fresh, nourishing, and tasty. To keep costs in line, we try to utilize the same packaging machinery for as many products as we can.

What would happen if we had to change our present packaging procedures?

I can point out the comparative packaging costs of two of our subsidiary companies overseas—one which operates under government packaging control regulations and another which does not.

Our Mexican subsidiary operates without regulatory control of package weights, and in Mexico they package nine different product sizes in three different package sizes.

In South Africa, where cereal must be packed in packages of prescribed net weights, our subsidiary has to go to 6 different package sizes to be able to market 12 different product sizes. To achieve this result in South Africa we even have to engage in slack filling to an extent we consider undesirable. Because of the larger number of package sizes used in the regulated South African plant, it takes about 51 percent more packing labor than in the Mexican plant to pack a given number of packages even though the two plants have comparable equipment and volume.

At the moment, however, I believe you will be more interested in hearing about a study we conducted earlier this year to gage the effects of packaging control legislation on our operations in the United States.

In authorizing this study, I asked a staff of well-qualified production managers, market research men, and cost accountants to determine to the best of their ability what it would cost our company to conform to the standardization provisions of the packaging control bill, what effect the bill would eventually have on consumer prices, and what effect it would have on our operations.

Here is a summary of the report they presented:

1. We would have to install considerable additional equipment in our plants. Capital expenditures for this purpose would run in excess of $8 million.

2. We would incur increased operating costs in excess of $3 million annually.

3. This would increase our manufacturing costs by approximately 4.2 percent.

4. A reduction in the net weight of average-size packages would increase the price to consumers by approximately 1.6 percent per ounce.

5. These added costs would result in an increase of approximately 5.7 percent in the prices consumers will have to pay for cereal.

6. The increased prices that consumers will have to pay will create obstacles to the successful maintenance of our markets and will hamper the growth of our business.

Although these figures apply to our products, I believe that the standardization provisions of this bill will have much the same effect on other types of products and in some cases it may be even more drastic.

How did we arrive at our figures? We proceeded on the assumption—based on the recorded views of the proponents of packaging-control legislation—that packages of cereal would be standardized at net weights of 8 and 16 ounces.

To pack our products in 8- and 16-ounce packages—while complying with existing Federal regulations controlling slack-fill and seeing that they are packed properly—it would be necessary to have packages of 29 different sizes instead of the 11 which we have now.

To pack cereals in packages weighing 8 and 16 ounces we would have to purchase 14 additional packing lines, 1 printing press, 2 cutting presses, and 1 of our printing presses would have to be rebuilt.

We would also have to provide more building space to house the additional equipment and more warehouse space to handle more complex inventory problems. Our estimate of these capital costs at February prices is $8,397,000.

The necessary expansion of operations would require additional labor costs for packaging line changes and to compensate for the loss in crew efficiency as well as makeready changes on printing and cutting presses. Our estimate of our annual increase in operating costs is $3,076,000.

Without considering other ramifications, these increased costs represent an increase in production costs of approximately 2½ percent.

As a part of our study, the market research staff delved into an area which we believe had not been considered seriously enough and that is the effect that standardizing packages by weight will have on consumer purchases. It is apparent that everyone has been assuming that pound sales would remain constant and package sales would adjust themselves to constant pound sales.

Our experience indicates that this is not true.

Our business was built on an honest effort to give consumers the products they want in the sizes they want. This is based on our experience and extensive studies of consumer preferences, not what we arbitrarily think they should have.

In developing packages of suitable size, we try to determine which package sizes various consumer groups want and we try to pick the package sizes that will permit economies in production.

To develop packages for our products we consider many variables including the size of packages in relation to the likely size of the pantry shelf—the length of time packages will remain open on the pantry shelf—whether there is enough cereal in a package to meet the needs of the family from one shopping trip to the next—and the expected retail price at which the package will be sold.

Our market research men projected sales trends for four of our leading products, assuming that our products would have to be marketed in 8- and 16-ounce packages instead of their present packages. From these predictions we analyzed the effects on our costs and consumer prices.

To make this more meaningful, permit me to give you an example of the effect of package purchases on pound sales.

Our corn flakes are sold in 8-, 12-, and 18-ounce packages. If we had only 8- and 16-ounce packages, a decline in total pound sales would result principally for two reasons. First, the present buyers of the 18-ounce package would shift to the 16-ounce package. Also, if the purchasers of our 12-ounce package could no longer buy that package, an estimated 75 percent of them would begin purchasing the 8-ounce package, while only 25 percent would switch to the larger size.

Why? Because the larger package contains more cereal than many families need during a week's time and because the price of the larger package would have to rise above a price barrier which many consumers are unwilling to cross.

Our study shows that our four most popular products would suffer—because of standardization—a reduction in sales varying from 5.5 to 12.5 percent—a factor which in itself would increase costs to consumers by approximately 1.7 percent in addition to the 2½-percent increase previously discussed.

There is one more cost increase that would have to be borne by the consumers. The larger packages of our products are sold by us and usually by the grocer at a lower price per ounce. Standardizing to 8- and 16-ounce packages would reduce number of ounces per package most frequently bought by our customers.

Therefore, they would have to pay more per ounce. The resulting cost to them, in that instance, would be approximately 1.6 percent per ounce. This would 1.6 percent per ounce plus the other cost increases which I have already mentioned.

These costs added together would result in a 5.7-percent increase in costs. Similar cost increases can be expected in connection with the production and distribution of other grocery products now available to the American public.

Having studied the probable effects of the proposed legislation very carefully, I am forced to say that the fair packaging and labeling bill—S. 985, H.R. 15440—is a packaging control bill—a bill that will increase the costs and prices of many food products at the very time when the administration seems to be giving consideration to measures to curb inflation.

The fair packaging and labeling bill now being pushed, supposedly in the interest of consumers, will boomerang against the consumers. It will hurt consumers, industry, and the national economy.

I have the best interests of our customers in mind in opposing H.R. 15440. I urge you as dedicated representatives of the people of the United States of America to give your most serious consideration to the adverse effects the proposed legislation would have not only upon our company, but the consumers we wish to serve.

Thank you, very much, sir.

Mr. MACKAY (presiding). Thank you very much.

Mr. Dingell, do you have any questions?

Mr. DINGELL. I have no questions, Mr. Chairman.

Mr. MACKAY. Mr. Younger?

Mr. YOUNGER. I want to compliment Mr. Roll for his very fine presentation especially in connection with the cost figures, which we have been trying to get into this record.

There is one phase that has come up a number of times, which is that the package of corn flakes, is down that far, or down from the top of the package and the reasons for it.

I think as long as you are here, you might get into the record the reasons why that happens.

Mr. ROLL. Mr. Younger, our packages are all sold by net weight. When filling our packages, on the packing line, they are all filled to what we call the score line, regardless of how much it is over the net weight. Then the food is shaken down over shakers so that we have enough room to seal the paper and to tuck the paper over.

The case is weighed at the end of the packing line, and if it fails to come up to the net weight it is rejected and repacked.

Now, paper in different climatic conditions will respond to conditions and it will bulge, and packages that we examine at home that have been shipped to California and back, we are always able to get the food back in the package to its original state. It will, though, on railroad cars and trucks, have a tendency to shake down. But the net weight that we have on the outside is still in that package.

Mr. YOUNGER. Well, as to this matter of sealing the inner package, you have to have a certain space for that?

Mr. ROLL. Yes sir. We try to shake it down. After we fill the food to the score line on the package, and it goes over a shaker, we need about another inch, because the seal on the package is about a half an inch from the top. This, we fold over and tuck down in the package, so the cereal is fresh when it arrives at the consumer's home.

Mr. YOUNGER. If you had the package full right up to the top of the outer casing, you wouldn't be able to seal it?

Mr. ROLL. No; we wouldn't. It would not seal and would allow the air to get in. Also, in processing different grains, any grain, say corn, for instance, will produce the same product—corn flakes, for instance—of different density at different times. Some will make heavy food, and others will make light food. Therefore, the fill in the package will again vary.

Mr. YOUNGER. Were you here when Mrs. Peterson testified?

Mr. ROLL. No; I am sorry.

Mr. YOUNGER. Several witnesses have mentioned this slack-fill and all of the time they complain about here is the package and the corn flakes are down that far or down further, without giving consideration as to why that has to take place in order to seal the inner packing, and also the transportation.

Mr. ROLL. I might add that moisture in the air here in Washington will cause the package to bulge more than it will in Denver.

Mr. YOUNGER. Just like it does to individuals?

Mr. ROLL. I am sure that that is true.

Mr. MACKAY. Mr. Nelsen.

Mr. NELSEN. Thank you, Mr. Chairman. I was at a grocery store last night and noticed a sign which read "4 for 98 cents." So I bought four. I won't mention the product, but it was four cans of canned food. I went over the cash register slip, but I did not get them for 98 cents. The full price was added there. Now, obviously, the sign that was displayed was intended to give me the impression that I would get four of this assortment for 98 cents. But there was no such price on the ticket when I paid the bill.

Now, this, of course, is a deception but this cannot be charged to the canner and it cannot be charged to the packager of food. This was strictly in the area of merchandising the product in the store itself.

Of course, that is not covered in the bill. But I think some of the deception that seems to be under attack is to some degree by labeling of the sales technique within the store itself.

Would you have any comment to make on that?

Mr. ROLL. Well, Mr. Nelsen, we are in the manufacturing business and the retailers are all fine customers of ours, through the wholesalers.

Mr. NELSEN. I understand.

Mr. ROLL. And since I am not familiar with the case, I think that I would like to be excused.

Mr. NELSEN. That is a very good answer. I would have answered it the same way.

Mr. YOUNGER. It has been suggested a number of times that we include the retailer in this bill, or in this legislation. Do you think that that would be a good thing?

Mr. ROLL. I am not in charge of writing legislation, and I think that I would like to be excused on that, also.

Mr. YOUNGER. You would like to be recorded as against the legislation?

Mr. ROLL. I am absolutely against it.

Mr. NELSEN. I might further add, Mr. Chairman, that one of the disturbing things to me about this legislation is the fact that I have received personal communications from some processers in opposition to the bill. Yet, they have in no case indicated their position by testimony for the record.

It seems to me that we experience more and more of this in legislation where people that are in responsible business positions are reluctant to speak up in opposition to legislative proposals. It becomes obvious to me that the Government in many ways suppresses a declaration of position relative to legislation because of the various ways that the Government can move in and harass business.

To me this is a very lamentable situation. I have no further questions, Mr. Chairman.

Mr. MACKAY. I would like to ask you to comment on sections 3 and 4. We have had a battery of witnesses come in here and talk about section 5 without any reference to sections 3 and 4 which, of course, do not have to do with packaging but have to do with labeling. I want to ask you if you have examined those sections and whether there is anything objectionable to either of those sections.

Mr. ROLL. I have examined them but I have with me our general counsel. He has much broader knowledge of law than I do, and if I may turn that over to him I would like to.

Mr. MACKAY. All right.

Mr. BRISTOL. Well, I think that the most obvious characteristic of sections 3 and 4—I am speaking now about the food field only—are well covered in the Federal Food, Drug, and Cosmetic Act, principally section 403 of the act.

Mr. MACKAY. Do you see that this adds anything to existing law?

Mr. BRISTOL. There are differences, certainly. For instance, there is the requirement that the net weight statement be parallel to the

bottom. But I think that in summary the field is adequately regulated in section 403 of the Food, Drug, and Cosmetic Act.

Mr. MACKAY. Now, this is the mandatory part of this bill, and all of the testimony I have heard, as I say, has been mostly about section 5. A common assumption of most witnesses has been that the promulgating authority would immediately move into the standardization of all packaging. We have had much testimony about the cost of standardization. But as I read the law it says that the promulgating authority is authorized to order standardization of packaging only after he finds that the method of packaging of a given commodity is deceptive or creates confusion.

Mr. BRISTOL. I think the test is not deception. I think it is in section 5, or section 5(d), which is the important one.

Mr. MACKAY. Will you look at the top of page 6? It says they are necessary to prevent deception or confusion of consumers, and so on.

Mr. BRISTOL. Yes, sir; that is the test, for arriving at the following regulations on the subjects that follow.

Mr. MACKAY. Really, what your testimony and the burden of other testimony is that there is nothing deceptive or confusing about present packaging.

Mr. BRISTOL. There is nothing deceptive that isn't already illegal in the food field under section 403 or the other parts of the Food and Drug Act.

Mr. MACKAY. Let me put it this way: It seems to me that under a reasonable construction of this act by a competent administrator of good character and intelligence, this could logically be applied to a very small percentage of the commodities that you find in the stores today.

I don't find much deception or confusion. I have been having a hard time finding illustrations out of my own experience that would support this test.

Mr. BRISTOL. Yes, sir; but the test in these, in this bill, is not deception.

Mr. MACKAY. Or ease of price comparisons?

Mr. BRISTOL. It is price comparisons.

Mr. MACKAY. I don't have much difficulty in making these comparisons. I have asked my wife, and she said in a few lines she does have some difficulty.

Do you think that the number of servings should be permitted as a selling point when no two people have exactly the same appetite?

Mr. BRISTOL. That is difficult for me to answer, sir. We don't sell our products as so many servings so it is difficult for me to state an objection to the provision establishing servings, I don't really know if that is an objectionable section or not, because I don't know what goes into a serving, or establishing a serving.

My wife doesn't seem to have any trouble with serving statements on packages.

Mr. MACKAY. That is a consumer judgment, isn't it, though?

Mr. BRISTOL. Yes, sir.

Mr. MACKAY. What about the cents-off provision?

Mr. ROLL. As far as cents off, our company hasn't used it in this country for many years. But in working in a free enterprise system,

if a new company is entering a market, we believe that they should be able to use a cents-off provision on their packages if they want to give the consumer a better buy to sample their product.

Mr. MACKAY. But they can't even control it, can they, because they sell it to the retailer and not to the consumer?

Mr. ROLL. It is controlled as far as they are concerned.

Mr. MACKAY. But doesn't that often end up as a deception to the buyer?

Mr. ROLL. I would say that in the majority of retail stores I have been in, it is properly marked when it comes through the cashier.

Mr. MACKAY. Mr. Nelsen gave an illustration that seemed to suggest that he had had just the opposite experience.

I have a feeling that maybe there are a couple of points in this bill that have some real merit and if they do have merit we ought to recognize this and cut the rest out of the bill, rather than just brand the whole thing as a bad idea, and I really sincerely suggest that.

Now, what about products of different densities?

Mr. ROLL. We have indicated in our testimony that as far as cereals are concerned, they are not sold by the pound. We try to put them up in the packages, and sizes, that will serve consumers.

From our experience that is the best way to do it and that is the reason we have a range of three sizes of some products, and other products two sizes, and some products, one size.

We spend quite a lot of time studying our packages and how better to serve the consumers to get more business.

Mr. Bristol said he would like to comment on that.

Mr. BRISTOL. There is one problem I have with regard to that section, and I think that I can give you an example on it. We have one product, Croutettes, which is stuffing crouton, spiced bread. As to what a "related product" is, I think there is a very difficult problem with regard to vagueness, but even so this product, Croutettes—we were able to manufacture it more easily because we took one of our cereal sized packages, and packed Croutettes in this dimensional size package which was already the vehicle for a number of cereal products.

We were able to achieve the efficiency even though we were jumping out of what I would consider to be the field, or jumping out for sure, of this field of related products.

I think this related products feature of the bill also doesn't take into account the future products that you may come out with. Maybe they are within the related field, and maybe they are not. But it is difficult to imagine what is going to happen.

Mr. MACKAY. Mr. Kornegay, do you have any questions?

Mr. KORNEGAY. I have no questions, Mr. Chairman. I simply would like to say this to Mr. Roll, that I am sorry that I was late getting in here, and I had to attend to another matter this morning, and I couldn't listen to your statement. I am generally familiar with your position from going over your statement.

I understand that you have made a study; is that correct?

Mr. ROLL. Yes, sir.

Mr. KORNEGAY. How lengthy is it?

Mr. ROLL. I did not hear the question.

Mr. KORNEGAY. How lengthy is the report or the study?

Mr. ROLL. Well, it was made as a report on the bill by the most talented production people that we have, with the help of the comptroller, and cost accountants, and with the help of our marketing research men. Altogether it took them about a month to get all of their figures together. At the conclusion of the report, it will cost us not only operating costs but capital costs of about 4.2 percent more to manufacture the same cereals that we would have manufactured under our present packaging sizes.

Mr. KORNEGAY. What, if you have this figure, what would the recurring increase in cost to the consumer be, according to the study you have made?

Mr. ROLL. We would have a capital outlay of $8 million, and we would have an increased operating cost of 4.2 percent. We would have added approximately 1.6 percent per ounce for packaging increase, and the total cost to the consumers would be approximately 5.8 percent increase in the price of our cereals.

Mr. KORNEGAY. In other words, you are not in a position to absorb that cost but would find it necessary to pass it on to the consumer?

Mr. ROLL. Right now, sir, we are trying to absorb in excess of $5 million of increased costs in raw materials. Studies are underway now as to how we are going to do that, and if this comes on top of that, there is a point beyond which you can't absorb costs.

Mr. KORNEGAY. You feel it would be necessary then to increase the cost of the products to the consumer?

Mr. ROLL. It would, sir.

Mr. KORNEGAY. Mr. Chairman, I would like to ask unanimous consent that this study which Mr. Roll has had made by the Kellogg Co. be placed in the record.

Mr. MACKAY. Without objection, that will be done.

Mr. KORNEGAY. We certainly appreciate your patience.

Mr. ROLL. We have a summary of the body if you would like to place it in the record, you are welcome to it.

(The document referred to follows:)

SUMMARY OF A STUDY BY KELLOGG CO., ON EFFECTS OF A REQUIREMENT THAT ALL FAMILY-SIZE CEREAL PACKAGES CONTAIN 8 OR 16 OUNCES NET WEIGHT—FEBRUARY 22, 1966

In February, 1966 a study of the effect of packaging all cereals in packages of net weights of either eight or sixteen ounces was conducted by the staff of Kellogg Company, Battle Creek, Michigan. Consideration was limited to products and operations of Kellogg Company. The purpose of the study was to determine what effect if any a requirement that family size packages of cereal for resale at retail in packages of net weight of either eight or sixteen ounces would have on the costs and prices of cereal. Excluded from consideration were cereal packages containing less than two ounces.

Selection of eight and sixteen ounces as the required net weight was based on statements by a proponent of the "Fair Labeling and Packaging" bill (S. 985).[1] No studies were made on the effect on cost or prices of any other required net weights. It is believed that the selection of any two other required net weights would have substantially the same effect of increasing costs and prices although it can be expected that the estimated increase in costs and prices resulting from standardized net weights will vary somewhat upward or downward depending on the two required net weights selected.

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[1] Hearings before the Committee on Commerce, United States Senate, Eighty-Ninth Congress, First Session, on S. 985 (Serial 89–28), pp. 726–727; Congressional Record p. 4501, 3/10/65; Congressional Record No. 172, 9/24/62.

The findings of the study are summarized as follows:

1. Standardization of package weights would result in a decrease in pound sales which, since unit costs will generally increase as volume decreases, would result in a 1.7% increase in the cost of cereals which will be reflected in increased prices the consumer pays.

2. The larger size packages are offered to consumers at lower prices per ounce of cereal than the smaller size packages of the same cereal. Standardization of package weights will result in a decrease in the average net weight of family size packages purchased at retail.

An increase in the average price the consumer pays as high as 2.7% with a mean increase at 1.6% will result.

3. The standardization of package weights will have an adverse effect on efficient use of packing and printing equipment. Reduction in efficiency will necessitate installation of additional equipment with suitable buildings to accommodate them. The added capital costs are estimated at $8,397,000.00 not including land, and additional operating costs are estimated at $3,076,000.00 annually including depreciation. An increase in costs of approximately 2½% will result from this increase in cost of manufacturing which will be reflected in a corresponding increase in the cost of cereals to the consumer.

4. Standardization of package weights will impair or eliminate the projected reductions in distribution costs, of grocery distributing organizations as well as of this Company, obtainable by development of improved methods of handling. A specific example is the development of an optimum pallet load of uniform dimensions. The cost improvements achievable by this method cannot be estimated with any degree of reliability, but it is known that handling and distribution costs are great and the possibility for decrease through development of an optimum uniform pallet load are substantial.

The basis for these conclusions are more fully set forth as follows:

1. COST INCREASE RESULTING FROM VOLUME DECREASE

In order to determine what effect the shift from the present packages marketed to packages complying with a regulation requiring packages of a net weight of either eight or sixteen ounces, the probable sales of the eight and sixteen ounce packages must be predicted. The bald assumption that pound sales of any particular product will be the same as at present if the product is marketed in eight or sixteen ounce packages cannot be made. On the contrary experience shows that a change in package net weight has a decided effect on the total pound sales.

The package and pound sales and expected retail prices by size of each of the four largest volume cereals sold in eight-ounce and sixteen-ounce packages only were predicted. The following are some of the conclusions arrived at over many years of experience and study by the Market Research Division of Kellog Company on which these predictions are based:

(i) The consumer buys cereal by the package, not by the pound or the ounce. She buys an assortment of cereals, usually those of more than one manufacturer, and her selections are those packages which meet her needs for her family and fall within a price range which meets her expectations.

(ii) There are retail price barriers over which consumers believe prices are too high for a package of cereal. These barriers will vary with time, from one area of the country to another, with the type of product and with various other factors. These price barriers are such that a large package which is priced at retail above the price barrier will not be purchased, even though by reason of its size it is offered at a lower per ounce price than smaller packages of the same cereal.

(iii) The grocery trade generally resells cereal on a percentage mark-up basis, and cost increases will generally be reflected in a comparable percentage increase in the retail price.

For instance in arriving at the prediction as to the purchases of packages of Rice Krispies, the Market Research Division predicted that most or all of the former six-ounce package buyers would become eight-ounce package buyers. This prediction is admittedly questionable and can only be achieved if there are no price barriers between the 24¢ at which the six-ounce package is sold and the 30¢ which is the predicted retail price of the eight-ounce package. It is likely that some consumers will find a price barrier at this point and will shift away from this particular product preference.

The prediction that all buyers of the ten-ounce package will become buyers of the eight-ounce package is reasonably safe. There will be no price barrier to overcome as the predicted price is lower than they have been paying. There is little likelihood that they would select the 16-ounce package since they are at present buying the ten-ounce package in preference to the 13-ounce package which is now available. Experience has shown that in similar reductions of the net weight there is not a corresponding increase in the number of packages purchased. On the contrary the number of packages sold generally stays approximately the same.

Many of the buyers of the 13-ounce package (45% of them) are predicted to become buyers of the eight-ounce package. Faced with the alternative of an eight-ounce package at 30¢ or a 16-ounce package at 54¢ these purchasers will drop to the lower price because they are unwilling to pay the higher price for a package of cereal.

Predicted retail prices are arrived at by interpolation and extrapolation from the present retail prices on the basis of the net weight in ounces, applying the Better Buy principles for larger package sizes observed by Kellogg Company, discussed below.

The predictions as to the other three cereals (Kellogg's Corn Flakes, Kellogg's Frosted Flakes, Kellog's Special K) are made similarly. A predicted loss of approximately 9.4% of the pound sales of these products is shown by the study.

Spreading of the plant burden (fixed costs) over 90.6% of the 1965 tonnage will result in an increase in the burden costs per pound of cereal which in turn will result in an increase in the retail price of approximately 1.7%.

2. PRICE INCREASES RESULTING FROM LOSS OF AVAILABILITY OF THE BETTER BUY IN THE LARGER PACKAGE

The larger packages of the same cereal are generally sold at retail at a lower price per ounce than the smaller packages. Kellogg's prices to the grocery trade are in all cases lower on a per-ounce basis for the larger packages, the per-ounce price being lower for each larger size than the per-ounce price for the next smaller size by from 3.35% to 11.5%, the mean being about 8%. Since cereals are generally resold by the grocery trade on a percentage mark-up basis, the same Better Buy percentages will apply to the retail prices.

The extrapolated and interpolated package prices of eight and sixteen counce packages of the same four cereals (Kellogg's Corn Flakes, Kellogg's Rice Krispies, Kellogg's Frosted Flakes, and Kellogg's Special K) were applied to the predicted package purchases and compared to the average retail prices and actual package sales (upon which the extrapolated and interpolated package prices and predicted package purchases were based). The comparison showed the following per ounce prices.

Product	Price per ounce		Increase in average price paid resulting from 8- and 16-ounce regulation
	Present	Predicted	
			Percent
Corn Flakes	0.0190	0.0193	1.6
Rice Krispies	.0219	.0293	.7
Frosted Flakes	.0258	.0265	2.7
Special K	.0385	.0391	1.6

It can readily be seen that the effect on the price the consumer will be paying will be an increase as high as 2.7% with a mean increase on the four products of 1.6%, as a result of the imposition of a regulation requiring net weights of 8 and 16 ounces.

3. LOSS OF EQUIPMENT EFFICIENCIES

In the absence of a requirement of standardized package weights, Kellogg Company uses packages of standardized dimensions to package a number of different cereals, almost all of which will contain in the standardized package a

different net weight of cereal because of the difference in bulk densities. For instance in one package of standardized dimensions (111.4 cubic inches) the following net weights of the following products are packed:

Product	*Net weight (ounces)*
Corn Flakes and Bananas	5
Rice Krispies	6
Apple Jacks	6½
Froot Loops	7
Croutettes	7
Sugar Stars	8
Cocoa Krispies	8½
Krumbles	9
All-Bran	16
Bran Buds	18

By optimum use of a number of cartons of standardized dimensions, Kellogg Company is able to limit the cartons used to eleven different dimensional sizes. The use of cartons of standardized dimensional sizes will be greatly limited if the Company is required to standardize on net weights. To package products in only 8-ounce of 16-ounce net weight packages would require use of twenty-nine, instead of the present eleven, dimensional sizes.

The use of a relatively small number of carton size improves packaging line efficiency because a packing line may be used to pack first one cereal and then another cereal in the same size carton without adjustment in the line. This change usually is made at a clean-up period and can be performed with no loss of time. However where the cartons packed on the line are changed from one size to another, the packing line must be adapted to handle a carton of a different dimensional size. Such a change necessitates approximately eight to sixteen hours of down time and 50 to 100 man-hours of mechanical labor to make the change over and tune up the line, and a loss of efficiency results temporarily after the change over. The increased amount of down time and temporary efficiency loss will necessitate the addition of fourteen packing lines to pack the same number of cartons.

A similar loss of efficiency in the operation of printing and cutting presses will result from standardization of cereal packages on a net weight basis. At present nine or twelve cartons are printed on one sheet of carton board with one impression. If all the cartons, which are roughly rectangular, are the same size, that number of cartons can be printed together with a minimum of waste carton board. Carton press down time is kept to a minimum, carton board sheets are kept to a minimum number of sizes keeping inventory costs and purchase prices lower, and the very expensive make-ready required in changing both a printing press and a cutting press from one carton size to another are kept to a minimum.

To print and pack the same number of cartons based on packages, standardized on a net weight basis, additional capital costs of $8,397,000.00 not including land, and additional operating costs of $3,076,000.00 including depreciation, will be required to conform to a regulation standardizing net weights. This is equivalent to a 2.5% increase which will result in a comparable increase of price to consumers.

4. IMPAIRMENT OF ABILITY TO REDUCE DISTRIBUTION COSTS

The distribution costs of cereal are known to be high. It is estimated that our annual costs during 1965 of handling and distribution other than actual freight paid are approximately $4,000,000.00. Handling costs of the purchasing grocery distribution organizations are of comparable magnitude, but it is not known accurately what their costs are. Methods of improving these costs have been under consideration and it is expected that there are substantial possibilities of further cost improvement in the cost of unloading of unitized inter-plant shipments by cutting unloading time in half.

One of the most fruitful possibilities in this area appears to be the development of a pallet load of optimum dimensions. The advantages to be found in such a development are—

(i) more efficient use of specialized handling equipment specially developed to form and handle pallet loads,

(ii) complete elimination of pallets, either the usual wood pallets or the somewhat more efficient container board pallets,

(iii) larger units for accounting purposes,

(iv) development of comparable improved handling facilities at the receiving dock, and many others.

To achieve the optimum uniform pallet load, the following requirements must be met—

(i) The dimensions must be compatible with the dimensions of existing and future railroad cars and trucks.

(ii) The elements of the pallet load—the cases of cereal—must be stacked so that the pallet load will be a relatively cohesive unit.

Development of an optimum uniform pallet load cannot be achieved if the Company is not free to make suitable adjustments in the elements of which the pallet load is made up, specifically the size of the cases making up the load which is in turn dependent on the size of the cereal packages making up the case. Standardization of the carton sizes on an net weight basis will unquestionably limit the ability of the Company to develop an optimum uniform pallet load and may make such a development impossible.

Since the uniform pallet load is still in its initial stages of use, the savings which it may make possible, or more pertinently, the cost savings which standardization on a net weight basis makes impossible, cannot be estimated on a reliable basis.

KELLOGG COMPANY.

Dated: February 22, 1966.

Mr. SPRINGER. You are chairman of the board and president of the Kellogg Co.; is that right?

Mr. ROLL. That is right, sir.

Mr. SPRINGER. Well now, you are getting around to something that we want to know on this committee. Have you been here and heard this testimony?

Mr. ROLL. This is our third day here, sir.

Mr. SPRINGER. Well, that is not enough. You should have heard it all before this, and especially the Government witnesses, and the administration witnesses on this.

They testified as to what they could do, but when I asked them the question about the increased cost, no one had given it a thought, and no one had even gone into the preliminary, to see what they are talking about.

Now finally, you do have in the record here some hard, cold facts on increased costs. I don't know about that. Someone the other day over on the floor said this wasn't a fair labeling packaging bill, but it was a bill to increase consumer's costs.

It would take $8 million to install additional equipment, in capital outlay; is that right?

Mr. ROLL. That is right.

Mr. SPRINGER. Your increased operating costs would be $3 million?

Mr. ROLL. Annually.

Mr. SPRINGER. That would be every year?

Mr. ROLL. That is right.

Mr. SPRINGER. This would increase your manufacturing costs by approximately 4.2 percent?

Mr. ROLL. That is right.

Mr. SPRINGER. Is that steady?

Mr. ROLL. That is every year. If we put it all on the consumers, it would mean that we would have to increase our prices 3.7 percent.

Mr. SPRINGER. We certainly don't want to do that. Now, I was interested in what you had to say on page 6 of your statement here,

where in Mexico you have no regulatory controls on package weights, and you have nine different product sizes in three different package sizes.

Mr. ROLL. That is right. That is in a free economy, and free enterprise system.

Mr. SPRINGER. Now, that means that you have only three packages, but you have nine different weights in the packages; is that correct?

Mr. ROLL. That is right.

Mr. SPRINGER. That will save on the number of boxes that you have to manufacture, is that right, the different kinds of boxes you have to manufacture?

Mr. ROLL. The big savings is on the packing labor.

Mr. SPRINGER. Now, you went to South Africa, and in South Africa you have weight control?

Mr. ROLL. Everything has to be in 4, 6, 8, 10, and 12 ounces.

Mr. SPRINGER. It has to be that way.

Mr. ROLL. It is standardized.

Mr. SPRINGER. Now, you said because of the larger number of package sizes it takes 51 percent, that is half again, more packing labor than in the Mexican plant, to pack a given number of packages, even though the two plants have comparable equipment and volume.

Mr. ROLL. That is right. Those are the facts in our records.

Mr. SPRINGER. It is because you have gone to 4 standards, is that right, 8, 10, 12, and 16?

Mr. ROLL. We are forced to operate under the Government regulations, or close up our shop.

Mr. SPRINGER. That is 51 percent more packing labor than the Mexican plant?

Mr. ROLL. That is right.

Mr. SPRINGER. Even though the two plants have comparable equipment and volume?

Mr. ROLL. That is right.

Mr. SPRINGER. You are positive about these figures?

Mr. ROLL. We have them and will show them to you any time you want to see them.

(The following letter was subsequently submitted by the Kellogg Co.:)

KELLOGG CO.,
Battle Creek, Mich., September 9, 1966.

Re H.R. 15440.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
Rayburn House Office Building, Washington, D.C.

DEAR CONGRESSMAN STAGGERS: This is our Company's response to your request in Mr. Borchardt's letter of September 1, 1966 for information on the comparative packaging costs of our Mexican and South African plant. We are also having copies of this letter given to Congressmen Springer and Moss who are mentioned in Mr. Borchardt's letter as requesting the information.

Mr. Borchardt's letter contained your request for more information on Mr. Roll's statement to the Committee that our South African subsidiary which is subject to a regulation establishing standardized net weights for cereal packages requires 51% more packing room labor than our Mexican subsidiary, which is not subject to such a regulation, but otherwise operates under comparable conditions.

The study involving the comparison between the South African and Mexican subsidiaries was made in 1965 in preparation for Mr. Roll's testimony before the Senate Commerce Committee on S. 985, which for the purposes of the study included provisions similar to those of H.R. 15440. A copy of Mr. Roll's pre-

pared statement for the Senate Commerce Committee is attached. His testimony and statement are printed at pages 333 through 343 of Hearings before the Committee on Commerce, United States Senate, Eighty-Ninth Congress, First Session, on S. 985 with testimony on this subject at pages 336 and 337.

The requirement that cereal packages be in standardized net weights requires a cereal manufacturer to incur a number of additional costs for many reasons. Some of these are:

1. More different dimensioned size cartons are required and additional mechanical labor is required to adapt packing lines on many more occasions so the lines can be used to pack varying package sizes.
2. Packages are designed not with the primary objectives of meeting consumer needs and conforming to efficient packing methods, but with the primary objectives of achieving the required net weight. As a result many packages may be awkward and inefficient in design and may require more packing material than necessary and may be of such design that waste is excessive.
3. The complications introduced by a larger number of unique package sizes causes the loss of opportunities for increased efficiencies.
4. Packing lines are out of service for adaptation on more occasions and are, therefore, used less efficiently.
5. Packing labor is used less efficiently.

The losses resulting from all these factors are extremely difficult to measure. In our 1965 study we atempted to measure the effect of a standardized net weight regulation on Factor No. 5 above, loss of packing labor efficiency, by comparing the amount of packing labor used in our South African subsidiary's plant, which is subject to regulation, with that of our Mexican subsidiary's plant which is not subject to that type of regulation.

The study involved performance by the two subsidiaries during the year 1964. In 1964 (and at the present) the South African subsidiary [Kellogg Company of South Africa (Proprietary) Limited] operated under a packaging regulation prescribing net weight scales of quantities "for pre-cooked breakfast foods manufactured from a cereal: 1 oz., 2 oz., 4 oz., 6 oz., 8 oz., 10 oz., 12 oz., 1 lb. or any integral number of pounds", Weights and Measures Regulations 1943, as amended, Part II, (2) (p) under the Weights and Measures Act.[1] The Mexican subsidiary [Kellogg de Mexico, S.A. de C.V.] operated free of regulations of this sort and was thus in a position to select its package net weights in order to meet the needs of consumers and to conform to good economic packaging practices in the selection of net weights for its products.

The South African and the Mexican plants were both completed and put into service at approximately the same time. South Africa in 1949, Mexico in 1951. The two plants were designed to have the same capacity for processing and packing ready-to-eat cereals. The packing facilities for family size packages in each of the two plants consisted of two packing lines which were substantially identical and would have the same capacity for packed cereal if run under identical conditions. The packing facilities of each plant are listed on Table 1 attached.

In 1964 the South African subsidiary marketed twelve different product sizes for family consumption. To achieve the twelve different family sizes, six different dimensional size cartons were used. The Mexican subsidiary marketed during 1964 nine different product sizes for family consumption and, not being required to market products in net weights established by regulation, it was able to keep the number of dimensional size cartons for family use to three. The 1964 product sizes for family use marketed by the Mexican and the South African subsidiaries grouped by dimensional size cartons used are shown on Table 2 attached.

During 1964 the Mexican subsidiary was able to devote one of its family size packing lines exclusively to the 120.1 cubic inch package in which five different products were packed. As a result, this line was operated efficiently and there were no occasions on which the line had to be adapted to a different size package. Adaptation of the other line to different size packages was then kept to a minimum.

During 1964, the South African subsidiary was required to pack its family size cereal products in packages of six different sizes and the two family size lines which the South African subsidiary uses had to be adapted to a change in package sizes on many more occasions. As a result packing labor was used

[1] Prior to amendment the regulation required cereal to be packed only in net weights of 1 oz., 2 oz., 4 oz., 8 oz., 1 lb. and integral numbers of pounds. The regulation has been amended to its present term during the interval between 1958 and 1964.

less efficiently. The following factors all contributed to the lesser efficiency of the South African plant:

1. Packing crew labor is lost while packing lines are being adapted.

2. Packing crews and lines are used less efficiently during the start-up period immediately following a change in the packing line. Packing lines cannot be put into satisfactory adjustment by initial adjustment of packing machines. Following initial adjustment a line must be operated with a full crew on hand on an intermittent basis while final adjustments are made.

3. The increase in complications involved in scheduling, carton inventory and other problems result in a loss of efficiencies in the use of packing labor.

4. The packages used are of more awkward shapes and require more labor to keep the packing lines operating properly. The reasons for the awkward shapes are set forth below.

5. Additional packing room labor is required to handle underweight and overweight packages and spoilage, all of which is greater in the South African plant because of the awkward package shapes which are the direct result of the regulation of net weights of cereal packages.

It is impossible to assign values to the additional labor requirements of the South African plant because of any one of the factors mentioned above. Additionally it is impossible to determine with precision the additional labor requirements of the South African plant resulting from the regulation requiring standardized net weights and the greater number of dimensional package sizes and the awkward shaped packages needed to conform to the regulation and not the result of other factors as for instance greater volume at the Mexican plant. However, despite the fact that the plants had substantially the same packing facilities and the volume was comparable, the use of packing labor in terms of number of family sizes packed was considerably higher (51% higher) at the South African plant in 1964. The major difference in 1964 in the operations of the two plants is the South African plant's necessity for compliance with the standardized net weight regulation, and to this difference must be attributed a substantial portion of the excess labor requirements experienced by the South African subsidiary.

In 1964 the pound production of family size packages of the two subsidiaries based on an index of the 1964 Mexican production as 100 was as follows:

Family size cereal production, 1964—Mexico 1964 production equals 100

	Pounds
Mexican subsidiary	100.0
South African subsidiary	88.9

During 1964 the amount of packing labor required by each subsidiary to pack 1,000 cases of twenty-four packages per case of the two subsidiaries was as follows:

Packing Room Labor Required

[Man hours per 1,000 cases]

Mexican subsidiary	88.6
South African subsidiary	133.3

During 1964 the South African subsidiary also expended approximately three and one half times the number of man-hours of mechanical labor per one thousand pounds of food than did the Mexican subsidiary. Mechanical labor is used for purposes other than adaptation of packing lines to different size packages and it is impossible to determine how much excess mechanical labor was required to perform the excessive number of line changes. However, a portion of the excess mechanical labor was required by the necessity of making more line changes.

Since 1964 the performance of the Mexican plant in comparison with the South African plant has improved in this respect. However, 1964 was the last year in which volume of the two plants was comparable, and comparative figures become less reliable as an indication of the additional burdens imposed on operating efficiency.

The requirement of standarized net weights in family size packages requires deviations from good packaging practices which manifest themselves in areas other than cost (although these deviations also have an adverse effect on cost). To illustrate, samples of all the family size cartons presently used by South African subsidiary are enclosed. (Because of a limited number available sample cartons are enclosed only with Mr. Staggers' copy.)

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The difficulty of adapting a packing line to a different size package is greatly increased if the height of the package is changed. Therefore, to keep packing efficiently losses to a minimum, packing machines are set to pack cartons of a fixed height and the carton width and thickness are varied from product to product in order that the carton will hold the standardized net weight.

Historically, the first cereal products produced in South Africa were corn flakes and Rice Krispies in eight ounce packages. Packages of suitable dimensions were designed both 9½ inches tall, the eight ounce corn flakes and Rice Krispies enclosed being representative of the dimensions of the initial design of the packages. Initially two packing lines were set to pack these two packages.

As other cereals were added to the product line of the South African subsidiary it became necessary, in order that adaptation of packing lines be as efficient as possible, to pack them in cartons of the same height as the original packages. As a result, packages were designed not with the primary purpose of meeting consumer needs or developing efficient packaging, but with the purpose of achieving a net weight of eight ounces (that being the only marketable size allowed by regulations then in effect) and having the same package height as the cartons of the existing products which were being packed.

In 1958 the decision was made to add a larger corn flakes package, consumer demand justifying another larger size. At this time the 301.9 cubic inch package, 11½ inches tall, was designed and one of the packing lines was adapted to pack the taller package. Following this change any packages could be used which were of either height and contained net weights of either eight or sixteen ounces. Subsequent to 1958 the regulation was amended to permit packages of net weights of 6, 10 and 12 ounces. One result has been the tall, thin packages which are more difficult to pack and more inconvenient for consumer use. Another adverse result has been the use of packages which are either too small or too large for the contents.

As an example for the purpose of efficiency and reducing the number of packing line changes, the 126.2 cubic inch package is used for eight ounce packages of Rice Krispies, Sugar Frosted Flakes and All-Bran Flakes. All three products have different product densities with the expected result that the package cannot be of the proper size to hold all three. A comparison between the actual contents of the South African package and the optimum contents according to this Company's package design principles in effect is as follows:

[Weights in ounces]

	Net weight, South African package	Optimum net weight, U.S. principles of package design
Product:		
Rice Krispies	8	7
Sugar Frosted Flakes	8	9¾
All-Brand Flakes	8	[1] 11

[1] The optimum net-weight under the company's principles of package design of the 126.2-cubic-inch package filled with All-Bran Flakes has been determined on the basis of the product manufactured in United States which is different than the product prepared in South Africa. The optimum net weight shown of 11 ounces is there.ore questionable.

It can readily be seen that the 8 ounce package of Rice Krispies contains more product than the optimum. This is achievable only by producing a product of different specifications in order to achieve the required net weight. As a result the sealing of the packages is less reliable and the number of packages rejected in the plant (at a considerable additional cost) is increased. The packages of the other two products contain less cereal by volume than the size of the package would call for under Company standards in effect in the United States.

The conclusions of this study may be briefly stated. In Mexico (and in the United States) the primary considerations in design of cereal package are the needs and desires of the consumers and the market and the efficiency of packing the product. In South Africa primary consideration must be given first to compliance with a regulation to the effect that cereal may be marketed only in packages of standardized net weights. Only after compliance with the regulation has been achieved can the convenience of the consumer and efficiency of

production be given consideration. The results have been that in South Africa, as compared with Mexico, production costs have been higher and packages have been used which are awkward of shape, more difficult of production and less convenient to the consumer, and that in South Africa packages have been filled in many cases with more or less cereal than the package should hold.

Very truly yours,

NORMAN BRISTOL,
General Counsel and Secretary.

TABLE 1.—*Family size packing equipment used by Mexican and South African subsidiaries of Kellogg Co., 1964*

Kellogg de Mexico S.A. de C.V.		Kellogg Co. of South Africa (Proprietary) Ltd.	
Number of machines	Description	Number of machines	Description
1	Johnson carton bottom sealer machine, Johnson Automatic Packaging Machinery Co. (now Battle Creek Packaging Co.).	1	Johnson carton bottom sealer machine, Johnson Automatic Packaging Machinery Co. (now Battle Creek Packaging Co.).
2	Lining machines, type "D," class 4131, Pneumatic Scale Corp.	2	Lining machines, type "D," class 4131, Pneumatic Scale Corp.
2	Packomatic Filler,[1] model 7-3151 T, Ferguson Machinery Co.	1	Pneumatron filler,[1] class 2634, Pneumatic Scale Corp.
2	Liner sealing top closure [2] machine, Kellogg Co. design and built.	2	Liner sealing top closure [2] machine, Kellogg Co. design and built.

[1] The 2 fillers used in the Mexican plant are the equivalent of the 1 filler used in the South African plant both as to output and crew size. 1 person mans both fillers in the Mexican plant and the combined operating speed is 76 packages per minute. 1 person mans the filler used at the South African plant and its operating speed is also 76 packages per minute.

[2] Kellogg designed and built top closure machines are identical at each plant.

TABLE 2.—*Product sizes marketed by Kellogg Co. of South Africa (Proprietary) Ltd. and Kellogg de Mexico S.A. de C.V. in 1964 grouped by dimensional size carton used*

KELLOGG CO. OF SOUTH AFRICA (PROPRIETARY) LTD.

Product description or tradename	Carton volume (cubic inches)	Net weight (ounces)
Corn Flakes	301.9	16
All-Bran Flakes	189.4	12
Rice Krispies	189.4	12
Raisin Bran	150.9	12
Honey Smacks	150.9	10
Corn Flakes	153.7	8
Rice Krispies	126.2	8
Sugar Frosted Flakes	126.2	8
All-Bran Flakes	126.2	8
Coco Pops	99.8	8
Hi Bulk Bran	99.8	12
Ricicles	99.8	8

KELLOGG DE MEXICO S.A. DE C.V.

Carton volume (cubic inches)	Product description or tradename	Net weight (grams and approximate ounce equivalent)
194.9	Corn Flakes	280 grams (10 ounces).
120.1	Sugar Pops	270 grams (9½ ounces).
120.1	Zucaritas (Sugar Frosted Flakes)	280 grams (10 ounces).
120.1	Hojuelas de Trigo (Wheat Flakes)	Do.
120.1	Dulcereal (Coated Puffed Wheat)	250 grams (8¾ ounces).
120.1	Corn Flakes	170 grams (6 ounces).
88.4	Choco Krispies	260 grams (9⅛ ounces).
88.4	All-Bran	280 grams (10 ounces).
88.4	Rice Krispies	150 grams (5¾ ounces).

Mr. SPRINGER. May I say to you two gentlemen, this is quite revealing. Thank you very much.

Mr. MACDONALD (presiding). Mr. Gilligan, do you have any questions?

Mr. GILLIGAN. I am sorry, Mr. Roll, I was not here to hear your statement, and your full presentation, but I have read through your statement and I find it quite interesting.

The question I would like to raise with you is: How many size packages and different kinds of packages do you presently use for the American market?

Mr. ROLL. We have 34 different packs, packed on 11 packing lines. If we followed the regulation, that is the proposed legislation in the bill, the 11 packing lines would have to be increased to 28 different sizes.

Mr. GILLIGAN. How often have you made changes in recent years in the number of containers you used or their sizes?

Mr. ROLL. I could think of only one during the last 12 months, and that was one produce. The size was reduced and the price was reduced to go along with a new ounce weight per package.

Mr. GILLIGAN. Why did you make the change?

Mr. ROLL. Because we found equipment that would be able to pack it more satisfactorily, so we reduced the package from 12 ounces to 10½ and our price was reduced accordingly.

Mr. GILLIGAN. You may have referred to this in your testimony, and I am not sure, but I would like to ask the question anyway; in your cereals, you put out a variety of packs, that is several kinds of cereal available in one container.

Mr. ROLL. We call it a variety pack. Those are all individual packages and we can't find anything in the bill where it refers to packages packed in 1-ounce packages.

Mr. GILLIGAN. That was my next question. I was going to ask if this would exclude anything under 2 ounces, and I wondered what the weight of those packages would be.

Mr. BRISTOL. I don't think it would exclude our variety pack in that you have a number of packages of close to 1 ounce, 10 of them in 1 package and you end up with a net weight of close to 10 ounces.

Mr. GILLIGAN. I was just wondering what that variety pack might look like if all of them had to contain the same weight of cereal. It would be a little lumpy.

Mr. ROLL. It would when we would have to get all new equipment.

Mr. GILLIGAN. The other question that I have, and the last one, is this: Presumably you received a good deal of mail from your consuming public, either comments favorable or unfavorable about your product, and so forth. Are you aware of complaints made about the difficulty of the consumer, the housewife, being able to determine the price that she is paying for your product, in comparison to other products, or she feels that she is being confused or deceived by your present packaging methods?

Mr. ROLL. The consumers are our bosses, and if we don't please the consumers we are going to go out of business. We get very little mail from the consumer on things that we haven't done right. If we do get mail that something isn't being done right, we make every effort to correct it.

Mr. GILLIGAN. Have you so far as you are aware, had any mail on the specific subject of complaints about the difficulty of comparing prices in the cereal field?

Mr. ROLL. No, sir. I don't recall a letter.

Mr. GILLIGAN. Thank you very much.

Mr. SPRINGER. Would the gentleman yield?

This keeps coming up and I am going to try to keep it to a minimum, but without changing packaging, would there be any solution which you could offer if we merely did something in bold type which informed the consumer of how much was in the package?

Mr. ROLL. I think there is a food and drug law that we wouldn't be permitted to do that.

Mr. BRISTOL. We would be required to state the net weight on the package.

Mr. SPRINGER. There are a lot of them you would have to look at the fine print. Maybe you don't, but some of them do.

Mr. BRISTOL. But the model regulation is fairly specific, and in force in many States. It is quite specific on type sizes.

Mr. SPRINGER. On the size of the type of the weight and so forth, that must be on there?

Mr. BRISTOL. Yes.

Mr. ROLL. We have a cereal institute certificate that talks about the principles of good practice, regarding the net weight and fill of the packages, which all of the cereal companies comply with.

Mr. SPRINGER. What I am talking about on packaging generally is this: Suppose you had a circle at the top and put in "so much net weight," and would this comply with it?

Mr. BRISTOL. It wouldn't create the problems that we have discussed in our studies. It is a matter of changing plates. But we have in quite large type in the lower left-hand corner the net weight.

Mr. SPRINGER. This would have to be uniform so that the housewife could look at the same place on everything that was sold over the counter. But I am getting sort of convinced, after listening to this testimony, that this is going to be a consumer's cost bill, and it is being misrepresented as merely a labeling and fair packaging bill.

There are going to be some substantial costs in every one of these. What I am trying to get around to on this, if there is a shortcut to this, where we can get to honesty in packaging, so that the housewife can see it, without getting into all of this about standardizing packages, and so forth.

Can you give me any answer to that?

Mr. ROLL. I would say as far as the cereal business is concerned, our packages are all labeled honestly.

Mr. SPRINGER. But you haven't given me any answer to my question. I thank the gentleman from Ohio for yielding to me.

Mr. WATSON. I do apologize for not being present to hear all of your testimony. I glanced through it, and I will certainly read it more carefully later on.

I assume that there are some of you who feel that one box would contain 1 ounce, and 1 ounce of another commodity would probably have twice the size box. Is that about it, because of the density of the size of the product?

Mr. ROLL. We have one packing line, Mr. Watson, that we pack from 5 ounces up to 18 ounces.

Mr. WATSON. In the same size container?

Mr. ROLL. Yes, sir.

Mr. WATSON. Well, now we are going to have to cut that out under this bill, and how would you handle that? Would you just crush the corn flakes and tell them that according to Government standards we have crushed them for you and you won't have to crush them yourself?

Mr. ROLL. It means we have to buy new equipment and we would have to pay the additional costs or the consumer would have to.

Mr. WATSON. You are talking about buying new equipment. If you are still dealing with the same commodity and you have to put 8 ounces in every package, you are going to have to crush some of them, aren't you, or change the complete formula for your manufacture of the cereal itself?

Mr. ROLL. You are not going to be able to do it. Under this standardization of the package, you are not going to be able to pack it in the 8, 6, 18, and 16 and 7 and 9 and 5 ounces that we pack now. You are going to have to pack in what the Government states we can pack the weight of food in the package, and so from what we have heard and stated by the people of the Government, it is going to be 8 and 16 ounces, which is going to mean the package size is going to have to change.

Mr. WATSON. Of course, I may have facetiously suggested something. You might try this prechewed cereal, and it may help some of those who have lost their teeth, and it might be appealing from that angle there.

On page 10 you state in the third paragraph that you consider in developing new packages their relation to the likely size of the pantry shelf, the length of time packages will remain open on the pantry shelf and whether there is enough cereal in the package to meet the needs of the family from one shopping trip to the next, and the extent of the retail price at which the package will be sold.

Should this legislation pass, those packages will probably be extended all the way out the window; is that right?

Mr. ROLL. That is right.

Mr. WATSON. Pursuing the line of questioning that my colleague, Mr. Springer, advanced a moment ago, this bill could result in increased cost to the consumer?

Mr. ROLL. Very definitely, a reduction in the choices that will be available to the housewife when she goes into the market to shop. And we might have also, sir, what it costs us to sell less volume.

Mr. WATSON. Thank you very much.

Mr. MACDONALD. Mr. Pickle?

Mr. PICKLE. I have no questions, Mr. Chairman, thank you.

Mr. MACDONALD. Mr. Harvey?

Mr. HARVEY. Mr. Roll, I have read your statement over and I can readily understand your objection to the standardized packaging aspects of the particular bill. What are your objections to the labeling aspect of the bill?

Mr. ROLL. May I turn that over to our general counsel, please?

Mr. HARVEY. Yes.

Mr. BRISTOL. I think essentially the labeling aspects of the bill are adequately covered by the existing law, principally section 403 of the Federal Food, Drug, and Cosmetic Act, and the model regulation which is in force in many of the larger States prescribing type sizes for net-weight statements.

Mr. HARVEY. I think many of us on this committee would agree with you in that regard, but my question is if this committee were to report out a bill which amounted to no more than a restatement of the law, let us say, which may very well happen, what would be your specific objection to portions of this bill pertaining to labeling? For example, do you have any objection to that section of the bill which would require quantities in less than a full pound to be stated in ounces? You would have no objection to that; would you?

Mr. BRISTOL. We are currently under regulation of the Food and Drug Act which says not 18 ounces, but 1 pound 2 ounces. It is my personal view that one way or another I don't see a problem.

Mr. HARVEY. What you are telling us here this morning is that your problem comes about, and we can understand it very readily, because of the standardized packaging; is that correct?

Mr. BRISTOL. That is the most serious aspect of the thing; yes, sir.

Mr. HARVEY. And that is a very serious problem indeed. I think that is readily understandable.

I thank you very much for your testimony.

I have no further questions, Mr. Chairman.

Mr. MACDONALD. You say that this bill, as now promulgated, will boomerang and that it will actually be a law that, if enacted, will hurt the consumer rather than help him. We on the committee are not experts in this field, obviously, or at least I am not, but we listened to testimony from people in the Government, a panel, and one of them, Mrs. Peterson, who is a very knowledgeable person, representing the administration, representing the Office of Consumers, wholeheartedly supports this legislation. We had a woman who represented the consumers in California, Mrs. Nelson, who also wholeheartedly supported it.

I am curious that you, as a manufacturer, say you are sticking up for the consumer in opposing this bill, yet the people who have been appointed representing the consumer say this is a fine and much needed bill. Therefore, one of you has to be wrong.

Do you think that the people who testified before us on behalf of the consumer are incompetent, that they don't know the field, that they are just talking from ignorance? What is your position toward them?

Mr. ROLL. We have great respect for the folks in Government, but we did want to present our testimony on what the cost would be to the consumer if we had to comply with this proposed legislation.

Mr. MACDONALD. I would judge your position is—I know you are a reputable firm, obviously, when you have gotten as big and as powerful as you now are—that you agree that there are some people packaging goods who do cut corners and who do mislead the public?

Mr. ROLL. Mr. Chairman, I am not familiar enough with other people's practices.

Mr. MACDONALD. I thought this was a highly competitive field, and any knowledgeable person in a company such as yours would be very familiar indeed with the practices of your competitors. Do you say you are not familiar with the practices of your competitors?

Mr. ROLL. I am very much familiar with the practices of our competitors and they are all trying to do an honest job.

Mr. MACDONALD. You say there are no sharp practices in the packaging field?

Mr. ROLL. Not as far as the cereal business is concerned.

Mr. MACDONALD. You don't use discounts or cents off, that sort of thing?

Mr. ROLL. We don't in our business.

Mr. MACDONALD. Nor do any cereal manufacturers that you know of?

Mr. ROLL. They have at different times.

Mr. MACDONALD. Don't you think this is a rather accepted practice?

Mr. ROLL. As far as the manufacturer is concerned, I can't see anything deceptive about it. They have taken it off their price.

Mr. MACDONALD. But what does the cents come off? We have asked this question innumerable times. I am getting rather tired of asking the question myself. I haven't yet had an answer.

Mr. ROLL. When you have a cents off, it usually comes off your list price. It is passed on through the wholesaler to the consumer on the same basis.

Mr. MACDONALD. When you are saying "list price," you are saying that you tell the retailer what price he should charge for your product?

Mr. ROLL. No, sir.

Mr. MACDONALD. Then what is the cents off of? If it is manufactured in your plant, you say 4 cents off. What is it going to be 4 cents off from? You don't know what the retailer is going to sell it for in the first place, presumably.

Mr. ROLL. There is enough competition in the retail channel that it usually comes out at the price you propose. We have nothing to do with the retail price. But I haven't found any retailers who haven't followed the cents-off practice that was intended.

Mr. MACDONALD. When you manufacture this box of your goods and it says "4 cents off," what is the 4 cents off of?

Mr. ROLL. Off of the price that we sold it for before the 4 cents was off.

Mr. MACDONALD. But you don't know what the the retailer is going to sell it for by your own statement.

Mr. ROLL. That is right.

Mr. MACDONALD. So how do you know if he is going to sell it at 4 cents off from the price you are giving him?

Mr. ROLL. If it is marked 4 cents off, the price on the retail shelf should be 4 cents off from the price it was before.

Mr. MACDONALD. It should be, but is this always the case?

Mr. ROLL. I would say in most of the cases, the majority of cases, that is right.

Mr. MACDONALD. Mr. Nelsen?

Mr. NELSEN. Thank you, Mr. Chairman.

In your testimony, you mentioned the fact that you cannot slack fill. Would you elaborate on that a bit?

Mr. ROLL. I will pass that, if I may, Mr. Nelsen, to our general counsel.

Mr. NELSEN. I would be interested in that because the slack fill has been in the testimony off and on all the way through this hearing. I was interested in the observation that was made that you cannot slack fill. This was in an ad-lib portion of your testimony and was not in your written statement. Would you enlarge on that a bit?

Mr. BRISTOL. I think the Food and Drug Act prohibits a package made, filled, or formed so as to be deceptive. I think Mr. Roll stated, in response to a question by Mr. Younger, the problems which require space between the top of the cereal and the top of the package; summing up, the need for additional space to seal the inner bag of the package, the problem that occurs in the further shaking down in the railroad cars, and the need to design your packages to allow for variations in product density.

Mr. NELSEN. Is it your opinion that the Food and Drug Administration under present law has the authority in the event the slack fill is beyond what is needed for proper packaging? I understand a package of cereal, for example, if you were to fill it too full in the packaging, it would crush and it would not be an attractive product, and, therefore, you have to allow for the sealing of the package.

Suppose it goes to an extreme or it is not even filled to the level that it could be filled to? Is it your judgment that the food and drug laws could then bring action where it goes to an extreme beyond the necessary level?

Mr. BRISTOL. I think so.

Mr. NELSEN. I would like to point out that in testimony by Administration representatives, including Mrs. Peterson, many of the examples that were brought to our attention as testimony in support of this bill were examples that could be handled under existing law. In my judgment, there has been considerable deception in the sale of this bill. Therefore, I think it is important that the present laws be fully brought to the attention of the consumer through the media of this hearing.

One angle that is not often touched upon that I think is very serious is the enforcement machinery under this bill. The Federal Trade Commissioner made the statement that they wanted the authority on an industrywide basis to proceed by the rulemaking authority provided in this bill. Instead of going through adversary proceedings the Commission would, instead, be able to proceed on an industrywide basis.

The penalty provisions in this bill, as I understand it, and I am not a lawyer, provide that in the event that any processor violates what is determined to be the rule, you are guilty until you prove you are innocent. Then, as the law reads, you are permitted to come into court to prove that you are innocent. If you continue this practice you are subject to a penalty not only on this one case, but it multiplies because of the delay in handling.

In this committee we have opposed a cease and desist application of antitrust laws, fearful of the fact that you are guilty until you are proven innocent. But under this bill you would be guilty, as I understand it, until you are proven innocent. Have you gone into that feature of the bill?

Mr. BRISTOL. That is a difficult question to answer, sir. I think certainly under this bill if you violate the regulations that they establish you certainly incur the penalties of the act. That is the end of it.

Mr. NELSEN. Under present law you would be on a case-by-case basis, however. Under this bill you would come under the penalty provisions of the Federal Trade Act and not under Food and Drug. On that basis you would be subject to a much more severe application, as I understand it.

Mr. BRISTOL. No, sir. As I understand this bill, and I am aware that Mr. Dixon disagrees with this aspect of it, under this bill the machinery of the Food and Drug Act applies to a violation of the regulations under this act in the case of a food.

Mr. NELSEN. I have no further question, Mr. Chairman.

Mr. MACDONALD. Thank you, gentlemen. If there are no more questions from the committee, you will be excused.

Mr. BROYHILL. Mr. Chairman, I have a question.

Mr. MACDONALD. Mr. Broyhill.

Mr. BROYHILL. I notice that in your testimony you make the assumption that packaging of cereals would be standardized at net weights of 8 and 16 ounces. Where did you get this assumption? Is that from the legislation or is it from statements of officials of the Government who will have the responsibility for administering this legislation?

Mr. ROLL. I will give you the answer that we have. We determined our increases in cost of prices on the basis of packaging with net weights of 8 and 16 ounces because those were the net weights suggested by the proponents of this bill. They suggested that packaged weights of cereals in a speech September 24, 1962, in an article in the Coronet magazine, reprinted in the Congressional Record on March 10, 1965, and a statement in the Senate Commerce Committee hearings on S. 985 in April and May 1965.

I was also told that 8 and 16 ounces have been suggested in testimony of witnesses favoring the bill before this committee.

Mr. BROYHILL. Thank you very much.

Mr. MACDONALD. I would like to pursue what Mr. Broyhill has brought up. What you have quoted has nothing to do with this bill. You quote some article in Coronet or some statement made in a speech, or something that was incorporated in the Senate bill. But we are not looking at the Senate bill. We are looking at H.R. 15440.

Mr. ROLL. I agree on that, sir.

Mr. MACDONALD. I would like to ask where in this bill is there anything said about standardization? Mrs. Peterson at one point used the word standardization and then said, and I believe I quote reasonably accurately:

> I didn't mean to use that word because that isn't the intention that this panel has in following out this legislation.

I don't know where this standardization of product comes from.

Mr. ROLL. I will leave that to our general counsel.

Mr. BRISTOL. Let me make a comment, sir. When we made this study, we had to pick two weights. Because of what we had before us to select two weights, all we had were the 8 and 16 ounces mentioned by the proponents. We did not make a detailed study as to the effect

that any other two weights selected would be. We didn't make a financial study as to what the costs would be if you selected any other two weights.

Our marketing research and production people all indicated that the results would be comparable, maybe somewhat more, maybe somewhat less.

Mr. MACDONALD. That may be an answer to my question, but if it is I don't understand it.

Mr. BRISTOL. What I am saying is that you can't make a study without knowing what——

Mr. MACDONALD. I am not talking about studies. I am sure you are in a fine position to make studies about your own product. What I am talking about is this bogeyman that has been raised about standardization of product. I don't see where it is in the bill. I don't believe it is in the bill.

I asked you to show me where it was. You have given details of what goes into the reasons for taking the study, but I don't believe that has anything to do with the question I asked.

I yield to Mr. Watson.

Mr. WATSON. If the chairman will yield on that particular point, I think section 5 sets forth the authority to control the size, shapes, and so forth of packages.

The only way it could possibly be administered in an equitable manner is to have standardization.

I agree with you that Mrs. Peterson did skirt all around the use of the word "standardization," but I think the slip was indicative of what the ultimate result of this legislation will be.

Mr. MACDONALD. If the gentleman will yield, I might point out to the gentleman what he knows very well, that Mrs. Peterson is not going to write this bill; that the gentleman and the other members of this committee are going to write the bill. What Mrs. Peterson has in mind, whether a Freudian slip or whatever it may be, I don't know.

But I point this out to the gentleman and also to the very distinguished counsel of this company, this so-called infamous section 5. Maybe I am reading it incorrectly, but I will read the words to you again and ask if you think you would fall into difficulty with this.

> The power to prevent distribution of that commodity for retail sales in packages of sizes, shapes or dimensional proportions which are likely to deceive retail purchasers.

You said obviously you have no intent to deceive anybody. Therefor, I don't think you would be bothered by this sentence. Would you?

Mr. BRISTOL. I am sure we would, sir. This seems to me like a simple finding of fact, and, in effect, an unreviewable finding of fact. This is what the proponents, excuse me, sir—that is all we have to go on—seem to be saying about packages, that a variety of sizes is likely to deceive or cause confusion, or impair the ability of consumers to make price comparisons.

Mr. ROGERS of Texas. Mr. Chairman?

Mr. MACDONALD. Mr. Rogers.

Mr. ROGERS of Texas. Isn't this the point, that section 5 makes it possible for a determination to be made as to a definition of deceive that is not a reasonable definition, not a practical definition?

In other words, a company may be using some method to appeal to consumers, and it would be within the power of the Government to come in and say, "We find that this is deception." And you say it isn't deception. It is an attempt to sell merchandise.

Mr. BRISTOL. They would find this is likely to deceive, or likely to impair price determinations and so forth.

Mr. ROGERS of Texas. They would be the ones that would make the determination of what is or what is not deception. It would be a check rein on the private enterprise system, definitely.

Mr. MACDONALD. Mr. Younger?

Mr. YOUNGER. I would like to read into the record what I ran across the other day. This is from the National Association of Internal Revenue Employees. On August 16 they issued a press release relative to Senater Ervin's bill of rights for Federal employees. This is what they had to say:

> To insure that the IRS employee has dignity as well as honor, we have found that he must be liberated entirely from the prying tentacles of a nosey bureaucracy.

This is what the employees say of their own organization.

Mr. MACDONALD. Thank you very much.

Mr. BRISTOL. Thank you very much.

Mr. ROLL. Thank you, sir.

Mr. MACDONALD. Is Mr. A. E. Wright of the Pet Milk Co. present? Would you come forward, sir?

STATEMENT OF ARTHUR E. WRIGHT, JR., DIRECTOR OF PUBLIC RELATIONS, APPEARING IN BEHALF OF THEODORE R. GAMBLE, CHAIRMAN OF THE BOARD AND CHIEF EXECUTIVE OFFICER, PET MILK CO., ST. LOUIS, MO.

Mr. WRIGHT. Mr. Chairman, Mr. Theodore R. Gamble, the chairman of the board and chief executive officer of Pet Milk Co., was scheduled and prepared to testify before this committee on several previous occasions. He was first scheduled to appear on August 2 and then rescheduled later that week. Because the testimony of previous witnesses took longer than expected, you were unable to hear Mr. Gamble that week.

Following that, of course, your committee then held hearings on the airline-machinist strike, and Mr. Gamble was again rescheduled to appear before your committee last Thursday, August 18, at which time he sat through the day's hearings here in Washington with the hope that he would be permitted to make his statement personally. He could no longer delay a scheduled trip out of the country and is unable to be present today.

He has asked that I read his statement for him and show you the exhibits he particularly wanted you to see. To the limit of my ability, I will also answer any questions you might have regarding Mr. Gamble's statement.

I am Arthur E. Wright, Jr., director of public relations for Pet Milk Co., headquartered in St. Louis, Mo.

Mr. Gamble's statement follows:

"Mr. Chairman and members of the committee"——

Mr. MACDONALD. Would you care to submit his statement for the record and perhaps paraphrase it?

Mr. WRIGHT. No, sir. It is not a lengthy statement and Mr. Gamble has requested I give the statement in full.

Mr. MACDONALD. Inasmuch as it is not your statement, I don't see what harm can be done by putting it into the record. You have chastised the committee by saying how long poor Mr. Gamble had to wait. I have a list here of other very busy people who would like to be heard, who would like to become part of this record.

I think it is a simple request to ask if you could paraphrase this statement, if you understand it well enough to paraphrase it. I know we would appreciate it and I know the other witnesses waiting to be heard would appreciate it. If you can't, of course, you can't.

Mr. WRIGHT. Mr. Chairman, I am afraid I cannot summarize it. The statement, itself, is a summary of our views. I hope I did not leave the impression that I was chastising the committee. I was hopefully merely explaining Mr. Gamble's inability to be present personally today.

Mr. Chairman and members of the committee:

I am grateful for the opportunity to express my views on House bill 15440.

My remarks will be brief, for I do not wish to repeat at great length what I know you have heard or will hear in other testimony. However, I shall be happy to answer any questions you may have, fully and in detail.

Generally, there are two broad aspects to the legislation you are considering.

One concerns what is said on a label, what a consumer sees and reads on a container. I support fully the objectives of these sections. But, I also believe that existing laws, both Federal and State, are adequate to achieve these objectives. If Congress is concerned—and quite obviously a number of legislators are concerned—I believe it would be more effective to appropriate more funds for more personnel and more enforcement on the part of the Food and Drug Administration and the Federal Trade Commission.

However, I wish to make it clear that Pet Milk Co. does not approach these particular sections with any attitude of "gloom and doom." To us, they seek a desirable end, even though we would urge greater enforcement of existing legislation rather than the enactment of new law. We have not noted—and venture to say that you have not, either—any great public clamor for this added legislation, primarily because the overwhelming majority of food labeling today is already honest and accurate.

It is the threat contained in section 5 of the bill regarding proposed standardization of packaging that deeply disturbs us at Pet and, I know, is disturbing to the food industry in general.

We do not believe standardization will contribute to the welfare of the American consumer. Quite the contrary, if provided for in law, it would work to her distinct disadvantage. It could reduce her freedom of choice in the marketplace, reduce the number of new and different products and packages available to her, and thereby reduce the level of competition which today works to her benefit. The only

increase would be in the prices she would pay for the food she would buy.

The threat of standardization contained in this bill presents a problem related to competition which I regard as extremely dangerous. Those who seem to be pushing the hardest for standardization of products and packaging apparently assume that there is only one form of competition in the marketing of food products; namely, price competition. Actually, competition takes many forms besides price. Quality, convenience, attractive and useful packaging, integrity of the maker and many other factors enter into the decision of a consumer to buy one product and not another.

Section 5 of H.R. 15440 is clear in its implications. Our interpretation of this section convinces us that the bill would definitely reduce competition in many of these forms.

Reducing competition in our Nation's largest industry, the food business, is certainly neither the intent nor the purpose of Congress. Yet, this is exactly what would happen if this bill were passed in its present form and if its provisions were enforced to the letter of the proposed law. I respectfully submit that, before taking action, you carefully consider the impact on competition that could come from passage of this bill.

The procedures to be followed under this law in the introduction of new or improved products and packages are not clearly defined. However, we have carefully followed the testimony which was delivered on S. 985 in the Senate hearings as well as that given to date in the hearings on H.R. 15440. From studying these it is obvious to us that some kind of premarketing clearance procedures would have to be developed by the Federal agencies involved in enforcing this legislation.

As a practical matter, a food manufacturer could not risk the investment of hundreds of thousands or perhaps even millions of dollars in the development of and tooling up for a new product and/or packaging without knowing whether or not he would succeed in obtaining Government clearance and approval. Thus, the bill would act as a real deterrent in new product and new package innovations.

In our judgment, House bill 15440 could become virtually a licensing procedures for new packages or new products or both. Not only law which would require time-consuming premarketing clearance would there be timelags in our introduction of such new products or packages but we fear that information developed in such clearances could become public knowledge and, therefore, would be available to our competitors. As a consequence, new product and new package development, as we know it today, would be reduced.

We are willing to risk a substantial investment in a new product or package only if we are reasonably confident that we can enter the market with a sufficiently superior product and superior packaging. so that we can compete successfully and earn a satisfactory return on our investment.

You already have heard or will hear testimony on what package standardization could mean in the increased cost of food processing and thus in increased prices to the American consumer.

Just briefly, and for the record, I want to reiterate this important point. There is no doubt in our minds that package standardization would definitely increase the cost of packaging our many products. We would have no choice but to pass this cost increase on to the consumer. No real benefits would accrue to the consumer from package standardization, but price increases would result. This is all the more reason, we believe, for consumers as well as food manufacturers to oppose this legislation.

It has been suggested that we present to this committee some specific information on just how much cost would be involved in package standardization. Although several companies have provided you with information along these lines, these have been firms with relatively narrow product lines. Our company, on the other hand, has an extremely diverse range of products. One of our 11 divisions—and one of our smaller divisions, at that—alone markets over 1,500 different food products today.

With all of our divisions, we have literally thousands of different products on store shelves. We did start a task force working on estimated costs of adapting our packages to some standardized forms but, frankly, the group came back to us and informed us it was virtually impossible to come up with meaningful figures for our many product lines.

Before we can give you more precise information, we ourselves must have more details from the Federal Government on how it intends to standardize. Among other things we must know is whose standards are to be accepted. If our standards are accepted, our costs would be one thing. If we must accept our competitors' standards, our costs would be entirely different. If we must accept Government-established standards that differ both from our own and our competitors, costs would be still different.

Suffice to say, we have done sufficient cost analysis to know that package standardization could cost us many millions of dollars. Because of the traditionally low profit margins in the food industry, we would have no choice but to pass on these added costs to consumers.

In the food industry, the great battle is for shelf space in our supermarkets and grocery stores. The fact that products are on those shelves in a wide variety of package sizes and forms is not just because the food manufacturing industry wants it that way. It is because the consumer wants it that way. They got there because a food processor saw a potential market for a different or a better or a more creative product or package. They remain only if the American consumer buys and continues to buy. If the consumer does not regularly buy all those different sizes and shapes of packages in the supermarket, I can assure you that the retailer will remove them from his shelves—and quickly.

I want to cite several examples of Pet products which rely for their success in large measure on their packaging. The products themselves are excellent ones, but the packaging which contains the products is itself one of the reasons for their competitive success. The packaging of these products gives added value to the consumer. This packaging has, without any question whatsoever, increased competition. But, these products probably would never have reached the marketplace with a standardization procedure.

The first is our Pet Formula Nurser for infant feeding. It is the first completely self-contained, fully disposable feeding unit for babies with premixed, presterilized formula in it, equipped with presterilized nipples—ready for immediate use. Mothers need do nothing more than open the nurser and feed the baby. Neither refrigeration nor warming is necessary because the baby drinks the formula at room temperature. After feeding, the entire unit—nipple and all—is thrown away.

The product in its unique package does away with such troublesome problems as inadequate sterilization and mistakes in mixing. There is nothing to add, no mixing, no measuring, no scrubbing, no boiling, no refrigerating, no warming. In just a matter of seconds, a mother can feed her baby—anywhere, anytime.

We estimate use of this product can save the average mother as much as an hour and a half of her time a day compared with conventional baby feeding methods. The packaging of this products costs us, and the mother, perhaps as much as the product inside. But mothers have indicated they are more than willing to pay for the tremendous saving in time and effort this product makes possible for them.

We believe this is the ultimate in infant feeding, offering complete safety, and nutritional effectiveness to the infant, a choice of formulas to the physician, and the utmost in convenience to the mother.

Our research and development costs on the packaging alone for this product were over a million dollars. It is our judgment that—if H.R. 15440 had been in effect as presently written—we would have been unwilling to invest this huge sum of money.

Had H.R. 15440 been in effect and product and package standardization a reality, there would undoubtedly have been standards already established for infant formulas and the packages containing them. With such standards set, we would be unable to justify the risk of trying to enter the market with another "me too" product almost identical with existing products.

Or, if the premarketing clearance procedures for markedly new products or new packaging had been established by the Federal Government as mentioned earlier in my statement, we would have this decision to make: Could we risk the expenditure of a million dollars or more on development of a product with the very real possibility that we would be turned down in Washington because our innovation departed so far from previous products and packaging? Our answer is "No."

Or, take still another alternative. Let us say we did invest the necessary funds and did succeed in developing the product. We have up to this point maintained the tightest possible security about this product. It is top secret to us and we guard it with the same vigilance that is accorded a top-secret matter in the military. Now, we have to take it to Washington for hearings of the type mentioned in H.R. 15440. What assurance, if any, do we have that our secrecy will be maintained and that our competitors will not learn of our plans as much as 6 months or a year prior to the time they otherwise would?

Destroying this leadtime we would normally have in the introduction of a new product or package could very easily mean the difference between profit and loss to us. With adequate leadtime, we can estab-

lish ourselves in the marketplace and earn a fair return on our investment. Without leadtime, competition would move in so swiftly that we would be unable to obtain a strong enough market position to justify our investment.

There would be so great a danger of our competition learning of our products, packages and plans under a premarketing clearance procedure that the net result would be to cause a substantial slowdown in the development of new and useful innovations in food products. Our Formula Nurser is a case in point. Under H.R. 15440 we probably would never have brought it into being and mothers throughout the Nation would have been deprived of a product they have indicated they want and will buy. Under the competitive system now in operation in this country, we were willing to take the risks involved—to the benefit of consumers as well as ourselves.

Here is another example which we believe will show how package standardization would decrease competition, would reduce consumer freedom of choice and would work to the disadvantage of consumers. About 2 years ago there were three nondairy coffee creamers on the market nationally. Because our evaporated milk had, through the years, been a traditional coffee creaming agent, we felt we had some market know-how in this field and considered entering the market.

Our research center developed a product which they felt—based on extensive consumer testing—was better than competition but was only marginally better—perhaps 10 or 15 percent. We did not feel this was a sufficient margin of superiority to enable us to compete successfully against three major national companies as the fourth entry. We felt we had to have something else to offer the consumer—a plus value that would bring our product to the attention of the consumer and make her select it over competition.

All three competitors marketed their products in brown glass jars rather similar to this one. We knew we could not compete successfully if we marketed our product in yet another brown glass jar. So we asked our packaging specialists to come up with a distinctive package in which we could market our instant Please. The result was this attractive white plastic cream pitcher. This package is pretty enough to leave on the breakfast table. Its shape and appearance denote its use and it has been extremely well received by consumers, who have even discovered an amazingly wide variety of reuses for the container once the product inside has been used.

Prior to our entry into the nondairy coffee creamer market all the products were packaged in brown glass jars. If—because the standard had been set for this product category to be marketed in brown glass jars—we would never have entered a competitive product. With a different, nonstandard package we did enter the marketplace. Now, where there were three competitors you have four—but only because of package innovation.

Passage of H.R. 15440 in its present form would stifle package innovation of the type I have described for you. And, consequently, it would reduce competition.

My essential point is this: There is a great deal more today to successful marketing than merely having a good product and uniform, standardized packages with accurate labels. I submit that consumers

want different packaging because it adds interest and variety to their shopping and because it has values to them over and above the mere containment of a product. Everything in our business experience leads us to believe that consumers like and will buy an increasingly wide variety of products in an equally wide variety of package forms.

I am highly gratified that your committee has been willing to listen attentively to many corporate citizens as well as to individuals during its hearings. It shows that you recognize the importance business has in our national economy and that, even though corporations have no vote as such, that you consider our views equally along with those of individual voters.

I followed with great interest the record of your hearings some weeks ago and must say that I am confident that your committee would not knowingly or willingly take action that would hinder the Nation's largest and most important single industry—the food business—particularly if there were no real offsetting benefits to consumers.

I think it is particularly fortunate, too, that this legislation is being considered by a House committee which concerns itself not only with domestic but also with foreign matters because H.R. 15440 has definite international ramifications.

These would be an important consideration for you at any time. But the situation today has a completely new dimension which was hardly evident as recently as a year ago. I urge you to give it your most thoughtful attention because it could become the most serious problem we face in this century. I refer to the growing world shortage of food being created by the population explosion.

No longer can we feed large portions of the world from our surpluses. Even our abundance is not sufficient to overcome hunger and starvation for countless millions of persons in less fortunate areas of the globe.

Our industry has met many problems of this nature in the past both at home and abroad and has helped in their successful solution. Even though the food supply problem now emerging throughout the world is perhaps the greatest in the recorded history of man, the American food industry can contribute materially to its solution.

As you well know, a national policy is evolving which is designed to focus on this major international problem and its solutions.

Many legislative and administrative officials in the Federal Government, from President Lyndon B. Johnson on down, are today addressing themselves to this matter and are seeking all the assistance they can obtain in understanding and meeting the problem. Many of them have called upon our industry to help them in finding some of the answers to this vital need. I believe I can speak for the food industry generally when I tell you that we have already cooperated fully in this undertaking and that we will continue to do so.

Under these circumstances, I must confess that I find it rather incongruous to come to Washington and to find any support for a bill which would limit rather than expand, the capabilities of the food industry. I find it difficult to believe that Congress, at this crucial moment in world history, would pass legislation which would in part reduce the food industry's ability to meet the staggering challenges which are beginning to face us.

I don't believe my thoughts on this matter are merely academic. During the past 3 years it has been my privilege to visit over 50 different countries throughout the world to examine their food supply and distribution capabilities. I have seen with my own eyes what an overwhelming problem starvation and malnutrition are throughout vast areas of the world. I know, from personal observation, that the food industry in the United States is going to have to be increasingly strong rather than weaker if we are to meet our responsibilities around the globe.

Our Government, historically, has been concerned with preserving and increasing competition. Without question, this freedom to compete has been the principal reason why our food industry has grown to the size and competence and strength which it has today. Although it goes by an emotionally appealing label as a so-called truth in packaging bill, in truth House bill 15440 would reduce competition and by doing so would weaken the food industry.

This bill seriously tampers with an economic system that has produced more value for this Nation and for its consumers—in products and services—than any other yet devised.

Before tampering with a system which has achieved results such as these—as House bill 15440 in my judgment would do—I earnestly hope that you will think long and hard. I hope, too, that you will conclude—as we have—that this bill is not in the best interests of consumers nor in the best national or international interests of the United States. I am confident you will agree that its passage could be damaging to consumers, to the food industry, and to our Nation as a whole.

Thank you very much.

The CHAIRMAN. Does that conclude your statement, sir?

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. Thank you, Mr. Wright; it is a very good statement from your point of view.

Mr. Rogers, have you any questions?

Mr. ROGERS of Texas. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Nelsen?

Mr. NELSEN. I would like to refer to some of the State laws which I understand have an exemption as to application of a regulation if below a certain weight and size.

In the presentation earlier in the hearings, two cans of dog food were used as evidence to prove there was deception. One had, we will say, x ounces, and the other had a lesser amount in the can, but the cans were the same size. This was used as an example of deception.

I later learned that the cans were identical in weight, really, but because of the various State laws which come into play, it is a purposely understated weight even thought the same package was involved. This becomes increasingly confusing to members of the committee where the samples that are shown are deceptively shown and the thorough explanation is not always presented.

Have you ever run into any examples like that in your merchandising?

Mr. WRIGHT. Not with any of our products. We have never encountered any complaints of this nature in connection with any of our products to the best of my knowledge. We are not in the dog food business.

Mr. NELSEN. I understand.

The CHAIRMAN. Mr. Macdonald.

Mr. MACDONALD. I have one question in the interest of time. I have others, but I will just ask one question.

On page 8 of your statement, in talking about that new way of feeding babies, you say that if H.R. 15440 had been in effect you would have been unwilling to put out that product because you would be unwilling to invest that kind of money.

Mr. WRIGHT. Yes, sir.

Mr. MACDONALD. I would like to ask a simple question. Why? Do you feel that that packaging is deceptive?

Mr. WRIGHT. No, sir. We do not feel it is deceptive in any way, but we feel it is nonstandard, and if standards had been previously set for baby formulas, as they no doubt would have been had H.R. 15440 been in effect, this product in its unique package is so different, it is so nonstandard, if you will, that we would have had to have done something. We would have had to come to Washington and gone through this premarketing clearance procedure that is mentioned in the statement, and by so doing would have tipped our hands to our competition and would have destroyed our leadtime to the point where we would have been unwilling to invest the million dollars plus that we did in the development of this product. We couldn't take a chance.

Mr. MACDONALD. I am no expert in feeding babies, but that looks pretty much like a regular—well, it looks not unusual to me.

Therefore, I don't see why you wouldn't accept the fact that I think the rule of reason would prevail among your people if this bill was in effect with regard to enforcing it. What makes you feel they are going to be unreasonable?

Mr. WRIGHT. Congressman, the product in this package, we believe is quite different. There is still nothing like it on the market. I assure you our competitors are working as hard as they can to duplicate it, and perhaps they will. But there is nothing on the market today like this product. It is a completely self-contained product.

If you would like to see how it works, I would be happy to demonstrate it.

The formula inside, of course, is premixed and is sterilized. The mother keeps these on the shelf. The top of the can is sterilized and there is a shrink band on it which the mother takes off.

Mr. MACDONALD. You have explained that in your testimony. I don't want to interrupt but other people have questions. What I am asking is, and I have asked it of the previous witness, is this: It would seem to me you are perfectly protected under section 5 where the rule of thumb is that the power is given to the agency to prevent distribution of commodities for retail sales in packages in sizes, shapes, or dimensional proportions which are likely to deceive retail purchasers in any material respect.

I think just by looking at that anyone would know what it was and what it was for. I don't see how possibly you would be adversely affected by the passage of this bill with that product. The only thing about that product that is new is the idea of it. I never heard of it, frankly.

This bill doesn't give any agency the right to say whether something is practical or not. It just is to prevent deception in packaging. I don't think you would in the slightest be affected in that product by this bill.

Mr. WRIGHT. Congressman Macdonald, we feel differently. We feel that if standards had been set, as they almost certainly would be in a product that is as widely consumed as baby formula is today, we do not feel we would be prevented from marketing this product.

We feel almost certainly we would be permitted to market it. But the point we want to make is that we would have to come to Washington and have hearings as specified in this bill to see whether or not we could market this product because it differs so markedly from previously set standards for infant formulas. If we did have to come to Washington for hearings we would be——

Mr. MACDONALD. What are those standards that are set and who sets them?

Mr. WRIGHT. The standards have not been set as yet.

Mr. MACDONALD. Then what are you talking about?

Mr. WRIGHT. But they are called for in this bill we believe very substantially in section 5. This is why we object so strenuously to section 5.

Mr. JARMAN. In the same line of questioning as Mr. Macdonald's, why would you anticipate that the men and women who would enforce the law, if this is passed into law, would act in an unreasonable manner?

I have in mind your comment on page 10 where you refer to the nondairy coffee creamers having been marketed in brown glass jars. Then you say "if because the standard had been set for this product category to be marketed in brown glass jars," and so forth.

Why would you anticipate that people operating under this law would come to that conclusion in the marketing of a product like coffee creamers?

Mr. WRIGHT. For this reason, Congressman: If all the products on the shelves were marketed in containers such as this, and we came along with a container that is entirely different, the provision in section 5 which mentions facilitating price comparison could be very definitely used against us. We know it would be difficult for a consumer possibly to compare prices in this brown glass, if all the other products were marketed in this; and for us to market a product in this new package.

We are very much afraid that some person in a Government bureau who does not understand the workings of the marketplace, who does not understand the stimulus that a new or unique package would provide, would say, "Look, people will not be able to compare prices effectively if you market your product in this container and someone else markets a product in this brown glass. The two are different."

We think there are a lot of things besides price comparison that are important. We think some people will buy this even if it costs more, so we want the privilege of being able to market our product in this kind of a container.

Mr. JARMAN. It seems to me that if a Government administrator came to the conclusion, let us say, that all nondairy coffee creamers

had to be marketed in brown glass jars, it would be a very unreasonable decision. If that would be the type decision that would be made in this field that affects the American public so completely, my own opinion is that Congress would lose no time in taking additional legislative action to prevent that kind of decision.

Mr. DINGELL. Would the gentleman yield?

Mr. MACDONALD. I yield.

Mr. DINGELL. Would you tell us, please, where in this bill there is authority vested in any official of the Government to dictate whether or not something would be marketed in brown glass bottles or in white plastic pitchers?

Mr. WRIGHT. We believe that section 5 on page 7 of the bill, line 11, says that the authority shall "prevent the distribution of that commodity from retail sales in packages of sizes, shapes, or dimensional proportions which are likely to deceive retail purchasers in any respect."

Mr. DINGELL. I do not want to intrude on my colleague's time, but if he would yield further I would like to pursue this point.

You are saying that this section, then, would permit a Government official, either the Food and Drug Administration of the Federal Trade Commission to dictate whether or not somebody is going to market the particular commodity we are discussing in a white plastic pitcher or a brown glass bottle; am I correct?

Mr. WRIGHT. Yes, sir. Our legal staff has gone over this bill and has gone over previous testimony. This is our opinion.

In addition, the general counsel of the Health, Education, and Welfare Department said in previous testimony before your committee, if we understand his testimony correctly, that it was his opinion that this bill would give that agency, that Government bureau, the power to standardize packages and products.

Mr. DINGELL. I am asking you; I am not asking him.

The language to which you are referring says, "Prevent the distribution of that commodity for retail sale in packages of sizes, shapes, or dimensional proportions which are likely to deceive retail purchasers in any material respect as to the net quantity of the contents thereof in terms of weight, measure, or count." Is that correct?

Mr. WRIGHT. Yes, sir.

Mr. DINGELL. Then you are saying to me and to this committee that one of those two packages, either the white plastic pitcher or the brown glass bottle, is going to "be likely to deceive retail purchasers in any material respect as to the net quantity of the contents thereof in terms of weight, measure, or count," am I correct? Is that what your position is?

Mr. WRIGHT. No, sir. We are saying that we are afraid that someone in a Washington bureau, a Government bureau, might feel that way. We don't feel that way.

Mr. DINGELL. I think we are really getting down to the guts of the bill and I want to discuss this. You are saying, then, that neither of the two containers we are discussing is likely to deceive?

Mr. WRIGHT. We do not feel it is. We fear someone else, not knowing the situation, not knowing the problems, might so interpret it.

Mr. DINGELL. If it is your position that this is not so, then why is it that you are fearful of this section?

Mr. WRIGHT. Because we will not be interpreting the bill.

Mr. DINGELL. We are establishing the legislative history right here and now. This Congress is going to interpret the bill for the bureaucrats, not the bureaucrats for the Congress. I can assure you of that.

I say here, and you are perfectly free to challenge this, if you have anything to fear with regard to this language it is because it is your position that one of the two containers that we are discussing, either the white plastic pitcher or the brown glass bottle, is deceitful in a material respect.

Mr. GILLIGAN. Will the gentleman yield?

Mr. DINGELL. I will in a moment. I am transgressing on my friend from Massachusetts' time.

If you are fearful that this be so, then perhaps maybe that is a good argument for passage of the bill. I don't personally see that either of these containers is deceitful.

Mr. WRIGHT. I agree with you completely.

Mr. DINGELL. Maybe it is your position that one of these two containers is deceitful. If so, I would like you to tell us which one.

Mr. WRIGHT. Neither container is deceitful, Congressman, in our opinion.

Mr. DINGELL. Then why should you be here complaining about language which would prevent the distribution of that commodity, and so on, which is likely to deceive retail purchasers in any material respect? You make the allegation that neither of those is deceitful in any respect. If that be so, why should this committee be apprehensive as to something that might happen?

Mr. WRIGHT. Once again, this is a matter of interpretation. I would like to refer further to section 5(d), page 7 of the bill.

Mr. DINGELL. You have been talking about 5. If we are going to switch to 5(d), I will have to handle this at another time.

The CHAIRMAN. The time of the gentleman for questions has expired.

Mr. Broyhill?

Mr. BROYHILL. Thank you, Mr. Chairman.

I think there is an honest difference of opinion here in interpretation of subparagraph 5 under section 5, and possibly under subsection d, paragraph 2. Perhaps at a later date we will want to get people back here who would have the responsibility for administering this law if it is enacted, to answer some of the questions the committee has.

Mr. NELSEN. Will the gentleman yield?

Mr. BROYHILL. I yield to the gentleman from Minnesota.

Mr. NELSEN. It seems to me there is even a difference of opinion as to interpretation among members of the committee. As I recall the testimony by the people from downtown, No. 1, they would set up a committee that would represent industry and administration people, and then rules and regulations would be drafted under which you would operate. Then, after the bill is to be applied, if in the judgment of these people a rule or regulation is violated, you are guilty until you prove you are innocent. That is the way I understood the explanation. I presume the example that is being exhibited is rather an unlikely one to cause trouble, but I think that anyone has a right to assume that there could be arbitrary application of any law that we

pass, and, therefore, I think it is very important that we have it very clear as to what we are intending to do.

I am sure Mr. Broyhill's suggestion will be followed up later on.

Mr. BROYHILL. I appreciate the gentleman's comment. This is in agreement with my thinking on this legislation. I sincerely believe that members of the committee must come to general agreement on the interpretation of language in this bill.

I yield to Mr. Gilligan.

Mr. GILLIGAN. I thank the gentleman for yielding.

I think it has been said previously that this is the nub of the problem in 5(d), because a new standard, if I read this correctly, is being introduced, not the standard of deception, but a different kind of deception, a deception on a rather subjective standard, to make price per unit comparisons.

The only way that I can see standards could be set forth that would assist the consumer in making price-per-unit comparisons is to require a standardization of weight or quantity which would have its impact eventually upon the packaging.

Section 5(d) provides that whenever the promulgating authority determines after a hearing that products are being produced in a form to make price-per-unit comparisons difficult, then they publish such a determination in the Federal Register and then promulgate regulations. Then the industry people may come back and request the setting up of a panel which would involve their competitors, among other things. Then they produce some involuntary voluntary standards which then can take on the weight of law if they are later confirmed by either the Food and Drug Administration or the Federal Trade Commission.

To take your example for a moment of the nondairy creamer product, if the three or four competing products were in simple jars, all of a standard weight, and you wanted to compete in price assuming for a moment that your container cost a little more so that you would decrease the amount of the product and include the extra cost of the container to stay below a certain level, I could see where your competitors might immediately rule that one out because it is a more attractive package; the price is the same; the consumer is getting a little less of the product. They would declare that that was a device that was making price-per-unit comparisons impossible or difficult.

Therefore, a producer would be unwise to get into the development of a new or novel package because he would know he would have to pass over these hurdles. If the objective is not standardizing the quantities or weights of the product on the market, then what other possible meaning can the section have? If it is not going to be employed, if it is not going to be used, then we are finding that the conditions in the marketplace today are satisfactory.

If this is unsatisfactory, it can only be in terms that we are using fractional weights and so forth, which someone who is sponsoring this legislation finds to be unattractive or unfair.

It seems to me that the inference in even submitting a bill like this to the Congress is that there are people in these executive departments who feel that standardization must be employed in order to give the consumer the necessary information that he needs to make price per unit comparisons. If that is not the intent of the language, then I don't know why this language has been submitted.

Mr. BROYHILL. I thank the gentleman for his contribution.

The CHAIRMAN. The gentleman from Oklahoma.

Mr. JARMAN. I have no additional questions, Mr. Chairman.

The CHAIRMAN. The gentleman from South Carolina, Mr. Watson.

Mr. WATSON. I have no questions, Mr. Chairman.

The CHAIRMAN. The gentleman from Michigan, Mr. Dingell.

Mr. DINGELL. Thank you, Mr. Chairman.

Earlier when you and I were discussing this, we got down to the point of (d). I asked you if it was your contention that there was nothing which was "likely to deceive retail purchasers" in the white or brown containers, and if not, what would you have to fear.

I reduced it to the simple fact that if those were not deceitful, then the language of the bill—and remember, we are creating legislative history—would not apply to either one of those two containers with regard to language on lines 11 through 16 on page 7 of the bill. That would be section 5(c)(5).

Mr. WRIGHT. Well, sir, I am not an attorney. I make no pretense to be.

Mr. DINGELL. If you interpret this legislation to say that if we pass this bill and it is aimed at the two products you have there before you, that is one thing. What I am trying to do is to say that of those two, if neither one of them is deceitful; nothing in 5(c)(5) would apply to them.

Mr. WRIGHT. As I stated before, I am not an attorney. I have talked at length with our legal staff in the Pet Milk Co. I can only tell you that they expressed the very great fear that this would become a problem. They are particularly concerned about the latter section in this same bill.

Mr. DINGELL. Let us stick with 5(c)(5) because that was your principal complaint at the time I began discussions with you.

Mr. WRIGHT. But not my only complaint.

Mr. DINGELL. Let us stay with it until we have disposed of it and then we will move on.

5(c)(5), lines 11 through 16, applies, I am sure you will agree, only to commodities for retail sales in packages of sizes, shapes, or dimensional proportions which are likely to deceive the retail purchasers in any material respect as to the net quantity of the contents thereof.

Now, I will ask you flatfootedly, Do either of those two packages to which we have been referring in your testimony fall into the category of packages in sizes, shapes, or dimensional proportions which are likely to deceive retail purchases in any material respect as to the net quantity of the contents thereof?

Mr. WRIGHT. In our opinion, Congressman, they do not. We fear what opinion other people might have.

Mr. DINGELL. Having then established that point, let us go on now to (d). We have established that in your opinion 5 would not——

Mr. KEITH. Would the gentleman yield?

Mr. DINGELL. In a moment I will be glad to yield.

Having established that in your opinion 5 does not apply, let us go on to (d).

I will yield to my friend.

Mr. WRIGHT. I did not state, Congressman, that 5 would not apply. I said this was a matter of interpretation. In my opinion, these packages do not deceive. I said earlier that other people, particularly some Government bureau, might feel otherwise.

Mr. GILLIGAN. Would the gentleman yield on just that one point, please?

Mr. DINGELL. You don't feel that they do apply, though am I correct?

Mr. WRIGHT. I do not feel the packages deceive. I feel that this particular section could be used by a Government bureau to tell us, contrary to our belief, that they do deceive.

Mr. DINGELL. You don't regard them as deceitful?

Mr. WRIGHT. I do not regard them as deceitful.

Mr. DINGELL. I yield to the gentleman.

Mr. GILLIGAN. Can you tell by looking at those two packages what they contain? Are you deceived by the contents thereof, the white jar and the brown jar? Is there any way of telling without examining the label how much of the product is contained in either of those? Is that deception under the meaning of this language?

It doesn't refer to label here. It says the size, shape, or dimensional proportions of the package deceive the retail purchaser in any material respect as to the net quantity contents thereof.

I would say that without the label being there it would be impossible for anybody to tell what is in those packages. Therefore, that could be deception.

Mr. DINGELL. Properly labeled——

Mr. GILLIGAN. But it doesn't refer to the label. The language is the size, shape, or dimensional proportions. It specifically excludes any reference to label. My contention would be to look at those two products on the shelf, that I can see through one and evidently see there is a column of whatever it is in there of certain dimensions, but the other I can't see through at all. I don't know whether it is half filled, a quarter filled, I don't know what is in it at all.

I am thereby, I would say, deceived or at least kept ignorant as to the contents of the package by its size, shape, dimensional proportions, and opacity.

Mr. DINGELL. Let us go on.

You have been talking about (d). What is your objection with regard to (d)?

Mr. WRIGHT. Primarily line 25, where the promulgating authority will promulgate, subject to provisions of subsections (e), (f), and (g), regulations effective to establish reasonable weights, quantities, or fractions or multiples thereof in which any consumer commodity shall be distributed for retail sales. This to us means standardization.

Mr. DINGELL. You are aware that those lines refer to the language appearing above in lines 17 to 22 under subparagraph (d); am I correct?

Mr. WRIGHT. That is correct.

Mr. DINGELL. That says whenever the promulgating authority determines after a hearing conducted in compliance with section 7 of the Administrative Procedure Act, that the weights or quantities in which any consumer commodity is distributed for retail are likely to impair the ability of consumers to make price-per-unit comparisons, such authority shall—and so on. You understand this is pursuant to the Administrative Procedure Act; am I correct?

Mr. WRIGHT. Yes, sir.

Mr. DINGELL. That affords adequate opportunity for the industry to appear and present its views; am I correct?

Mr. WRIGHT. This is one of the things that bothers us.

Mr. DINGELL. You are also aware that you may, as industry, come forward and halt the entire proceedings by accepting the voluntary standards; am I correct? You may thereby police yourself, am I correct, to remove the Government policing which you so greatly object to; am I correct?

Mr. WRIGHT. Yes, but we believe this particular section of the bill is extremely confusing.

Mr. DINGELL. We are again writing legislative history. As I read the language, it says that you can go ahead and can have voluntary standards in lieu of governmental standards by some bureaucrat; am I correct?

Mr. WRIGHT. Yes, sir. But what happens, Congressman, if we have a new product? We haven't been in the product category up to a certain point. All of our competitors have previously, voluntarily, if you will, set these standards.

Mr. DINGELL. You tell me where in this bill there is a premarket approval of packaging or packaging sizes, premarketing?

Mr. WRIGHT. We believe this is implied. We don't believe it would be possible to market if the standardization provisions of this bill were approved, and we believe it is a standardization bill as presently written. We don't believe, and our legal department feels quite strongly on this, that we would be able to market nonstandard products or packages without a premarketing clearance.

Mr. DINGELL. Since you are here to tell us, you tell me where that language is in the bill.

Mr. WRIGHT. This has come up in various testimony because people have asked this question before.

Mr. DINGELL. I will defer to my colleagues, Mr. Chairman. Perhaps the witness can supply that information.

Mr. WRIGHT. This is on page 7, once again, line 17: "Whenever the promulgating authority determines after a hearing conducted in compliance with section 7," et cetera.

Mr. DINGELL. Nowhere in that language is the requirement that you submit your commodities to any Government agency for premarketing clearances.

Mr. WRIGHT. We believe this is implied in this section.

Mr. DINGELL. You tell me what language authorizes premarketing clearance by a Government agency.

Mr. WRIGHT. This is one of the things that worries us about this bill. The bill is not clear, but we think it is clear in its implications. It says there will be hearings.

Mr. DINGELL. But you are writing legislative history. If you want to write some premarket clearances you have a chance to do it now. I would like to see the language in there which says any Government agency may clear a product before it is marketed. Can you tell me where that is?

Mr. WRIGHT. We believe this is what will be the net result of this legislation.

Mr. DINGELL. I did not ask you what the net result is. Where is there language in there which says that some bureaucrat can require you to clear a package size and shape before you market it?

Mr. WRIGHT. If we are coming into a product category in which we have not been active before, we are not going to enter that cate-

gory without knowing whether our product, in the opinion of a Washington bureau, is likely to deceive or is likely to vary too much from existing products. This means we, of necessity, are going to protect ourselves and protect whatever investment we have in that product by coming to Washington ahead of time and saying, "Look, this is a product we want to enter the marketplace with. Can we do it?"

Mr. DINGELL. You are saying you feel compelled to do that, but not that there is any language which would require that.

Mr. WRIGHT. I am saying this would be the net result of this legislation. We would have to come to Washington for premarketing conferences.

The CHAIRMAN. Can the gentleman come back to a committee meeting tonight at 7 o'clock?

Mr. WRIGHT. Yes, sir.

The CHAIRMAN. The committee is recessed until tonight at 7 o'clock.

Mr. KEITH. Mr. Chairman, Mr. Macdonald and Mr. Dingell were questioning the witness while I was trying to get a question in. The questioning was on legislative history and such that it might leave the impression that the committee concurred in the line of attack mentioned.

Mr. DINGELL. If the gentleman will yield, I am not sure that I will concur.

The CHAIRMAN. I would say that every member of this committee has a right to question every witness as long as he keeps it within the bounds of propriety.

Mr. KEITH. But I would like to know how long will the questioning continue, Mr. Chairman. Will we have the 5-minute rule?

The CHAIRMAN. That is right.

The committee will stand in recess until 7 o'clock tonight.

(Whereupon, at 12:20 p.m., the committee recessed to reconvene at 7 p.m. the same day.)

AFTER RECESS

(The committee reconvened at 2 p.m., Harley O. Staggers, chairman, presiding.)

The CHAIRMAN. The committee will be in order.

Mr. Wright, would you take the stand, please?

STATEMENT OF ARTHUR E. WRIGHT, JR., DIRECTOR OF PUBLIC RELATIONS, APPEARING IN BEHALF OF THEODORE R. GAMBLE, CHAIRMAN OF THE BOARD AND CHIEF EXECUTIVE OFFICER, PET MILK CO., ST. LOUIS, MO.—Resumed

The CHAIRMAN. As I said this morning, I was interested in your testimony. I believe I asked you the question that if certain provisions were delineated from the bill, would you favor the bill?

Mr. WRIGHT. Sir, if the provisions regarding standardization were eliminated from the bill, the bill would be far more acceptable to us. There is no question about that. However, I would like to point out that there are other provisions in the bill which we do not find fully

acceptable, and we would recommend their deletion or their alteration before the bill is passed.

The CHAIRMAN. You may present that information for the record, if you have it with you.

Mr. WRIGHT. Just generally, sir, we were talking about provisions for standardization. This, without question, is the section of the bill which we object to most. This is the section of the bill which would impose the greatest hardship upon the industry, certainly upon our company. It is the one which would cause us the most problems, it is the one which would increase costs the most to the consumers.

However, there are other parts of section 5. For example, the so-called ingredient statement. We believe this presents some real problems.

We believe that section 5(c)2, in which servings are defined, also could present some real problems. We have a large and substantial and able staff of home economists who deal daily in this problem. I can assure you that they have a most difficult time in determining what constitutes a serving.

There is other language particularly in section 5 that we would certainly hope would be eliminated or at the very least modified.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

I do not find in the paper which you read for Mr. Gamble any figures as to what the additional cost would be to your company, if the bill were passed in its present form.

Mr. WRIGHT. That is correct. We did not have them in the statement. We hoped to get such figures for you. Because of our extremely wide line or products, literally thousands of different products, we almost didn't know where to begin. Rather than give you information that would be misleading or not particularly meaningful, we found that we couldn't at this point in time tell you exactly how much it would cost, because we don't know whose standards are going to be set.

We don't know whether they are our standards, somebody else's standards, the Government standards. We don't know what products they will cover. This will be an evolving matter, if this bill is passed in its present form. But we do know this, that acquiring, installing, and operating new packaging lines is a very expensive proposition for us.

To be sure, we have to do this on occasion and we therefore know how much it costs us to install new packaging lines. Depending on the products, it could cost us anywhere from a few thousand dollars in some cases to as much as $500,000 or $750,000 for one new packaging line.

Mr. YOUNGER. You heard Mr. Roll this morning, did you?

Mr. WRIGHT. Yes, sir.

Mr. YOUNGER. He gave very fine concrete examples of cost and estimated that their annual cost would run approximately 5 percent. Of course, that would have to be passed on to the customer; they can't absorb that.

If you can, I think the committee would appreciate it if you filed for the record an estimate of the cost, and it would be only an estimate.

You can't tell exactly because it is impossible to say at this time what kind of standards might be adopted. But I think it would be well if you would file with the committee some estimate of the cost to you and what it would mean to the purchasers.

Mr. WRIGHT. We will try to take perhaps one product category out of the many thousands that we manufacture and try to indicate to the committee how much it would cost us if we were required to adopt different standards from those we now utilize, and if we were required to conform to a different set of standards and change our packaging accordingly.

Mr. YOUNGER. So far, there has been no evidence that I have heard, and I think I have heard most of it, to the effect that amendments to the Pure Food, Drug, and Cosmetic Act as well as the Federal Trade Commission Act would not solve the problem. There were two cases. One was mentioned by the Chairman of the Federal Trade Commission who said that they are not sure of their right to proceed against an industry if they found that the entire industry were practicing deception.

Would you see any reason why that authority should not be given to the Federal Trade Commission?

Mr. WRIGHT. I am not a lawyer, but as a layman, I can see no reason why such authority should not be granted. Our position has been as indicated in Mr. Gamble's statement, that what is probably needed more than anything else right now is simply additional personnel and additional money for additional enforcement on the part of FDA and FTC.

We think this would solve virtually all of the current problems if such problems are the concern of Congress.

Mr. YOUNGER. I think that is true, if they had additional personnel, probably far less personnel than would be needed in this new bureau, they could do a better job, because they know what they are doing and this new bureau would merely be floundering around with new problems that they are not accustomed to dealing with.

Mr. WRIGHT. I agree with you completely, Congressman.

Mr. YOUNGER. Thank you.

The CHAIRMAN. Thank you again.

Mr. WRIGHT. Thank you.

The CHAIRMAN. The next witness will be Mr. Arthur E. Larkin, Jr., executive vice president, General Foods Corp.

STATEMENT OF ARTHUR E. LARKIN, JR., EXECUTIVE VICE PRESIDENT, GENERAL FOODS CORP.; ACCOMPANIED BY MISS ELLEN-ANN DUNHAM, VICE PRESIDENT IN CHARGE OF GENERAL FOODS KITCHENS

Mr. LARKIN. Mr. Chairman, and the two members present of the committee, my name is Arthur E. Larkin, Jr. I am executive vice president of General Foods Corp. Our company manufactures and sells to retailing organizations a wide variety of packaged food products, principally in the convenience foods categories.

Among our better known brands are Maxwell House, Sanka, Birds Eye, Post, Jello, and Log Cabin. Our headquarters is in White Plains, N.Y.

Accompanying me today on my right is Miss Ellen-Ann Dunham, vice president in charge of General Foods kitchens. She and her colleagues are concerned with dealing directly with consumers. Miss Dunham has appeared twice before committees of the Senate to testify in opposition to S. 985 and its predecessor bills.

If questions arise today in her area of professional competence, she will be pleased to answer them and with your permission I shall refer them to her.

I have filed with the clerk of the committee a statement which sets forth in detail the reasons for our vigorous opposition to the sections of H.R. 15440, which provide for standards regulating net weight or content and size, shape, and dimensions of food packages.

In this brief oral statement I shall emphasize only two or three points of special concern to my company. Allow me to illustrate some of these with examples from among our products. Miss Dunham has in hand an attractive, valuable, heat-resistant glass carafe filled with instant Maxwell House coffee. In a period of 3 years, more than 20 million American housewives bought instant coffee in this special package. That comes out to one glass carafe for every three homes in the United States.

Why was this instant coffee package such a noteworthy success? Because the consumer perceived in it a substantial value. Unless a great many of them bought more than 1, 20 million American consumers chose this package of soluble coffee over the others on the grocery shelves because they like instant Maxwell House and because they wanted the carafe. They perceived the real value inherent in the offer—the right combination of product quality, attractive reusable package, and reasonable price.

Now, Miss Dunham has in hand a handsome and we think useful serving pitcher filled with Log Cabin sirup. This special package also was a great hit with our customers, and our sales figures indicate that one may be found in every ninth home in the United States. In this package, the quantity of the sirup is different from that in our normal package. We did this purposely, not to deceive, but to offer consumers a pitcher of most useful size.

Apparently, that did not deter them from perceiving the value and making the purchase.

Next, we have two packages of Great Shakes Mix, a flavored milkshake mix which is a favorite of mothers of young children because it helps them get the little ones to drink more milk. The innovation represented by this product lies in the fact that it permits youngsters to make their own milkshakes.

The rectangular package is our standard one. It contains 10 pouches, each of which mixes with 8 ounces of milk to make a delicious milkshake. The hexagonal package contains a handy plastic shaker and inside it are four of the pouches of Great Shakes.

We have found that the shaker is an important factor in the introduction of this product because most families do not have the proper utensils to make a milkshake. Therefore, the homemaker views the special package as a favor. We believe that all three of these successful packages which delivered real value to the consumer may have been prohibited if there were Federal standards regulating net con-

tents as in section 5(d)(2) or package shape as in section 5(c)(5) in these product categories.

Two of them have net weights different from the regular packages of the products and all three are radically different in shape and dimension. If time permitted, I could recite many more examples from our existing product line.

I do hope these few brief illustrations have persuaded you that we have very real grounds for our grave concern over the impact of product standardization on the food industry and the consequent detrimental effect on consumers.

Ours is a dynamic industry in which a steady, rapid pace of technological advance, especially in recent years, has led to many consumer benefits, and very real advantages for the national economy. Putting shackles on that technical progress which is what we believe compulsory standardization would do, cannot possibly be in the national interest.

Allow me to speak for a moment about two such technological advances with which I am most familiar. In the food industry we have recently achieved breakthroughs in two different techniques for product improvement.

We in General Foods are now market testing a freeze-dried soluble coffee which is clearly superior to conventional instant coffee. We are also on the threshold of similar achievements with agglomeration, which is another food processing tehcnique with promising new applications.

Freeze drying results in a better flavored, more concentrated, and denser product. Agglomeration improves color as well as flavor in some products and enhances their convenience in use. Agglomerated products tend to be less dense and more fluffy than regularly processed products. The density of a product obviously relates to the question of net content or net weight, and it could relate to the size and dimension of packages.

This is why I make the point of these two technological developments in a discussion of standardization provisions of H.R. 15440.

Allow me to illustrate by citing instant coffee as an example. If packages of instant coffee were now standardized by regulations fixing net contents as in 5(d)(2), sizes, shapes, and dimensions as in 5(c)(5), we would have difficulties with either our freeze-dried product or an agglomerated product.

The freeze-dried product being more dense than other soluble coffees would result in a slack fill in a package of standard size under 5(c)(5). The agglomerated product, on the other hand, would not meet the requirements of standardized net weight or content under 5(d)(2) since it would take a larger package to hold a given number of ounces.

I hope you can see from this brief explanation why we are concerned. These examples of recent achievements in the coffee field are but two of many in our product development stable.

As technology advances, and we are expending about 1 percent of our net sales each year to make the advance, more such promising breakthroughs will surely come along. Some of them, at least, inevitably will affect the way we package our products.

I am fully aware that standards can be amended and that procedures are provided for changing them. But as a practical man, I am equally convinced that the necessity of appearing before a Federal agency, revealing confidential details of new processes, and waiting long periods for approval, will be a serious deterrent.

General Foods endorses any reasonable action to enhance protection of consumers against fraud and deceit. We are in complete accord with that portion of the bill's objectives. We have, however, stated a number of times that we believe no new legislation is needed to provide consumer protection against fraudulent or deceptive food packaging.

We are convinced that present Federal and State laws adequately enforced give the American consumer the proper governmental protection. And we believe further that the vigorous competition that is the foundation stone of our competitive enterprise system also provides a real measure of protection.

No business can survive in this system if it makes a practice of fooling or cheating customers. Our real concern, then, derives from these sections of the bill aimed at standardization of size, shape, dimensions and net weight of content of food packages.

We are particularly troubled because these provisions are predicated on the basis that consumers shop on the basis of price comparison alone. Our experience convinces us that this is not valid. We know the consumer is guided in her purchases by the values she perceives in a product and in her thinking, the price of the product then being related to these values.

For this reason, we are apprehensive about the potential damage which would result from legislation which purports to help the consumer make price comparisons, but, in fact, limits her freedom of choice in the marketplace.

I appreciate, Mr. Chairman, the opportunity to appear before you.

(Mr. Larkin's full statement follows:)

STATEMENT BY ARTHUR E. LARKIN, JR., EXECUTIVE VICE PRESIDENT, GENERAL FOODS CORP., WHITE PLAINS, N.Y.

My name is Arthur E. Larkin, Jr. I am executive vice president of General Foods Corporation. My office is at our headquarters in White Plains, New York. My responsibilities include executive supervision of both the production and the marketing functions of our company.

The production and distribution of packaged food has constituted the bulk of our business for all the years of our company's history. Approximately 20 million packages of our products are purchased by consumers in retail stores each shopping day. Some of our better known brands are Maxwell House, Birds Eye, Post, Jell-O, Log Cabin, and Sanka.

On two previous occasions an officer of General Foods has come to Washington to describe for Senate Committees the reasons for our opposition to proposals to regulate food packaging similar to the bills your Committee is considering today. We asked for permission to testify before your Committee because we believe the bills before you—particularly H.R. 15440—are sufficiently changed from the Senate bills to warrant additional comment by us.

Our witness at the Senate Committee hearings is here with me today. She is Miss Ellen-Ann Dunham, our vice president in charge of General Foods Kitchens. Miss Dunham is widely respected as a professional home economist and a leader in the food industry's efforts to study consumer attitudes and promote consumer education. She supervises a department staffed entirely by women. Like Miss Dunham, many of her colleagues are professionally trained in the fields of home

economics and nutrition. As the risk of incurring her ire, I can tell you that she has been affiliated with our company for 34 years. Miss Dunham will be glad to answer any questions which may arise in her area of professional competence. With your permission I shall refer them to her.

Miss Dunham's department replies to the voluminous mail we receive every day from consumers. These letters are coming to us at the rate of 135 thousand per year, and the flow is increasing. All of them are read, and all receive thoughtful replies. These letters added to our total consumer research effort, which put us in touch with nearly a million homemakers each year, provide us with a large-scale contact with consumers. We believe therefore, that we are well informed as to their attitudes, their likes and dislikes. We listen to them, we correspond with them, and we act on this knowledge.

Much of the discussion of proposals to regulate packaging, during the five years or more that such bills have been before the Congress, has centered on the obligation of a government to protect its citizens against fraudulent or deceptive labeling and packaging. With that we have no quarrel.

We have stated in previous testimony that we believe such legislation is unnecessary. We still hold that belief. It is our conviction that adequate consumer protection against fraud and deception may be achieved through proper enforcement of federal and state statutes already on the lawbooks.

A major objective of H.R. 15440 is the standardization of food packages as a means of helping the consumer to make price comparisons between products. This is stated in the "Declaration of Policy," and it appears in paragraphs 5(c) and 5(d). In the former, the bill would authorize regulations when needed "to facilitate price comparisons," and in the latter it provides for regulations when the weights or quantities of a consumer product "are likely to impair the ability of consumers to make price per unit comparisons."

This increased emphasis on helping the consumer to compare unit prices in the marketplace suggests to us that the authors of this proposed legislation give more weight to price comparison than it should have. From our experience we know there is a fallacy in this. We know that, in the consumer's mind, the value of a product is the quality and convenience she perceives in it offset by the price she is asked to pay for it. There is a delicate balance of the components in this price-value equation. Each has its proper weight in the careful calculation the consumer makes before she buys. No one must be out of proportion, or the balance will be disturbed. We urge you not to overemphasize or overregulate the price component in the equation.

We feel one other general comment regarding the bills under study is needed. If, despite the earnest objections which have been raised, the Congress sees fit to enact further legislation governing packaging, we assume that the new law will treat private label products and manufacturers' brands alike. I am advised that the Congressional history of this H.R. 15440 and its predecessors leaves room for argument on this subject, particularly on the question of "off-labels." To avoid the possibility of giving an unfair competitive advantage to private labels, I would urge that any legislation enacted contain an express provision requiring any implementing regulations to give like treatment to private labels and manufacturers' brands.

Let me turn now to comments about specific sections of H.R. 15440:

As regards the provisions of Section 4 which call for legible and informative labeling, we have no quarrel with their purpose. My company continuously examines all of its packages and labels to be certain that they contain the information which, from our long experience, we know the housewife wants. As a matter of policy we adhere to the provisions of the model state regulations as regards placement of net contents on the package, type size, etc.

We have no objection to the prohibition of qualifying words or phrases supplemental to the statement of net contents. By the same token, we do not oppose the regulation provided for in 5(c)(1) to standardize the language characterizing the sizes of consumer product packages.

We are troubled by the proposal in 5(c)(2) that servings be standardized by a governmental agency. Miss Dunham has pointed out in previous testimony the pitfalls in this proposal. To paraphrase an old adage, one man's portion may be another man's half-portion, and a federal standard which would fit all homes and all appetites in all parts of the country is simply not feasible. In our own case, when we indicate servings on a label, we also say how big the servings are if that is feasible. We say, for example: "Six servings, one-half cup each."

We object vigorously to Section 5(c)(3), which deals with promotional labels.

We believe it is too sweeping and too vague. The power to regulate legitimate promotional devices which it would bestow on the promulgating agencies is certainly the power to prohibit them. This is borne out by the language of the bill itself. In paragraph 5(c) it speaks of "regulations containing prohibitions."

Presumably the intent of this section is to curb widespread use of cents-off labels. We acknowledge that it could conceivably control this promotional device, and, indeed, it could be invoked to outlaw it. We fear that it could also be applied against a variety of other effective, time-tried, and useful merchandising practices. Unless it is limited or clarified, this section, as we read it, could be invoked to prohibit many special merchandising offers which are of real value to the consumer—bonus packs, secondary use conainers, and other similar devices.

General Foods' position on cents-off labels in the coffee industry was set forth in a statement to the Federal Trade Commission earlier this year which was included in the record of its hearing on this subject. In it we indicated we believe certain guidelines for this promotional practice might be advisable. I have a copy of that statement here today if the Committee wishes it for the record. We believe the six-month moratorium on such labels for coffee was a proper exercise of its authority and would have served a useful purpose if it had applied to all processors. We hold, therefore, that such a provision as 5(c)(3) is unnecessary.

We believe also that the language and intent of paragraph 5(c)(4), which deals with ingredient information, are unduly vague. We have no quarrel with the placement of appropriate ingredient information on the label of a consumer product. Indeed we have followed the practice of naming ingredients for many years, as required by the Federal Food, Drug, and Cosmetic Act. But we believe that this paragraph as written needs clarification as to what kind of information it calls for and in how much detail.

The sections of the bill which give us gravest concern are those which provide for regulations to standardize sizes, shapes, and proportions of packages and net weights and quantities. These are paragraphs 5(c)(5) and 5(d)(2).

We are convinced that those sections are potentially harmful, both to consumers and to the food industry. We believe they would tend to discourage or inhibit the creativity, the incentive to innovate, which characterize our industry today and which have been responsible for providing American consumers with a variety of convenience foods. We believe they would retard further development of convenience foods and further advances in package design which add important consumer values. Thus we believe this legislation would redound to the detriment of the consumer rather than help her as it purports to do.

Let me support this position by means of several illustrations from our own business.

Among the more successful of General Foods' recent merchandising projects was our offer of Instant Maxwell House Coffee in an attractive, heat resistant glass carafe. By purchasing her instant coffee in this special package, the consumer acquired a useful and decorative carafe as an "extra" during her regular shopping for daily menu items. It was not only a useful household item, but it was one of substantial monetary value. If there were any doubt of its value to the housewife, that doubt was dispelled by the fact that more than 20 million of these special packages of instant coffee were sold during the three different periods in which the offer was made in a three-year time span. This comes out to one carafe for every three households in the United States. It also was many times the total number of glass carafes which the Corning Glass Company, our supplier, had been able to sell in all the years of marketing similar carafes.

Here, I submit, we have a dramatic example of specialized packaging from which everybody benefited. The housewife perceived real value in the offer, and she got a bargain. General Foods profited from an increase in soluble coffee sales, grocers enjoyed increased volume, the glass company felt the impact on its sales. And, I suspect, some of the effect of increased consumption may have been felt as far away as the coffee-producing nations.

As we read this bill, such a project would have been impossible—or at least discouragingly difficult—if there were standards governing the packaging of instant coffee.

Shortly after our success with the coffee carafe, and perhaps in large part because of it, we offered the consumer another of our products in a valuable reusable container. This time it was a handsome glass pitcher filled with Log Cabin Syrup. And this time the net quantity of the product was different from that in our regular package. This was done to present a pitcher of optimum

size from the consumer's point of view. So attractive was this unusual package and so welcomed by the housewives of this country, that we estimate one of these pitchers may be found in every ninth home in the United States.

As we interpret H.R. 15440, we could not have considered this successful promotion—which obviously provided the consumer with something of value—if there were a regulation standardizing the net contents or the shape or dimensions of packages in which syrup is sold.

There are a number of illustrations of special packages among our present products and future marketing plans, all of which could conceivably be prohibited by regulations under Section 5. At the present time, for instance, we are distributing Great Shakes, a flavored milk shake mix, in both a standard package of 10 individual serving pouches and a special hexagonal carton which contains four such pouches packed inside a plastic shaker. We have found that the shaker is an important factor in the introduction of this product because most families do not have the proper utensil to make a milkshake. Therefore the homemaker views the special package as a boon.

Although our Great Shakes is a new product, flavored milk supplements themselves are what we consider a mature product category. If standards for packaging flavored milk supplements had been in effect five years ago, this successful innovation would have been difficult if not impossible.

I could describe other such added-value packages currently on the market or in our future plans, but I hope I have made my point without prolonging the list of examples. Let me turn now to the impact of standardization on product development and improvement.

We fear that standards for net weight or content would lead to serious difficulties in our continuing effort to improve our present products or develop new versions of established ones. This is especially true of formulated products such as cake mixes, or other dessert mixes, which may vary in net weight for a number of reasons. At the present time we have 13 regular cake mixes on the market; seven of them weigh 18 ounces, one weighs 18⅔ ounces, four weigh 19 ounces, and one weighs 20 ounces. All of them make a cake of the same size, and—more importantly—all of them call for two eggs in the recipe. If we were bound by a standard requiring all cake mixes to have the same net weight, conceivably the recipe might call for 1¾ eggs. Poor a cook as I am, I know that might be difficult to accomplish in the kitchen.

Our continuing program of product improvement sometimes leads to changes in formula which change the net weight. Or we sometimes change it to permit a new recipe developed by our kitchens which is easier and more convenient for the consumer. Again, a standard would impede this.

Our competitors' cake mixes differ slightly from ours in net weight. Checking two of the best known competitive white cake mixes recently, I found one weighs slightly less than ours and one slightly more. They make cakes of somewhat different characteristics from ours. This is because those companies put recipes on their labels which their consumer research tells them are preferred by consumers. We obviously disagree. I hope we will never all be regulated by a standard for cake mixes which forces us all to make the same product.

One final comment on this point: Assume we were governed by a standard for a certain product and we decided on a formula change to achieve product improvement or to adapt to a better recipe for consumer use. Presumably this would result in a change in net weight. We interpret the bill to mean that we would be required to petition a federal agency to change or amend the standard. This could involve a question of trade secret disclosure or costly delay, and we might conclude "the game isn't worth the candle."

For all of these reasons, gentlemen, and for still another we vigorously oppose the sections of H.R. 15440 aimed at establishing standards for package shapes and sizes and for net weights or contents of packaged food products. Our final reason is the threat, which we believe is implicit in these sections, of a reduction in the variety of products available to the American consumer. As firm believers in the American economic system—our creative, competitive enterprise economy—we must oppose anything which we believe will restrict or inhibit the consumer's complete freedom of choice in the marketplace.

Our system, of course, has its flaws. It has not yet reached perfection in its operation, nor is it likely to in our lifetimes. But its virtues far outweigh its shortcomings. One of its virtues, in my view, is the freedom enjoyed by the modern consumer to choose from a wide variety in making her purchases. If

there are 8,000 different items in the average supermarket today as compared with 2,000 some years ago, ir if there are 18,000 items some years hence as compared with 8,000 today, it's because the consumer wants it that way. From my years of experience in making and marketing consumer goods, I can assure you that no one of those 8,000 items will continue to be produced and occupy shelf space if the customers don't take it off the shelf and put it in their shopping bags. This is the strength of our system. Each product must win its right to survival. Each must be sold in sufficient quantity to be profitable. And each consumer must be served as she wishes to be served.

If a federal agency tells one consumer that she may not purchase coffee or cereals in the size package she prefers, if it says she must buy frozen vegetables only in pounds or certain fractions of pounds, her freedom to choose has been restricted, and the system has been weakened. This, too, is why we at General Foods are concerned about the implications of imposed standardization in packaging.

In conclusion, gentlemen, we feel today as we did in 1965 and 1961 that there is already adequate protection of consumers against fraudulent or deceptive packaging and labeling. Vigorous enforcement of present state and federal law will provide it. As far as H.R. 15440 is concerned, we are in sympathy with its objectives as regards informative labeling, but we question the need for it. We are disturbed by the sweep and vagueness of the paragraphs dealing with cents-off labeling and ingredient information, and we urge their clarification. We are gravely concerned about the paragraphs of Section 5 which would provide for the standardization of package sizes and shapes and of net weight and content. We are particularly concerned because these provisions are predicated on the assumption that consumers shop on the basis of price comparison alone. Our experience convinces us that this is not valid. We know that the consumer is guided in her purchases by the values she perceives in a product, and, in her thinking, the price of the product is related to these values. For this reason we are apprenhensive about the potential damage which would result from legislation which purports to help the consumer makes price comparisons but in fact limits her freedom of choice in the marketplace. Such legislation, we are convinced, would work to the detriment, not the benefit, of the consumer and would inevitably injure the system of food distribution which has made this nation the world's best fed at the lowest cost.

If you are convinced that this Committee must report out a bill to regulate packaging in this session of the Congress, I urge you to delete Section 5 from H.R. 15440. As I have said repeatedly, we endorse any reasonable effort to strengthen the protection of consumers against fraud and deceit. But this bill goes far beyond that. Under its objective of facilitating price comparison it would provide for stultifying standardization of products and packages which would inevitably be detrimental to consumers. From our own experience in the market place and from our large-scale consumer contacts, which total a million a year, we see no evidence of consumer demand for this legislative action. We find no basis for the assumption that America's housewives want the government to help them make price comparison among food products, especially if such a legal remedy would affect their freedom of choice among products. I am sure I speak for the food industry when I say we would be happy to cooperate in a scientific study to determine whether such a consumer demand in fact exists. Meanwhile I respectfully suggest that the Committee members study the situation in their own districts to determine to their own satisfaction the existence of such a demand among their own constitutents before taking such a drastic step as this bill provides in Section 5.

Thank you for the opportunity to appear before your Committee.

The CHAIRMAN. Thank you.

Mr. Macdonald.

Mr. MACDONALD. Thank you, Mr. Chairman.

Sir, I wasn't quite sure whether you oppose H.R. 15440 or not. You said there were many good things in it, as I listened to your testimony, and yet you said there were some parts of it that should not be included. Is it the position of the company you represent that this bill should be passed or not passed?

Mr. LARKIN. As stated, Mr. Macdonald, I feel that there is adequate legislation on the books today to protect the American consumer against fraud and deceit. However, if in the wisdom of the Congress they feel that legislation is needed, then there are specific sections of this bill that we think we can live with. There are other sections we think should be deleted, and others that we think should be amended.

Mr. MACDONALD. Could you break that down a little bit? What do you think should be left in the bill?

Mr. LARKIN. We have no contest on sections (a), (b), and (c)(1). When we get to section (c)(2), and I am talking of section 5——

Mr. MACDONALD. You have no problems with the bill up to section 5?

Mr. LARKIN. Up to section 5, that is right. And we have no objections to (a), (b), and (c)(1) in section 5.

When you get to section (c)(2), and you start talking about servings, I would like to call on Miss Dunham, if I may, to clarify servings a bit. Then we have a suggestion as to the serving section.

Miss DUNHAM. Food processors such as General Foods include serving statements, not as a marketing device, but as a service to homemakers. Although the sufficiency of a serving will vary depending upon the appetite of different members of the family for a particular food, serving statements nevertheless serve as useful guides to millions of women both in food purchases and planning for their families.

It has been almost impossible for Government—and I am specifically referring to the Department of Agriculture and other such departments—to determine a standard serving, or what a serving is on any type of food.

This is difficult because human beings vary, their appetites vary, and their nutrient requirements vary. In other words, the metabolism of an individual differs one from the other.

We know of no scientific study, and we have researched this field, that can verify what a serving is. The question has come up in relation to servings when we indicate that a package will make four servings, one-half cup each, as to what a cup is. If I may at this time, I would like to explain it, unless you have something to ask me on servings.

Mr. MACDONALD. I think it has been established what a cup is. Frankly, before these hearings I didn't know. I now know that a cup is a cup and it is in Webster's Dictionary and you can look it up, et cetera.

Going along with your definition of a cup will not be necessary, I don't believe. I am still not quite clear what a serving is.

Mr. LARKIN. Mr. Macdonald, if I may, let us suggest to the committee that rather than attempting to define servings, the subsection might require that if a manufacturer includes a serving statement on a label—and there are many products where servings mean nothing to the consumer and they are not included—if he chooses to put servings on a label, he shall also specify the size of the serving in terms of weight, measure or count.

For example, makes four servings, one-half cup each, or six servings, 3 ounces each. If the Congress wants a better description of a serving, fine, where it applies. But an attempt to define servings we think leads to a terrible morass.

Mr. MACDONALD. I couldn't agree with you more. That is my point. If it leads to misunderstanding, why have it on the label in the first place?

Mr. LARKIN. Miss Dunham knows better than I. We put it on there as a service to the housewife to give her a better indication.

Mr. MACDONALD. But if she doesn't know what a serving is, how is it a guideline?

Mr. LARKIN. In each case, Mr. Macdonald, when we say a serving, we define what we mean by a serving. If we say on a package, four servings, we follow it up with one-half cup each, or four servings, 3 ounces each, if it is a 12-ounce package.

Mr. MACDONALD. One last question, if I have time, Mr. Chairman. I see on the Maxwell House Coffee jug about the special offer, and then it goes into small print under that. What does the small print say?

Mr. LARKIN. It says "Heat-proof coffeemaker made of Corning heat-proof glass when you buy the 10 ounces of coffee inside." It is a special offer.

Mr. MACDONALD. In other words, you are buying two things at once. You are buying a coffee pot and the coffee, is that right?

Mr. LARKIN. You are buying this carafe at far less than it is offered at retail. We have offered it from no increase in price to an upcharge of 40 cents. Actually, what happened in our company was that we built a special packing line and then amortized the cost of the line over the volume so that as we had paid for our packing line we can offer the consumer a better product, a better package, for no extra money.

But, were packages standardized into 2-, 6-, 10-ounce sizes, with the current size, shape and dimension, this we would not be able to do. We think it is a real bargain to the housewife.

Mr. MACDONALD. My time has expired.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. I have no questions, Mr. Chairman.

The CHAIRMAN. Mr. Dingell?

Mr. DINGELL. Mr. Chairman, I would like to put my questions at a later time.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. We have had other testimony with regard to the development of a special package. Where the manufacturer spends quite a bit of money on developing a product of that kind, if this bill were passed the way it is, he would have to bring that package to the Secretary or someone lower to get that approved, thereby releasing to the public and to his competitors what he has probably spent a lot of money developing. Is that true?

Mr. LARKIN. Yes, that is as I understand it. It says to me that if it wouldn't be lost altogether, it certainly would deter the innovative effort on the part of food manufacturers to do this kind of thing. It would be slowed down. This is a cost to the consumer that is intangible and incalculable, but it is very real in my mind.

Mr. YOUNGER. You certainly would lose the impetus of getting ahead of your competitor in developing that product.

Mr. LARKIN. Yes, we would.

Mr. YOUNGER. He could go out and take advantage of the money you have spent in developing, researching, and producing an article of that kind.

Mr. LARKIN. Yes, that is very true. As I say, if it wouldn't stop us altogether, it would certainly slow us down.

Mr. YOUNGER. It would be a handicap.

Mr. LARKIN. Yes, sir. We would lose the leadtime now available to us for a good idea.

Mr. YOUNGER. No one in Congress wants to be in the position of adding additional handicaps to our economy and to the manufacturers, the people who are paying taxes.

Mr. LARKIN. No, sir; and we certainly don't.

Mr. NELSEN. Would the gentleman yield?

Mr. YOUNGER. Yes.

Mr. NELSEN. As I understand it, I don't believe you would be required to bring this new package size in for approval, but if you went ahead with it and put it on the market, hazarding the chance that it would be approved, you might have spent millions of dollars to develop it and at that point be stopped in your tracks.

I think that that could happen. As I understand the bill, it doesn't say you must go to the Government agency and ask, "Can I have a package of this size?" But it does put you in the position of gambling pretty heavily before you put it on the market and then you might be stopped, as I understand it.

Mr. MACDONALD. Would the gentleman yield?

Mr. YOUNGER. I will yield.

Mr. MACDONALD. Obviously, it seems to me that there is nothing in that package that is at all a secret. I mean, the coffee is there, and apparently you say how much coffee is there. I will repeat, for the sake of the record, that we are some 10 or 12 feet apart so I can't see the whole thing. But it seems clear to me that there is no deceit intended at all in such a package.

People know they are getting a carafe, though I call it a coffee pot, plus the coffee. Where possible would there be an intent to deceive the public? Therefore, if there is no intent to deceive the public, as I have said to many witnesses before, and I will say to you so you can answer it if you want to, the whole point of the thing is that it says prevent the distribution of that commodity for retail sales, which is your coffee, in packages of sizes, shapes or dimensional proportions which are likely to deceive retail purchasers.

That doesn't seem to me like it is going to deceive anybody. What makes your company or yourself, experts in this field, feel that the people downtown, whatever agency gets this, will be so unreasonable as to say that you can't do that after you have invested x number of dollars in turning over the size of your packaging unit?

Mr. LARKIN. May I attempt to answer?

Mr. MACDONALD. Yes.

Mr. LARKIN. Let me refer you to page 2 of your bill, line 8, where it says it shall be unlawful for any person engaged in the packaging or labeling of any consumer commodity for distribution in commerce or for any person engaged in the distribution in commerce of any package or labeled consumer commodity, to distribute,

or to cause to be distributed in commerce, any such commodity if such commodity is contained in a package, or if there is affixed to that commodity a label which does not conform to the provisions of this act and the regulations promulgated under the authority of this act.

Then, let me refer you to page 5, which is section (c) under 5, which says, "Whenever the promulgated authority determines that regulations containing prohibitions or requirements other than those prescribed by section 4 are necessary to prevent the deception of consumers," and let me underline the next few words," *or to facilitate price comparisons as to any consumer commodity*, such authority shall promulgate with respect to that commodity regulations effective to establish and define standards for characterizing the size of a package"—and this is a different size than our regular coffee—"enclosing any consumer commodity which may be used to supplement the label statement net quantity" and so on.

Mr. MACDONALD. Don't use "and so on." It goes on to say "This paragraph shall not be construed as authorizing any limitation on the size, shape, weight, dimensions or number of packages which may be used to enclose any product or commodity."

You just can't skip that language. It is there.

Mr. LARKIN. Let me say again that they have the right in the paragraph that I just read, "Such authority shall promulgate with respect to that commodity, regulations effective to establish and define standards for characterizing the size of a package enclosing any consumer commodity which may be used to supplement the label statement of net quantity of contents of packages containing such product."

Then, "But this paragraph shall not be construed as authorizing any limitation in the size, weight, dimensions or number of packages which may be used to enclose any product" which to me means shipping container.

The CHAIRMAN. The time of the gentleman has expired.

The gentleman from New York, Mr. Murphy.

Mr. MURPHY. I will yield my time to the gentleman from Massachusetts.

Mr. MACDONALD. I yield to Mr. Younger.

Mr. YOUNGER. Thank you very much, for this triple play. We can use it.

I think there are practices going on in the Government that would lead one to doubt the administration of this. We have it right now with Dr. Goddard and his new order on vitamins.

Mr. LARKIN. Yes, sir.

Mr. YOUNGER. That is going to put many established institutions, which have been manufacturing for years, out of business, completely out of business, wiped out, if those rules and regulations that Dr. Goddard has promulgated stand. I don't think there is any question about it.

Mr. LARKIN. And also to force reformulation and repackaging of many, many food products.

Mr. YOUNGER. That is right. So I think that any manufacturer in the face of that situation can have grave doubts as to the administration and what might happen under this bill.

Mr. LARKIN. And we do, Mr. Younger.

Mr. SPRINGER. Would you yield for a question?

Mr. MACDONALD. I yield.

Mr. SPRINGER. I might have missed this point, but I don't find any point about cost in your statement.

Mr. LARKIN. Your question is very appropriate because I do not have in this brief testimony items of cost. But I am prepared to give you our point of view on cost of packaging were they standardized.

This group is familiar with the National Biscuit Co. exhibit of 2 or 3 weeks ago. I will be very brief to identify what would happen to us under a similar set of circumstances in our cereal business. We currently package 17 cereal products in 36 packages in 11 package shells. As an illustration, this is the standard shell in which we package five different products in different weights. This is the least dense, Alpha Bits, of the five packages that we sell in this particular shell.

So we put 8 ounces in this, Alpha Bits. That is represented by this visible container.

The next one is the same size container, but because it is a more dense product, we put 9 ounces of Sugar Crisp into this package.

We put 11 ounces of Bran Flakes, because it is a more dense package, into this same package.

And we put 14 ounces of Raisin Bran into the same package shell because it is, again, a more dense product.

If we were standardized, and I am assuming 4, 8, and 16 ounces standardized as to the net content, we would have to increase our packaging by the amount of 17 additional packaging lines.

Mr. SPRINGER. How many have you now?

Mr. LARKIN. We now have 11 or more.

Mr. SPRINGER. And you would have to increase that 17 or 17 more on top?

Mr. LARKIN. Seventeen additionally on top of it.

Mr. SPRINGER. That would make it 28, or more.

Mr. LARKIN. We have calculated that this would cost us $11 million in capital, that the additional packaging materials, the additional labor expense, the additional depreciation on equipment and buildings, and the additional maintenance cost would cost us an additional $2.7 million a year in operating costs.

Mr. SPRINGER. That is permanent.

Mr. LARKIN. That is permanent every year. Then as we calculate this over our total volume of cereal packages sold, it is our calculation that we would need to raise our cereal prices to the consumer after the retailer takes his normal markup that he is taking today by 7 percent.

Allow me to continue. General Foods in total packages 102 products in 335 different packages, so the 36 packages that we have in our cereal line amounts to 10 percent, roughly, of the total packages in General Foods.

If we extend that and say this is 10 percent of the problem, then we say we are faced with $111 million worth of capital expense and $27 million worth of operating expense, and a 7-percent increase across our line.

I suggest that this may be too severe, but I do feel that about a 5-percent increase in cost to the consumer is a realistic figure. I am

convinced, as I am sitting here today, that it will cost the consumer more, not less.

Mr. SPRINGER. You are talking about 5 percent. Let us see if we can get something on the record that this committee can understand. How much does that first package cost?

Mr. LARKIN. I don't have the package cost with me, but cereals run from 29 to 49 cents.

Mr. SPRINGER. Is that one about 30 or 35?

Mr. LARKIN. Here is one that is price marked at 33 cents.

Mr. SPRINGER. And 5 percent would be how much?

Mr. LARKIN. It would be a penny and a half per package.

Mr. SPRINGER. On top of that.

Mr. LARKIN. Yes.

Mr. SPRINGER. That, I take it, would be rather immediate when you went into this. Is that correct?

Mr. LARKIN. Yes. This is far too big a bill for us to absorb. As Mr. Roll said this morning, we are battling higher commodity costs today.

Mr. SPRINGER. Let us take the first year. In the first year, you said that would be how many millions?

Mr. LARKIN. In the first year, as soon as we get the additional packaging lines, we have spent $11 million. That is capital.

Mr. SPRINGER. How much then would you increase the cost each year?

Mr. LARKIN. It is going to increase in annual operating costs $2.7 million for cereals alone.

Mr. SPRINGER. What about the rest of your packaging?

Mr. LARKIN. We have not gone through this exercise. I am using this as an example, but this is about 10 percent of the total packages of General Foods. You can multiply that broadly.

Mr. SPRINGER. Is it too much for you to go through this thing and have your auditor do it and send it into the committee?

Mr. LARKIN. We would be very happy to attempt it.

Mr. SPRINGER. Mr. Chairman, I would like to ask unanimous consent to put this into the record at this point in the permanent record.

The CHAIRMAN. Without objection, that will be done.

Mr. SPRINGER. Could I have this, which you are talking about today, sent to my office?

Mr. LARKIN. I would be very happy to.

Mr. SPRINGER. I don't want to wait for the reporter to send it to me. I would like to have it myself, if I may.

Mr. LARKIN. You certainly may.

The CHAIRMAN. The gentleman's time has expired.

I would like to make one observation. You mentioned 4, 8, and 12, did you not?

Mr. LARKIN. I mentioned 4, 8, and 16.

The CHAIRMAN. Do you think that is set forth any place in the bill?

Mr. LARKIN. No, sir, I do not.

The CHAIRMAN. Don't you think that is kind of like the safety bill when they said we would require the automobile industry to make Sherman tanks and it would cost everybody in this land too much to have automobile safety?

Mr. LARKIN. I am not familiar with that legislation.

The CHAIRMAN. You are using figures and weights that are not realistic. The people downtown are not going to require anything like this.

Mr. LARKIN. May I suggest that if the bill is not going to be implemented, we don't need the bill. I think we must assume that the bill is going to be implemented.

The CHAIRMAN. We hope so. That is what the committee is here for, in its wisdom to make changes and do what it thinks is right. The committee will not let this bill go out and put you to millions of dollars of costs. I don't think the assumptions which you have made are apropos to the bill at all. I don't think they apply.

Mr. SPRINGER. Mr. Chairman, I would like to make the observation that you were not here for part of this morning. The Kellogg people testified this morning. I don't know why we have never asked this question before, but we asked if any other country has this. They compared South Africa, where you have 4, 8, 12, 16, and 24. This is the container. They do not have such a law in Mexico. They compared the cost.

The only thing I can think Mr. Larkin would do is that this thing would come from countries that have already had this experience. The experience of the Kellogg Company was that even though the plant in South Africa was the same as the plant in Mexico, the cost of the plant in South Africa was 51 percent more, and almost all of that was due to labor, which they had to add to this in order to meet the requirements of the Government of South Africa in the fair packaging field.

I think this is something that is really coming home. We are getting a picture of what this is going to cost.

Mr. MACDONALD. Would the gentleman yield?

Mr. SPRINGER. Yes.

Mr. MACDONALD. Don't you think it is unrealistic to compare South Africa and Mexico with the United States? There are many things that the South African Government demands of its citizens that we don't demand. I don't think it is any comparison at all that isn't far fetched at least to think that the U.S. Government is going to make the same demands as the South African Government.

I don't see why that is relevant at all, though I listened to the same testimony.

Mr. SPRINGER. May I have a moment to reply? This is the only experience that I know of that anyone has had. I think the gentleman had to assume that packaging would come in 4, 8, and 12, because the only country that has ever used it has come up with this kind of a formula.

I think that is the reason that these gentlemen have used it, since they had nothing else to rely upon, except from the countries that have had experience with this.

The CHAIRMAN. Mr. Gilligan.

Mr. GILLIGAN. Mr. Larkin, has your company been involved at any time in its history in the process of developing a voluntary product standard?

Mr. LARKIN. Yes. We are involved now, Mr. Gilligan, and it has to do with the cents-off labels and voluntary standards. Is that what you are alluding to?

Mr. GILLIGAN. Yes.

Mr. LARKIN. I would like, if I may, to give a bit of background. Cents-off labels have proven over the years to be effective ways of getting temporary price reductions through to the housewife through the retail channel.

It is a fact of life that retailers and manufacturers of advertised brands have very honest and very real conflicts of interest in many major categories. Coffee is one of them; desserts is another; frozen foods is another.

Many times it is to the retailer's interest not to pass through some kinds of promotional efforts. Cents-off label, because it is on the label, gets passed through.

We also have felt in our company that overuse of cents-off labels has led to abuse in the past. Twice we have attempted to lead our coffee industry out of the overuse, if you will, of cents-off labels by unilaterally going out of them.

For good, sound, competitive reasons our competitors did not follow us and we went back into it. Then on January 14—and Mr. Dixon had some things to say about this during his testimony, which I heard—on January 14, we did receive a letter from the Federal Trade Commission, along with 21 other coffee roasters.

There are, incidentally, some 450 total coffee roasters in this country. The FTC requested a 6-month moratorium on cents-off label packs of regular and soluble coffee. They asked us to suggest guidelines which might help them in formulating guidelines for the industry.

They suggested that an informal conference would be held in the near future with members of the industry to help formulate some of these guidelines. We replied promptly.

We forwarded all the information that they required. They scheduled hearings for April 27. We sent in our written testimony. We answered all their questions.

Then we sent them our proposed guidelines on the use of cents-off labels. They held their hearing. Then we heard nothing from the Federal Trade Commission.

Our brands, because we did go out of cents-off labels, and the other brands went out—some of them had longer inventories that we did, it took them longer to get off the shelf and get into a list price situation—and there were also 420-odd coffee roasters and processors that were not required by any agreement to get out of cents-off labels who stayed in it. We went down to the Federal Trade Commission, sent our general counsel down, armed with information telling the Federal Trade Commission that we were hurting competitively volumewise, and profitwise, and we urged the Federal Trade Commission to hold this informal conference and get on with the guidelines.

August 1 came along, which was the end of the moratorium and we urged them again to get on with the guidelines. For their own good and sufficient reasons, but regretfully to us, we have not yet heard from them. It is a frustrating experience.

Mr. GILLIGAN. My question is have you any way of anticipating how long it would take to reach a voluntary standard in the coffee roasting business on this packaging label?

Mr. LARKIN. If this experience is any criterion at all, it will take far in excess of 6 months. We are now in the seventh month without even having our first conference.

Mr. GILLIGAN. In this procedure in which you are presently involved do you have participation on the part of manufacturers, distributors, and consumers, or is this just a unilateral transaction at the present time between yourself, several other companies, and the FTC?

Mr. LARKIN. This is not quite unilateral. It is 22 industry members.

Mr. GILLIGAN. Each making a separate presentation?

Mr. LARKIN. That is what has happened so far, Mr. Gilligan. But the informal conference, as we understood it, was to be among the 22 coffee manufacturers.

Mr. GILLIGAN. And this is directed to eliminate or modify in some ways the cents-off promotional technique?

Mr. LARKIN. Not to eliminate, but to provide guidelines.

Mr. GILLIGAN. Does it have anything to do with standardizing the weights or sizes of packages that coffee shall be sold in?

Mr. LARKIN. Not at all.

Mr. GILLIGAN. Can you tell me quickly how many consumer commodities your company, General Foods, produces in the meaning of the term as used on page 7, section (5) (d)? They use the term there "consumer commodity."

Mr. LARKIN. What is a consumer category or commodity? It is terribly difficult for us to determine what is a commodity. We deal in many, many different commodities, depending upon the definition.

Mr. GILLIGAN. Did you say before you had 102 products?

Mr. LARKIN. We have 102 products. Three of them might be three different brands of soluble coffee which I assume would be a category. But then freeze-dried coffee would be maybe another category.

Mr. GILLIGAN. Thank you.

The CHAIRMAN. Mr. Van Deerlin?

Mr. VAN DEERLIN. I have no questions, Mr. Chairman.

The CHAIRMAN. Mr. Macdonald.

Mr. MACDONALD. Thank you, Mr. Chairman.

Do you have any basis for that figure, if this bill passes in its present form, of 5 percent extra cost to the consumer? Do you have any yardstick by which you measured that?

Mr. LARKIN. Yes. From the example I gave you on costs, using the hypothesis that cereals would be standardized into 4-, 8-, and 16-ounce packages.

Mr. MACDONALD. We can imagine the same thing, but why do you take that hypothesis? There is nothing in this bill that says that will happen.

Mr. LARKIN. It is a possibility that it can happen.

Mr. MACDONALD. If you stay in Washington, and you have been here, I know, quite a long time waiting to testify, anything is possible in Washington. But it isn't very likely.

Mr. LARKIN. If it isn't very likely, then I would suggest the legislation is unnecessary, if it is not going to be used.

Mr. MACDONALD. We are now making legislative intent clear in marking up this bill. I don't think that any member of this com-

mittee wants to do either one of two things: Either hamstring the manufacturers, or increase cost to the consumer.

That, obviously, would be the last thing that this bill should do. I frankly think you are looking for bogeymen under the rug who are not there. When you just blithely say it is going to increase the cost to the consumer 5 percent, that sounds like a good, round figure, but what do you base it on?

You base it on standardization which you say is in the bill, and I ask you if you think it is in the bill to tell me where it is in the bill.

Mr. LARKIN. I will tell you again. Let us please go back to page 6, and the bottom of page 5.

Whenever the promulgating authority determines that regulations containing prohibitions or requirements other than those prescribed by Section 4 are necessary to prevent the deception of consumers or to facilitate price comparisons, such authority shall promulgate with respect to that commodity regulations effective to establish and define standards.

Mr. MACDONALD. And then you go to page 7, line 11, and you read the following language which certainly would make a reputable company like your's happy, I would think:

Prevent the distribution of that commodity from retail sales in packages of sizes, shapes or dimensional proportions which are likely to deceive retail purchasers in any material respect as to the net quantity of the contents thereof in terms of weight, measure or count.

I know you don't go about, your company, trying to deceive the consumer. Therefore, you would not be affected by this legislation.

Mr. LARKIN. Yes, we would, because on page 6, line 3, that controls, that section (c) controls, subsection (5). It says not only to deceive but to facilitate price comparison. We believe that the consumer looks at many more things, values, than price comparison.

Mr. MACDONALD. Obviously. That is why brand names are brand names. That is why Maxwell House spends so much money advertising itself. It is a brand name. A housewife going into the store knows it is an old-established company that through the years has produced a good product.

Mr. LARKIN. But if someone should say that this carafe or that hexagonal package did not allow the housewife to facilitate price comparison——

Mr. MACDONALD. If you put the poundage of the coffee on there, if you put what is in the package in a clear place, why do you think that the people downtown are going to do such an extraordinary thing as to say, "No, you can't have that kind of package." It specifically says in the bill that you can have any kind of package you want if you label it clearly.

Mr. LARKIN. It says if a Government agency decides in their wisdom that this does not facilitate an easy price comparison for the housewife, they can standardize the package.

Mr. MACDONALD. But it doesn't say that exactly. This is what your fear is. What you are testifying here is not about the bill but about something that you fear might happen. Actually, you cannot buttress it by any words in this bill that it is going to happen if the bill should become law.

Mr. LARKIN. I made it as clear as I can.

Mr. MACDONALD. I have tried to make it as clear as I can, as a member of this committee, who has to mark up this bill. As you understand, this isn't the final bill. We will go through many phases of just going line for line, word for word, as to what should be contained in the bill.

I just want to assure you that there is no member of this committee that I know of, and I know I make assurance for myself, who want to injure you. The whole point of the bill is not to injure the legitimate operators, but to protect the consumer. You are a legitimate operator and, therefore, I don't see what you have objection to.

It is the small, fly-by-night person when he says 4 cents off or 9 cents off that the consumer, who has never seen the product before, thinks is a bargain.

They do know what Maxwell House usually sells for, so they do know what a cents-off thing is there. They know what it is a cents-off of, more or less, the shrewd buyer.

But the small fly-by-night person who is cutting corners, this bill is a protection of the reputable operator from him, and it keeps amazing me that the reputable operators are opposing it.

The CHAIRMAN. What he is trying to say is that we want constructive criticism. If you come here and say, "This would help this bill," or, "This would help this land of ours" instead of just coming in here and saying, "Everything is wrong," it would be helpful.

Mr. LARKIN. I hope I didn't leave that impression, Mr. Chairman.

The CHAIRMAN. I know you didn't. You do say that there are some good things. What we want is constructive criticism that will help us.

Mr. LARKIN. May I continue on that vein for a moment?

The CHAIRMAN. Yes; you may.

Mr. LARKIN. I think we have covered servings. Our suggestion is if you want servings, rather than attempting to define servings, the subsection should require that if a manufacturer includes a serving statement on a label, he shall also specify the size of the serving in terms of weight, measure, or count.

For example, makes four servings, one-half cup each, or six servings, 3 ounces each.

May I go on to subsection (c)(3), which has to do with cents-off labels?

The CHAIRMAN. I might ask you this one question first. Do you not in your example of cents-off sales indicate the need for this legislation? I thought you did a while ago. If I understood you correctly, you stated that voluntary action will not achieve the needed results, therefore, you need this bill, don't you?

Mr. LARKIN. Mr. Staggers, what I was attempting to say is that in the area of overuse or abuse, the Federal Trade Commission has plenty of authority to go even on an industrywide basis, which they did in the coffee industry, to regulate overuse or abuse.

We are attempting to work with them. There seems to be a second problem that is bothering the committee on cents-off labels, and that is cents-off what.

The CHAIRMAN. That is right.

Mr. LARKIN. You recognize, and we surely recognize, that we do not control the price at retail. If this part of this argument is bothering

the committee, although I feel that 99 percent of off-labels are passed on, it seems to me that the industry could live with a requirement that says the manufacturer takes the cents-off amount off his invoice, and that you require the retailer to pass on at least the exact amount of the off-label, which would satisfy that, and not then destroy or regulate unduly an effective marketing device that is benefiting the housewife, and allows a bargain to get through to the consumer.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. I would like to pursue the cents-off statement that you made.

I gather from what you have said that actually the cents-off plan of merchandizing could be handled by authority that the Federal Trade Commission now has. Is that correct?

Mr. LARKIN. I believe it can be; yes.

Mr. NELSEN. The thing that disturbs me about this bill is that the cents-off technique was one of the selling points by the administration spokesmen, that this had to be curbed, and, therefore, we needed this new piece of legislation.

I would not agree with the chairman that some of these arguments are ridiculous because if I were in the food packaging business I would assume that the administration's sales pitch is the basis on which the bill would be administered, if it were passed.

The testimony by Mrs. Peterson, and I have it before me, says, "The fewer sizes and the fewer off-cents sales deals they have to content with, the simpler their stock records and the lesser stock shelf they would need."

She is making the pitch that the cents-off deal should be out of the picture.

Also, in the testimony are references continually by Mrs. Peterson about standardization of packages. While I would agree with the chairman that they are not going to write the bill downtown, I would also point out that if I were in the food business, I would be fearful of the fact that the administration of the bill would be in keeping with the executive department and not the legislative.

Therefore, it is important that in the hearing we develop a record which indicates what we in the Congress want to do and to protect the type of technique which we wish to pursue.

I yield to the gentleman.

Mr. MACDONALD. I appreciate your yielding.

I want to keep the record clear. Mrs. Peterson, to my knowledge, and I attended all the hearings in which she testified, just once used the word "standardization," and then took it back, saying that although she used that word she didn't mean it, and that it was not the intent of the Panel that there be standardization.

So, she didn't, Mr. Nelsen, use it continuously. She used it one time and within minutes said that she regretted the fact that she had used it.

Mr. NELSEN. I would disagree because on page 76, and I have gone through the record pretty carefully, she made the statement, "There was a heavy degree of proliferation, and certain ground rules and standardization will help." Then in the next reference, "There is no desire for standardization that was unreasonable."

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The next reference I have is, "I think it is because there are no ground rules, that there has been such a proliferation, and it is impossible for the consumer to make this valid price comparison."

The next reference I would like to refer to, "Again, the standardization would be in the area so the consumer could know what amounts where."

But I realize with Mrs. Peterson it is a matter of choice of words that I think we sometimes hear in our own comment on a bill. I would assume from this that standardization is in the wind and I think it is up to us in the legislative body to make it very clear what we wish to do. I think the chairman has so stated.

Mr. GILLIGAN. Will the gentleman yield?

Mr. NELSEN. Yes.

Mr. GILLIGAN. On the question of Mrs. Peterson's prepared testimony, not her answers to questions, she said on page 4, in describing the conditions under which commodity by commodity regulations can be issued are clearly spelled out, and—

> Industry is invited to determine its own voluntary standards, to reduce the confusing array of weights and sizes.

So it seems to me if you are reducing the array, you have to be coming down to some specific number.

Then she used an example of the 33 young married women who were sent into the grocery store and who made a lot of mistakes. She said:

> They made no mistakes on staples like sugar and flour which are sold in whole unit packages. They had the greatest difficulty with products where there was a proliferation of sizes and mixed units of measure—

which she apparently finds reprehensible.

Then on the voluntary aspects of section 5(d)(2), she says:

> Provides for a regulation of weights or quantities at which a commodity may be sold if the ability of consumers to make price comparison is likely to be impaired. This would be accomplished by encouraging the industry, itself, to agree upon the most wanted sizes and to establish voluntary product standards under procedures already established.

A little later, on the same page, she says:

> If this were not accomplished within a year or a year and a half at the discretion of the administering agency, the administering agency, itself, might promulgate such a standard.

It seems perfectly clear to me that the whole intent here is to reduce the proliferation of sizes, and if that isn't accomplished by standardization which, as she said, will be done voluntarily by the industry or if not by the industry will be done by the promulgating authority within 18 months, then I don't know what this legislation is all about.

The CHAIRMAN. Mr. Moss.

Mr. Moss. I will be pleased to yield to the gentleman from Michigan.

Mr. DINGELL. I thank the gentleman.

I want to commend the witness for a very fine and helpful statement. It occurs to me that he has been perhaps the most constructive witness we have had from industry on this legislation.

I had hoped to ask a question or two about your experiences and judgments with regard to the problems of cents-off, but you have cov-

ered that very well. I would like now to switch and perhaps ask you with regard to some other points.

You spoke, first of all, about instant coffee and regular coffee. First of all, you sell regular coffee in 1-pound and 2-pound cans, I believe.

Mr. LARKIN. And 3-pound cans. Some people sell them in half-pound cans.

Mr. DINGELL. Are there other sizes in which coffee is sold, like 17 ounces, 14 ounces, 23 ounces?

Mr. LARKIN. There are not at present, if you restrict yourself to regular coffee.

Mr. MOSS. If the gentleman will yield, I believe there is one distributor on the Pacific coast who sells in a quarter-pound can.

Mr. LARKIN. Yes, quarters, halves, pounds, 2, 3.

Mr. DINGELL. But no 23½ ounce cans?

Mr. LARKIN. Not that I am aware of, no, and I think I would be aware of it.

Mr. DINGELL. Similarly, sugar is sold in similar size cans, 1-pound, 5-pound, 10-pound, and so on?

Mr. LARKIN. Yes.

Mr. DINGELL. And it would be the same with regard to flour? That is, 1, 5, 10? You wouldn't have 17¾-ounce sacks of flour.

Mr. LARKIN. I am not aware of any. But I am not aware of even multiples either.

Mr. DINGELL. It is fairly easy for a consumer to make a price per ounce comparison between different coffees; am I correct?

Mr. LARKIN. Yes.

Mr. DINGELL. But there he is dealing, let us say, with substances which are not exactly identical but are fairly similar. Am I correct?

Mr. LARKIN. If you are comparing regular coffee with regular coffee; yes.

Mr. DINGELL. I am not asking you to prejudice your corporate interest here by telling us that anybody else makes coffee as good as yours. But I am saying they generally would be substantially similar as between different 1-pound cans of coffee or bags of coffee, that the consumer could determine the unit differential within his own mind without using a slide rule or a complicated logarithmic table, something of this kind.

Should a consumer be entitled to do the same thing with regard to instant coffee? In other words, make a per ounce judgment insofar as instant coffee is concerned?

Mr. LARKIN. We have no argument, Mr. Dingell, in staying with even ounces on soluble coffee. Our only problem with fractional ounces is when the ounce weight is not the major criterion for the housewife wanting to buy the product.

Mr. DINGELL. Where would that particular condition arise?

Mr. LARKIN. Let me illustrate that in a whole line of Jell-O puddings of different densities; for instance, we have weights per package running from 1¾ to 2¾, 2½, 3 ounces, and so on, but they all make the same number of servings.

Mr. DINGELL. I would like to defer on this a bit, if I could, because I had intended to work toward this end. But I wanted to discuss first, if I could, the problem that we run into with regard to substances which are substantially identical or very similar.

For example, green beans, peas, frozen or in the can, carrots, sugar, flour, coffee, instant coffee, commodities of this kind, perhaps canned strawberries or frozen raspberries, or items of this kind. Would we run into a problem if we were to generally deal with standardization of those particular size packages, so that a consumer could make an intelligent judgment between, let us say, two packages of frozen peas, or two packages of frozen strawberries, something of this kind?

Mr. LARKIN. My problem with that question is this: If you standardize products that are on the marketplace today, there is, just as sure as we are sitting here, going to come innovation in whatever field you talk about that will put this product in some different form or shape, or there will be some different product formulation that will change the net weight content, package size, or dimension.

If the manufacturer is restricted to any given size, shape, or multiple, then it restricts the innovative opportunity. It deters it. It makes it more trouble, more difficult, to reformulate to the consumer's benefit because we can't go up a quarter of an ounce or down a quarter of an ounce, as it may be determined by a reformulation.

Mr. DINGELL. Mr. Chairman, I do have another question that I would like to ask, but I will defer, if you wish.

The CHAIRMAN. Mr. Keith's time has expired, but you may proceed on your own time.

Mr. DINGELL. Thank you, Mr. Chairman.

I think you and I are working together on the point that I want to come to. We have talked about different substances which might be, generally, more or less the same. It is fair to say that some innovation in packaging in the food industry is of benefit to the consumer.

It is also fair to say, I believe, that a certain measure of this innovation is done for convenience or for the salability of the merchandise concerned; am I correct, sir?

Mr. LARKIN. Yes; and if it doesn't sell and if she doesn't like it, it isn't there long.

Mr. DINGELL. This is it. So we have the two. On the one hand we have the salability for the consumer, because of consumer preference for some innovation, and on the other hand you have something which might be, let us say, for the benefit of the merchandiser, the person who manufactures.

Mr. LARKIN. That second, to me, is a fairly shortsighted point of view, because if it doesn't serve the consumer, regardless of how it serves the merchandiser or manufacturer, it won't be there.

Mr. DINGELL. I must confess a certain measure of concern over some of the practices I have seen in the industry which would not be, at least from a cursory view, directed solely to the consumer's benefit.

I think we can cite some examples, but I think I prefer to stay away from them.

What I am coming to now is the very important question I want to ask you. Can any line be drawn between products such as coffee which could fairly well be standardized insofar as 1-pound cans or 2-pound cans, something of this kind, and some item like a cake mix or a pudding mix, something of this kind, which obviously would be rather difficult to standardize? I am asking your help to guide the committee.

Mr. LARKIN. My fear, again, is innovation. Let me give you an example. Instant coffee today is sold in 2-ounce, 6-ounce, 10-ounce, 14-ounce sizes.

Mr. DINGELL. If I may interrupt you at that point, is this always the case, or is it 2¾, 2⅚?

Mr. LARKIN. I am not aware of any fractional ounces in soluable coffee.

Mr. DINGELL. In other words, would you say that all makers would go 2, 6, 12, whatever it might be?

Mr. LARKIN. I would say the majority of soluable coffee is sold in those sizes. There are some 8-ounce sizes. But to get to my point, a new freeze-dried coffee will give the same number of cups in a smaller package that weighs less ounces because it is a more dense product. It is an innovation. So you don't take a rounded teaspoon or else your coffee is too strong. If you put that in the standardized 2-, 6-, or 10-ounce sizes, if she used the rounded teaspoon, she would get too strong coffee.

If freeze-dried coffee were sold in 6- and 10-ounce sizes it would be priced out of sight.

So we have put freeze-dried coffee into a 4-ounce size, which gives roughly the same number of cups of coffee because the consumer uses less.

Mr. DINGELL. To return to my question, is there a line that can be drawn between regular coffee and other products which are more or less the thing you spoke of, freeze dried as opposed to your more or less standard type of soluable coffee?

Mr. LARKIN. As of any knowledge I have today, I am not aware of any innovation in regular coffee that would change the density of the produce, if you will. But believe me, that is not to say it will not happen to us tomorrow, because we are working on it every day.

Mr. DINGELL. Let me ask you this: Let us take the case of salad oil. This started out in pints and quarts. Now we have gone to 24 and 28 ounces.

I think it would be fair to say this: This particular innovation is not necessarily entirely to the consumer's benefit, because a 14- or 28-ounce as opposed to 16- or 32-ounce is fairly similar in size.

If you give a little different body shape to the container, you will come up with something which looks to be substantially the same, but which costs significantly more per unit, per ounce. Would you say there was any innovation here that should be protected for the consumer's benefit?

Mr. LARKIN. Let me give you an example from my own experience in this sizing business which might be helpful. We had soluble coffee in the 2- and 6-ounce size and we found that in a buying cycle people were buying the coffee more often and running out, so we came up with a larger size. We said "large, economy size" on it.

Mr. DINGELL. My chairman has his gavel in hand.

I would rather not talk about that but stick with this other. Why should we tolerate the 14 ounce as opposed to 16 ounce in salad oil?

Let us take peanut oil, corn oil, safflower oil, two safflower oils are generally similar. Generally their functions are pretty much the same. The same thing would be true with regard to olive or peanut oil.

Why should the person be forced to choose between a rather slickly done 14 ounce as opposed to a rather stodgy 16 ounce when he will be paying more and he might be deceived into buying that 14 at a higher unit cost as opposed to a cheaper and better deal for himself if he would not be confused into buying that 14 instead of the 16-ounce container?

Mr. LARKIN. May I ask Miss Dunham to answer that question?

Mr. DINGELL. Certainly.

Miss DUNHAM. My experience in watching women shoppers is that they read the label, and if it is clearly marked on the label, 14 ounces or 16, then she buys on the basis of that 14 or 16 and it is priced to that.

Mr. DINGELL. Let us talk about the gal who sends her husband to the store.

Miss DUNHAM. Then she should teach him to read the label.

Mr. DINGELL. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Pickle.

Mr. PICKLE. No questions.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS of Florida. I presume it is true that anyone who goes into buy will have to read the label or they will not know what is in any container.

Mr. LARKIN. Yes, sir, that is right.

Mr. ROGERS of Florida. Thank you very much.

The CHAIRMAN. Are there any more questions?

Mr. Moss. I have just one question.

I must confess since I realized the inevitability of having to sit here and finally make a judgment on a legislative document that I have become much more interested as a shopper. I have been doing quite a bit of it lately. I have roamed the aisles of a number of supermarkets. I have the affliction that hits many of us in our fifties. My arms have become too short and I have difficulty reading.

I noted that in many instances labels are done in complementing rather than contrasting colors. They are metallic finished labels. I have great difficulty on many products in determining what the labels are.

If I think to take along a special pair of glasses that I carry and take off my regular ones and put those on, then I haven't quite the difficulty. But it seems to me that there has been an increased tendency in some commodities to ultilize these metallic labels where it is very difficult to read the very small print that gives these fractional sizes.

I must also confess that I have had great difficulty in determining what the best buy might be in dealing in many of the large chain markets where there are both standard and private brands, and you attempt to formulate a judgment.

What would be your observation on that?

Mr. LARKIN. Mr. Moss, we subscribe to the model laws on labeling and net contents, and where it should be in the principal panel, and what type size it should be.

We do it because we believe in it and our consumers play back to us that they like to be able to read this loud and clear.

If in your minds this needs further clarification than is available now, it seems to me the food industry can certainly live with it. If

you need to specify even larger type sizes than are now specified in these model laws, we have no great argument with that.

Mr. Moss. I am troubled. I believe there is a clear consensus in this committee that we are not anxious here to take any action that would be prejudicial to the very important distributive business of food commodities consumed in the average home everyday.

On the other hand, we are mindful of the fact that that is a market that is increasingly competitive, and that all innovations are not necessarily good or just innovations. I have some pet peeves. One is an attempt to buy bacon. I like it lean and I have great difficulty in finding whether it is lean or whether it is fat. It is so attractively packaged that it defies my greatest ability at attempting to see what it is.

There are other items packaged like that.

Mr. YOUNGER. Will the gentleman yield?

Mr. Moss. Yes.

Mr. YOUNGER. Do you think we ought to include meats in this bill?

Mr. Moss. I just said I had a pet gripe.

Mr. YOUNGER. I want to satisfy your pet gripe. Should we include meats?

Mr. Moss. You can't tell. In markup I may offer such an amendment.

I thank the Chair.

The CHAIRMAN. We want to thank you, Mr. Larkin, and Miss Dunham, for coming to give us the benefit of your views. You have been very helpful witnesses and I am sure you have added to the record.

I am sure that you, like the members of this committee, are trying to do what is best for the overall problem in the land.

Mr. LARKIN. We certainly do recognize that, Mr. Chairman.

The CHAIRMAN. As I say, we do appreciate that you have come to give us the benefit of your views. We hope the other witnesses will take the same attitude that you have, that we are trying to work out something together, and we are not working at cross purposes.

Mr. Moss stated it very well, that the members of the committee are not out to hurt any industry in this land. That would be bad, it would not be the American way.

But we are obligated to carry out our responsibility to the consuming public, to work on this bill and to cut out some things or to amend others.

That is the reason we need the help. If you people who are eminently qualified to give us that advise will help us, we appreciate it.

Mr. LARKIN. We will do our best now and in the future, Mr. Chairman. We urge you in all sincerity to take a real hard look at section 5.

The CHAIRMAN. Thank you so much, both of you.

(The following letter was subsequently submitted by Mr. Larkin:)

GENERAL FOODS CORP.,
White Plains, N.Y., August 26, 1966.

Hon. HARLEY O. STAGGERS,
Representative in Congress,
Rayburn House Office Building,
Washington, D.C.

DEAR MR. STAGGERS: I want you to know how much I appreciate the gracious treatment afforded me by you and the members of your Committee on the occasion of my testimony before you earlier this week. I am hopeful that my

appearance will prove of some help in your thoughtful consideration of the Packaging Bill. If I can be of further assistance to you in any way I will consider it a privilege.

I noted with interest in the press that you asked some industry witnesses, prior to my appearance, whether their opposition to the bill would recede if the section on size and weight standards was replaced with a provision prohibiting slack filling and the use of packages which look similar to established packages, but contain less. Had you asked me that question I would have answered you in the affirmative, and had I known that you had asked the question of prior witnesses I would have volunteered an affirmative comment.

Experiences with your Committee, culminating with my appearance before you, is a source of great reassurance to me that this proposed legislation is being given careful, intelligent consideration and that you and your associates will be as sure as you possibly can that whatever legislation is reported out will be constructive, fair and truly in the public interest.

Sincerely,

A. E. LARKIN, Jr.,
Executive Vice President.

The CHAIRMAN. At this time we will hear from Mr. Thomas McCabe, Jr., of the Scott Paper Co.

STATEMENT OF THOMAS B. McCABE, JR., VICE PRESIDENT, SCOTT PAPER CO., ACCOMPANIED BY MRS. CARTER BULLER, CUSTOMER RELATIONS DEPARTMENT, SCOTT PAPER CO.

The CHAIRMAN. Would you identify your aid, Mr. McCabe?

Mr. McCABE. I will, indeed, sir. The lady on my right is Mrs. Carter Buller. She is in charge of our customer relations department. I think she may be of assistance during the questioning.

In the interest of time, Mr. Chairman, if you are agreeable, I would like to hurriedly present my testimony.

The CHAIRMAN. That will be fine.

Mr. McCABE. As a representative of the Scott Paper Co., I can tell you that the packaging bills under consideration by this committee will have a very direct impact on our business because of the nature of the products that we manufacture, and most particularly our line of consumers and potential consumers the product of his company, and he these products, which is through supermarkets and independent retail stores.

I would like, if I may, to make what I hope will be a few constructive comments with respect to the proposed legislation and the impact on our business.

We believe that a businessman assumes certain responsibilities when he take a product to market. Each day he places before the eyes of consumers and potential consumers the product of his company, and he says "You should buy this product because it offers in return for your dollars utility, quality, and value."

In fact, if the customer pays their money and does not receive satisfaction in terms of utility, quality, and value in the product or service she buys, in our experience they will not, in this country buy again.

As a representative of Scott, I can tell you that our company will produce domestic sales this year in the range of a half billion dollars. The largest portion of those sales is in paper products sold through supermarkets and independent retail stores for use in the home. Thus, Scott Paper Co., will receive the full impact of any legislation affecting

the packaging of consumer products, and certainly of H.R. 15440 or S. 985 if either becomes law.

Frankly, gentlemen, I was dismayed by the recent action of the Senate Commerce Committee and the Senate as a whole with respect to this bill, and I urge you to give this legislation the very serious attention it deserves. In your hands rests the fate of a vital and dynamic aspect of American business life because packaging is one of the most important marketing forces in self-service merchandising and, therefore, in the continuing stimulation of consumer demand in the largest purchasing segment of our economy.

Let me briefly review the specifics:

Passage of this bill will restrict rather than stimulate consumer demand. The objectives of this legislation run counter to national economic objectives.

The consumer for whom this so-called protection is sought will be hurt more than helped by it and will have to pay higher prices for the products she buys to obtain protection which she already enjoys under existing Federal and State laws.

From every indicator—market research, surveys, consumer mail—there is no significant "confusion or deception in the marketplace." To make sure that what our own consumer mail was telling us was accurate, we participated, through the Grocery Manufacturers Association, in a national survey conducted by Opinion Research Corp. Here are some of the facts resulting from that survey.

Do consumers want Federal control of packaging? Ninety-nine percent of American housewives veto proposals to regulate package shapes and designs. Only 1 percent saw any value in restrictive legislation.

Do consumers want fewer sizes in food packages? Eighty-six percent of housewives are happy with today's package sizes.

Are consumers misled by information on food packages and labels? Eighty-six percent of housewives say that packages and labels give them all the information they need.

We can find no evidence of widespread consumer dissatisfaction with the packaging and labeling of products—certainly not of such force to warrant the crippling, costly, and unnecessary controls as proposed in this bill.

Scott Paper Co. has been concerned about this legislation in all of its previous forms and on three prior occasions our president, Mr. Harrison F. Dunning, has testified against it. H.R. 15440 and S. 985 represent some improvement over earlier versions of bills directed to the same end, but still raise the specter of interference with legitimate, fair, and reasonable marketing practices—particularly in the areas of package standardization and the limitations placed on cents-off promotions.

It appears to me, therefore, that this bill has made as much progress as it has in the Congress largely through the efforts of a small group whose articulate and rather emotional arguments hide the fact that they speak for very, very few people.

Application of the proposed standardization regulations will create greater confusion by forcing a proliferation of package sizes on the one hand and in other cases, a drastic cutback in the choice of quantities now available to the customer. Not all commodities have the same volume, density, weight per ounce, and value.

Hence, different sizes and amounts are necessary. If this legislation is passed, virtually all competitive products in the same category will look the same on the shelf and the advantages of unique package shape and design will be lost and confusion among grades would likely follow. And clearly, there just isn't in the marketplace the confusion and deception that the proponents of this bill would have you believe.

What is in the marketplace is competition and it extends to pricing, packaging, and, most basically, value. Each of these elements is part of the whole; they are critically interrelated and form the sum and substance of the total offering.

There are a number of examples of consumers saying to packagers: "This is not fair," or "This is misleading," or, yes, even "I think this is plain dishonesty." And the companies who have continued to grow and progress have made right what they once made wrong, no matter what very good or very bad reasons they had for their original decisions.

I am not saying that businessmen are more sincere than others in carrying out their jobs. But I am saying that their sincerity and honesty is equal to those of others and they try as hard to please their customers as legislators do to please their constituents.

A businessman assumes certain responsibilities when he takes a product to market. Each day he places before the eyes of customers and potential customers the product of his company and says: "You should buy this product because it offers, in return for your dollars, utility, quality, value." If he is false, if he does not keep faith with his customers, if, in fact, the customer pays her money and does not receive satisfaction in terms of utility, quality, and value in the product or service she buys, she will not, in this Nation, buy again.

Obviously, in companies like Scott, we receive complaints from consumers. It would not be possible, I think, to produce something like one million and a half packages of products a day and not receive some complaints. We go, I think, far out of our way to satisfy the small percentage of customers who feel that they have not received in some way the value they should be getting when they purchased our products.

Let me illustrate this briefly how at Scott the consumer dictates and influences packaging in our business. Customer criticism which we receive largely in the form of mail is fed back to the design and manufacturing process in our business through our company's consumer relations department.

Because of consumer suggestion or criticisms, we have in the past changed a number of packages, included good opening devices, instructions, cutter edges, and design and graphics, on some of our packages.

As an example, a number of people wrote in about our towel wrappers, when we switched to polyethylene. The small flower designs we used on our paper wrapper were used on the polywrap with the new material which was introduced.

Some customers were now led to believe that the towels inside were decorated. As soon as this confusion was brought to our attention, we immediately removed the flowers from the package.

In other instances, we have gone out of our way at additional cost to prevent consumer misunderstandings. We make two lengths of

wax papers, the 125 feet and the 75 feet. The rolls are the same width, only the length is different. We could put both of these products in the same sized box and point out the difference in copy. This would save us a considerable sum of money, but we don't because our policy dictates against this. We make two different-sized boxes with different equipment handling each.

The question may then arise in your mind as to "Why, Scott Paper Co., do you oppose legislation that its proponents say is to protect the consumer? If your packaging is designed to insure that consumers are not misled, then this bill will have no effect on you."

The truth is that the truth-in-packaging bill in our judgment is not necessary, and the result of such legislation would be to throw out perfectly good machinery and equipment and buy replacements, because present equipment is designed to prepare and package products in a given way.

To use an example, should the Federal Trade Commission, having thoroughly review the situation, conclude that paper towels should be packaged in multiples, of, say, 75, Scott Paper for one, will have to buy equipment that counts towels in 75 because its existing equipment will not count in these multiples.

Now, we have prepared a study of the impact of standards on the packaging of our towels and we have made some assumptions in the preparation of this study.

In summary form, this study that we have prepared shows that the cost, the increased cost, of making the change that would be visualized in the standards that are set up in this study would be approximately 5 percent.

This study is available to you gentlemen for your review and consideration if you wish to do so. (See p. 600.)

Household paper towels, which are sold in rolls, come in a number of sizes. Our company presently makes two sizes, which we selected after a lot of research into consumer uses and preferences regarding paper towels.

We know, for instance, that because our towels are somewhat larger in sheet size than others, the housewife will use one of our towels for many applications where she would, by necessity or preference, use more than one of the smaller towels. It was our research into consumer needs which told us that we would meet an unfilled demand by selling 120 larger sheets even though our competitors can offer more sheets at prices which meet ours. We know that many consumers will prefer our product.

Three other factors which have the same effect are the number of plies, absorbency, and wet-strength. The latter two are somewhat inconsistent with each other—the more of one, the less of the other. Like sheet size, the number of plies and the relative degrees of absorbency and wet-strength have a direct relationship to the number of towels a housewife will use for any given application.

Every company in our industry tries to outdo the others in making a product which has what it considers to be the best blend of useful characteristics in terms of sheet size, the number of plies, absorbency, wet-strength, and so on. At the same time, every company knows that the housewife will not buy its towels unless they are priced competitively with those of its competitors.

The result is that all of the characteristics I have mentioned, plus others such as the bulk or amount of fibers in a sheet, must be taken into account in determining the number of sheets in a roll, so that the package gives the consumer what she wants at a price which she wants and which we can afford.

If the Federal Trade Commission were to decree that roll towels may be sold only in quantities other than those which we have selected to meet a consumer demand, we will have to reduce our sheet size to market our product at a price which we believe the consumer will pay, and I am excluding from consideration at this point increases in price because of the necessity of buying new machines to package new sizes.

I think you should note that the housewives who no longer can buy what they want are going to be unhappy and we will get thousands of letters from disappointed ladies who bought our towels precisely because they liked the difference.

I hope these situations which I have outlined will be helpful to you in terms of explanation, and I hope you see why I am urging reasoning and commonsense where this bill is concerned. When all makers of paper towels must put the same number of towels in a package, and then have the design of that package approved by a central review board that is reviewing every other package, the very nature of competition—diversity—will be lost.

To the extent package standardization will prevent adjustments in net quantity to compensate for product improvements, it will also mean that the consumer will have to pay higher prices or forego a better product at a competitive price.

For instance, one way to improve many sanitary paper products from the user's standpoint is to increase the bulk of the paper sheet. But if you do that on paper towels or bathroom tissue, you have to decrease the number of sheets, because the dispensing fixtures will accommodate rolls of a certain diameter and no more.

A standardization order will preclude the manufacturer from offering to the consumer a product with greater bulk and utility and attractiveness because, if it is packaged according to the standards used for competitive products with less bulk, it won't go into the holder.

Fundamentally, the bill proposes that Government lawyers or economists rather than the consumer, should regulate all the important aspects of presenting a product on the shelf to the shopper. When the manufacturer can no longer determine the most effective way of presenting his product, he will face higher costs and a loss of ability to compete by using fair, nondeceptive, nonprice elements.

All along the line, higher prices. Package standardization will inevitably mean higher production costs, which will have to be passed on to the consumer. Restricting the use of fair and nondeceptive cents-off coupon and similar promotions will deprive the consumer of bargain prices and will require the use of other, perhaps more expensive kinds of promotion, the cost of which also would be passed on to the consumer.

I submit, gentlemen, that the reasons against passage of this kind of legislation are compelling.

And I go back to my original point: there is no sign of significant desire on the part of consumers for additional legislation. And there is ample legislation on the books to protect the consumer.

Thus, if Congress passes this bill, it is saying: "You, Mrs. Consumer, don't seem to be unhappy with the present competitive marketing system and, by reply to survey, have indicated active support for that system. However, Congress believes otherwise. It does not believe the key to successful marketing is freedom and flexibility and you are going to have to pay for new regulations that are going to remove a vital element from industry's competition for your favor."

The key to successful marketing is freedom and flexibility. If we are forced to eliminate or fetter our right to be different and unique in our packaging, we will be taking a step backward in terms of trying to stimulate consumer demand, a step which is counter to our Nation's economic objectives. We are trying to achieve and maintain full employment, stave off inflationary pressures, and maintain a healthy economic Nation. And we know the successful accomplishment of this can be obtained only by creating a higher level of marketing achievement. This bill's objectives run directly counter to that.

Gentlemen, I have attempted to appeal to your reason and your commonsense.

Scott Paper Co. and I personally fail to understand the reasoning or to recognize the commonsense in this bill.

The decision is in your hands, gentlemen—think well on it, recognizing that your conclusions will determine in large degree the future success and well-being of our Nation's economy—and most importantly—the consumer.

Thank you.

The CHAIRMAN. Thank you very much, Mr. McCabe.

Mr. Macdonald, do you have any questions?

Mr. MACDONALD. Thank you. I won't go into a dialog that we usually have with witnesses about their statements with Mr. McCabe, but I take it that although you compressed your statement which I congratulate you for, I was curious about page 2, where you say that some organization called the Opinion Research Corp., participated along with you and others in taking a national survey.

You state that 99 percent of American housewives veto proposals to regulate package shapes and designs.

I was wondering if you knew much about this survey or study. It is the first time we have heard about it and we have been taking testimony for quite some time.

Mr. MCCABE. This survey was conducted under the sponsorship of the Grocery Manufacturers Association. What I summarized in this statement were the results of that study, which was based on consumer interviews and conducted by the Opinion Research Institute.

Mr. MACDONALD. As you know, it is not known for people running for office to take polls, and two people running for the same office can come up with polls. One poll will say that X is ahead by 89 percent, with 3 undecided and Y would come up with 82 percent for him and 4 percent undecided and a certain number against him.

So I was curious when you make these bland statements that consumers are happy with today's packaging and they are not misled.

You say 86 percent say that they are not mislead. I was wondering what cross section of the consumers this Grocery Manufacturers Association which hired the Opinion Research Association to poll.

Mr. McCabe. I do not have with me the plan for the study or the numbers of women that were interviewed, but I would be happy to arrange with the Grocery Manufacturers Association to get you that material.

Mr. Macdonald. I think to have any meaning, to have a meaningful statement, it would have to be buttressed by saying it was taken in all 50 States, or it was taken only in New York, or it was taken in Massachusetts, or just what did happen.

Mr. McCabe. I will make sure that you get the data which supports this statement.

Mr. Macdonald. I know that I would like to have that, and I ask permission of the chairman to have it made a part of the record when you furnish it.

Mr. McCabe. Yes, sir.

The Chairman. It will be inserted in the record.

(The information requested, when supplied, will be found in the committee files.)

Mr. Younger.

Mr. Younger. Thank you. If I understand you correctly, it is your considered judgment that this bill as written would increase your costs about 5 percent.

Mr. McCabe. It would increase our costs certainly as we interpret the legislation. The 5 percent is an approximate figure for this particular towel situation on which we ran a study, and which is available to you, sir, for your consideration.

Mr. Younger. I think it would be well to file it with the committee. That, of course, is considerably above the 3.2 percent that is the limit which the administration says is noninflationary.

(The information referred to follows:)

Scott Paper Co.,
Philadelphia, Pa., August 22, 1966.

Subject: H.R. 15440 and S. 985.

To the Members of the Committee on Interstate and Foreign Commerce,
House of Representatives, U.S. Congress.

Gentlemen: Attached is a summary statement of the costs to Scott Paper Company which would result from a hypothetical regulation under the packaging bills being studied by your Committee.

The regulation, while hypothetical, is one which we believe is well within the realm of possibility under the bills. It was chosen on the basis of the purpose of Section 5(d) of the bills as we understand them, namely, to reduce the number of net quantities of products to facilitate price-per-unit comparisons. In selecting the hypothetical regulation, we made certain assumptions, set forth below, as to the market demand for the product involved. Our manufacturing division was then asked to compute the costs which would be involved on the basis of the stated assumptions.

We assumed a regulation, pursuant to Section 5(d) of the bills, prohibiting the sale of two-ply household roll paper towels in net quantities other than 75, 150 and 225 sheets per roll. We further postulated that for every three "regular" rolls now sold in the industry, on the average one roll of 75 sheets and two rolls of 150 sheets would be sold; and that for every "large" roll now sold, one roll of 225 sheets would be sold.

We assumed that all rolls would be wound on the core at the same tension as is presently used to avoid any question of "slack fill" as a consequence of looser winding in one size package than in another.

The figures shown in the attached statement are as accurate as the nature of the problem permits. We believe them to be fully supportable given the assumptions listed above. A regulation differing from the hypothetical one would, of course, involve different costs.

It should be noted that the attached statement relates to only one product manufactured by Scott. It should also be noted that an increase in Scott's costs of manufacturing and distributing a product of one-half or even one-quarter cent per unit may result in an increase in the retail price for that product of one to two cents.

We will be pleased to try to answer any questions you may have concerning the foregoing.

Very truly yours,

SCOTT PAPER CO.

I. Equipment:	
A. Cost of new equipment and installation (including removal of existing equipment)	$3,315,000
B. Unamortized cost of existing equipment	1,447,000
Total equipment cost	4,762,000
II. *Operations:*	
A. Increase in annual operating costs, excluding packaging and distribution costs	254,000
B. Additional paskaging costs	529,747
C. Additional distribution costs	388,420
Total increase in annual operating costs	1,172,167
III. *Additional cost during 1st year of operation under regulation*	
A. Depreciation on new machinery	555,000
B. Unamortized cost of existing equipment	1,447,000
C. Total increase in annual operating costs	1,172,167
Total additional 1st year cost	3,174,167
Average increase in manufacturing and transportation cost per roll	0.011

Mr. MACDONALD. Will the gentleman yield?

Mr. YOUNGER. Not right now.

Mr. MACDONALD. I was wondering if the gentleman had heard of the steel settlement, and of how much steel thought it needed.

Mr. YOUNGER. I have heard about that. I just wanted to make sure that he was not breaking the 3.2 guidelines.

The CHAIRMAN. Mr. Moss, do you have any questions?

Mr. Moss. Mr. Chairman, I wasn't going to ask any questions, but my good colleague from California has stimulated one. The 5-percent figure would have to be a very arbitrarily arrived at figure, wouldn't it, based upon a hypothesis which might have validity, and might not? The standards which were adopted might well become the standards of the industry, and therefore, you might be faced with no cost conditions; isn't that true?

Mr. MCCABE. The study that we prepared in relation to towels is based on a hypothesis; that is right.

Mr. Moss. Completely, and therefore, we could adopt a different hypothesis and come up with a saving?

Mr. MCCABE. You could develop a different hypothesis that would result in a standard being set that conforms with our present standard. That is correct.

However, I think the probabilities of this standard, of our standards prevailing on most of our product lines is not a presumption that we can make with respect to considering this legislation.

Mr. Moss. Well, I think it would be very difficult to make any presumption that would stand up under any close scrutiny until we have completed the legislation efforts of the committee.

I merely wanted to raise that point, because there has been talk of increased costs. It is not necessarily inherent in this legislation that costs would be increased.

I think unless there is conclusive evidence to the contrary, that the record should be quite clear on the fact that any such study would be highly arbitrary, and based upon a hypothesis which might well be prejudiced because of opposition to the legislation.

I am not at this point indicating whether I support or oppose the legislation. I am interested in listening to the testimony.

Now, on the opinion research, Mr. Macdonald has requested the results of that. I would like to have the detailed universe upon which the researchers relied for their conclusions.

I had the experience of sitting through many weeks of hearings by a subcommittee of this committee when we studied certain research operations for preference in radio and television, and the committee found that they had little validity, and that was an official finding of the committee back just a few years ago.

So I would want full details as the basis of any appropriate evaluation of its validity.

Thank you.

The CHAIRMAN. Mr. Keith.

Mr. KEITH. I have no questions, Mr. Chairman, except as a matter of curiosity I was following your prepared statement quite closely and I noticed you departed from it in several instances.

It seems to me that when you were speaking personally to the Congress you chose to avoid that portion of your prepared statement that dealt with the Congressman from a philosophical or personal point of view and I was sort of curious as to why you left that little part of your sermon out.

Mr. MCCABE. It was not deliberate, Mr. Keith.

Mr. KEITH. Also, I am a little curious as to the role that your assistant might be playing here, and I was going to propose that we might find some way to inject her into this.

Mr. MCCABE. Well, Mrs. Buller is very closely concerned with the reaction of the consumers with respect to packaging and virtually every matter that pertains to our household paper products, and I think that you might comment on how we react to consumer's suggestions, with respect to packaging.

Mrs. BULLER. Allow me to introduce myself as being in charge of Scott Paper Co.'s consumer relations department, and as such we receive a great many letters each year concerning these matters.

As to these letters, for instance, in the past year dating from June 30 of 1965 to June 30 of this year, we received over 10,000 letters dealing with all aspects of our company, and our public acts in the form of products and packages.

These comments, this consumer mail, deals with many different aspects of our company entering into the consumer market. This

includes suggestions for new products, innovations in existing products, and general comments on availability of our products, and this type of thing.

Mr. KEITH. Thank you. I noted that the previous witness mentioned that they had 135,000 pieces of mail in a particular year. You have about 10,000?

Mrs. BULLER. That is right.

Mr. KEITH. Is that correct?

Mrs. BULLER. Yes, sir.

Mr. KEITH. What are the numbers of packages or volume of your business as contrasted with General Foods? Is their interest perhaps more in the food problem than in the question of the paper supplies, or do they do a much larger volume of business than you do? Or perhaps is there more cause to comment with General Foods as contrasted with the Scott Paper Co.?

Mrs. BULLER. I am sure General Foods is somewhat larger than Scott Paper Co., and, also, that while we have a great number of people who are very loyal to Scott Paper Co., perhaps there are less who would write in about these products, but it seems that 10,000 letters are an awful lot of letters.

Mr. KEITH. I would think so.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Florida. Mr. McCabe, your products are under supervision as far as the subject goes, by the Federal Trade Commission; is that correct?

Mr. MCCABE. That is correct.

Mr. ROGERS of Florida. Have they ever brought an action against your company for deception?

Mr. MCCABE. Not to my knowledge, sir.

Mr. ROGERS of Florida. Say, in the last 5 years?

Mr. MCCABE. No, sir.

Mr. ROGERS of Florida. So the Federal Trade Commission, which has charge of that, has not brought an action against your company?

Mr. MCCABE. No.

Mr. ROGERS of Florida. Who are your major competitors, or how many major competitors do you have, major companies, just as a rough guess?

Mr. MCCABE. Six or seven.

Mr. ROGERS of Florida. Do you try to set standards within these six or seven groups? Do you have voluntary standards or not?

Mr. MCCABE. Not within the terms that I believe you are thinking of.

Mr. ROGERS of Florida. This bill envisionages a voluntary procedure first. Would you use that procedure, is the industry currently in a state that uses this type of procedure?

Mr. MCCABE. We do not have a procedure which in our judgment conforms to what is visualized in this bill; no, sir.

Mr. ROGERS of Florida. Do you label all your products?

Mr. MCCABE. Yes, sir.

Mr. ROGERS of Florida. And there has been no action against labeling at all either, I presume?

Mr. McCabe. No, sir.

Mr. Rogers of Florida. Thank you very much.

Thank you, Mr. Chairman.

The Chairman. Mr. Pickle.

Mr. Pickle. Mr. Chairman, I don't have any questions. I just want to make the observation that the testimony of Mr. McCabe and some others who have appeared to date, that it seems to me you start out on a certain premise, and then you go ahead with your testimony on the basis that it is bad because of your premise.

Your testimony says that if you have standardization of packages, and if this bill is passed, then it would lead to standardization and that would increase your costs. I think that follows, and that would be true. But you don't point out anywhere in here just how you think it does require standardization. Have you touched on that in any of your testimony at all?

Mr. McCabe. I am not an attorney, sir. Our attorneys have reviewed this bill and they inform me that section——

Mr. Pickle. If you are not an attorney, what is the purpose of your testimony? Do you object to the bill? You don't point out any place where you do object to it.

Mr. McCabe. Well, I have read the bill and I have discussed the bill with our attorneys, and my conclusions are in terms of our interpretation that this bill will result in standardization.

I am trying to be constructive. I want to bring to the attention of this committee the implications of this legislation with respect to our business. That is the purpose of my being here, sir.

Mr. Pickle. Well, again I say, you start off with a premise, and on the assumption that this does provide for standardization and therefore it is bad. It would be more helpful if you would point out where we might improve the bill, but you just say it is going to increase costs and you would be against it. It seems to me like you are missing the point, although I think that your testimony is fine, but it doesn't get quite to the point or the question.

The Chairman. Mr. Satterfield?

All right, Mr. Mackay.

Mr. Mackay. Thank you, Mr. Chairman. Just to develop a little further the line of Mr. Pickle, I think there has been a strong premise in the whole thread of testimony that we have had before us, and I think a cautious lawyer might very well be justified in picking up this thread.

But there hasn't been much evidence before us that there is any large amount of deception and confusion in the packaging of foods in this country. As I read the bill, before the promulgating authority can set forth any standards there must be a showing that there is deception or real confusion, and these are the two words that appear. Semantically these words are inadequate as far as I am concerned as a lawyer, and I think that this vagueness generated the fears so often expressed. Insofar as section 3, I have not heard a witness testify against this section which standardizes labeling. I wonder if you offered any objection to section 3 of the bill?

Mr. McCabe. As I understand that section, it is designed to outline law with respect to deception in labeling, and we are certainly op-

posed to deception in labeling, and we do everything that we can to make it as easy as possible for the consumer to determine how much is in a package, and the other considerations.

Mr. MACKAY. Well, as I read the section, it says what you shall do. You live within specified law and not within the gastronomic condition of an administrator. Is there anything in section 3 that you think is arbitrary or unreasonable or impracticable?

Mr. MCCABE. Based on my understanding of the section, it certainly does not strike me as being arbitrary in the sense that it goes significantly beyond law that is already on the books with respect to deception.

Mr. MACKAY. Now, with reference to the packaging section, there are a couple of specific points that the proponents of this bill propose that I would like for you to comment on.

One is the cents-off feature. You have heard that discussion this morning. Is this device used in your business?

Mr. MCCABE. This device is used in our business. It is used more by some companies than others.

We believe that it is a promotional device that is very useful. Under certain circumstances, it offers the consumer a value that is important in terms of introducing new products to the consumer, and also in other ways.

Mr. MACKAY. But it does lend itself to abuse, because of buckpassing where the manufacturer says "I don't have any control over what the retailer charges," so it could be misleading, if there was no understanding between the manufacturer, the wholesaler, and the retailer.

Mr. MCCABE. Based on my experience, traditionally in the grocery business, there has not been serious abuse in this area.

Mr. MACKAY. Then speaking generally as one of your company's consumers, your particular products don't lend themselves to deception, do they? Generally, you go in a store and you can see paper napkins and you can see all of the paper products rather easily, can't you, by examination, as distinguished from many other packaged articles?

Mr. MCCABE. Assuming the products are properly labeled, as we believe that ours are in terms of contents of the package, the color, and so on.

Mr. MACKAY. I can't see where the thrust of this bill, as I have heard it discussed, would have much application to your industry.

Mr. MCCABE. In terms of setting up standards, we feel that there would be serious problems, as I pointed out in my testimony with respect to creating problems that would increase costs to the consumer.

Mr. MACKAY. Finally, I have not understood this bill to standardize all products in the American grocery system. I have understood that it would apply only in cases of deception or confusion.

Have you had any complaints from any source that your packaging confuses anybody in these 10,000 letters that you get?

Mr. MCCABE. Yes; we have, sir.

Mr. MACKAY. What have they centered on?

Mr. MCCABE. As I pointed out in my testimony, we have had a problem on towels, when we switched from paper to polyethelyne. When we had a paper wrapper, we had a little flower on the wrapper,

and when we shifted to polyethelyne on this particular towel product we kept the flower on the wrapper.

Customers wrote in and said that these flowers presented a problem because you couldn't clearly tell whether or not the product itself was decorated, as a result of seeing the flowers on the polyethelyne.

As a result of these letters, we immediately eliminated these little decorations from the polyethelyne. So we get complaints of this type, and when we do we endeavor to take action on them as quickly as we can.

Mr. MACKAY. Thank you.

Mr. GILLIGAN. Thank you, Mr. Chairman.

Mr. McCabe, have you read the Senate report on this bill?

Mr. MCCABE. No, sir; I have not.

Mr. GILLIGAN. I am going to cite a couple of sections and ask for your comment on it. There seems to be some confusion in the committee or some doubt on the part of the committee that the intent of this legislation is to provide for standardization. On the other hand, the opposition witnesses appearing before us seem to feel that this is the main fear.

On page 3 of the Senate report, it says:

> Out of all these hearings there has emerged a pattern of marketing practices which the committee believes have substantially impaired the fair and efficient functioning of consumer commodity marketing. In particular, the hearings identified certain undesirable conditions and practices to which this legislator is principally directed. They include—

And then they give seven, and the seventh one is:

> The proliferation of awkward and fractional weights and quantities, in which many consumer commodities are being marketed.

That is labeled as one of the seven bad practices in the marketplace, to which this legislation is principally directed.

They go on to say:

> Testimony before the committee established that present law is inadequate or imprecise to a degree that permits these practices and conditions to flourish unabated.

Then they describe the mandatory provisions of section 4, and then under section 5, on page 7, they say this:

> Subsections 5 (d), (e), (f), and (g) establish procedures for the development of standards of weights or quantities for the retail distribution of consumer commodities, placing primary emphasis upon the voluntary product standards procedures of the Department of Commerce.
>
> A weights or quantities standard proceeding is triggered by the determination of the promulgating authority, after hearing, that the weights or quantities in which any consumer commodity is being distributed for retail sale are likely to impair the ability of the consumer to make price per unit comparisons.

Then, after describing the procedure to be gone through, they say:

> Where industry is unable to develop a voluntary product standard within twelve months from the filing of such a request.

Then it says:

> The promulgating authority may establish a standard of reasonable weights or quantities, and fractions or multiples thereof, in which the commodity shall be distributed for retail sale.

A little later on they describe how any product issued for distribution in interstate commerce violating these standards shall be seized.

What does that suggest to you, sir, about the thrust or intent of this legislation?

Mr. McCabe. That suggests to me, sir, that this legislation would result in package standardization.

Mr. Gilligan. I think that I agree with you.

Thank you.

The Chairman. Thank you very much, Mr. McCabe.

Our next witness is Mr. Banzhaf, staff vice president of the Armstrong Cork Co. of Lancaster, Pa.

STATEMENT OF MAX BANZHAF, STAFF VICE PRESIDENT OF THE ARMSTRONG CORK CO. OF LANCASTER, PA., REPRESENTING THE CHAMBER OF COMMERCE OF THE UNITED STATES; ACCOMPANIED BY FRED BYSET, CHAMBER ATTORNEY; AND WILLIAM P. NOBLE, ARMSTRONG CORK CO. ATTORNEY

Mr. Banzhaf. My name is Max Banzhaf. I am staff vice president of the Armstrong Cork Co. of Lancaster, Pa. In addition to building and industrial products, we also manufacture glass and plastic packaging materials and produce a line of floor-care products. My company is a longtime member of the Chamber of Commerce of the United States, which is the Nation's largest business federation, representing more than 3,900 business organizations with an underlying membership of more than 4,300,000 businessmen in 50 States.

Along with other Armstrong officials, I have participated in various activities of the chamber over the years. Currently I am a member of the chamber's manufacture-distribution committee. I am here to present the views of the Chamber of Commerce of the United States on H.R. 15440 and S. 985.

Accompanying me are Fred Byset, an attorney in the chamber's national economic development group, and William P. Noble, an attorney with the Armstrong Cork Co.

The avowed purpose of H.R. 15440 and S. 985, to their proponents, is to assure that information about the content and price of prepackaged consumer commodities is presented in such a way as to prevent unfair and deceptive practices, and to facilitate consumers' price comparison among competing brands.

This purpose would be achieved in H.R. 15440 by granting additional authority to the Food and Drug Administration and the Federal Trade Commission (1) to regulate the place, prominence, and content of label information; (2) to standardize the weight and quantity of commodity containers; and (3) to regulate or standardize the sizes, shapes, and dimensions of commodity containers.

S. 985 is essentially the same measure, except that it does not contain the provision for the regulation or standardization of container sizes, shapes, and dimensions.

In assessing this legislation, the issue before the Congress is not whether packages and labels shall be truthful and adequately informative. That principle is subscribed to by all.

The issue offered by these bills is twofold:

A. Whether existing regulatory powers under the Federal Trade Commission Act and the Federal Food, Drug, and Cosmetic Act, as

well as under State laws, are adequate to curb unfair or deceptive practices.

B. Whether additional regulatory controls over packaging and labeling would be beneficial or detrimental to the general economy and the consuming public.

While the chamber opposes passage of the bills, it supports the principle that a merchant should truthfully represent his wares. An orderly society requires reasonable regulation and sanction against misleading, unfair, or deceptive business conduct.

Opposition to the bills is in no way a contradiction of these principles. This is so because we believe existing law already provides reasonable and adequate protections against misleading, unfair, and deceptive merchandising methods. In short, we believe existing law makes S. 985 and H.R. 15440 unnecessary.

While that is our main reason for opposing the legislation we also oppose it because some provisions could (1) increase production costs and consumer prices, and (2) curtail product variety and packaging improvements.

These views reflect the attitude of the great majority of our membership. In a membership poll conducted last summer, 96 percent of our respondents agreed with the chamber's opposition to the legislation.

Two bodies of interlocking Federal law bear on the adequacy of existing remedy. They are the Federal Food, Drug, and Cosmetic (F.D. & C.) Act and the Federal Trade Commission (FTC) Act. In addition, weights and measures laws in the various States deal with the bill's subject matter at the local level.

In all but one instance, the provisions of S. 985 are essentially duplications of these existing laws; the one exception is the provision for standardized container weights and quantities in sections 5 (d), (e), (f), and (g). Similarly, H.R. 15440—which is nearly identical to the Senate bill except for the addition of 5(c)(5)—is a repeat in substance of these existing laws.

In one instance, the bills use the exact language of existing law. The wording in section 4(a)(1) to require a label statement of "the name and place of business of the manufacturer, packager, or distributor" is taken from the Food, Drug, and Cosmetic Act.

Other provisions of the bills are paraphrases of existing statutory language. For example, section 4(a)(2) of S. 985 and H.R. 15440 says:

> The net quantity of contents (in terms of weight, mesaure, or numerical count) shall be separately and accurately stated in a uniform location upon the principal display panel of (the) label * * *.

The corresponding sections of the F.D. & C. Act require—

> an accurate statement of the quantity of the contents in terms of weight, measure or numerical count * * * prominently placed 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.

Other provisions of the bills amount to restatements of present law as interpreted by the courts and the administrative agencies. This is best illustrated by the FTC Act where the law is expressed in broad general terms rather than in specified prohibitions or requirements.

It prohibits all "unfair or deceptive acts and practices in commerce."

As related to the same identity and contents requirements of section 4(a) (1) and (2), this broad language of the FTC Act has been interpreted and applied to require "facts that the consumer considers material to his decision" to appear "in clear, conspicuous type" on the "front or face panel of the container."

In like fashion, the provision in section 5(c) (3) of the pending bills for the regulation of cents-off and economy-size promotions is a restatement of the FTC Act interpretation. The bills would permit the two agencies to—

> regulate the placement upon any package * * * or upon any label * * * of any printed matter stating or representing by implication that such product is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail sale price advantage is accorded to purchasers thereof by reason of the size of that package or the quantity of its contents.

Similar language in a judicially approved cease-and-desist order entered by the Commission prohibits implications that—

> any savings are afforded from the retail price of products unless such savings represent a reduction from the price at which said products are regularly and customarily sold at retail.

In substance, section 5(c) (5) of H.R. 15440 is also a restatement of FTC Act interpretation. It would allow the agencies to make rules of future application to—

> prevent * * * packages of sizes, shapes, or dimensional proportions which are likely to deceive retail purchasers * * *.

This compares with present case-by-case application and interpretation of the FTC Act to prohibit packages that are—

> appreciably oversized or in containers so shaped as to create the optical illusion of being larger than conventionally shaped containers of equal or greater capacity.

These examples illustrate the difficulty of fashioning new law that is not a parallel of existing law. They also supply the national chamber's reason for regarding the pending bills as unnecessary for the prevention of "unfair" packaging and labeling.

Our contention that present laws are adequate for the task of consumer protection was emphasized, I think, by the Government witnesses who appeared here earlier and who frequently admitted the applicability of current law to deceptive packaging and labeling.

Now it may be that all of the powers conferred on the enforcement agencies by existing law have not been used fully. In fact, FTC Chairman Dixon said as much in testimony before the Senate Antitrust Subcommittee on March 28, 1962. He said that the Commission had not had many cases dealing with slack-filled containers, and that the Commission had taken no action at all to require ingredients statements, or to forbid deceptive package shapes, or to require that contents "be expressed in such terms and figures as would enable a housewife to make comparative costs * * *." But, he added:

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

In similar vein, also in 1962, the then FDA Commissioner testified that the present F.D. & C. Act "calls for truth in packaging." And

he enumerated how the law "has provisions designed to inform the consumer about the food in the package and thus permit her to make intelligent selections at the marketplace." But, he went on to point out that these requirements have not had "the degree of priority warranted by matters involving health and safety * * *."

Even the proponents of the bills would probably agree that the agencies can now reach most—if not all—of the complaints raised about commodity packaging. As we see it, the issue is not whether the agencies can act, but how. In short, the real and closely interrelated questions posed by these bills are:

1. Shall the FTC and the FDA continue to proceed on the present case-by-case method of enforcement, or be given additional broad lawmaking powers?

2. Shall the FTC and FDA be allowed to standardize packaging?

Let's take up these two questions in that order. First, the case-by-case method of enforcement versus broad agency legislative powers.

We believe that legislative control over packaging should not be given to the agencies because it would cost more in economic detriment than it would be worth in economic benefit. We believe that the power to control package weights, quantities, sizes, shapes, and dimensions as outlined in sections 5(c)(5) and 5 (d), (e), (f), and (g) of H.R. 15440 would lead to increased production costs, higher consumer prices, reduced consumer choice, and curtailed packaging innovation.

By present law, the FTC and FDA prevent unfair packaging usually under the case-by-case method. That is to say, if a particular package appears to be unfair or misleading, the packager is brought to trial or hearing, and the agency offers evidence to prove its charge. In this way, the defending businessman has his day in court, and nonoffending packages are relatively free of governmental control.

Government regulation of packaging through the case-by-case system has minimal effect on production costs, consumer prices, and packaging innovation. If the packer follows ethical practices, he is free to choose the packaging methods, materials, styles, and sizes best suited to allow economies of scale. He is free to design his package in a way best suited to accommodate consumer choice. He is free to innovate to provide the consumer with greater convenience and freedom of choice. Only the guilty packager is restrained in his right to exercise these judgments.

By the pending bills, this procedure would be changed; agency action could control ethical packaging as well as the unfair packaging by regulations announced in advance. Under that kind of structure the law would cause heavy expenditures for new machinery and materials, and would cause the abandonment or deny the full use of existing machinery. The result would be increased production costs and higher consumer prices that would naturally follow to cover these added costs.

We know that the Congress has seen fit to delegate its lawmaking power to the FTC and the FDA in other instances, but in the past this lawmaking authority has been given cautiously. It has usually been designed to provide accurate information without undue economic consequences. For example, the FTC's wool-labeling authority gives the consumer information about fabric content, but it does not control

or limit the number of fabrics nor does it put the manufacturer to added expenses.

It the case of the FDA's power to standardize the fill of food containers, the agency does not control or choose the quantity and shape of the container. It simply specifies the degree of fill. Here again the manufacturer can comply without added expense and without a curtailment of inventiveness.

A different situation is presented in the pending bills. The broad agency legislative powers over container quantity and shapes would result in added costs and other economic consequences, as I will illustrate in a moment.

In testifying before this committee earlier in these hearings, the FTC Chairman made a strong plea for broad legislative or rulemaking powers to augment the case-by-case method.

It should be noted that on another occasion recently—dealing with antitrust laws also having economic consequences—Mr. Dixon took an opposite position. Testifying against a bill designed to preserve the franchise system of distribution, he told the Senate Antitrust Subcommittee on June 23, "* * * to limit the evolution of antitrust rules of law now would be * * * in conflict with the wise tradition of case-by-case development * * *"

If case-by-case development is a "wise tradition" for antitrust, it is equally so for packaging regulation. Serious economic consequences are involved in both areas. Therefore, we feel that the agencies should not be given the broad legislative powers that are contemplated in these bills.

Now let us turn to the second question—whether the FTC and FDA should be allowed to standardize packages for consumer commodities. This power would be granted to them by sections 5(c) (5), and 5 (d), (e), (f), and (g) in H.R. 15440.

The bills before you state in their preambles and subsequent provisions that their aim is to facilitate consumer price per unit comparisons. To accomplish this, of course, the end objective of the bills must be to standardize packages, hopefully, making unnecessary the arithmetic of dividing quantity into price. Mrs. Esther Peterson, Special Assistant to the President for Consumer Affairs, in her testimony before the committee earlier in these hearings, readily admitted that price comparison is the goal and standardization the means to the goal of these bills.

We oppose standardization as being adverse to the consumer's interest and to the national interest for several reasons. Permit me to illustrate some of these adverse effects of standardization.

First, and very important is added cost—which in the long run is paid by the consumers. The added costs which could result will depend, of course, upon the number and variety of regulations issued. If few package changes are ordered, the added costs would be minimal. But it is likely because of standardization that the changes would be extensive throughout industry, and the costs consequently heavy.

Let us review briefly the kinds of costs that are involved. As a manufacturer of glass containers, we would be affected. For each change we would have to obsolete existing glass bottle molds and make new sets of molds at a cost ranging from $4,000 to $50,000—depending upon the quantities of the container to be produced. And we are but

one of several glass manufacturers. Incidentally, the mold costs for plastic containers would be even greater.

Even higher costs, however, would be incurred by the manufacturer or producer of the packaged item. Every change would necessitate reengineering and rebuilding a filling line which includes machinery for sorting, weighing, measuring, filling, closing, sealing, labeling, and packaging into shipping cartons. These costs, depending upon the complexity of the line, would range from $12,000 or $15,000 up to $60,000 to $75,000. And this does not include the expense incurred in lost production during the down time to make the conversion.

But even more serious is that standardization may well lead to proliferation of package sizes, at least in some product categories. It is not clear whether commodities would be standardized by weight or volume of contents; Mrs. Peterson told the committee that it would depend upon the commodity. If some packages are to be standardized by weight and others by volume of contents, there would be a proliferation of package sizes with great additional manufacturing costs. In some instances the building of entirely new filling lines would be required at as much as $400,000 each. So the potential for increased costs in these bills is great. These costs, in turn, would be reflected in higher consumer prices.

The second adverse effect that we see in the bills is a reduction in the consumer's freedom of choice.

Perhaps in some product categories it might be decided to reduce the number of package sizes. We fear many people do not understand why there is such a wide assortment of packages in varied sizes to be found on the shelves of the supermarket. They assume that many, if not most, of these package sizes are unnecessary, and that the manufacturer is thrusting them upon an unwilling public. For each and every successful package there is a market—a sizable number of customers who want that particular package. Typically, their desire for it is measured by market research—or by test market experience—before any attempt is made to put the package on the shelves as a regular item. And once it's there, if it is not reasonably popular, it doesn't stay on the shelf very long. Competition for shelf space is so keen that only those products that reflect real consumer demand are allowed to remain for very long.

So the great number of packages is by public demand, not by manufacturers' whim. To eliminate some of these packages is to take a benefit away from some segment of the public. Take, for example, a small size package of cleanser—only 4 ounces. Who wants it? Not the housewife who has a large family, of course. But someone wants it and buys it—perhaps people living in a small apartment or in a mobile home. And so it goes. Thus the bills would take from the consumer his freedom of choice and place that choice in the hands of Government officials who are not as close to the marketplace as those whose success in business depends on meeting individual needs and desires of consumers.

Furthermore, it is questionable whether legislating standardized packages would actually produce the intended effect of making it easier for consumers to compare prices of competing products. Manufacturers, of course, do not control retail prices, nor do they set the

terms and conditions of sales to consumers. While the legislation proposes to standardize the quantities and size of commodities packaged by manufacturers, it has absolutely nothing to do with the retailers' selection of the quantities and sizes he will offer to his customers.

Thus, comes this possibility: A certain product might be standardized in 8-, 16-, and 32-ounce sizes. The retailer does not stock each brand of the product in all three sizes. Instead, he sells the 8-ounce package of one brand at 69 cents, and the 16-ounce size of another brand at $1.25, and the 32-ounce size of a third brand at $2.49. Obviously, some division would still be required for the consumer to determine which is the best priced purchase.

Even packages of the same size are not automatically free from this process of division to arrive at a price comparison. Retailers, in order to offer the consumer a bargain, may present three packages of a certain brand at the price of two, and five packages of another brand at the price of four. Or, one brand may be priced at four for 59 cents, while another brand in the same category is priced at two for 29 cents, and the third brand at three for 49 cents—all in the same size container.

Beyond the effects on cost and reduced consumer choice, standardization would also stifle innovation. While the detriments of curtailed innovation to the consuming public are obvious, it should also be recognized that innovation and imagination are the best competitive devices of the small businessman.

I know some say that innovation will not be curtailed by standardization; that manufacturers can always make improvements within the rules set up by the FTC and the FDA. They will say that manufacturers can always ask the agencies to modify or change the standards. In theory this is true, but it could not work that way in practice. The reasoning overlooks procedural and marketing practicalities.

For example, a packager is never certain that a new idea will be accepted by the public. He tests the idea by limited production and sales in a few selected markets. Under the bills this meaningful market testing would not be possible. If a particlular product becomes locked into package quantities and shapes set by the FTC and the FDA, experimental marketing in other quantities and shapes would be illegal.

Of course, the manufacturer could ask for changes in the standard before conducting his market test. But this, too, is impractical. Through agency proceedings, it would expose the idea to his competitors. Moreover, until the idea has been actually tested by limited production and sales, the manufacturer would not know whether he should ask for new standards.

To put the question of stifling innovation in perspective, suppose H.R. 15440 had been enacted some years ago and the price comparison provisions strictly applied. All manner of products would be standardized as to weight or quantitity. Quite likely the consumer would have been denied the convenience of many of the innovative packages that have come on the market in recent years—such as squeeze bottles, aerosol containers, and concentrates.

With the vision of hindsight, it is now possible to write legislation which makes exceptions for such products and containers because they are known. But legislation must deal with what comes after its

enactment. Since we cannot predict today what form scientific developments will take in the future, we must see to it that this legislation does not foster standardization—for that would unquestionably retard packaging and product development.

As an example, consider one packaging improvement my company is trying to perfect. It's called encapsulation in which we package drops of liquid in a membrane. And so, the liquid can be packed in a dry container until its wet form is needed, at which time the application of light pressure will break the capsules. These tiny packages can be in varying sizes, thus containing varying quantities of the liquid.

These tiny packages come in different sizes, as I can demonstrate here for a second. As you can see, the capsules are broken, and the liquid is delivered.

We don't begin to know all of the uses there may be for this packaging process or what problems it will solve. But one thing is certain, standardization could well limit its application and deny its usefulness to the consumer. To illustrate, if the standardized size for furniture polish were 8 ounces in a standardized container, how could he comply with the regulation with a new application we have just created—putting encapsulated furniture polish in a disposable pads?

Here is an illustration. The committee may be interested in these. Here the capsule is contained inside the pad. You crush the pad and the liquid now is available inside the pad, and you can remove a scratch on the tabletop and turn around and buff it with the other side of the pad.

This is but one small potential use of encapsulation. There are perhaps thousands more. But the real significant fact is that encapsulation itself is but one of many other packaging innovations that advancing science can create to provide consumer benefits, if it is permitted to do so.

The answer, according to the bill's proponents, seems simple. Submit the idea to the Government and request a change in the standard. This ignores practical marketing considerations. To change a standard would require a hearing which is public in nature and thus the idea would be prematurely disclosed to competition. A company cannot afford to take this risk. As a result the application of ideas would have to be limited to the structure of the established standards, innovation would be stifled, and the public would lose the benefits of new, better, and more convenient products.

I am fully aware that the bills do not ignore entirely the problems of higher costs, reduced consumer choice, and the limiting of convenience. In standardizing weights and quantities under S. 985, for example, the FTC and FDA would have to give "due regard" to the probable effect on producer costs, consumer costs, and convenience, the packaging materials affected, trade customs, and competition between different types of packaging materials. There is a similar provision in H.R. 15440, except that the agencies would not be required to consider the effect on consumer costs.

Presumably, these factors would be considered to keep higher prices and curtailed consumer choice from being excessive. But, the benefit to the consumer of a very modest additional facility of price comparison by standardization is so minor compared to what he gives up, that even the slightest price increase or choice curtailment is unjusti-

fied. Moreover, due regard to these factors could become something of a formality. The agencies could treat these factors superficially and recite in their orders that due regard had been given. Unless an agency action of this kind proved to be clearly arbitrary, a reviewing court would be reluctant to set it aside.

In the case of control over package sizes, shapes, and dimensions, in section 5(c)(5) of H.R. 15440, the agencies could ignore these cost and other factors altogether. The bill is structured to require their consideration only when weights or quantities are standardized. And, in effect, weights or quantities could also be controlled without a consideration of these factors. The word "sizes" in 5(c)(5) is just another way of saying "weights or quantities."

I don't mean to imply that the FTC and FDA would go about their duties in a capricious fashion, but the bills would set up a potential danger with little compensating benefit. In such circumstances, the danger should be avoided altogther. With so much thought being given today to the protection of criminals from abusive governmental action, it is little to ask that ethical businessmen receive similar considerations.

The national chamber believes that further legislation on packaging and labeling is unnecessary; that the bills largely duplicate existing law; and that existing law, especially the language of the FTC Act, is broad enough to curb all unethical practices.

However, if the committee concludes from the hearings that additional law is needed, the chamber agrees that it would be under a duty to report a recommended bill. But, the committee would also be under a duty to ascertain whether the detriments of such a bill would submerge its expected benefit.

The consumer benefit intended by the bills' proponents is an increased ability to compare prices among competing products. This is largely to be accomplished by the standardizing provisions of 5(c)(5) and 5(d), (e), (f), and (g). These provisions contains inherent detriments for the individual consumer and for the general economy. These are: (1) Increased production costs and higher consumer prices; (2) a substitution of Government choice for consumer choice, (3) curtailment of innovation for consumer benefit.

We urge the committee to reject this legislation as unnecessary and potentially very harmful.

However, if that goal is not obtainable, we ask that the committee at least delete sections 5(c)(5) and 5(d), (e), (f), and (g), to avoid the risk of harmful standardization effects to consumers and to business.

Gentlemen, thank you very much.

The CHAIRMAN. Thank you very much for giving us the benefit of your views and for giving them as you have. Of course, as you say, I notice it is in opposition to one part of the bill. That seems to be your main statement.

Mr. Mackay, do you have any questions?

Mr. MACKAY. I would like to compliment the witness on the spirit and quality of his testimony. I think that you haven't overstated your case and, therefore, it has been twice as forceful as it might otherwise have been. I think that your explicit reference to existing law has been helpful.

I have been interested that most witnesses jump on the packaging section and don't even comment on the labeling section, and you did. You point out what this existing law is. I want to ask you whether you have any complaint about the statement of the law proposed in section 304.

Mr. BANZHAF. My only comment is that they are already covered by existing law.

Mr. MACKAY. This section says that packages must be conspicuously labeled. The proposed law gets down to specifics about where it must appear.

Mr. BANZHAF. I believe that is also contained in the FTC Act.

Mr. MACKAY. In any case, you are saying that you offer no objection to that section.

Mr. BANZHAF. None at all, except that it seems to a layman to be redundant—that we have laws on the books now, and I don't understand why we need to pick up the same language and have another bill. A great deal of those sections are existing language of existing law.

Mr. MACKAY. Your company does not have to deal with the Federal Trade Commission and the Food and Drug; does it?

Mr. BANZHAF. Well, that all depends.

Mr. MACKAY. As a practical matter, you don't have periodical inspections such as the food industry or others?

Mr. BANZHAF. Well, as I understand you, no. But that does not mean that we aren't subject to the provisions that they may have.

Mr. MACKAY. Well, your experience with these agencies, as you have said a while ago, is that they have not been capricious; have they?

Mr. BANZHAF. You may be asking a legal question to which I have no degree of competence.

Mr. MACKAY. I am asking, as a freshman Congressman, whether the conduct of these existing agencies strikes you as capricious.

Mr. BANZHAF. As I understand it, yes; they have been capricious as the word "capricious" is defined by the courts and there are court cases clearly of record, of capricious acts. Yes, this is true.

Mr. MACKAY. Based upon your own experience in your own business?

Mr. BANZHAF. I would have no experience of that.

Mr. MACKAY. Much of this testimony rolls out the monster theory of government and infers that people in government are not going to behave rationally or fairly. I just wanted to know whether, based on your own experience with government officials to date, you feel those fears are justified.

Mr. BANZHAF. May I put it another way, and maybe this is not quite accurate. I think that I can state what our fears are.

If you issue a man a blank check, you assume that he is going to write it in a rather substantial amount, and not a minimum amount. It does seem to me that we are, in effect, by eliminating case-by-case procedure, giving the agencies a blank check. This naturally causes fears in the minds of businessmen. What will they do with this blank check? You naturally assume the worst.

Mr. MACKAY. Again I was trying to get a judgment about the functions of the Government. I think that the fears you have expressed

are justified. I am a lawyer by trade, and I do think that the power granted here is broad and that it could be abused. I think that you have gone to the heart of the matter when you say that we must balance the benefits to the consumer deriving from this fiercely competitive product marketing against denying the consumer a yardstick that is highly meaningful to the consumer in making price comparisons. I think that you have stated the case well. Thank you very much.

Mr. BANZHAF. Thank you.

Mr. YOUNGER. Thank you, Mr. Chairman.

I think the testimony of the chamber could be enlarged considerably if you put in the number of cases where the orders of the Food and Drug Administration and the Federal Trade Commission have been issued and the cases which have gone to court, and which the court has overruled.

We have cases right in our own district. One case where the order was made, and they went to court, and the case went along for about 2 years before they finally got the decision. Well, the businessman won the case, but in the meantime he was broke and it cost him about $150,000 in fees, and he lost his business.

There was a party in the office this morning, with two cases in California, one was concerned with the pure food and drug orders, and then the case went to the circuit court and the circuit court overruled the pure food and drug but the firms were killed completely. In one case it cost them $18,000, and I don't know what the cost was in the other one.

I think businessmen have had experience which justifies them in having some doubt about what should be done. I believe that there are certain additional powers that ought to be given, to both the Food and Drug Administration and the Federal Trade Commission, but I think that they ought to be given as additions and amendments to those acts. We haven't had anything to my mind presented here that can't be covered and completely cured by amendments to those two acts. That can be done without creating another Government bureau. If you create a bureau, goodness knows they are going to have to have something to do. They all do that, and they enlarge, and they grow. I think the solution if we have one, is to enlarge on the existing law, and give additional powers to these two agencies. But I think you should have given us a good many cases in here which I know the chamber has.

(The information requested follows:)

ARMSTRONG CORK CO.,
Lancaster, Pa., August 29, 1966.

Hon. HARLEY O. STAGGERS,
Chairman, Interstate and Foreign Commerce Committee,
House of Representatives, Washington, D.C.

DEAR MR. STAGGERS: At the conclusion of my testimony August 23 on the packaging legislation, on behalf of the Chamber of Commerce of the United States, Congressman Younger suggested that it would be helpful to the Committee if we furnished examples of actions on the part of the administrative agencies that were overruled by the courts. Accordingly, we have compiled a list of appellate court cases which is attached to this letter.

We hasten to assure you that this is not all of the cases on record. Time does not permit the research necessary to fully cover the subject. This is only a small sample but we believe it is adequate to demonstrate the point that the

administrative agencies can act with caprice or make decisions not based upon substantial evidence or extrapolate unwarranted conclusions from inadequate data. Since this possibility exists, and since it is recorded that they have so acted, then certain provisions of H.R. 15440 as currently written permit capricious and arbitrary action—not on a case by case basis as with present law but across whole industries. This broad power could be catastrophic to those industries affected to say nothing of the gross damage to the consumer and the economy as well.

Our concern can be documented by reading these cases and imagining that the actions of the agencies were inflicted upon whole industries instead of individual companies. Particularly germane to the issue are the comments of the courts which clearly show the time, expense and inconvenience experienced by private litigants merely because the agencies acted in an arbitrary, capricious manner or made decisions not supported by substantial evidence.

We call your particular attention to the practical consequences of conferring broad powers to the agencies if such powers are exercised in a capricious or arbitrary manner involving a whole industry. The time required in the courts to overturn such arbitrary and capricious decisions might be substantial and during the ensuing period the industry would, for all practical purposes, have no choice other than to capitulate for it could not afford to remain idle until the courts acted.

Due to the lateness of the hour we regret that several of the members of the Committee could not be present during our testimony for we believe we could have helped them in answering some questions that have been particularly bothersome throughout the hearings. Congressmen Dingell and Macdonald especially have been rightfully concerned in trying to discover where H.R. 15440 provides for "standardization" of packaging as has been claimed by so many witnesses.

We suggest that the Committee refer to the portion of the Bill that begins with line 17 on page 7 and continues through line 4 on page 8. Please note that this does not refer to deception but to price comparisons. While the word "standardization" does not appear, synonyms for the word are clearly present. For example, to "promulgate * * * regulations effective to establish reasonable weights or quantities, or fractions or multiples thereof, in which any such consumer commodity shall be distributed for retail sale" is another way of saying "standardization". If "standardization" is not meant by this language, then we respectfully submit that the Committee would be well advised to change the language to more accurately reflect what is intended and thus relieve the possibility of standardization which both opponents and proponents of the bill seem to agree would clearly be undesirable.

I would appreciate it if you would include this letter and its attachment in the record of hearings. And, again, may I state that we are grateful for the searching and sincere inquiry the House Interstate and Foreign Commerce Committee is making into the proposed legislation. We hope that in some small way we have been able to help the Committee in its deliberations.

Very truly yours,

MAX BANZHAF,
Staff Vice President.

[Attachment A]

FOOD AND DRUG ADMINISTRATION CASES

1. *Nolan* v. *Morgan, et al*, 69 F. 2d 471 (7th Cir. 1934). Issue was the standard of identity for dry peas; petitioner was in business of processing, canning and marketing dry, ripe peas which were first soaked in hot water to soften them and to swell them to their original shape and color. The Administrator required that containers of these dry peas contain the legend "Below U.S. Standard. Low Quality But Not Illegal. Soaked Dry Peas". This is in contrast to unripe or immature canned peas which do not have to bear the above label; there was testimony to the effect that both products have nutritional value and that neither was superior to the other in any significant manner.

The court held:

"* * * we cannot regard as 'reasonable' the regulation which fixes immature, unripe peas as the standard for canned peas generally, requiring the dry peas

product to be labeled in a manner which would convey to the public the impression that it is a degraded and inferior article of food, which in fact it is not." (Page 473)

"In our view the entire legend with which it was demanded appellees should label their product is unwarranted unreasonable. 'Below U.S. Standard' should not be required, because the fixing of the one article as the standard is arbitrary and unreasonable to the same degree as if it had been required that the canned dry peas be the standard and the immature peas a descent therefrom." (Page 474)

2. *Willapoint Oysters, Inc.* v. *Ewing*, 174 F. 2d 676 (9th Cir. 1949). Rehearing denied, 338 U.S. 860, 94 L. ed. 527, 70 S. Ct. 101, 339 U.S. 945, 94 L. ed. 1360, 70 S. Ct. 793. Issue concerned the standard of identity and the standard of fill of containers for canned oysters; the Administrator ordered that packers of eastern and southern oysters have the option of labeling their product "cove oysters" or "oysters" while requiring western canners to label their product "pacific oysters". Petitioners objected that this was an unreasonable order since it gave exclusive use of the generic term "oysters" to the eastern and southern packers and denied use of that term to western packers when, in effect, the product was the same for all sections of the country.

The court held in favor of the petitioners and stated:

"Permitting one segment of the sea food industry to enjoy the exclusive use of a term naturally associated with and normally applied to an article of food in common use under a common name without the most cogent reasons directly pertinent to the protection of the consuming public, appeals to us as being outside the bounds of reason and fairness. A purchaser who inspects the two products side by side, one labeled 'Oysters', the other 'Pacific Oysters', would probably be left with the impression that the latter are in some form a typical, possibly not a true member of the oyster family. We think that the danger inherent in such a situation makes it manifestly unfair to that portion of the industry discriminated against, and to that extent we regard the requirement as arbitrary, capricious and an abuse of discretion." (Page 697)

3. *Cream Wipt Products Co.* v. *Federal Security Administration*, 187 F. 2d 789 (3rd Cir. 1951). Issue concerned an order of the Federal Security Administrator (predecessor of Secretary of Health, Education and Welfare) which established a standard of identity for salad dressing; the order permitted the addition of water and petitioner wanted to include, as an alternative authorization, the inclusion of cream, milk, milk solids or nonfat dry milk solids as a substitute for part of the water; government argued that to permit a label statement regarding milk or cream in the dressing would be misleading because only small amounts are possible in salad dressing and these were insignificant to affect the taste and nutritional advantages of the dressing; one Government witness, a chemist, testified to the same effect; petitioner had been in the salad dressing business for 16 years and had used cream, milk et al in its formula during this period.

The court held that there was no substantial evidence to support the Commission's finding and that it would be overturned.

"The very mixture in question has a commercial history. Whatever that record would reveal as to advertising and customer reaction, such evidence is obviously of so much greater probative value than one man's prediction of future customer reaction offered without stated basis as further to emphasize how scant is the basis of the critical findings of fact in this case. Considered alone, the evidence was of small probative value. In relation to the type of evidence reasonably anticipated in the circumstances of the case, that very slight proof must be characterized as unsubstantial." (Page 791)

4. *United States* v. *Lord-Mott Co., Inc.*, 57 F. Supp. 128 (D.C. Maryland 1944). Issue involved violation of the standard quality for canned peas; the regulation of the Administrator required that the alcohol insoluble solids in certain peas should not exceed a specified percentage of the product; under these standards over 25% of all peas grown in Maryland, New Jersey and Delaware during 1941 would have been substandard.

The court held for the petitioners and stated:

"* * * we have here a clear case where an administrative agency has promulgated a regulation, the force and effect of which is to impose a hardship upon those affected by it which is not warranted or required by either the expressed or implied language of the statute, and, therefore, such a regulation must fall." (Page 132)

"It is also true that, for this reason, his findings are to be accepted as conclusive if supported by substantial evidence, provided always, however, they are within statutory and constitutional limitations * * * In the present case, we find they are not within either limitation." (Page 133)

5. *Cook Chocolate Co.* v. *Miller et al*, 72 F. Supp. 573 (D.C.U.S. District of Columbia 1947). Issue involved standard of identity for Cacao products; petitioner is a manufacturer of chocolates which contain certain added vitamins; in order to sell its product petitioner would have to get an amendment to the Cacao products regulations; petitioner made application to the Administrator for a public hearing on this question and the Administrator refused to hold the hearing saying there was no reasonable ground shown for it.

The court was faced with deciding whether motions to dismiss the complaint should be sustained; it held that the complaint should not be dismissed and stated:

"However, if the foregoing allegations of the petition filed with the Administrator are true, the action of the latter [in denying a public hearing] is clearly arbitrary. His power to fix regulations is given whenever 'in the judgment of the Administrator, such action will promote honesty and fair dealing in the interest of consumers' and his holding that the plaintiff's application did not show reasonable grounds was not based upon this power but apparently upon some general authority not vested in him by the statute to define whether or not the addition of vitamins to chocolates to be used as a confection would be used by the public in sufficient quantities to justify a new regulation or an amendment to the existing regulation." (Page 574)

FEDERAL TRADE COMMISSION CASES

1. *Carr* v. *F.T.C.*, 302 F. 2d 688 (1st Cir. 1962). Issue concerned the processing of wool remnants under the Wool Products Labeling Act; petitioner argued that his acquiring wool remnants and reselling them in packaged form does not require a label calling said products "reprocessed"; the court held for petitioner and the Commission asked for rehearing; at the rehearing the Commission argued that administrative practice is the ultimately determining factor in statutory construction and that its past practice, as reflected in a whole page of citations and consent orders, accompanying the petition for rehearing, indicates the petitioner's activities required his product to be labeled "reprocessed"; the Commission's argument at rehearing about its administrative practice and its expertise in these matters was the first time such a position was advanced.

The court held for petitioner and stated:

"In general matters, even though not obliged to do so, we commonly make our own research. But a court cannot be expected to rummage among administrative rulings and consent orders sua sponte when the party most directly involved and knowledgeable makes no suggestion that anything would be found there. For a governmental agency best familiar with its own practice with respect to a matter directly in issue, and now said to be of paramount importance, to make no mention of the subject until after it had lost the case on another ground, if deliberate, is a breach of duty to the court and, if inadvertent, is still inexcusable. The Commission's petition for rehearing raising this allegedly vital point contains no mention of why it was first developed at this late date, let alone any apology for so doing." (Page 692)

2. *Rayex Corporation* v. *F.T.C.*, 317 F. 2d 290 (2nd Cir. 1963). Issue concerned the preticketing of the price on sunglasses: evidence educed disclosed one isolated sale at less than the preticketed price in Hartford, Connecticut, opinion evidence by one retail druggist that petitioner's preticketed prices were false and petitioner would place any price ticket on the items that was requested by retailers; in contrast, there was a total absence of any evidence concerning actual retail sales in any given sales area and petitioner sold many grades of sunglasses, all of which had a influence upon the price ultimately charged.

The court held for the petitioner and stated, at Page 294:

"There may have been sufficient evidence here to justify suspicion that a preticketing policy was being deceptively used and enough to justify investigation but such meagre proof is not enough to justify a cease and desist order."

[1] It should be noted that this case deals with the very real problem of whether or not one has the right to be heard at all before deciding whether one's case has merit or not.

The court also cited the remarks of the Seventh Circuit in *Niresk Industries, Inc.* v. *F.T.C.*, 278 F. 2d 337 (7th Cir. 1960), Cert. Denied 364 U.S. 883, 81 S. Ct. 173, 5 L. Ed. 2d 104 (1960) as follows:

"The Commission, as other administrative agencies, occupies a unique position which was unknown to common law jurisprudence. The Commission wears all of the hats involved in the proceedings instittued under its authority. It is, at once, the accuser, the prosecutor, the judge and the jury. The wide scope of its discretion in the resolution of questions within its realm is founded and sustained by the courts upon the fact that its jurisdiction exists in a specialized field, wherein expertise is felt to be a necessity. Under those circumstances, we feel that the Commission should assume a wider responsibility than that necessarily undertaken by a private litigant and substantiate its injunctive order upon the concreate basis of a thorough investigation and full presentation of evidence whenever the existence of unfair or deceptive practices is charged against any respondent." (Pages 340–341)

3. *Carlay Co.* v. *F.T.C.*, 153 F. 2d 493 (7th Cir. 1946). Issue concerned advertisements which represented that excessive weight could be removed from the human body through the use of petitioners' product and weight reducing plan without restricting the diet and that the removal of excess weight would be "easy"; Commission insisted that all advertisements of the weight-reducing plan contain the statement that it was necessary to adhere to a restricted diet and that such adherence was essential to weight reduction; petitioners objected to the Commission's conditions and this appeal followed; the plan involved eating of petitioners' candy just before a meal so that the appetite would be depressed and the intake of food would be lessened; in effect, it is the appetite which is reduced; petitioner had seven experts testify, five of whom were physicians, and all stated that by taking petitioners' candy before a meal, a weight reduction would result through reduced appetite; in contrast, the Commission's experts merely stated the candy in and of itself did not contain any weight-reducing elements but that the final result would be a "reduced diet"; petitioners also introduced into evidence tests conducted on 112 persons, all of whom experienced a weight reduction.

The court held for petitioners and stated, at Page 496:

"There is no evidence in this record to support a finding that it is necessary, in order to follow the suggested plan, that the user adhere to a restricted diet. The facts are plain, it being undisputed that eating candy before meals curbs the appetite, lessens intake of food and involves no restriction of diet but automatically restrains the desire for food. This, we think, is all that petitioners have ever claimed; this, we think, is all that their advertising represents. There is absolute absense of any deceptive representation. It follows that there is lack of substatnial evidence to support the finding that a rigorous or restricted diet is necessary."

4. *Evis Manufacturing Company* v. *F.T.C.*, 287 F. 2d 831 (9th Cir. 1961) Cert. Denied 368 U.S. 824, 7 L. Ed. 2d 28, 82 S. Ct. 43. Issue concerned the making of representations in connection with the sale or distribution of a water conditioner; the Commission's evidence consisted of the testimony of 19 experts who ran tests on the water conditioner under laboratory conditions; the tests, however, disregraded the manufacturer's installation and use instructions; the Commission's other evidence was an admission by petitioners' counsel that of the 100,000 units sold perhaps 3% or 3,000 installations might not have been successful; in contrast, petitioners put on the stand 91 witnesses who had used its water conditioner and all testified to its success in their operations; the full Commission took the position that the admission of counsel about 3,000 bad installations would more than offset the 91 endorsements.

The court held for petitioner and stated that the Commission was in error in disregarding the testimony of petitioners' witnesses with respect to the good results experienced with the water softener; also, the court held that the statement of petitioners' counsel with respect to 3,000 unsatisfactory installations could not be construed as a full "admission" since it was not intended as such and since it could be refuted in and of itself by the 97,000 installations that could have been successful; in essence, then, the court held that the Commission's order was not based on substantial evidence and the case was remanded.

5. *Gelb* v. *F.T.C.*, 144 F. 2d 580 (2nd Cir. 1944). Issue involved representations that a cosmetic preparation known as "Clairol" reconditioned the hair or restored its natural or youthful color; only one witness testified that the product

would not recondition the hair while many other witnesses testified to the contrary; in particular, petitioner's expert chemistry witness so testified and his testimony was not contradicted by the Commission.

The court held that the Commission's order was not supported by substantial evidence and should be modified to remove any prohibition against advertising that Clairol did, in fact, recondition the hair.

6. *Magnaflo Company, Inc.* v. *F.T.C.*, 343 F. 2d 318 (D.C. Cir. 1965). Issue involved use of description "Lifetime Charge" with respect to an automobile battery; petitioner acknowledged that such a description could be ambiguous and could be deceptive but felt that by certain qualifying phrases, the objections would be removed; the Commission disagreed and issued a cease and desist order against petitioner; the Commission did say that if petitioner can satisfactorily demonstrate that the trade name may be used nondeceptively, it can request appropriate modification of the order.

The court held that the Commission's order must be reversed. At Page 320 the court stated:

"So long as the Commission agrees that the ability of petitioner to qualify its trade name remains an open question, it cannot deprive petitioner of this valuable asset without affording him a full hearing on the issue * * * As the result of the Commission's peremptory withdrawal of the case from the hearing examiner, petitioner was never afforded an opportunity to present evidence relevant to the remedies problem, or even to argue that the material he offered to present was relevant to the Commission's consideration of the problem."

7. *Elliott Knitwear, Inc.* v. *F.T.C.*, 266 F. 2d 787 (2nd Cir. 1959). Issue involved use of trade name "Cashmora" for sweaters which contained 30% Angora Rabbit and 70% Lambs Wool; Commission argued that since the sweaters contained no cashmere, and since trade name represented the product so labeled did contain cashmere and was therefore false, misleading and deceptive, petitioner should cease and desist from using the trade name on all its wool sweater products which were not made or comprised of a substantial amount of cashmere; on each sweater was a label which set forth the percentage of Angora and Lambs Wool in the sweater.

The court held that the Commission's choice of remedy, i.e., to cease and desist from use of the trade name even with qualification, was an abuse of discretion since the fiber content of the sweaters was set forth on a label which was attached to the sweaters; the case was remanded to the Commission for further hearings to determine how deceptive trade name actually is and whether some qualifying phrases might not cure all defects.

8. *Dearborn Supply Co.* v. *F.T.C.*, 146 F. 2d 5 (7th Cir. 1944). Issue involved advertisements of petitioner's product "Mercolized Wax" which the Commission argued may, under certain circumstances, be harmful to the user because of the ingredients from which the product was composed; the Commission also found that if certain precautions were followed in the use of the product, no injurious effects would be experienced; however, the Commission issued a cease and desist order against petitioner's advertisements for their products on the grounds that the precautions in use of the product were not set forth in the advertisements; but the precautions were in each package of the material which was sold at retail.

The court held that the Commission did not have substantial evidence to support its cease and desist order on the grounds that its sole support for the order was certain inferences, assumptions and innuendoes created at the hearing. The court stated, at Page 7:

"As already shown, there was no proof in support of the complaint except certain excerpts from petitioner's advertisements. We should think under such circumstances that petitioner would have a right to assume that respondent [Commission] was relying solely upon such excerpts and not upon some other matter or proposition not included in the stipulation or otherwise offered to be proved. While we are dealing in inferences, we think it must be inferred that respondent, at any rate at the time of the original hearing, regarded the portions of the advertisements not included in the stipulation as immaterial to the issue between the parties, and in any event it appears certain that petitioner was justified in indulging in such inference."

Mr. BANZHAF. Perhaps it is an oversight.

The CHAIRMAN. Mr. Gilligan.

Mr. GILLIGAN. Thank you, Mr. Chairman. I have only one question.

I followed with great interest your statement, and I found it quite helpful. Your conclusions are at the top of page 13, as I understand it, and you concluded by hoping that the Government would give equal consideration to ethical businessmen as to criminals. Is that the standard that you hope to establish?

Mr. BANZHAF. That seemed to us to be a reasonable request, Mr. Gilligan.

Mr. GILLIGAN. Up to there I was with you. I lost the thread of your argument on that one.

The CHAIRMAN. Thank you very much.

There are two gentlemen that I had hoped to have on the list this afternoon and you may be excused, and we thank you. We will not be able to get to you. I wonder if you would want to put your statements in the record. If you do not, you will be called in the morning, but anyone who does want to put a statement in the record, we will be glad to receive it.

Tomorrow we will meet at 10 o'clock and we will perhaps go into a night session tomorrow night.

The committee is recessed until tomorrow morning at 10 o'clock.

(Whereupon, at 5:50 p.m., the committee recessed, to reconvene at 10 a.m., Wednesday, August 24, 1966.)

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