TO INCLUDE CERTAIN FRUITS IN THE AGRICULTURAL MARKETING AGREEMENT ACT OF 1937

HEARING

BEFORE THE

SUBCOMMITTEE ON DOMESTIC MARKETING AND CONSUMER RELATIONS

OF THE

COMMITTEE ON AGRICULTURE HOUSE OF REPRESENTATIVES

EIGHTY-NINTH CONGRESS

SECOND SESSION

ON

H.R. 13007, H.R. 13008, H.R. 13826, H.R. 13897, H.R. 13931, H.R. 14712, and H.R. 15604

JULY 27, 1966

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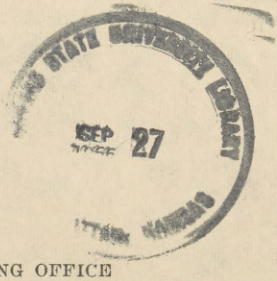

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TO INCLUDE CERTAIN FRUITS IN THE AGRICULTURAL MARKETING AGREEMENT ACT OF 1937

WEDNESDAY, JULY 27, 1966

SUBCOMMITTEE ON DOMESTIC MARKETING
AND CONSUMER RELATIONS OF THE
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 1301, Longworth House Office Building, Washington, D.C., the Honorable Spark M. Matsunaga (chairman of the subcommittee) presiding.

Present: Representatives Matsunaga, Hagen of California, Purcell, Foley, Greigg, Teague of California, Mrs. May, and Burton of Utah.

Also present: Martha Hannah, staff.

Mr. MATSUNAGA. The Subcommittee on Domestic Marketing and Consumer Relations will please come to order.

Today we are holding this subject hearing to take testimony either for or against certain bills which have been referred to the subcommittee providing for the establishment and maintenance of orderly marketing conditions for processing pears and table grapes and plums. The bills have been introduced by Mr. Hagen of California, Mr. Sisk, of California, Mr. Teague of California, Mr. Moss of California, Mr. McFall, of California, and Mr. Leggett, of California; and Mr. Sisk, of California, has a second bill before the committee.

The bills, together with the Department reports, will be made a part of the record at this point.

(H.R. 13007 introduced by Mr. Hagen of California and the departmental report thereon follow. Mr. Sisk also introduced a similar bill, H.R. 13008.)

[H.R. 13007, 89th Cong., 2d sess.]

A BILL To amend section 8c(6)(I) of the Agricultural Marketing Agreement Act of 1937, as amended

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Agricultural Adjustment Act of 1933, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, is further amended by inserting in section 8c(6)(I) thereof "all quantities of grapes grown in California for sale as fresh table grapes," immediately after the words "Tokay Grapes," and by changing the period at the end of the same subsection to a colon and adding thereafter the following: "*Provided further,* That, in the case of all quantities of grapes grown in California for sale as fresh table grapes, although the expenses of advertising and promotion projects shall be assessed separately under the order against the producers thereof, the order may provide for collection of such assessment by designated grape handlers, including producer handlers."

DEPARTMENT OF AGRICULTURE,
Washington, D.C., July 27, 1966.

Hon. HAROLD D. COOLEY,
Chairman, Committee on Agriculture,
House of Representatives

DEAR MR. CHAIRMAN: This is in reply to your request of March 3, 1966, for a report on H.R. 13007, a bill "To amend section 8c(6)I of the Agricultural Marketing Agreement Act of 1937, as amended."

This Department favors the principle of extending authority for marketing promotion, including paid advertising, to all California grapes marketed as fresh table grapes. However, question is raised concerning other changes in the Act implied by the language of the proposal.

Any form of marketing promotion, including paid advertising, of commodities under marketing agreement and order programs is now authorized for cherries, carrots, citrus fruits, onions, Tokay grapes, fresh pears, dates, plums, nectarines, celery, sweet corn, limes, olives, pecans, and avocados. All of these commodities except cherries were added by an amendment to the Act approved November 8, 1965 (PL 89–330 89th Congress, S. 2092). This Department reported favorably on this and companion bills.

The proposed amendment would authorize any form of marketing promotion including paid advertising under a marketing order for "all quantities of grapes grown in California for sale as fresh table grapes," with expenses thereof to be assessed against the producers. The quoted language appears to imply that the grapes thus grown are to be subject to assessment against the producers thereof regardless of whether or not such grapes are subsequently marketed, or otherwise handled for sale, as fresh table grapes. In this connection, there are varieties of grapes grown in California that have multiple uses. For example, Thompson seedless grapes may be sold for fresh table use, may be used in the production of raisins, and may be used in the production of alcohol (e.g., wine and high proof). Also, the fact that such grapes may be grown for sale as fresh table grapes would not necessarily preclude their actual use in another one of the outlets for these grapes. Hence, the impact of the assessment requirement would be on production of the grapes rather than on the marketing or other handling of the commodity. This would appear to be inconsistent with the Agricultural Marketing Agreement Act of 1937 which deleted from the predecessor legislation all references to "production" and made it clear that the legislation was in the exercise of Congressional power to regulate interstate and foreign commerce. It would, therefore, appear appropriate, if such is the intent of the quoted language, for the language to state that the assessment against producers is to be with respect to the grapes marketed or otherwise handled for fresh table use under the order in question.

The language of the proposed amendment would appear to limit the authorization (including the assessment against producers) to a marketing order covering all California grapes grown for fresh table use, and not permit such marketing promotion activities with or without producer assessments under a marketing order covering only a portion of California table grapes, except for Tokay grapes with handler assessments. If it is intended that the proposal permit marketing promotion activities for certain California grapes, as defined in an order, which are marketed or otherwise handled for fresh table use, consideration should be given to appropriate modification of the language of the amendment.

Also, as the proposal (and particularly the proviso) is now worded, the position of Tokay grapes (one variety of California grapes grown primarily for fresh table grape markets) for which marketing promotion and paid advertising, with handler assessments to defray the expenses thereof, is now specifically authorized, may be unclear. For example, is it intended that a marketing order for Tokay grapes for fresh table use which includes provisions for marketing promotion and paid advertising may not utilize the handler assessments currently authorized by the Act for these activities, but must obtain funds therefor from producers? Also, must such an order cover all California grapes for fresh table use as a prerequisite for such activities?

The proposed amendment represents a major departure from the concept under the act that (a) regulation under Federal marketing orders is restricted to the handling of applicable commodities and products, but not to the production thereof, and (b) assessments to obtain funds for program operations are levied only on handlers. The act now specifically provides in section 10(b)(2)(ii) that each handler subject to a marketing order shall pay his pro rata share of expenses of the program, and in section 8c(13)(B) provides that no order shall be applicable

to any producer in his capacity as a producer. There is authority in the act for enforcing orders generally (section 8a(6)), and for the collection of assessments by an agency established under an order only from handlers (section 10(b)(2)(iii)). Thus, any amendment which would require assessment on producers of grapes grown in California for sale as fresh table grapes may require additional amendments of the act.

Assessing producers would be considerably more difficult and more costly to administer than assessing handlers. This is because of the much larger number of producers, and the greater difficulty of accounting for off-farm movement of commodities, and achieving payment of assessments by producers.

It is estimated that any new marketing order program resulting from the proposed legislation would entail an annual cost of about $25,000 for each program.

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

The Bureau also suggests that the Committee may wish to secure the views of the Departments of Commerce and Justice on this bill.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

(H.R. 13826 introduced by Mr. Teague of California, H.R. 13897 introduced by Mr. Moss, H.R. 13931 introduced by Mr. McFall, and H.R. 14712 introduced by Mr. Leggett are similar bills. The text of H.R. 13826 and the departmental report thereon follow:)

[H.R. 13826, 89th Cong., 2d sess.]

A BILL To establish and maintain orderly marketing conditions for processing pears in the interest of producers and consumers, and an orderly flow of the supply thereof to market throughout its normal marketing season to avoid unreasonable fluctuations in supplies and prices

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—PROCESSING PEARS

SEC. 101. The Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, is further amended as follows:

(1) Subsection 8c(2) of the Act is amended as follows:

"(2) Orders issued pursuant to this section shall be applicable only to (A) the following agricultural commodities and the products thereof (except canned or frozen grapefruit, cherries, apples, or cranberries, the products of naval stores, and the products of honeybees), or to any regional, or market classification of any such commodity or product: Milk, fruits (including filberts, almonds, pecans, and walnuts but not including apples, other than apples produced in the States of Washington, Oregon, Idaho, New York, Michigan, Maryland, New Jersey, Indiana, California, Maine, Vermont, New Hampshire, Rhode Island, Massachusetts, and Connecticut, and not including fruits for canning or freezing other than pears, olives, grapefruit, cherries, cranberries, and apples produced in the States named above except Washington, Oregon, and Idaho), tobacco, vegetables (not including vegetables, other than asparagus, for canning or freezing), hops, honeybees and naval stores as included in the Naval Stores Act and standards established thereunder (including refined or partially refined oleoresin): *Provided*, That no order issued pursuant to this section shall be effective as to any grapefruit for canning or freezing unless the Secretary of Agriculture determines, in addition to other findings and determinations required by this chapter, that the issuance of such order is approved or favored by the processors who, during a representative period determined by the Secretary, have been engaged in canning or freezing such commodity for market and have canned or frozen for market more than 50 per centum of the total volume of such commodity canned or frozen for market during such representative period; and (B) any agricultural commodity (except honey, cotton, rice, wheat, corn, grain sorghums, oats, barley, rye, sugarcane, sugarbeets, wool, mohair, livestock, soybeans, cottonseed, flaxseed, poultry (but not excepting turkeys), eggs (but not excepting turkey hatching eggs), fruits and vegetables for canning or freezing, and apples), or any regional or market classification thereof, not subject to orders under (A) of this subdivision, but not the products (including canned or frozen commodities or products) thereof. No

order issued pursuant to this section shall be effective as to cherries, apples, or cranberries for canning or freezing unless the Secretary of Agriculture determines, in addition to other required findings and determinations, that the issuance of such order is approved or favored by processors who, during a representative period determined by the Secretary, have engaged in canning or freezing such commodity for market and have frozen or canned more than 50 per centum of the total volume of the commodity to be regulated which was canned or frozen within the production area, or marketed within the marketing area, defined in such order, during such representative period. No order issued pursuant to this section shall be applicable to peanuts produced in more than one of the following production areas: the Virginia-Carolina production area, the Southeast production area, and the Southwest production area. If the Secretary determines that the declared policy of this chapter will be better achieved thereby (i) the commodities of the same general class and used wholly or in part for the same purposes may be combined and treated as a single commodity and (ii) the portion of an agricultural commodity devoted to or marketed for a particular use or combination of uses, may be treated as a separate agricultural commodity. All agricultural commodities and products covered hereby shall be deemed specified herein for the purposes of subsections (6) and (7) of this section."

(2) Subparagraph I of subsection 8c(6) of the Act is amended as follows:

"(I) Establishing or providing for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of any such commodity or product, the expense of such projects to be paid from funds collected pursuant to the marketing order: *Provided*, That with respect to orders applicable to processing pears, cherries, carrots, citrus fruits, onions, Tokay grapes, fresh pears, dates, plums, nectarines, celery, sweet corn, limes, olives, pecans, or avocados such projects may provide for any form of marketing promotion including paid advertising."

DEPARTMENT OF AGRICULTURE,
Washington, D.C., July 27, 1966.

Hon. HAROLD D. COOLEY,
Chairman, Committee on Agriculture,
House of Representatives.

DEAR MR. CHAIRMAN: This is in reply to your request of April 18, 1966, for a report on H.R. 13826, a bill amending the Agricultural Marketing Agreement Act of 1937, as amended, to provide that (1) marketing orders may be made applicable to pears for canning and freezing and to the canned and frozen products of pears, and (2) any marketing order applicable to "processing pears" may provide for any form of marketing promotion including paid advertising.

This Department recommends that H.R. 13826 be passed. However, we believe that the term "processing pears", as used in lines 2 and 3 of page 5 of the bill, should be clarified. The new authority provided for marketing promotion of "processing pears" is undoubtedly intended to be used for promoting the products of pears—the principal product being canned pears—since little could be gained from marketing promotion of the pears which are to be processed. It is questionable, however, whether promotion of canned pears could be undertaken if the authority for such promotion merely specified "processing pears". The term "processing pears" probably was used in this provision because the commodity "fresh pears" is currently specified therein. It is our suggestion that the amended provision delete the word "fresh" immediately preceding the word "pears" rather than add the words "processing pears". It would then read "* * * *Provided*, That with respect to orders applicable to cherries, carrots, citrus fruits, onions, Tokay grapes, pears * * * such projects may provide for any form of marketing promotion including paid advertising."

There are three marketing orders currently in effect regulating the handling of fresh pears. One order covers Bartlett type pears produced in California; one covers similar pears produced in Oregon and Washington; and one covers specified varieties of Winter pears grown in the three Pacific Coast States. However, the efforts of these producers to better returns for their pears are limited inasmuch as only about one-third of pears produced in the Pacific Coast States are marketed as fresh pears. The primary outlets for the approximately two-thirds not sold as fresh pears are the canners of pear halves, fruit cocktail, and baby foods. However, since the act now prohibits marketing orders for pears for canning or freezing and for the canned and frozen products of pears, producers are unable to

use this type of program to improve their market position with respect to the major portion of their crops.

Fruit and vegetable industries have shown growing interest in commodity advertising programs in recent years. Some are now conducting such programs under State marketing orders, commissions, or similar authorities established by State legislation. Others believe that Federal marketing orders provide the most practical and equitable means of carrying out joint producer-handler programs to promote the sale of their commodity. We believe that the pear industry should be given the opportunity to develop a promotion program by this means if it desires to do so.

It is estimated that the annual costs to the Department for administering each new marketing order program that is issued approximate $25,000. To the extent that the added authority might be utilized by amendment of existing programs, any additional costs to the Department would be absorbed within existing appropriations with respect to such programs.

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

The Bureau also suggests that the Committee may wish to secure the views of the Departments of Commerce and Justice on this bill.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

(H.R. 15604 introduced by Mr. Sisk and the departmental report thereon follow:)

[H.R. 15604, 89th Cong., 2d sess.]

A BILL To establish and maintain orderly marketing conditions for processing plums grown in California

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—PROCESSING PLUMS GROWN IN CALIFORNIA

SEC. 101. The Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, is further amended as follows:

(1) Subsection 8c(2) of the Act is amended as follows:

"(2) Orders issued pursuant to this section shall be applicable only to (A) the following agricultural commodities and the products thereof (except canned or frozen grapefruit, charries, applies, or cranberries, the products of naval stores, and the products of honeybees), or to any regional, or market classification of any such commodity or product: Milk, fruits (including filberts, almonds, pecans, and walnuts but not including apples, other than apples produced in the States of Washington, Oregon, Idaho, New York, Michigan, Maryland, New Jersey, Indiana, California, Maine, Vermont, New Hampshire, Rhode Island, Massachusetts, and Connecticut, and not including fruits for canning or freezing other than plums grown in California, olives, grapefruit, cherries, cranberries, and apples, produced in the States named above except Washington, Oregon, and Idaho), tobacco, vegetbales (not including vegetables, other than asparagus, for canning or freezing), hops, honeybees and naval stores as included in the Naval Stores Act and standards established thereunder (including refined or partially refined oleoresin): *Provided*, That no order issued pursuant to this section shall be effective as to any grapefruit for canning or freezing unless the Secretary of Agriculture determines, in addition to other findings and determinations required by this chapter, that the issuance of such order is approved or favored by the processors who, during a representative period determined by the Secretary, have been engaged in canning or freezing such commodity for market and have canned or frozen for market more than 50 per centum of the total volume of such commodity canned or frozen for market during such representative period; and (B) any agricultural commodity (except honey, cotton, rice, wheat, corn, grain sorghums, oats, barley, rye, sugarcane, sugarbeets, wool, mohair, livestock, soybeans, cotton seed, flaxseed, poultry (but not excepting turkeys), eggs (but not excepting turkey hatching eggs), fruits and vegetables for canning or freezing, and apples), or any regional or market classification thereof, not subject to orders under (A) of this subdivision, but not the products (including canned or frozen commodities or products) thereof. No order issued pursuant to this section shall be effective as to cherries, apples, or cranberries for canning or freezing unless the Secretary of Agriculture determines, in addition to other required findings and determinations, that the issuance of

such order is approved or favored by processors who, during a representative period determined by the Secretary, have engaged in canning or freezing such commodity for market or have frozen or canned more than 50 per centum of the total volume of the commodity to be regulated which was canned or frozen within the production area, or marketed within the marketing area, defined in such order, during such representative period. No order issued pursuant to this section shall be applicable to peanuts produced in more than one of the following production areas: the Virginia-Carolina production area, the Southeast production area, and the Southwest production area. If the Secretary determines that the declared policy of this chapter will be better achieved thereby (i) the commodities of the same general class and used wholly or in part for the same purposes may be combined and treated as a single commodity and (ii) the portion of an agricultural commodity devoted to or marketed for a particular use or combination of uses, may be treated as a separate agricultural commodity. All agricultural commodities and products covered hereby shall be deemed specified herein for the purposes of subsections (6) and (7) of this section."

DEPARTMENT OF AGRICULTURE,
Washington, D.C., July 27, 1966.

Hon. HAROLD D. COOLEY,
Chairman, Committee on Agriculture,
House of Representatives.

DEAR MR. CHAIRMAN: This is in reply to your request of June 28, 1966, for a report on H.R. 15604, a bill amending the Agricultural Marketing Agreement Act of 1937, as amended, to authorize marketing orders for California plums for canning or freezing and for the canned and frozen products of such plums.

The Department recommends that H.R. 15604 be passed.

Most California plums are marketed in fresh outlets. About 6 percent of this crop is processed. Grower returns from such plums in processing outlets are comparatively low, averaging about $23 per ton in 1965. This compares with an average return of $101 per ton for plums for fresh market in the same year.

Grades and sizes of California plums marketed in fresh outlets are regulated under Federal Marketing Order 917. The restriction under this order of low grade and small size plums from the fresh market results in the availability of such plums for marketing in processing outlets. Since the Act does not now provide for marketing orders for plums for canning or freezing, producers are unable to use this type of program to improve their market position with respect to fruit marketed in canning and freezing outlets. This reduces the effectiveness of the present marketing order for plums.

It is estimated that the annual costs to the Department for administering each new marketing order program that is issued approximate $25,000. To the extent that the added authority might be utilized by amendment of existing programs, any additional costs to the Department would be absorbed within existing appropriations with respect to such programs.

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

The Bureau also suggests that the committee may wish to secure the views of the Departments of Commerce and Justice on this bill.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

Mr. MATSUNAGA. I notice that the list of witnesses has listed the witnesses according to alphabetical order. If there is no objection, I will go according to the list which we have here prepared by the committee staff.

If there is any request by any Member of Congress to be heard, we will accede to that request.

Mr. Moss. I have another committee meeting, Mr. Chairman.

Mr. MATSUNAGA. Our first witness then will be the Honorable John Moss, author of H.R. 13897. Mr. Moss.

STATEMENT OF HON. JOHN E. MOSS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Moss. Thank you, Mr. Chairman and members of the committee.

I want to personally thank you for scheduling this hearing and permitting those of us from California to present a matter of great concern to us.

I appear here to testify concerning H.R. 13897 and two companion bills intended to permit producers of canning pears to enjoy the benefits of the Agricultural Marketing Agreement Act of 1937, as amended. I, together with several other Congressmen from California, representing districts in which canning pears are produced, strongly urge the passage of this legislation.

The Agricultural Marketing Agreement Act of 1937 clearly declares that the public is concerned with the economic well-being of farm producers; further, that the function of this legislation is to permit farm producers to help themselves through a democratically adopted program to achieve order and stability in place of the normal chaos of the marketplace.

As a Congressman, I have respected the efforts of pear growers and other farm producers who are committed to this philosophy of self-help. Pear growers have developed a statewide bargaining cooperative, The California Canning Pear Association, at their own time and expense, which has provided informed leadership for pear growers to better equip them to meet in the marketplace with their canner customers. For some years the pear growers have enjoyed the benefits of marketing agreement legislation in Calfornia under which a State marketing order has been adopted and is in effect.

Pear producers now recognize that the economics of pear production and distribution require marketing orders on a geographical basis which extends beyond the boundaries of a given State. This arises from the simple fact that canning pears are produced in significant quantities in Oregon and Washington, as well as in California. For this reason, the growers must turn to a Federal marketing order program. This is why the Agricultural Marketing Agreement Act was adopted by Congress; this is why producers of other farm commodities make use of it, including producers of fresh pears. Canning pear growers know there is no valid reason why a Federal program should not be available to them.

Under a regional Federal marketing order, the growers affected could obtain better statistical information, could more effectively coordinate trade promotion and advertising, and could attempt to develop a meaningful approach to overproduction if this seems desirable.

I have heard it argued by some canners that they would pay the assessment for administration of the program and, therefore, should be entitled to vote on whether an order should be adopted. In plain words, these canners would ask for the right to veto a program adopted by the farmers.

In fact, every grower and every producer knows that the growers will directly or indirectly pay the cost of this program. This is precisely what happens under the Federal marketing order for fresh pears. It can be as clearly understood in connection with any market-

ing order for canning pears. Experience in other commodities has shown that the possession of such a veto power can deny to producers their ability to adopt an effective marketing order.

In conclusion, what pear producers really seek through legislation I have proposed is their increased ability to know more about their industry, to work together as responsible agricultural producers and to be more effective in the marketing of their products.

I might add that the report of the Federal Food Commission, chaired by a distinguished former California chief justice, Phil S. Gibson, clearly urges the adoption of legislation such as the bill I have introduced. In referring to the position of farmers, the Commission specifically urges:

"We conclude that Federal marketing agreements and orders should be authorized for any agricultural commodity produced in a local area or regional subdivision of the United States."

I strongly urge the committee to favorably recommend my bill.

Again, I wish to thank you, Mr. Chairman, for scheduling this hearing. I strongly urge the favorable recommendation of the legislation by this committee.

Mr. MATSUNAGA. Thank you, Mr. Moss, for your concise, very to the point, testimony.

Are there any questions?

Mr. TEAGUE of California. No, Mr. Chairman, but I have a problem. We are having an executive session of the Conservation and Credit Subcommittee on the REA co-op proposal, which is equally as important as this legislation. I have to go to that committee hearing, because that is in executive session, but I do want you, of course, and my colleagues and others in the audience that will read the statements both for and against the bills as well as the transcript that I will have available, in which will be other information brought out by the questioning.

I will have to ask to be excused.

Mr. MATSUNAGA. Very well.

Mr. MOSS. Thank you, again, Mr. Chairman.

Mr. MATSUNAGA. Thank you, Mr. Moss.

Mr. GREIGG. I have a similar situation, two sessions underway at the same time.

Mr. MATSUNAGA. Very well.

Our next witness will then be the Honorable John J. McFall, who is the author of H.R. 13931.

STATEMENT OF HON. JOHN J. McFALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. MCFALL. Thank you, Mr. Chairman, for the privilege of appearing for this bill that I have introduced, along with others from California.

I would like permission to insert my prepared statement in the record at this point. It is substantially to the same point that Mr. Moss brought out.

Mr. MATSUNAGA. Without objection, your prepared statement will be included in the record as if presented in full.

Mr. MCFALL. I would also like permission for Congressman Harold T. (Bizz) Johnson to present his statement which he will

submit to the subcommittee and to have it appear in the record following my statement. Mr. Johnson is in support of this bill. He is also in another committee meeting. They are considering the Colorado River project this morning, and he had to be there.

Mr. MATSUNAGA. Without objection the statement will be made a part of the record following your statement.

Mr. MCFALL. We are strong supporters of this legislation, Mr. Chairman. I know that you will receive testimony from those in the industry here much more qualified to discuss points involved than I am. I know that your record will have current information about the industry which will be in substantial support of our position. I thank you.

Mr. MATSUNAGA. We thank you very much.

We appreciate your statement in its briefness and for taking the time out to be with us this morning. Are there any questions?

Mr. GREIGG. No questions.

(The prepared statement of Hon. John J. McFall follows:)

STATEMENT OF HON. JOHN J. MCFALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, I appreciate the opportunity to appear before your subcommittee this morning in support of bills introduced by Congressman Charles Teague, Congresman John Moss, Congressman Robert Leggett and myself which would permit producers of canning pears to adopt a Federal marketing order if they so desire.

Producers of canning pears have long been committed to a philosophy of "self help." Since 1953, they have supported the California Canning Pear Association, which is a bargaining cooperative composed completely of farm producers. They also have secured the adoption of a State marketing order under enabling legislation adopted by the State of California. Both of these approaches have been taken by producers in their effort to help themselves become better informed as producers and better able to bargain effectively in the marketplace with their canner customers.

The Federal Government for many years has recognized the importance of voluntarily adopted marketing programs by enactment and implementation of the Agricultural Marketing Agreement Act of 1937. Under this Act, producers of a substantial number of agricultural commodities are legally entitled to adopt Federal marketing programs. In fact, producers of fresh pears are so qualified.

Producers of canning pears believe—and I agree with them—that there is no logical reason why the benefits of this Act should not be extended to the canning pear industry. The enactment of the legislation under consideration would amend the Agricultural Marketing Agreement Act of 1937 to permit the inclusion of canning pears and allow producers of this commodity to enjoy the benefits which are extended to other crops already covered.

Canning pear producers now recognize that a Federal marketing order may be necessary to enable them to accomplish purposes which cannot be achieved under State orders. This conclusion is without reflection on the administration of current State programs. However, since canning pears are grown significantly in Oregon and Washington, as well as in California, it is desirable that we permit these pear producers to work together under one program on a regular basis, if they desire to do so.

The only opposition to the proposal of which I am aware comes from the canners. I would not criticize them, for it is a matter of self-interest. The canners are the customers of pear producers and it is understandable that they should try to get as good a price as possible.

It is equally important, however, that producers should be able to avail themselves of the organizational procedures permitted under the Agricultural Marketing Agreement Act in order to improve the economic health of the industry.

There should be no adverse effects on the canners as the result of enactment of this proposal. Most marketing orders are written in such a way that they encourage activities which help the processors and growers alike. A higher quality product in better supply is the general result of such an order.

This proposal is entirely consistent with the recent recommendations of the National Commission on Food Marketing established under provisions of Public Law 354 of the 88th Congress. In its June, 1966, report, the Commission finds, in discussing the position of farmers, that "there is frequently need for group action by farmers to adjust sales more uniformly to market demands at reasonable prices, to improve product quality and uniformity, to negotiate with buyers, and to protect themselves against trade practices and abuses of market power to which they are otherwise vulnerable." One of the three key recommendations of the Commission is the extension of Federal marketing agreements and orders and I call attention specifically to the following:

"The second and often complementary approach is through marketing agreements and orders, which have been available for use for certain products for about 30 years.

"We conclude that Federal marketing agreements and orders should be authorized for any agricultural commodity produced in a local area or regional subdivision of the United States.

"Since marketing orders and agreements may outlive their usefulness, it follows that they should be periodically reviewed by the Secretary of Agriculture, and we think that the reviews should be made public."

I consider these bills to be of vital importance and strongly urge favorable action upon them by your subcommittee.

(The prepared statement submitted by Hon. Harold T. Johnson follows:)

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., July 25, 1966.

Hon. SPARK M. MATSUNAGA,
Chairman, Domestic Marketing Subcommittee, Committee on Agriculture,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Thank you very much for the opportunity to present briefly my comments concerning the proposed amendment to the Agricultural Marketing Agreement Act, which would permit the inclusion of canning pears, a commodity which is of importance to the Second Congressional District and the State of California as a whole.

Certainly since the original Act was voted by Congress nearly thirty years ago, its importance and influence as a vehicle to assist producers help themselves to commodity stabilization has been proven of extreme value time and again.

I believe that the time has now arrived that the provisions of this act be extended to the canning pear industry. At the present time, the Act covers fresh pears but as times change, the fresh pear market is relatively small as compared to the canning pear market. Therefore it would seem to me that the time is right to extend the provisions to the latter category as well as to the former. Frankly, it does not seem reasonable that there would be any difference in the Act and that the entire pear industry should be uniformly covered. Accordingly, I am requesting this Committee to give favorable consideration to H.R. 13931 which would permit the producers of pears which will be processed to enjoy the provisions of the Agricultural Marketing Agreement Act of 1937 in order to adopt a Federal marketing order should the growers wish to do so.

I emphasize that this is a voluntary matter and one which will let the growers assist themselves through a self help trade promotion and advertising program which I believe will be beneficial not only to the growers but also the consumers and the public at large.

Mr. Chairman, the president of the California Canning Pear Association, my good friend, Robert E. Collins, is here today. I have discussed his statement with him and reviewed it, and certainly I want to say that when he makes his presentation at a later time, I would like to add my heartiest endorsement to what he has to say.

Sincerely yours,

HAROLD T. (BIZZ) JOHNSON,
Member of Congress.

Mr. MATSUNAGA. Our next witness will be the Honorable Robert Leggett, the author of H.R. 14712.

STATEMENT OF HON. ROBERT L. LEGGETT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. LEGGETT. Thank you very much. It is a pleasure for me to be here this morning to testify in support of my bill, H.R. 14712. And I want to thank you very kindly for holding hearings on this important legislation.

I would ask permission to have my statement made a part of the record, and I will just comment on it briefly.

Mr. MATSUNAGA. Your statement will be made a part of the record.

Mr. LEGGETT. It is substantially in accordance with the testimony of my two colleagues and also the testimony of Congressman Johnson. We represent grower areas, growers of pears, I think, of larger areas than anyone else. I have 26 percent of the pear industry in my State, and I think something like 15 percent of the national pear producing industry, that is, these great luscious Bartlett pears that are picked and shipped all over the country.

Unfortunately, we do not have the pear industry in quite the same situation as you have the pineapple industry. We are spread out over three States, and, therefore, we cannot handle the problem just on an intrastate basis. We have a great deal of cooperation between Washington, Oregon, and California, which are substantial pear-producing States, but we do need some Federal regulation.

We are asking for a marketing order, and, of course, this gives jurisdiction, as contained in the legislation, to our growers to enact regulations of their industry in the best interests which might be to limit the volume or to advertise.

Volume in the pear-producing business now is not a problem. We have a problem of producing enough pears. We had a poor year in 1965, which was not because we had too many pears planted—we did not have enough planted. We had a poor pear-growing condition and a small crop. And the year before that we had a good crop. The year before that in 1963 we had a poor crop. This we cannot handle by Federal legislation or regulation.

So, I think that the volume-limiting capability that is contained in the legislation is not the important thing. What we would like to do as an industry is to be able to talk about the great western pears like we talk about pineapples and like we talk about the citrus industry, to be able to advertise and to build this commodity up as a great commodity and, perhaps, increase the demand and utilization nationwide.

And there is always a possibility that we could induce our underdeveloped nations to acquire a taste for the great western pears.

This is, generally, the situation.

Obviously, the legislation is opposed by the canners. The canners, of course, being the secondary purchasers of the commodity, do not like, naturally, any legislation that would give the growers the right to limit these quantities that would be sold to them. They pretty well set the price.

We have some strong bargaining associations with the pear growers associations, and they pretty well bargain, though the prices are set by the volume as it is produced. They do not like that feature of the bill.

The canners do not, likewise, like collecting the payments for the growers' advertising. This is the only practical way for the growers to advertise as a unit. If they can do it as an industry, to build up the utilization this is possible but not necessarily going to happen.

Then, the only reasonable way to collect the cost of that advertising is for the processor to collect it and to charge that back to the grower. That is the essence of the enabling legislation, as I understand it.

Mr. Robert Collins is here to testify representing the pear growers association. I think he is eminently qualified to represent the industry and to give the technical facets of the legislation.

Thank you.

Mr. MATSUNAGA. Thank you very much, Mr. Leggett, for taking the time out to appear before the subcommittee. We will give your testimony very serious consideration.

Are there any questions?

Mr. HAGEN of California. I have one question.

Does the State order cover canning pears?

Mr. LEGGETT. So far as the regulation of quality and grades are concerned?

Mr. HAGEN of California. Yes.

Mr. LEGGETT. I would rather defer that question to Mr. Collins to answer. That is a technical question. I could make some inquiries, but I think that he would be better qualified to answer that for the record.

Mr. HAGEN of California. Thank you.

Mr. MATSUNAGA. Is there are no further questions, as previously requested, the statement will be put into the record in full.

Mr. LEGGETT. And my informal comments will be included; will they?

Mr. MATSUNAGA. Yes.

(The prepared statement submitted by Mr. Leggett reads in full as follows:)

STATEMENT OF HON. ROBERT L. LEGGETT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman:

It is a pleasure for me to be here this morning to testify in support of my bill, H.R. 14712, and the bills of my colleagues, Congressmen Teague, McFall and Moss, to extend coverage of the Agricultural Marketing Agreement Act of 1937 to the canning pear industry.

It also pleases me to note the presence of a gentleman who will testify before the committee today, a man who is unquestionably one of the best qualified to give expert testimony before this committee. Mr. Robert Collins began as a hired hand on a pear farm until he saved enough to buy a small orchard of his own. He has been in the pear business 20 years as a grower and knows the business inside and out. He has served as president of the Agricultural Council of California and is now president of the California Canning Pear Association, a non-profit cooperative marketing association for the marketing of the pears of its grower members. It is this organization Mr. Collins will represent this morning.

The pear industry in my district alone accounts for 26% of all pears grown in California and 15.1% of all pears produced in the country. The Bartlett pear in my district are known for their high quality and are sold both as fresh fruit and canned.

At the present time, however, only the fresh fruit market which comprises approximately 20% of the total pear production is covered by Federal marketing orders. As of now the pear grower has had practically no means of assuring a price on his canning pears that will permit him to even break even. The result has been that pear growers have suffered severe ups and downs with losses falling

most heavily on the small to medium size producers. What can be done to rectify this situation?

I believe this legislation will provide at least a partial answer, for it will enable growers, *if they so desire*, to utilize the Federal marketing order.

Federal marketing orders have been used in this country for the past 30 years in many farm commodities. They are grounded in the great American tradition of "self-help". After enabling legislation is passed by the Congress, an interested party may propose a marketing order. Hearings are held on the proposal and then the growers vote on whether to adopt the order. It takes two-thirds of the grower vote to enact an order.

Federal marketing orders are most often used to regulate on an industry-wide basis the size, quality and sometimes volume of the product to be sold. Such orders are designed to improve the prices available to the grower-producer at very little added expense to the consumer.

The need for a Federal marketing order is especially important for the pear industry because pears are grown in more than one state, hence state marketing orders are ineffective should the growers want to limit the volume.

Another feature of this legislation is that it enables growers to advertise their produce. While there is much debate on the effectiveness of advertising, suffice it to say that no self-respecting pineapple producer would fail to advertise.

The canners argue that the cost of the advertisement program is borne by them through an assessment. I say, ask any pear grower in my district who bears any costs incurred by the canner and he will tell you—he does, and he will probably continue to bear it. The canner as a practical matter will continue to dictate the price paid even after this legislation.

Another point: there is absolutely no logical reason why fresh pears should be covered by a Federal marketing order while canned pears are not. *The only historical reason for this is to be found in the lobbying power of the canners as compared with the traditionally weak bargaining position of the grower-producer.*

In conclusion, Congress long ago decided that Federal marketing orders were a good thing. Congress long ago endorsed the idea of "self-help" and there is no reason why the opportunity for self-help should not be extended to the canning pear growers.

In the 1966 report of the National Commission on Food Marketing just hot off the press, the Commission is worried about the bargaining of the farmer and states in unequivocal language: "*We conclude that Federal marketing agreements and orders should be authorized for any agricultural commodity produced in a local area or regional subdivision of the United States.*" Needless to say, the Commission is concerned also with the cost to the consumer and not just the welfare of the farmer.

This legislation, gentlemen, will enable growers of canning pears to enjoy the needed benefits of Federal marketing orders.

Mr. MATSUNAGA. I do not see Congressman Sisk here, but we have a statement from him which, without objection, will be made a part of the record at this point.

(The prepared statement of Hon. B. F. Sisk follows:)

STATEMENT OF HON. B. F. SISK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, I introduced H.R. 13008 to authorize the growers of all table grapes in California to participate in self-financed advertising and market research programs, and H.R. 15604 to establish and maintain orderly marketing conditions for processing plums grown in California.

These bills were introduced at the official request of the administrative boards of both industries. In my opinion, specialty crops need to strive for enlargement of their markets, and I wish to commend the aggressive efforts of the table grape growers in asking for this opportunity to engage in promotional and advertising programs, and the processing plum growers for their efforts in requesting a Federal marketing order.

H.R. 13008 would afford other California table grape varieties the same self-financed advertising and market research programs which now exists for Tokays. I would like to point out that this program would be supported by the payment of assessments, and therefore, would not involve the expenditure of Federal funds. I also want to make clear that the enactment of this bill would provide an authori-

zation only, and it would then be up to the persons engaged in the industry to decide whether or not they want to assess themselves for the program. Mr. Hagen has an identical bill, and I am sure would be willing and able to answer any specific questions which you might have.

H.R. 15604 would amend the Agricultural Marketing Agreement Act of 1937 so that processing plums as well as fresh plums would be under a Federal marketing order. Grade and size controls on fresh plums are presently imposed under the Federal Marketing Order known as the California Tree Fruit Agreement. These controls often result in the culling of substantial amounts of undersized and off-grade plums. Since the supply of culls is quite large and the processors' requirements are quite small, the processors are able to purchase these plums as low as $5 per ton. Obviously, if a processor can obtain packinghouse culls for this price, he will pay little more for good fruit directly from the orchard. Consequently, I feel the plum industry is desperately in need of this legislation and I urge your sympathetic consideration.

Mr. Chairman, with your permission I would like to request that the record be kept open so that statements from the plum industry people can be included as part of these hearings. I am sure that these statements will substantiate my position, and, I am sure, give you more specific details. These people were not able to be present today, due to the cost of transportation and the pressure of work.

I recognize that the members of this Committee are experts in these fields and I ask only that you weigh the evidence presented.

Thank you for your kind attention.

Mr. MATSUNAGA. Our next witness is from the Department of Agriculture, the Deputy Director of the Fruit and Vegetable Division, Mr. Paul A. Nicholson.

Mr. Nicholson?

STATEMENT OF PAUL A. NICHOLSON, DEPUTY DIRECTOR, FRUIT AND VEGETABLE DIVISION, CONSUMER AND MARKETING SERVICE; ACCOMPANIED BY CHARLES W. BUCY, ASSISTANT GENERAL COUNSEL, OFFICE OF GENERAL COUNSEL, U.S. DEPARTMENT OF AGRICULTURE

Mr. NICHOLSON. Mr. Chairman and members of the subcommittee, my name is Paul A. Nicholson. I am Deputy Director of the Fruit and Vegetable Division, Consumer and Marketing Service, U.S. Department of Agriculture.

I will discuss the seven bills you are considering which are bills to amend the act as reenacted and amended by the Agricultural Marketing Agreement Act of 1937.

I am accompanied here by Mr. Charles W. Bucy, who is Assistant General Counsel from the General Counsel's Office, U.S. Department of Agriculture.

H.R. 13007 and H.R. 13008 are identical bills and would authorize any form of marketing promotion including paid advertising under a marketing order for all quantities of grapes grown in California for sale as fresh table grapes with expenses of such promotion to be assessed against the prducers.

H.R. 13825, H.R. 13897, H.R. 13931, and H.R. 14712 are identical bills and would authorize marketing orders for pears for canning and freezing and for the canned and frozen products of pears. It would also authorize any form of marketing promotion including paid advertising under marketing order for "processing pears."

H.R. 15604 would authorize marketing orders for California plums for canning and freezing and for the canned and frozen products of such plums.

The Department recommends that H.R. 13007, H.R. 13008, H.R. 13826, H.R. 13897, H.R. 13931, H.R. 14712, and H.R. 15604 be passed.

The Agricultural Marketing Agreement Act of 1937 authorizes marketing orders for the commodities specified in section 608c(2) of the act. The purpose of a marketing order is to assist agricultural producers in the orderly marketing of their crops. The act authorizes varying types of regulations in order to improve returns to producers.

Before a marketing order may be issued, a public hearing is required. No order may be issued unless at least two-thirds of the producers by number or volume of production voting in a referendum indicate approval.

I think that it has been stated that 70 percent is the amount, but actually the act specifies two-thirds instead of what was said.

There are three Federal marketing orders currently in effect regulating the handling of fresh pears. One covers Bartlett-type pears produced in California; one covers similar type pears produced in Oregon and Washington; and one covers specified varieties of winter pears produced in the three Pacific Coast States. Each of these orders contain provisions for regulating the quality and the size of the pears that my be handled for fresh market purposes and for establishing market research and development projects. The two orders covering Bartlett-type pears also provide for regulations designed to standardize the containers and packs of fresh market shipments.

However, the act now exempts pear for canning or freezing as well as canned and frozen products of pears from any regulation under Federal pear marketing orders. The portion of the U.S. pear crop that is processed has been increasing. Canning is the principal processed outlet. During the 1945–49 period, 40 percent of the U.S. pear production was processed. Processing increased to about 60 percent of such production during the 1960–64 period.

As indicated, pear producers and handlers in the Pacific Coast States have developed and used marketing orders to supply the fresh market with only the better quality of pears. As marketing orders cannot now be applied to pears for canning or freezing, however, similar programs designed to improve marketing conditions with respect to the larger portion of these crops—that which is processed—could not be adopted. Under the present programs, canners and freezers are permitted to use these lower quality pears in canning and freezing outlets. This reduces the effectiveness of these programs.

Grades and sizes of California plums marketed in fresh outlets are regulated under Federal Marketing Order 917. The restriction under this order of low-grade and small size plums from the fresh market results in the availability of such plums for marketing in processing outlets.

Most California plums are marketed in fresh outlets. About 6 percent of this crop is processed. Grower returns from much plums in processing outlets are low, averaging about $23 per ton in 1965. This compares with an average return of $101 per ton for plums for fresh market in the same year.

Since the act does not now provide for marketing orders for plums for canning or freezing, producers are unable to use this type of program to improve their market position with respect to plums marketed

in canning and freezing outlets. This reduces the effectiveness of the present marketing order for plums.

We believe that the effectiveness of marketing orders for pears and plums would be strengthened if authority were included to regulate the handling of these fruits (1) for canning and freezing and (2) their canned and frozen products.

Fruits and vegetable industries have shown a growing interest in commodity advertising programs in recent years. Some are now conducting such programs under State commissions, marketing orders, or similar authorities established by State legislation. Others believe that Federal marketing orders provide the most practical and equitable means of carrying out joint producer-handler programs to expand the market for their commodity through promotion and advertising. We believe that the pear industry and the California fresh grape industry should be given the opportunity to develop promotion programs by this means if they desire to do so.

We recommend that the term "processing pears" used in the marketing promotion including paid advertising portion of the four bills on pears (H.R. 13826, H.R. 13897, H.R. 13931, and H.R. 14712) be clarified. We believe it is intended that promotion be on pear products rather than on processing pears. The term "processing pears" probably was used in this provision because the commodity "fresh pears" is currently specified therein. It is our suggestion that the amended provision only delete the word "fresh" immediately preceding the word "pears". It would then read:

* * * *Provided,* That with respect to cherries, carrots, citrus fruits, onions, Tokay grapes, pears, dates, plums, nectarines, celery, sweet corn, limes, olives, pecans, or avocados, such projects may provide for any form of marketing promotion including paid advertising.

We recommend that H.R. 13007 and H.R. 13008 be clarified by substituting the words "other fresh California grapes" for the words "all quantities of grapes grown in California for sale as fresh table grapes." The act now contains marketing promotion including paid advertising authority for Tokay grapes. Tokay grapes are grown principally in California. The recommended wording would continue present authority for Tokay grapes and provide such authority for other fresh California grapes.

We also recommend that these two bills, H.R. 13007 and H.R. 13008, be amended to provide that assessments for the expenses of marketing promotion including paid advertising for other fresh California grapes be assessed against handlers rather than against producers. The act now provides for assessments against handlers only.

These recommendations can be carried out by changing H.R. 13007 and H.R. 13008 to read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Agricultural Adjustment Act of 1933, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, is further amended by inserting in section 8c(6)(I) thereof "other fresh California grapes", immediately after the words "Tokay grapes", and by changing the period at the end of the same subsection to a colon and adding thereafter the following: "*Provided further,* That with respect to orders applicable to California grapes, the expenses of advertising and promotion projects for other fresh California grapes may be assessed against the handlers of such grapes."

We also recommend that H.R. 13007, H.R. 13008, H.R. 13826, H.R. 13897, H.R. 13931, and H.R. 14712 be further amended to specifically authorize the operation of marketing research and development projects and any form of marketing promotion including paid advertising under marketing orders in above parity situations. Section 602 of the Agricultural Marketing Agreement Act of 1937 sets forth the policy of Congress to establish and maintain such orderly marketing conditions for agricultural commodities as will return parity prices to farmers. The statute now authorizes certain types of regulation when prices are above parity.

We recommend that the authority contained in this section to regulate in above parity situations be clarified to insure that it applies to the initiation or continuation of marketing research and development projects, including any form of marketing promotion and paid advertising. Marketing research and development activities, including promotion and advertising, must continue on an uninterrupted basis if the desired aims are to be accomplished. Consequently, we know of no compelling reason for discontinuing such projects when prices are above parity. These projects are aimed at making improvements in marketing and distribution which we believe are worthwhile at any price level. Our recommendation for this added authority could be accomplished by inserting in section 602(3) of the act, "such marketing research and development projects provided in section 608c(6)(I)", immediately after "establish and maintain". If so amended, section 602(3) of the act would read in part as follows:

* * * to establish and maintain such marketing research and development projects provided in section 608c(6)(I), such container and pack requirements provided in section 608c(6)(H), such minimum standards of quality and maturity and such grading and inspection requirements for agricultural commodities enumerated in section 608c(2) of this title, other than milk and its products, in interstate commerce as will effectuate such orderly marketing of such agricultural commodities as will be in the public interest.

It is estimated that the annual costs to the Department for administering each new marketing order program that is issued approximates $25,000. To the extent that the added authority provided in these bills might be utilized by amendment of existing programs, any additional costs to the Department would be absorbed within existing appropriations with respect to such programs.

Mr. MATSUNAGA. Thank you, Mr. Nicholson, for your very comprehensive testimony. There were questions in my mind initially which have been answered by your testimony.

I have one question:

Do you not feel that all of these bills could be consolidated into one bill, including H.R. 13007 and H.R. 13008 and the other bills pertaining to pears?

Mr. NICHOLSON. Yes.

Mr. MATSUNAGA. Then you would not have any objection to putting these bills into one bill?

Mr. NICHOLSON. That is right, I would have no objection to that. I think that it would make the task much easier.

Mr. MATSUNAGA. I have one more question:

Do you feel it necessary that the plum bill be adopted, in view of the fact that plums presently are included in the act itself?

Mr. NICHOLSON. As the plum bill proposes to include plums in the act insofar as plums for canning and freezing, canned and frozen

products are concerned—that is not now in the act. Plums are in the advertising and research and development section but not in the one proposed here, except insofar as fresh fruit is concerned. We can regulate the fresh under the marketing order, but not those for canning and freezing—in other words, I do feel that the plum bill should be enacted as well.

Mr. MATSUNAGA. I think that your suggestion of additional provisions for authority to do research in this area is a good one and ought to be included.

Mr. NICHOLSON. Yes, this is authority to continue the marketing research and development projects, including advertising if prices should be above parity.

Mr. MATSUNAGA. Above parity?

Mr. NICHOLSON. Yes.

Mr. MATSUNAGA. If the price goes above parity, you would not continue your assistance.

Mr. NICHOLSON. This is not certain. We think it should be clarified to make it certain that we can. There is an argument about whether we could continue or not if the prices are above parity. We suggest that the committee clarify this by inserting this language in the legislation.

Mr. MATSUNAGA. I think that is a good suggestion. You have no objection to drafting a bill which will combine all of these bills into one bill, and would you help us in that connection?

Mr. NICHOLSON. We would be glad to help you.

Mr. MATSUNAGA. Thank you.

Are there any questions?

Mr. HAGEN of California. Yes.

Mr. Nicholson, I want to thank you for a very fine statement. I appreciate the Department's support of these bills.

Taking them in toto, I understand that the amendment is to the Agricultural Marketing Agreement Act of 1937; but includes amendments to more than one section; is that correct?

Mr. NICHOLSON. These amend the section that specifies the commodities that may be covered, and, also, the section that specifies the type of regulation that you can have under marketing orders. I do not have my act right in front of me, but I am sure that you are correct. It sets out the terms and conditions.

Mr. HAGEN of California. 8c(I) is also amended, is that correct?

Mr. BUCY. Yes.

Mr. HAGEN of California. I wish you would specify what those canning and processing commodities are that are presently covered under the act and to the extent that the authority contained in the act with respect to these commodities is used for this purpose, and whether or not the law has been implemented with respect to any of them?

Do you follow me?

Mr. NICHOLSON. Yes, sir.

Mr. HAGEN of California. And without reading this complicated statute, can you just set out clearly for the record that information so that we will all understand it.

Mr. NICHOLSON. I hope that I do not miss any. I agree with you, Congressman Hagen, that the act is rather difficult to read.

We can have marketing orders under the act for the canning and freezing commodities of grapefruit, cherries, certain apples, cranberries, olives, and asparagus I believe. Those are the ones that you can have marketing orders for canning and freezing.

Mr. HAGEN of California. That is presently the law?

Mr. NICHOLSON. That is right.

And then you can have marketing orders for canned and frozen products on only two I believe at the moment, and that is asparagus and olives, that is, of those commodities mentioned.

Mr. HAGEN of California. If I may interrupt you at that point. You have given us a list of commodities. Now, is there a difference among them with respect to whether or not the processors are permitted to have a voice in the decision, or are they all treated the same?

Mr. NICHOLSON. No, there is a difference. In the case of the cherries, the processors must vote for the order in order to have a marketing order.

In the case of the other commodities, the processor vote is not required.

Mr. BUCY. That is not exactly accurate.

Mr. NICHOLSON. I will let Mr. Bucy state it.

Mr. BUCY. The vote is required with respect to all of the commodities listed except olives and asparagus.

In the case of olives and asparagus, the canning vote is not required.

Mr. HAGEN of California. The processors have no voice in those two commodities; in other words?

Mr. BUCY. The majority of the processors, the canners or the freezers producing a majority of the commodity must vote in favor of it in order for the order to go into effect, but with respect to those two, the processors do not have any vote.

Mr. HAGEN of California. They do not have any vote?

Mr. BUCY. That is correct.

Mr. HAGEN of California. With respect to all of the others except olives and canned asparagus, they do have it?

Mr. NICHOLSON. Mr. Bucy is right. I checked further.

Mr. HAGEN of California. With respect to the commodities named, does the law permit a provision for assesssment for advertising in each instance?

Mr. NICHOLSON. The act specifies that advertising programs may be engaged in only on 15 commodities—I mean the act specifies that, now.

Mr. HAGEN of California. Does that cover any of these proposed commodities for processing?

Mr. NICHOLSON. Olives are one of the 15. That is, olives are one of the 15; yes.

Mr. HAGEN of California. None of the other commodities on which marketing orders are permitted for processing?

Mr. NICHOLSON. Let me read the list. The list is carrots, citrus fruits, onions, Tokay grapes, fresh pears, dates, plums, nectarines, celery, sweet corn, limes, olives, pecans, avocados, and cherries in that list also. There are 15 of them.

Mr. HAGEN of California. How about olives for canning, you would have to have a special specification in respect to that, would you not?

Mr. NICHOLSON. No, olives in the provision would include both

olives for canning and fresh. Of course, they do not market many in the fresh form, as you know.

Mr. HAGEN of California. To try to summarize this then, which commodities for freezing, canning, or processing subject to marketing orders—you have given us the list—are eligible for promotion and research programs under the present law?

Mr. NICHOLSON. All of them are for marketing research and promotion projects, but only the 15 that I read are eligible for paid advertising.

Mr. HAGEN of California. I see.

Then, to narrow the question down, which of the ones designed for canning or processing are eligible for paid advertising provisions in the order?

Mr. NICHOLSON. Let me see. It would be grapefruit, because citrus fruit would cover that, olives, cherries; and I believe that covers it, Mr. Bucy, does it not?

Mr. BUCY. Yes.

Mr. HAGEN of California. A further question: Has this program for the inclusion in a marketing order been implemented with respect to any of these canning-processing commodities?

Mr. NICHOLSON. We have one on olives only at this time—on canning and freezing.

Mr. HAGEN of California. Canning and freezing?

Mr. NICHOLSON. Yes.

Mr. HAGEN of California. Historically, are there others?

Mr. NICHOLSON. There was one on cherries that was voted down in a referendum about a year ago.

Mr. HAGEN of California. Then, the history of that with respect to the canning and processing of commodities, olves is the only one that has been included in a marketing order, is that correct?

Mr. NICHOLSON. Yes, that is right. Of course, the list of commodities for which permission has been granted to regulate the canning and freezing is a rather short list.

Mr. HAGEN of California. That is correct. You have set forth the list.

Mr. NICHOLSON. Yes, I did.

Mr. HAGEN of California. I assume for example that in the case of canned grapefruit, that this was sought by the grapefruit growers; is that correct?

Mr. NICHOLSON. This was sought, as I recall, I believe it was in 1954, in that amendment—it was quite a few years ago—it was sought by the Florida people, but it has never been used.

Mr. HAGEN of California. I was going to ask you that. They sought the amendment. Why do you think they have not sought the inclusion of canning grapefruit in an order?

Mr. NICHOLSON. I am not sure that I know all of the reasons. Of course, the grapefruit industry for the last few years in Florida has done reasonably well. The prices have been rather stable for the last year or two.

Mr. HAGEN of California. I want to ask you another question. We have several bills here dealing with different commodities. I am the author of one involving grapes.

Mr. NICHOLSON. Yes.

Mr. HAGEN of California. Is the purpose of all of them merely to include—well, some want to include a regulation of production or

sale for canning, which is not true in the case of grapes. Is the thrust of all of these bills to include a provision for advertising in the marketing order for each commodity?

Mr. NICHOLSON. Well, the grape bills would include advertising. The pear bills would include the authority for regulation of the canning and freezing and the frozen products—the canned products, as well—and advertising. And the plum bill would include authority for canning and freezing and for regulating the canned and frozen products. They vary.

Mr. HAGEN of California. The plum and pear bills are seeking authority far broader than the right to assess for advertising and research.

Mr. NICHOLSON. Yes.

Mr. HAGEN of California. In the case of olives—not in my district, perhaps—they have had promotional campaigns; is that correct, under marketing orders?

Mr. NICHOLSON. I believe its promotional campaigns have been under State orders, Congressman Hagen. We have a Federal marketing order that became effective in certain portions last year. The regulatory portions become effective, I believe, September 1, but, as I recall, this order does not include advertising, but I believe you have had a State order that did.

Mr. HAGEN of California. With respect to these commodities which, historically, have included eligibility for marketing orders as to the product that go into canning and processing, have there been any assessment features in any of those orders?

Mr. NICHOLSON. Yes; the one that we have, of course, has an assessment procedure, and it is against the handlers. That is the olives.

Mr. HAGEN of California. That is the olive order?

Mr. NICHOLSON. Yes.

Mr. HAGEN of California. The handler is assessed; right?

Mr. NICHOLSON. Right.

Mr. HAGEN of California. Is it your experience that he passes this assessment back to the grower?

Mr. NICHOLSON. Of course, this is a good question.

Probably, it has to go one way or the other. It has to either go back to the grower or on to the consumer. There is probably no other place for it to go. In some instances, we think that it is passed back to the grower and in other instances we think it is passed on to the consumer. And in some instances we think that it is divided between the two.

Mr. HAGEN of California. In the case of olives, the processors are not allowed to vote on the question of whether or not there will be a marketing order and what will be included therein; is that correct?

Mr. NICHOLSON. That is the provision of the act. Of course, we have a public hearing on these proposed orders and the processors are able to come to the hearings, and they do so in numbers, and they put their views in the record, and their views are given consideration under those circumstances, of course.

Mr. HAGEN of California. Let me ask you this then: With respect to olives, assessments imposed on the processors, and there has been an assessment, has there been any complaint from the processors about these assessments?

Mr. NICHOLSON. No; there has not been. I should point out that in the case of the olive order there is a companion marketing agreement, and this companion marketing agreement was simply signed by more than the 50 percent by volume of the processing tonnage, and the processors, by and large, in the case of olives, were in favor of the olive order.

Mr. HAGEN of California. Of course, to make the record clear: I have a cooperative in my district. I think or suspect that they might themselves represent the majority of the volume.

Mr. NICHOLSON. I am familiar with that cooperative. I do not think I am at liberty to say what their tonnage is, but I do think that it is not quite 50 percent.

Mr. HAGEN of California. In other words, there was an agreement among other processors?

Mr. NICHOLSON. Yes.

Mr. HAGEN of California. To support these assessments?

Mr. NICHOLSON. Yes; they signed marketing agreements.

Mr. HAGEN of California. One more question, Mr. Chairman.

I am glad that you have stated some of these features. It is complicated. I wish that it could be redrafted in some way to make it readable, but it has grown historically with additions and exceptions.

Mr. MATSUNAGA. Like Topsy.

Mr. HAGEN of California. Like Topsy. You, obviously, are interested to have special provisions, et cetera. There has been some comment on parity. This has been a real problem, has it not, with the implementation of marketing orders for a commodity, the concept of applying the parity concept to the marketing order?

Mr. NICHOLSON. It has been a problem in some instances with some industries. When the act was first enacted, parity, of course, was quite a good figure, I am sure, in relation to what most of the producers were getting back in those days, back in 1933. But as time has gone on and we have added more complementary authorities, side authorities, you might say, to the act, provisions like permission to regulate the container and pack of fruits and vegetables, and the permission to have marketing research and development projects—some of those things that have been added to the act, and there is not much reason why they should be discontinued in an above parity situation. That is the point that I made in my testimony on marketing research and development projects, including paid advertising, if you had to discontinue those in a year that you might obtain parity, this would disrupt the program entirely, and you cannot plan a program like that.

Mr. HAGEN of California. In that connection, have there been any situations which have arisen where the concept of parity in this program has becomes determinative in some provision as to whether or not you would continue an order?

Mr. NICHOLSON. There have been a few instances where we have had to discontinue certain types of regulations because of being above parity. Many of these have been taken care of by amendments to the act over the years. About the only one remaining that we are worried about is, I believe, this one of marketing research and development projects, including paid advertising permission.

Mr. HAGEN of California. I see. I am glad that you suggested the amendment. I think that would accomplish a great deal now with respect to these specified commodities involved in the bills and with

respect to the whole list, but my question is: Do you change the application of the parity formula with respect to eligibility for section 32 purchases?

Mr. NICHOLSON. Yes, sir. The section 32 purchase removal program, yes, sir.

Mr. HAGEN of California. Your suggested change in the law, if it were adopted, would it affect that application?

Mr. NICHOLSON. No, sir. That is a separate act, the section 32.

Mr. HAGEN of California. You would not change that application of parity.

I believe that the Farm Bureau has advocated that.

Mr. NICHOLSON. I am not prepared to take a position on section 32 this morning, Mr. Hagen.

Mr. HAGEN of California. Thank you very much.

Mr. MATSUNAGA. Even if these bills were passed and enacted into law, public hearing would still be required before a marketing order was issued; would it not?

Mr. NICHOLSON. Yes.

Mr. MATSUNAGA. And then two-thirds would have to vote for it, of the members, of the volume represented in voting?

Mr. NICHOLSON. There is a rather long procedure involved. First, you must have a proposal. This is generally an industry proposal for approval. Next you have a hearing, a public hearing. Anybody may appear and testify, that is in this business.

Mr. MATSUNAGA. Who conducts these hearings?

Mr. NICHOLSON. They are conducted by the Office of Hearing Examiners of the Department of Agriculture. And then after that, the Department issues a recommended decision. At that step, also, opportunity is given to submit exceptions to the recommended decision.

After consideration of all of those, if the decision is still to go ahead with the program, the Secretary issues a decision saying that, and making the program subject to a vote of the producers. At that time, the program is submitted to a vote of the producers, and the producers voting must vote for it by either two-thirds by number or by volume in order for it to be issued.

Mr. MATSUNAGA. In the case of the proposed inclusion of pears, the processors would have no vote, but they would have a voice, that is they would be able to testify but they would have no vote. Is that correct?

Mr. NICHOLSON. They would have no vote under these proposed bills. They would have a voice to the extent of testifying at a hearing. They would have a voice from the standpoint of the opportunity to sign a companion marketing agreement. Of course, the order could under the required finding be issued anyway, if they failed to vote for it.

Mr. MATSUNAGA. One more question, with reference to the cost which you say is estimated at $25,000 per marketing order, you say further that to the extent that the actual authority provided in these bills might be utilized by amendment to the existing programs, any additional cost to the Department will be absorbed between the existing appropriations with respect to such programs. Do you mean by this that if it pertained to grapes, other types of grapes than Tokay grapes, that you may not need additional appropriations inasmuch as you have grapes included within the present statute, that is, Tokay grapes?

Mr. NICHOLSON. In the case of grapes, probably it would be a new order, although this is speculation whether you would add to an existing order or whether it would be a new order.

In the case of plums where we already have an order on California plums, it is probable that it would be added to the California plum order; and, therefore, would cost no more, insofar as the appropriations are concerned. It is likely that if these seven bills are enacted, only one or two new programs would result, although this is speculation again.

Mr. MATSUNAGA. So that the maximum estimated cost to the Government would be in the neighborhood of about $50,000?

Mr. NICHOLSON. I would think so, sir.

Mr. MATSUNAGA. And this expense would be involved in the holding of hearings and the working up of the order?

Mr. NICHOLSON. Yes, sir. The working up of the order and the administration, the programs we now have, and the money spent in defraying the expenses of carrying on the programs and initiating them, and so forth—the number of programs divided by the money comes out to around $25,000.

Mr. MATSUNAGA. You said that the cost the cost of advertising is defrayed by the producers, themselves?

Mr. NICHOLSON. No. I am recommending here in my statement this: This bill, the grape bill, for example, was drafted to provide that the assessment be assessed against the producers. Then, I am recommending that that be changed to provide that the assessments be assessed against the handlers. We have no other commodity whatsoever where we assess the assessment against the producers. It would probably take quite a bit of rewriting of the act to provide for this. We do feel that the handler should pay it, and he can pass it on to the producer if the industry desires that this be done. So, we do not feel that this is needful to put this provision in the act.

Mr. MATSUNAGA. I can see where the handlers would pass it on to the consumers. But how would he pass it back to the producer?

Mr. NICHOLSON. Well, Mr. Chairman, this would be simply a matter of taking care of it in the price that he paid to the producer—he would deduct it. This is done, we think, in some commodities. In other commodities, we think that it is passed on the to consumer. It can be done either way.

Mr. MATSUNAGA. And under the present practice it is done both ways?

Mr. NICHOLSON. Yes; we think that ofttimes this is not very plain in the operation of the program. A handler will not always say "My price is $75 minus $1 assessment." That is, he could say that. He would generally say "My price is $74," which probably has the assessment already taken out.

Mr. HAGEN of California. To add to what you have just said, even after the referendum, say that it carries by two-thirds of those voting or by two-thirds of the volume, the Secretary can still refuse to implement the order; is that not correct?

Mr. NICHOLSON. Yes; the Secretary has that authority. I would say that. But this would be very unusual. If the industry has spoken and said that the program should go in, why, I do not think that the Secretary would, as a rule, second guess it.

Mr. HAGEN of California. It was indicated at the time of consideration of recent cotton legislation that even with a double qualifi-

cation standard of two-thirds by capita or volume the Secretary would not implement an order unless there was at least a 51-percent majority vote of all votes cast and in fact had never implemented an order except under such conditions.

Mr. NICHOLSON. This is on——

Mr. HAGEN of California. It referred to the other marketing order agreement.

Mr. NICHOLSON. I think that is right.

Mr. HAGEN of California. This indicates a veto power, if you please, in the Secretary, regardless of the vote meeting one or more of the statutory standards.

Mr. HAGEN of California. As I understand it, actually, the cost that the Department has is in the hearing and election procedure, and that the cost of administering the order is borne by the industry; is that correct?

Mr. NICHOLSON. That is not exactly correct. We have the cost of the salaries of the people working on these orders. There is a lot of service work that goes into operating these orders each year. We issue in the neighborhood of 450 to 500 regulations each year which appear in the Federal Register, many of which I sign, by the way, and there is a lot of other work that goes in, in addition to the work mentioned.

Mr. HAGEN of California. The day-to-day management of the order is in the industry itself; is it not?

Mr. NICHOLSON. The local administration is, but the supervision is in the Department. The Department has the burden of operating the order in the public interest as well as in the interest of the producers, and the Secretary has the final authority.

Mr. HAGEN of California. The Secretary has the final authority?

Mr. NICHOLSON. Yes.

Mr. HAGEN of California. In each instance in an order, you have a committee of the industry that would be involved in the day-to-day management; is that correct?

Mr. NICHOLSON. Yes, sir. This is true of fruit and vegetable orders about which I am testifying. We think that the committee system is a very worthwhile system. We think it is one of the strengths of our program.

Mr. HAGEN of California. Those committee members receive no compensation or expense money from the Department of Agriculture, do they?

Mr. NICHOLSON. Well, not from the Department of Agriculture, no, but there is a local budget. These assessments that are collected from the handlers include money for local administration and these committee members are generally paid their expenses.

Mr. HAGEN of California. It is not a burden then on the Federal Treasury?

Mr. NICHOLSON. It is not a burden on the Federal Treasury at all.

Mr. HAGEN of California. Thank you very much.

Mr. MATSUNAGA. Any questions, Mrs. May?

Mrs. MAY. I have a few questions.

I would like to know, first of all, why these commodities were exempted from the Agricultural Act,

Mr. NICHOLSON. I am not sure that I really know that. That dates back, I believe, to 1933 or 1935. The Agricultural Adjustment

Act of 1933 was rewritten and reenacted in 1937. Mr. Bucy may have some information on that.

I believe that canning was left out in 1935. And then freezing was amended out about 1947.

Mr. BUCY. Somewhere about that time.

Mrs. MAY. I wanted to know why.

Mr. NICHOLSON. I assume it was because the canners opposed their inclusion. It is history back beyond my time. I am not familiar with it.

Mrs. MAY. Do you have any comment, Mr. Bucy on that question?

Mr. BUCY. I am not familiar with the reason why it may have been left out.

Mrs. MAY. As I recall—and I am not certain of this—it was that they included the fresh products in this, but that the processors, the canners, had to provide most of the risk when it came to buying the crops for canning and processing. I just wanted to know if that was a fair statement, and what was the principle behind the exception.

Mr. BUCY. I think that there was a different situation at the original time of the enactment. The percentage of the commodity that was handled for canning or freezing was substantially different than the percentage of the commodity that is so handled today, relative to the canned and frozen products that compete with the fresh products today.

Mrs. MAY. Has there been any change, however, in the situation when he comes to canning and processing a product, is it not the canner or the processor who pays the financial risk and responsibility rather than the grower?

Would this be a valid statement today?

Mr. NICHOLSON. Of course, the grower takes all the risk in producing. The canner takes the risk by and large in processing. In some instances, of course, the growers are interested in the processing, too, very directly, because of the cooperatives we have.

Insofar as processing, especially canning and freezing, is concerned, it has become much more important as the years have gone by. For example, as I pointed out in my testimony, about 15 years ago only 40 percent of the pears were processed. Now, about 60 percent are processed. Of course, in the case of your Bartlett pear, just in your territory and in California, I think it is around 75 percent of the Bartlett pears that are processed.

We have now in fruits and vegetables, in total, over one-half of the fruits and vegetables that are being processed. It is becoming more difficult to have effective programs and not have regulations on those, too.

Mrs. MAY. Why is this?

Mr. NICHOLSON. Because if you keep from the fresh markets certain grades and sizes, they still end up in the canned or in the frozen product, and they compete with the fresh market. This tends to pull down what you are trying to do in the fresh market.

Mrs. MAY. The opposition, as I understand it, to this was as to the inclusion of pears and plums as expressed by the processors and the canners. In my own area, for instance, based on general statements, it is that they think of it as being economically and practically unsound, discriminatory among producers and processors, disruptive of volume and price relationships and contrary to the best long-run interests of producers and consumers.

I wonder if you would comment on that as to the validity or fairness of that statement?

Mr. NICHOLSON. Well, of course, our views are somewhat different, as indicated by the statement I made here this morning. We feel that if an industry desires this type of program that it should be permitted to have it, after going through the democratic process of the vote, and all of the procedures involved. Of course, we disagree with the opposite view.

Mrs. MAY. May I ask you another question?

As I understand it, in response to questions posed by the gentleman from California, Mr. Hagen, a committee administers the order. Who is represented on the committee, the producers, the processors, the canners, and the handlers, and what proportion are they represented on this committee that administers this?

Mr. NICHOLSON. We have 48 orders and they all vary somewhat, so that it is a little difficult to say exactly, but I can give you the range.

The committees range from being all growers, which is by far the exception, to being about one-half handlers and about one-half growers. More or less, the average would be perhaps two-thirds growers and about one-third handlers.

Mrs. MAY. Who bears the expenses of the administration of the order, the producers?

Mr. NICHOLSON. The local administration is borne by assessments on the handlers.

Mrs. MAY. The producers do not bear any of the cost of the administration?

Mr. NICHOLSON. Well, of course, the handlers only have about two places that they can get this money from: one is by passing it back to the growers, deducting it from the price that they pay the growers, and the second is passing it on to the consumers. And we think that some of both is done.

Mrs. MAY. Yes, I have heard that, but you have no idea what percentage in the business transaction, so that there is not, obviously, any use going over the records to determine how much of this is passed on to the consumer or how much is passed on the to the grower. It is impossible to find out where the heaviest cost is borne and by which group. In other words, which group bears the heaviest in cost, the consumer or the producer.

Mr. NICHOLSON. I think it would be impossible to find out. We do not know. I know that we know in a few programs. We have one program, that for peanuts, a marketing agreement only, and we know that it is passed on there to the consumer, because the price support for peanuts has remained exactly the same as before the marketing agreement. The grower was getting the same price as before but the assessment of around $2 a ton was being obtained from the handlers and therefore was being passed on to the consumer.

Mrs. MAY. That assessment is set by this committee; is that right?

Mr. NICHOLSON. By the marketing agreement committee and concurred in by the Secretary. That is, it has been approved and issued by the Secretary of Agriculture.

Mrs. MAY. In other words, the Secretary and the committee dominated by the growers sets the amount of the assessment, and, basically, under the act, that cost could not be voted down by the handler?

Mr. NICHOLSON. Yes.

Mrs. MAY. You say that in actuality that is not the way it works out, because the handler just bears only a part of it.

Mr. NICHOLSON. Well, the real question in mind is if the handler really bears any of it.

Mrs. MAY. There is no way that you can prove that?

Mr. NICHOLSON. No.

Mrs. MAY. Thank you.

That is all, Mr. Chairman.

I ask unanimous consent to put into the record a telegram from the Northwest Canners & Freezers Association, in opposition to the bills, and also I would like for the record, Mr. Chairman, if it is all right, not to submit the entire letter but to place in the record part of a letter in support of this bill coming from the Washington-Oregon Canning Pear Association, signed by their secretary-manager, Mr. Clay Whybark.

Mr. MATSUNAGA. Without objection, the telegram and the letter will be included in the record at this point.

(The telegram dated July 2, 1966, and the letter dated June 2, 1966, follow:)

PORTLAND, OREG., *July 26, 1966.*

Hon. CATHERINE MAY,
Member of Congress, House Office Building,
Washington, D.C.:

We understand Agriculture Committee hearings on H.R. 13826, H.R. 13897, H.R. 13931, and H.R. 15604 making marketing order provisions applicable to pears and plums for canning start July 27. We request that this statement be made a part of the record in lieu of personal appearance. The Northwest Canners & Freezers Association including its 56 processor members packing 85 percent of Northwest production of canned and frozen fruits and vegetables opposes in principle all marketing orders for fruits and vegetables for processing, as being economically and practically unsound, discriminatory among producers and processors, disruptive of volume and price relationships and contrary to the best long-run interests of producers and consumers. We therefore urge that the instant bills not be approved by your committee.

With warm personal regards,

NORTHWEST CANNERS & FREEZERS ASSOCIATION,
C. R. TULLEY, *Executive Vice President.*

WASHINGTON-OREGON CANNING PEAR ASSOCIATION,
Yakima, Wash., June 2, 1966.

Representative CATHERINE MAY,
1118 New House Office Building,
Washington, D.C.

DEAR CATHERINE: The Washington Oregon Canning Pear Association is again coming to you for help. We would be most appreciative of your support of H.R. 13931, introduced by Representative Teague of California.

The California Canning Pear Association was the organization to start the proceedings on this bill. As you probably know, H.R. 13931, would include Bartlett Pears for processing in the Agricultural Marketing Agreement Act of 1937. This would give the Bartlett Pear growers permissive legislation so that they could work toward a Federal Marketing Order if the Producers felt the need and wanted one. As it stands now, nothing can be done nationally or in the State of Washington.

Just to give you an idea of how important this is to the West Coast, 92%–95% of the Bartlett Pears grown in the United States are grown in the three Pacific Coast States, and this bill is strongly supported by a large majority of the producers.

Again many thanks for your help in the past.

Sincerely yours,

CLAY WHYBARK,
Secretary-Manager.

Mr. MATSUNAGA. Are there any further questions?

Mr. HAGEN of California. Yes.

In the case of peanuts, that is a price-supported commodity?

Mr. NICHOLSON. Yes, sir.

Mr. HAGEN of California. And the handler has to pass that charge—Or, rather, if he tried to do it to the grower, he would have to forget about it because the grower could in effect sell to the Government at the support price.

Mr. NICHOLSON. Yes, sir.

Mr. HAGEN of California. I have one further question:

I have in my hand here the Agriculture Handbook No. 281, published by the Agricultural Stabilization Conservation Service, which is as of January 1, 1965. In the section of marketing, I do not find any reference to Tokay grapes. When did that get into the section?

Mr. NICHOLSON. You mean in this section on advertising?

Just added, sir, last year. Congress added 14 commodities last year, for which permission has been granted for advertising, to the one that was put in in 1961 or 1962. And that was cherries.

Mr. HAGEN of California. The January 1965 January compilation does not have it?

Mr. NICHOLSON. It would not have it in there.

Mr. HAGEN of California. That is the present state of the law?

Mr. NICHOLSON. Correct.

Mr. MATSUNAGA. Mr. Hagen voted for that bill.

Mr. NICHOLSON. That was approved November 8, 1965. You are familiar with it, Mr. Chairman. You had the hearings on it.

Mr. HAGEN of California. Thank you.

Mr. MATSUNAGA. Thank you very much, Mr. Nicholson. In case there are other questions that come up, we will call on you again.

Our next witness is the counsel from the National Canners Association, Mr. Dunkelberger.

STATEMENT OF EDWARD DUNKELBERGER, COUNSEL, NATIONAL CANNERS ASSOCIATION

Mr. DUNKELBERGER. Thank you, Mr. Chairman and members of the committee.

My name is Edward Dunkelberger. I am a member of the firm of Covington & Burling, and am appearing today on behalf of the National Canners Association in opposition to H.R. 15604, H.R. 13826, and related bills.

The National Canners Association is a nonprofit trade association.

Mr. HAGEN of California. You are not opposing this grape bill?

Mr. DUNKELBERGER. No, sir.

Mr. HAGEN of California. That does not involve canning?

Mr. DUNKELBERGER. That is correct. We have no position on 13007.

Its 585 members have canning plants in 44 of the 50 States and pack approximately 85 percent of our national production of canned fruits, vegetables, meats, seafoods, and specialties.

H.R. 15604 would amend the Agricultural Marketing Agreement Act of 1937 by inserting the words "plums grown in California" in section 8c(2). H.R. 13826 (and related bills) would add the word

"pears" in the same section 8c(2), and the words "processing pears" in section 8c(6)(I) of the act.

The bills themselves set forth no controls, prohibitions, or penalties, and on their face would appear to provide little cause for concern on the part of processors, growers, or consumers. Their stated purpose is to provide for checkoffs for paid advertising for California plums and pears for processing. Unless you take the time and effort to work through the confusing tangle of words in section 8c(2), and to study the economic controls and penalties contained in succeeding sections of the act, you can have no conception of the potential impact that these bills could have upon the operations of processors of these products.

I would like to point out that even the Department of Agriculture's witness, in describing the commodities that are covered, said only "certain apples." I think that we would have to take about 10 minutes to read through that section of the act to decide which apples in which States, and whether for processing or not, could be covered. Indeed, I believe several years ago, abill was introduced on the floor of the House to include certain apples, and the effect was to exclude then, because the section is phrased in terms of exceptions within exceptions within exceptions Congressman Hagen has already referred to this confusion.

The actual effect of these bills—as contrasted with the stated purpose—would be to remove California plums and pears from the act's long-established exemption for canning and freezing crops, and to subject canners and freezers of these crops for the first time to grower-imposed marketing order controls, which would give persons outside the canning industry—Government officials and growers—absolute control over raw product procurement and sale of the finished product—control tantamount to the power of life and death over the affected canners.

I would like to add one point: The Department of Agriculture's representative referred to the fact that the purchase of plums in California by processors apparently has some injurious effect upon the market. The statistics that we have show that the sale of plums to the processing industry for canning in California is about 1 percent, and stays about 1 percent, of the production of plums in that State. The number of cases of plums packed in California from California plums is small, is not miniscule.

Ever since it first adopted the Agricultural Marketing Agreement Act Congress has acknowledged the wisdom and desirability of maintaining the marketing order exemption for canning and freezing crops. Congress recognized that it is one thing to authorize growers to control their own production and shipment of raw products for the fresh market—where they have a substantial financial risk and investment in the product as purchased by the consumer. But it is quite a different thing to tell growers they can get together and control the production of the canned product—when the canner has the principal investment in the commodity as purchased by the consumer and has taken over entirely the grower's financial risk and marketing responsibilities.

Quite obviously, the grower's risk with respect to producing a product of nature remains. No one has found any way to eliminate that.

The National Canners Association has on many occasions developed before this committee the basis for its opposition to proposals that

would limit or remove the canning crop exemption. In 1962 and 1963 we testified before this subcommittee and a Senate committee in opposition to bills that would have removed this exemption for potatoes. And in 1961 NCA witnesses detailed the canning industry's objections to those parts of the administration omnibus farm bill that would have eliminated altogether the statutory exemption for canning and freezing crops.

NCA's historic opposition to the authorization of marketing orders for canning crops is based on the simple proposition that neither the Government nor growers should be given absolute control over every aspect of canning industry raw product procurement and sale of the finished product—control that would eliminate competition, stifle incentive, and prevent growth.

So that the subcommittee may have clear idea of why the canning industry has opposed the authorization of marketing orders for canning crops, it may be helpful for me to review briefly how a marketing order could be adopted for pears and plums for processing, and what it could provide, if these bills were enacted.

The Secretary of Agriculture initiates the proceeding by publishing a proposed marketing order, developed either within the Department or by some other party, such as a growers' organization. All interested persons are given an opportunity to appear at the hearing, present evidence, and file arguments or briefs. If the Secretary decides that the issuance of an order will tend to effectuate the declared policy of the act, the order is published. But it does not become effective until the Secretary determines that it is approved or favored by at least two-thirds of the producers of the commodity, or by producers who produce at least two-thirds of the volume of the commodity.

Thus, although processors and other handlers of pears, for example, could appear at the hearing and file comments, they would have no say in whether the order issued by the Secretary of Agriculture would become effective. And the policy sections of the act make it clear that it is the interest of producers, not processors, that must be considered in formulating the provisions of an order.

In this regard I might add that Mr. Nicholson referred to the opportunity of the canners and the processors to protest during these proceedings. The last time that the Canners' Association formally did that was in the proposed cherry marketing order. I think it is fair to say that none of the evidence or the testimony or the suggestions that we made with respect to the cherry order were adopted by the Department. Certainly, none of substance.

Once adopted, the order would be administered by a committee of growers, and perhaps a few canners and other handlers, but subject to the ultimate control of the Secretary. I say "a few canners," because past experience has shown that these committees have been dominated by grower representatives. The act does not require that handlers be represented at all. And again, as Mr. Nicholson said, the pattern is that these committees are composed sometimes of all growers, and almost without exception with a majority of growers. There may be a few, such as he referred to, that are 50–50, and those, of course, are in noncanning crop orders. The development of marketing policy under the order is in the hands of this grower committee, and the final decision of course lies with the Secretary.

The expense of operating the marketing order would be borne not by the producers for whose benefit it was adopted, but by the

handlers—in this instance, canners who purchased pears for processing. The amount of the assessment would be set by the committee, and the Secretary, but producers would pay no part of the costs of operations under the order.

I will add this point to my prepared testimony: The Department of Agriculture witness said at least five times, I believe, that invariably every time the assessment is paid by the handler it is either passed forward to the consumer or back to the grower. He categorically refused to acknowledge that under any circumstances would this cost, this direct cost to the processor, be taken out of the processor's profit. This is nothing but a direct tax. I am sure that economists could spend hours trying to decide whether this cost was passed backward or forward by the processor. But to our knowledge there is no basis for saying categorically that invariably it is passed either backward or forward. We do believe that if anyone were given a choice, he would much rather not be the person to have to pay this tax. It is only an assumption that processors can easily pass it backward or forward.

Time does not permit a complete listing of the types of controls that are authorized under the act and have been implemented in past and existing marketing orders. A brief summary will have to suffice. But bear in mind that all of these controls would be applied directly on the handlers; none on producers.

This is perhaps the ultimate irony of this so-called self-help legislation. A marketing order cannot impose any controls on producers. Only the canners and other handlers would be regulated. And penalties for noncompliance would of course apply only to canners, not to growers, who have decided to help themselves, as the witness from the Department of Agriculture stated.

On the raw product side, the order could regulate what, when, and how much a canner could purchase for processing. He could be told what grades he could buy, and in what amounts from which growers. No greater degree of outside control over a canner's procurement of the raw product could be imagined.

The order could extend beyond the raw product, however, and could allot the amount of the canned product, or any grade, size, or quality, which each canner could sell in any or all markets. This would amount to nothing less than complete regimentation of the canner's business. The success of his operation, bulit on private capital, individual initiative, and hard-earned experience, would no longer be under his own control.

Other provisions of the marketing order could establish surplus pools of the product, require inspection of the commodity or product, prohibit unfair methods of competition, require price filing, and establish marketing research and development projects, including paid advertising.

Proponents of these bills have explained them as an effort to authorize checkoff advertising programs for pears and California plums. But the bills are not in fact so limited. Regardless of the reasons given for enactment, if these amendments to the Agricultural Marketing Agreement Act are adopted, then the procedures and controls I have just described would become fully applicable to pears and California plums for canning.

We are reminded that in 1961 the act was amended to eliminate the exception for cherries for canning or freezing, on the basis of representations by the proponents that their only intent was to authorize market promotion programs for processed cherries. Nevertheless, cherry producer groups submitted a proposed marketing order for red tart cherries to the Secretary of Agriculture early in 1965, calling for set-aside limitations on the purchase of cherries by canners and freezers, the establishment of surplus pools, and surplus disposal procedures.

In spite of this apparent turnabout on the part of the cherry producer organizations—proposing a comprehensive supply curtailment program rather than merely advertising and promotion—the referendum on the order approved by the Secretary following the hearing failed to develop the necessary grower and processor support. I should add that when the exemption for cherries for canning or freezing had been removed in 1961, the act had been further amended to require processor as well as producer approval of a proposed marketing order for cherries. It should be emphasized that neither processor nor grower approval required by the act was obtained for that order. There has been introduced by Senator Hart in the Senate a bill that would eliminate the requirement of the processor approval of the marketing order. They refused to approve the last proposal.

Needless to say, the proposed cherry order was never adopted by reason of the referendum.

The lesson is clear, however. Once a product is added to the list of commodities in section 8c(2)—for whatever claimed purpose—the entire range of economic marketing controls becomes available for that commodity. And the temptation to use them becomes more than some people, at least, can bear.

We will not take the subcommittee's time today to explain why the canning industry firmly believes that artificial supply limitations are not and cannot be a satisfactory substitute for competition in the production and sale of canning crops. Certainly there is no empirical evidence to suggest that growers of processing crops under marketing orders have fared better than, or as well as, growers of unregulated processing crops.

But we feel we must emphasize the inequity of marketing order controls as applied to canning crops. They are imposed for the benefit of the grower, but it is the canner whose business is regulated, who pays for the administration of the order, and who is penalized for violations, even though he has no effective voice in approval or formulation of the order.

Accordingly, we respectfully urge that this subcommittee recommend against enactment of H.R. 15604, H.R. 13826, and related bills.

Thank you.

Mr. MATSUNAGA. Thank you very much, Mr. Dunkelberger.

You have made a good case for the canners.

You state on page 8 of your statement:

> Certainly, there is no empirical evidence to suggest that growers of processing crops under marketing orders have fared better than, or as well as, growers of unregulated processing crops.

What are the crops that are referred to here?

Mr. DUNKELBERGER. The California growers of asparagus and cling peaches, under the California State Marketing Order Act, have

from time to time or continually in the past approved marketing orders that would apply to asparagus for processing and cling peaches for processing in California.

I should emphasize this was not under a Federal order or the Federal act. But in the case of cling peaches, certainly the overwhelming percentage of cling peaches produced in this country are in that State.

In the case of asparagus, at the time California had a pretty good corner on asparagus production. We believe, as the result of the asparagus marketing order in California, which imposed limitations on the growing of asparagus there, that in other areas, including the Northwest, the Central United States, and the East, asparagus production was greatly encouraged. You can compare asparagus production before and after the California order, and this conclusion is certainly hard to avoid.

With respect to the cling peach order, I am not an economist and do not pretend to be, but we have seen data—the data that has been available to us—which suggests that although cling peaches in California have been under marketing order control, with various provisions, to try to keep down an overwhelming surplus which has occurred from year to year and is occurring this year under the marketing order, the growers of the cling peaches have not fared as well as the growers of pears for processing in the State of California. And pears for processing have not been regulated, whereas peaches for processing have been regulated. Indeed, this year I understand that the price of pears probably will be around $73 or $74 a ton; and that for cling peaches, which have been regulated for many years, it will be probably around $63 or $64 a ton.

Again, I am not a fieldman, nor an agriculture expert, but I am told that probably the cost to produce peaches is greater than that to produce pears.

The evidence that we have seen from any comprehensive, valid, objective study of these provisions, we believe would justify the statement at the bottom of page 8 of our statement. We have not been shown anything to the contrary.

Mr. MATSUNAGA. Do you not feel that the comparison, if any, ought to be made between the periods prior to the marketing orders and subsequent to the marketing orders covering the same product, rather than comparing one product with another product, in trying to determine whether the producers fared better before the marketing orders or subsequent to the marketing orders. Is this not a fair test?

Mr. DUNKELBERGER. The order for peaches extends back almost over a 30-year period. Unquestionably, we are talking about different economic climates. The production of peaches in the United States was entirely different in the 1920's from what it was in 1960. Unquestionably, there were problems—the industry believed there were problems in the production of cling peaches or they would not have gone to the marketing order. I do not personally recall the data which would compare the situation of the cling peach producer before and after the orders.

I do know the asparagus orders have gone off and on and have not been maintained regularly. From time to time the producers apparently recognize they are better off without them. In the case of asparagus they ended up with a lot more complications than they had before.

Mr. MATSUNAGA. Are there any questions?

Mr. HAGEN of California. I will yield to the gentlelady from Washington.

Mrs. MAY. Mr. Dunkelberger, just one question, because I think you have answered some of the questions that I put to Mr. Nicholson, at least from the viewpoint of the grower.

The question is: You mentioned in your statement that all sorts of various controls, potentially, could be applied to the handlers and the processors. Under existing marketing orders in other commodities, have a great many of these restrictions in the orders been applied that you know of that resulted in restrictions on the buyers?

Mr. DUNKELBERGER. We are not suggesting comparability between marketing orders for processing costs and for fresh marketing crops, or indeed for milk, which are entirely different in effect.

The most recent example that I can think of is the proposed cherry marketing order. This was after the recent amendment to the act, to bring cherries in under the order. The proposal was made by the growers to impose upon the processors a flat percentage of the cherries that they could receive from each producer. In other words, if a producer has 100 tons available for sale, the processor would purchase that 100 tons, and then set aside a percentage, say 20 percent. This would be set aside presumably for processing, and then the balance held in surplus-reserve pools for the coming year. We pointed out, or at least argued, that that surplus would be very costly for processors to store and hold for the following year, and that the supply limitations were unjustified. These were exactly the kind of supply controls that we are threatened with whenever you get a marketing order for a canning crop. And that is what we have in mind.

As Mr. Nicholson pointed out, there are very few marketing orders for canning crops.

Another example is the cling peach order of California, which has required green drop—not even picking a certain percentage of the peaches—in order to raise the price each year by limiting the amount of peaches that can be sold.

This is one more example of the kind of restrictive supply control which we fear in marketing orders.

Mrs. MAY. As I understand, in the cling peach area, that is a State marketing order.

Mr. DUNKELBERGER. Yes.

Mrs. MAY. Cling peaches must be taken off the trees?

Mr. DUNKELBERGER. I believe it works that way some years.

Mrs. MAY. As to the vote on the cherry marketing order, the proposed one, you say that both the growers and the processors failed to give it their support. Could you give us a breakdown of how the growers voted and how the processors voted on the proposal?

Mr. DUNKELBERGER. Yes. The order of the Secretary broke down both. The referendum for the processors and producers were separate.

The producers approved that one, I believe, by only a vote of over 50 percent, but below the two-thirds requirement. So, the producers themselves did not give the approval to the order that the Congress deemed should be required.

As to the processors' vote, I am quite positive more than 50 percent of the processors, and I believe it was much higher, although I do not

remember precisely, voted against the proposed order. There again, I believe that the cooperative may have done some processing itself, and like Mr. Hagen indicated earlier for the olive order, the processing cooperative would have a vote both as a producer and as a processor.

Mrs. MAY. You said in your statement that the purpose of this legislation is to provide a checkoff for the paid advertising for California plums and pears, and the like. What is it that has led to this request for legislation by the grower group in California; that is, the need for this?

If it were confined to just one area, do you feel that it would be justified to have that in that respect?

What has been the cause? Is it to help themselves as to advertising?

I would like comments on that.

Mr. DUNKELBERGER. The National Canners' Association has no policy one way or the other, certainly, on whether grower groups should attempt to assess themselves to pay for advertising for promotion of their product.

I have no idea what led the peargrowers or the plumgrowers into this proposal.

As I say, I do not know. I believe that Congressman Leggett, or one of the other Congressmen who testified earlier, stated that certainly there is no problem so far as the prices for pears are concerned this year.

What the basis for the proposal is, you will have to ask the proponents—the pear canning association and the plum associations, if they are here.

You will notice that they propose a checkoff for advertising. Even that, to our mind, is totally incorrect.

Some State orders provide for true checkoffs, in that the processor does nothing more than collect an additional specified amount from the producer when he pays the producer for the crop.

It is like a sales tax. The store collects the tax and passes it on.

It is not this checkoff that this act calls for.

There is no provision for a formal checkoff, in the form of producer payment.

So that in sum—I will have to say that we certainly have no opposition to any self-help advertising program that they want to implement. We do have strong opposition to authorizing much more drastic controls of the industry than merely a paid advertising program on behalf of the producers.

Mrs. MAY. That is all.

Thank you, Mr. Chairman.

Mr. HAGEN of California. Mr. Dunkelberger, in connection with your reference to the cling peaches, actually there is no market for cling peaches outside of the processing industry.

Mr. DUNKELBERGER. That is my understanding.

Mr. HAGEN of California. They are so hard that you could not break them with a sledge hammer. You are talking about a product that is entirely used for processing.

Mr. DUNKELBERGER. I believe that is the case, yes, sir.

Mr. HAGEN of California. In California, by virtue of the State order you do have a volume control. The cling peach people have never sought the inclusion of canning peaches under a canning order, that is, permission for inclusion under a Federal order; is that correct?

Mr. DUNKELBERGER. I certainly cannot say that they never have. I would not be surprised if they never have. Obviously, you do not need any more than a State order to achieve your end with 95 percent of the crop in one State.

Mr. HAGEN of California. They have the procedure of volume control. Could they have achieved the same result? Well, assuming that they were included in the list of commodities which are to be canned or processed under the Federal order, could they have achieved the same control of volume that they have achieved in California?

Mr. DUNKELBERGER. I am not completely familiar with the California Marketing Order Act. I do believe that the kinds of controls that they have used on cling peaches are very similar to the kinds of controls that they could have imposed under the Federal law. And to answer somewhat facetiously they could have achieved the same disastrous results by the Federal law as by the State law.

Mr. HAGEN of California. I would question your conclusion, because you say there has been a State order continuously in effect for 30 years, if I understand your statement.

Mr. DUNKELBERGER. Yes, not continuously but virtually continually. I believe it was on and off in some years.

Mr. HAGEN of California. That is correct. It did not prevent the entry of new growers. That has been quite a problem.

Mr. DUNKELBERGER. I do not believe that they control how much is planted by existing growers.

Mr. HAGEN of California. That is right. Many growers want that provision in the California Marketing Order Act, to establish a quota system like they have on peanuts, and cotton, and tobacco.

Mr. DUNKELBERGER. We believe that entry is perhaps a basic element in any competitive enterprise.

Mr. HAGEN of California. Do you represent any cooperatives?

Mr. DUNKELBERGER. Yes, sir; the processing cooperatives.

Mr. HAGEN of California. Do they agree with your position here?

Mr. DUNKELBERGER. The position of the National Canners' Association has been developed and reaffirmed year in and year out. I am not aware, in the most recent years, when this resolution has been adopted in a board of directors meeting or other committees of the association, that there has ever been a formal protest of the association's position by the larger processing cooperatives, such as California Canners & Growers, Curtice-Burns, and other groups throughout the country that have acquired independent canning operations and are now processing in competition with independent canning enterprises.

Mr. HAGEN of California. I would merely like to point out that there has been a rather large growth of the cooperatives in the canning operations in California. I would suspect, particularly in the case of those that can cling peaches, that there might be members of the association who are co-ops.

Mr. DUNKELBERGER. If that is your belief, I would suggest, perhaps, that you get in touch with California Canners & Growers, Tri-Valley, and other processing cooperatives in California, and see if that is the case. My latest understanding is that is not. Certainly, the bargaining association is dedicated to support of marketing orders, but they are to be distinguished from the processing cooperatives which process the production of their members.

Mr. HAGEN of California. That is correct.

On page 2 of your statement, at the bottom thereof, you refer to the removal of long-established exemptions. For example, grapes, and you mention cherries. Are you opposed to all the present exemptions in the act?

Mr. DUNKELBERGER. I do not know what you mean by "opposed." We have not advocated legislation designed to repeal them. We certainly opposed the elimination of the exemptions at the time. We opposed the removal of the cherry exemption, the grapefruit exemption, and the other exemptions in the act. We opposed them because we do not believe that marketing orders are the solution to the problem.

Mr. HAGEN of California. Your statement at the top of page 3 is not exactly correct, I would comment, because they in the past eliminated some of these exemptions with respect to specific commodities.

Mr. DUNKELBERGER. That statement was intended to reflect the decision of the Congress to reject the proposals that would have eliminated altogether the exemptions. We acknowledge, indeed, that this exemption has been removed in six specific cases.

Mr. HAGEN of California. In the bills by Congressman Sisk and myself, we include some language at the end regarding the method of collecting the assessment, that is, those on grapes, which would put it on the back of the producers. The Department suggested an amendment of that portion of our bill.

Would similar language with respect to plums and pears meet with your approval, in making it clear that the producers would bear the burden of the assessment?

Mr. DUNKELBERGER. I do not believe that the association has any position on this. But I think that I can say safely that if legislation were introduced to authorize the producers of plums and pears for processing to impose on themselves an assessment to pay for advertising of the product and nothing more, our association would not oppose that legislation.

Mr. HAGEN of California. That is another question that I was going to ask you: In other words, the canning of plums and pears, as to that, if it only went to the extent of permitting a marketing order for assessment of the producers for marketing and research and advertising, you would not then object to the bill and you do not oppose the grape bills of Mr. Sisk and myself?

Mr. DUNKELBERGER. I think that it is fair to say that we have no detailed position on that, but I think I can speak for the association and say that we would not oppose that.

Mr. HAGEN of California. As to the inclusion of canned cherries I believe such inclusion is limited, to a certain type of sour cherries, is it not?

Mr. DUNKELBERGER. They are for pies.

Mr. HAGEN of California. The kind of inclusion that was secured there is the kind of inclusion that is sought presently?

Mr. DUNKELBERGER. I believe that is the case. These cherries are to be distinguished from the Royal Anne cherries produced on the west coast.

Mr. HAGEN of California. You purport to speak for the consumer. Admittedly, the consumer's voice is rarely organized.

It is my understanding that the association is opposed to these bills, pending in the Congress, for fair merchandising, I believe, such as the Hart bills.

Do you support the features contained therein?

Mr. DUNKELBERGER. I do not believe that we claim to speak for the consumer on this or on the Hart bill. We certainly believe that it is our obligation and our right to suggest that we believe the proposed legislation will adversely affect consumers. We do not believe that we speak for them. In this regard, marketing order supply limitations result in increased costs, and with increased costs to the processor, the price of the canned product is raised on the retail shelves. That is where the consumer, we believe, would be prejudiced by this. In the same way, we believe in all sincerity that the consumer will not benefit from the additional labeling and packaging legislation.

Mr. HAGEN of California. I believe you have indicated that these bills for processing plums and pears, if they were limited to a marketing order for advertising to be assessed against the producer, that you would not object to them; is that correct?

Mr. DUNKELBERGER. If that is the intent and the effect of the legislation, we would not object certainly. We would want to be sure that that was exactly what the legislation said.

Mr. HAGEN of California. If the method were not specified but that the burden of the collection was put on the grower would you object to that?

Mr. DUNKELBERGER. By that, do you mean a true checkoff?

Mr. HAGEN of California. A method of collecting that is present in the law.

Mr. DUNKELBERGER. The method of collecting presently in the law is directly on the processor, and he has no right to check off or collect that certain amount from the producer. We believe that if the producer is to have an advertising program, it is better to assess the producer directly and to let him pay it, than to trust to economic pressures one way or another that might enable the processor to push the cost back to the producer.

Mr. HAGEN of California. One final question:

I note that from time to time that the canners get into difficult situations themselves with big inventories, in particular commodities, that they carry over which adversely affect their prices, but in spite of that fact, it is my understanding that you are opposed to any kind of volume controls that might affect the canning industry?

Mr. DUNKELBERGER. With all due respect, we believe that is one of the unfortunate results of competition. We are willing to take those results. We may not like them, when they do show up, but we do not ask Congress for controls to enable us to manipulate the market.

Mr. HAGEN of California. Do you agree with respect to some of the commodities, and I think, perhaps, cherries is one where the primary market is the fresh market, that the profit the group will make on the crop comes from the fresh sales and not from the canning sales, and to the extent the canning sales cut into that market, the farmer's return is injured.

Mr. DUNKELBERGER. I certainly cannot say where the main profit of the producer of pears comes from. I do believe that of the production of pears in California, over 80 percent goes to processors. Very

frankly, I cannot believe that the pear producer would be helped by eliminating this 80 percent of his market.

Mr. HAGEN of California. Thank you.

Mr. MATSUNAGA. Thank you very much. The bell has already rung, but we have a gentleman who came all the way from San Francisco, and if there is no objection we will proceed to hear Mr. Collins testify, and then perhaps we will have to answer a quorum call.

We are happy to have you here and to hear from you now, Mr. Collins.

STATEMENT OF ROBERT E. COLLINS, PRESIDENT, CALIFORNIA CANNING PEAR ASSOCIATION

Mr. COLLINS. Thank you, Mr. Chairman, and members of the committee.

My name is Robert Collins. I am president of the California Canning Pear Association, a nonprofit cooperative marketing association engaged in the marketing of pears for processing for our members. This marketing association consists of 800 growers producing from 140,000 tons of pears in all the important pear-growing districts of California. The association markets about 50 percent of the canning pears of California.

I am here to speak in support of the amendment to the Agricultural Marketing Agreement Act as proposed by H.R. 13931.

I would like also to state, although I am sure that Congress may have stated the position of the Northwest growers——

Mr. HAGEN of California. You mean that the Northwest Territory, Oregon and Washington, also supports this legislation; is that correct?

Mr. COLLINS. That is correct.

They were to be present but were unable to do so.

Mrs. MAY. They were going to be here, but Mr. Collins is speaking for all of them. Is that right?

Mr. COLLINS. Yes.

Canning pears, the commodity to be affected by this bill, are produced mainly in the three Western States of California, Oregon, and Washington; California alone accounting for 65 percent of the Bartlett pears, the major processing variety.

While pears are used for both fresh consumption and processing, and both markets are important to us, in recent years the processing uses have greatly outgrown the fresh outlets, some 75 to 85 percent of the crop now being processed. The fresh usage has just barely managed to hold its tonnage although losing ground heavily on a per capita basis.

The attached statistical charts will provide information regarding the acreage, usage, and present and future production trends. I will only state here that the three States of California, Oregon, and Washington make up one large production area that utilizes the same nationwide outlets for their pears.

Mr. HAGEN of California. You now wish to affect the canned product or do you just want to affect the frozen product?

Mr. COLLINS. Frozen is not an item in pear production. What we are concerned with is primarily matters of promotion, and in this respect we would like to increase usage of canned pears.

Mr. HAGEN of California. In other words, you do not want to tell the canner how many cans of pears he can can or where he can sell them?

Mr. COLLINS. No, that is correct, but we do wish to do something about the cooperation that has been built up in that respect.

The original Agricultural Marketing Agreement Act was established by Congress in 1937. Congress at that time and in subsequent amendments pointed out the public concern with the well-being of farm producers and through this vehicle provided the means through self-help marketing agreements for producers to work toward a parity of income.

Since that time many commodity groups have used these Federal marketing agreements to great advantage. They have been able to bring a measure of stability and order into what had become chaotic conditions.

This has been good legislation, not only for the farmers but for the general public. With proper safeguards it has permitted growers to work together to develop information and to coordinate their marketing efforts in many problems that reach beyond State boundaries.

As pear growers, we have also made good use of the act. But unfortunately only on the very small portion of our fruit shipped fresh, since by specific exclusion our canning fruit is prohibited from using this act.

However, despite this exclusion and perhaps because of it, pear growers on the Pacific coast have developed a number of regional and State programs, in an attempt to accomplish these same objectives for our canning pears that Congress has said are in the public interest for our fresh pears. Parenthetically, I will say that it is hard for us to understand any logic in this distinction, since the fruit in both cases may have come from the same twig on the same pear tree.

These programs are in the form of State marketing orders or agreements having varying legal authorizations and managements depending on the basic laws of the three States. They are all voted into effect, paid for and administered by growers funds under State supervision and have been a great step forward in an orderly approach to marketing.

Growers, again at their own expense and on a voluntary basis have formed two effective bargaining cooperatives representing California and Washington and Oregon. These actions have been of great help to the pear industry in the past. Growers have gained a great deal of knowledge about the economics that go into making our markets. It is a result of this knowledge that impels us to request this next step in the growth and extension of industry cooperation; for producers now realize that the economics of pear production and distribution go beyond the boundaries of a given State, and beyond the legal capacity of a State marketing program.

It was for this very reason that the Federal Marketing Agreement Act was established by Congress and the reason producers of other farm commodities make use of it, just as we do in the fresh fruit portion of our crops. We can see no valid reason why these same programs should not be available to our canning pears.

We are, therefore, requesting through H.R. 13931 that pear producers be given the right to employ the provisions of the Agricultural Marketing Agreement Act of 1937 for the purpose of adopting a

Federal marketing order should growers wish to do so. We request the right to incorporate any of the provisions authorized under the act, including those for trade promotion and advertising.

With the enactment of these provisions we are requesting we will only have gained the right to enter into a marketing agreement. It will still require a great majority of the producers to act affirmatively by appearing at public hearings and by voting the proposals into an agreement. These protections and the administration of the act by the U.S. district attorney guarantee that decisions are soundly supported by producers and within the meaning and intent of the act as provided by Congress.

I would like to mention some of the past objections that have been raised by opposition.

Processors object that they pay the assessment and are denied representation in a vote on the adoption of the order. This is not our experience in the Federal order we now have on fresh pears nor on our State marketing orders. The cost or assessment is taken from grower returns and this is known both to the grower and the handler or the processor. While it is true that this assessment is collected by the handler or processor the order is clear in indicating this is a producer cost. This has been the practice in California since our marketing order was enacted in 1938 and we would expect producers would similarly bear the cost of any Federal marketing order.

Mr. MATSUNAGA. It is estimated by the Department of Agriculture that it will cost the Federal Government $25,000 per commodity when a marketing order is issued. What is the estimated benefits to be derived from such an order?

Mr. COLLINS. Mr. Chairman, I would not know how to analyze the economic value of such a thing, to be able to set a uniform grade. I know that the $25,000 would not be the sum of the possible effect of that. We are now handling these in three different sets of arrangements, with legislation in the three States. I really could not set any money value on it. I know that it would not be $25,000.

Mr. MATSUNAGA. If 80 percent of your production goes into the canning industry—and you say you are not interested in controlling the canning industry—how would you gain any benefit without controlling or having some say as to the canned product itself?

Mr. COLLINS. The canned product would be the result of the pears made available. We have been taking the approach to some extent that we can control constructively the quantities through quality. We have done this in California. This is by grade. When you have too many pears, you try to throw away the last desirable, and this makes economic sense to everybody, so that this is an important area where 500,000 tons of pears could make an appreciable difference in the net return. We find right now that we are deadlocked on that.

I would like to raise another point, which is this: Somebody commented on the fact that pears this year are at $75 which is not certain at the moment, because we are deadlocked in price at the moment. This is not a high return for pears. Pears and peaches cannot be compared. Pears are much more expensive to produce than peaches and they should not be compared, but there is a tremendous field there of cooperation between the three States that can be worked in without having to try to affect the canner sales directly. The canners in California work closely with us, sit on the committees establishing

the grades. We would assume we would welcome the same type of an arrangement on a national basis. We, certainly, need knowledge, need their knowledge. We have no objection to this.

Mr. MATSUNAGA. So, it is simply through the control of the quality of the product that goes to the canner that you will have control?

Mr. COLLINS. That is right.

The real issue that is at stake in this matter is the veto power which would go with a provision providing for a processor vote. It is not reasonable that processors be given such a veto power over what is essentially a producers program paid for and administered by producers. Experience in other commodities has shown that the possession of this veto power has effectively prevented producers from obtaining any meaningful marketing order even after all other conditions have been met. Canners in California, and this includes the majority, have not complained of any great problems in this respect even though they do not have this veto power.

Another objection by canners is that this is undercutting free enterprise and replacing it with Federal legislation.

The record of pear industry leadership and actions in programs now in effect is the best answer to this objection.

Peargrowers have historically had a great concern for the freedom of the markets to operate in accord with supply and demand. All industry programs have been developed with a realization that they must contribute by improving economics not despite economics.

The objectives of a fair return and stability can only be achieved by giving full recognition to the problems of processors and handlers and consumers as well as those of growers. Peargrowers can point to a long record of statesmanship in this regard. Recognition of this has been made by processors in public statements and articles appearing in their trade papers.

Since the founding of the California Canning Pear Association in 1953 under the leadership of former Congressman Jack Z. Anderson, this concern for sound judgment and responsible actions has been a basic precept.

Canners have shown a great concern that growers might enact a number of market controls permitted under the Federal act, that in their opinion would be harmful.

In this respect the history of California experience should provide some assurance. Under almost identical conditions in California which is the heaviest producer of processing pears, and the Nation's major concentration of processors, growers have not sought to include these so-called undesirable features.

The passage of this bill will permit the continuance of the orderly evolution in pear marketing. In the relatively short time since the first marketing acts were voted by growers in California, the producers have learned to work together—first on the local level then in gradually expanding marketing areas.

The cooperation that has now been achieved by three States, each working under differing marketing authorities, has demonstrated the willingness to work together on our mutual problems, and the need for legislation permitting this to be done in an orderly and uniform manner throughout the marketing area.

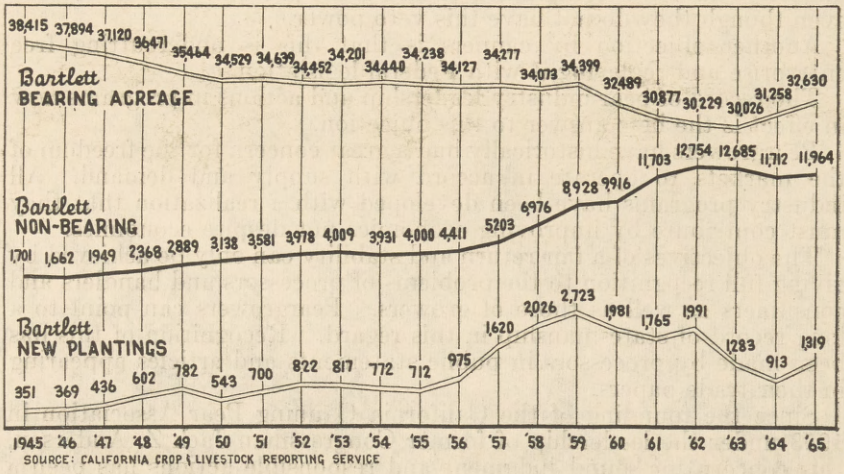
At this point it is certain peargrowers do not seek any controls beyond those absolutely necessary; and these would only be put into

effect by the Secretary of Agriculture through a marketing order voted in by a great majority of growers, after full public hearings in which all interested parties could appear.

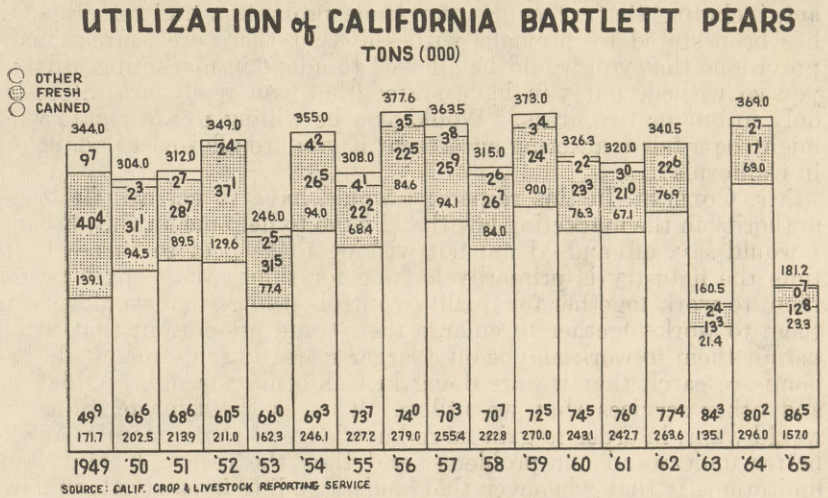
In conclusion: What peargrowers really desire is an increased ability to know more about their industry; to work together as responsible producers and to utilize without subsidy from public funds provisions in the Federal Marketing Act which Congress saw fit to enact some 30 years ago for this very purpose.

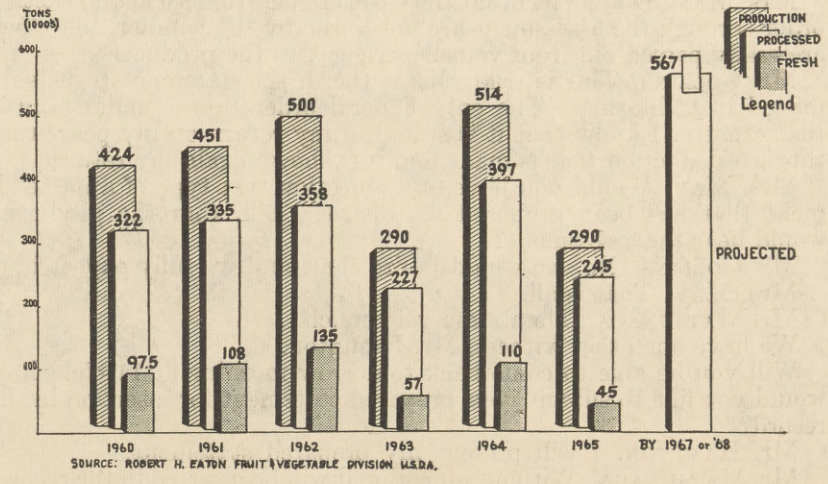
(The chart entitled "Acreage Trends," and the chart entitled "Utilization of California Bartlett Pears," and the chart entitled "Pacific Coast Bartlett Pears—Utilization" follow:)

ACREAGE TRENDS



SOURCE: CALIFORNIA CROP & LIVESTOCK REPORTING SERVICE


UTILIZATION of CALIFORNIA BARTLETT PEARS
TONS (000)
OTHER
FRESH
CANNED
344.0
304.0
312.0
349.0
246.0
355.0
308.0
377.6
363.5
315.0
373.0
326.3
320.0
340.5
160.5
369.0
181.2
1949 '50 '51 '52 '53 '54 '55 '56 '57 '58 '59 '60 '61 '62 '63 '64 '65
SOURCE: CALIF. CROP & LIVESTOCK REPORTING SERVICE


PACIFIC COAST BARTLETT PEARS·UTILIZATION
TONS (1000S)
PRODUCTION
PROCESSED
FRESH
Legend
424
322
97.5
451
335
108
500
358
135
290
227
57
514
397
110
290
245
45
567
PROJECTED
1960
1961
1962
1963
1964
1965
BY 1967 or '68
SOURCE: ROBERT H. EATON FRUIT & VEGETABLE DIVISION U.S.D.A.

Mr. MATSUNAGA. Are there any questions?

Mrs. MAY. Mr. Collins, you have stated in your statement that you would like to incorporate those provisions authorized under the act, including that, of course, for trade promotion and research. It has been stated by previous witnesses that there are a great many provisions that you would be allowed to adopt in marketing orders if you so wished, but you have stated that you really are interested only in one or two areas. Would you be willing to anticipate what might be a fair marketing agreement if you are allowed to adopt one in California?

Mr. COLLINS. In this respect: I would have to get a little better authority in the marketing law that I have to help me on this, because I would say, offhand—I am not wishing to be held to this—at this time the industry is primarily looking for things that would permit them to work together for quality control—things that would permit them to work together to enlarge their trade promotion; that would permit them to work maybe on a larger scale, due to some of the economic research that we are doing in California through foundations and other services that we utilize. That is the type of thing we would want, in order to gain more knowledge of the economics and to better understand our problems, and then the reason I want some limitations is that whenever that understanding is received, that we have other areas that we would need to use. We have all of this open to us in the State of California which is roughly well over one-half of the Nation's production of canning pears. These are now available to us. They are sitting there. The canners have not raised this point. We do not find that it seems to be the cause of any general alarm.

Mrs. MAY. If you have them available to them.

Mr. COLLINS. On a one-State basis.

Mrs. MAY. Yes, I understand. I think that ought to be made clear for the record, that it is that, rather than on a three-State basis.

Mr. COLLINS. That is right.

Mrs. MAY. Do you feel that the costs of operating such a marketing order through the assessment are not borne by the handler, that they are really passed on, from your experience, to the producer?

Mr. COLLINS. This is true; this is the direct statement to us submitted in California. The only Federal order that I understand is that exactly; I know that it is stated in my return on my pears that this is a deduction that is made and it is shown again my return

Mrs. MAY. Would you have any objection to a type of an amendment that has been proposed to this very bill, that the producers would bear the assessment?

Mr. COLLINS. No, we would desire that, and we fully expect it.

Mrs. MAY. That is all.

Mr. MATSUNAGA. Thank you very much.

We have one other witness, Mr. Hampton.

Will you be able to come back tomorrow morning at 11 o'clock or would you like to submit your prepared statement for insertion in the record?

Mr. HAMPTON. I will present my prepared statement.

Mr. MATSUNAGA. Without objection it will be inserted in the record. We will meet tomorrow for an executive session.

Mr. HAGEN of California. Mr. Collins, as I understand your statement, you have the same availability of the types of controls in California under State laws that the cling peach people have; is that correct?

Mr. COLLINS. That is correct.

Mr. HAGEN of California. Further, as I understand it, you have not attempted any green-drop, or any other volume control of that type?

Mr. COLLINS. No, we have not—only through quality control.

Mr. HAGEN of California. Through your marketing order in California, you do take off market for all purposes a certain quality of pears; is that correct?

Mr. COLLINS. That is right.

Mr. HAGEN of California. I assume that is the reason that it has been inadequate in that it does not touch production and marketing in two other States that have substantial pear production.

Mr. COLLINS. Yes.

Mr. HAGEN of California. So, this is the primary reason for the Federal order, because, unlike cling peaches, California really dominates the supply of those—this is a three-State proposition?

Mr. COLLINS. Yes.

Mr. HAGEN of California. And you, therefore, are seeking Federal authority, and the other two are seeking it, too; is that correct?

Mr. COLLINS. Yes.

Mr. HAGEN of California. Would you settle for an amendment of the law, including canning pears under Federal marketing orders only for the purpose of establishing a marketing promotion and research program that would be paid for by assessment?

Mr. COLLINS. Honestly, I do not believe that the cost would justify going through that, because we do have a program that we go through now on a voluntary basis in the three States, and for that reason, I do not believe so.

Mr. HAGEN of California. What would you seek in the Federal order?

Mr. COLLINS. Speaking again on just my own, because this certainly would have to be discussed with the Northwest and the other areas, I would look toward third-party grading and a uniform set of grades throughout the area.

Mr. HAGEN of California. Would you seek to take out of availability to the canners certain grades of pears?

Mr. COLLINS. Yes.

Mr. HAGEN of California. They would just be disposed outside of the channels of trade?

Mr. COLLINS. As the way they now do it in California and as the Northwest does to some extent. They have a minimum of grades. This is, in all commodities, an accepted way of grading.

First, I think that would be the most important.

Mr. HAGEN of California. Those are the only two elements that you seek in this commodity order?

Mr. COLLINS. There are really three, promotion and research, and the grades. I thought that we were discussing a third one, too.

Mr. HAGEN of California. Basically, these are the two things that you seek in your first Federal order, which would be assessment for promotion and market research, and uniform grades, the elimination

of a certain portion of the crop from the canning availability because of poor quality?

Mr. COLLINS. Uniformity of grading, that is right, and promotion and research.

Mr. HAGEN of California. That is all.

Thank you.

Mr. MATSUNAGA. Thank you very much, Mr. Collins.

For the record, our next witness is Mr. Robert N. Hampton.

The record will show that Mr. Hampton has made his appearance, and his statement will be made a part of the record at this point, as if presented in full.

STATEMENT OF ROBERT N. HAMPTON, NATIONAL COUNCIL OF FARMER COOPERATIVES

Mr. HAGEN of California. Are you here in support of the legislation?

Mr. HAMPTON. Yes, sir.

(The prepared statement submitted by Mr. Hampton reads in full as follows:)

STATEMENT OF ROBERT N. HAMPTON, DIRECTOR OF MARKETING SERVICES, NATIONAL COUNCIL OF FARMER COOPERATIVES

I am Robert N. Hampton, Director of Marketing Services of the National Council of Farmer Cooperatives. The National Council is a nationwide federation of farmers' business associations engaged in the marketing of agricultural commodities or purchasing of farm production supplies or both, and of state cooperative councils. The membership includes a large number of the major federated and regional farmer cooperatives of the country. The organizations making up the Council are owned and controlled by farmers as the off-farm departments of their overall farm business operations.

The National Council strongly favors the enactment of legislation to enable federal marketing agreements and orders to be established for pears for processing, as provided for in H.R. 13826, H.R. 13897, H.R. 13931 and H.R. 14712.

The current policy of the Council with respect to "Marketing Agreements and Orders" includes this statement:

"The National Council favors legislation for the continuation and liberalization of the marketing agreement and order authority to:

"1. Provide for inclusion of additional commodities under the marketing agreement and order authority; and to specifically provide that fruits and vegetables for processing now excluded may make use of federal marketing orders and agreements whenever such orders or agreements affect the farmer-producers primarily and are approved by a majority of these producers affected. Whenever they regulate the processed product, such orders or agreements may become effective only upon the voluntary assent of a majority of the handlers affected, and should be administered jointly by producers and handlers. * * *

* * * * * * *

"4. Provide for the expansion of this type of authority to encompass such geographic areas as are most desirable to carry out the intent of the order."

The intent of the marketing order type of program to permit more orderly marketing of farm products with benefits to farmers, food marketers and consumers would be furthered by this legislation. The type of program which would be authorized by this legislation has worked well under a state enabling law in California, but more effective multi-state coordination of market planning is needed to extend the benefits to the entire canning pear industry.

Recent studies of the National Commission on Food Marketing have reaffirmed the need for much broader use of marketing orders as one of the more deisrable means of improving marketing efficiency, and at the same time improving competition by overcoming farmers' market weakness. The following comment, from the June 1966 report of the Commission, "Food From Farmer To Consumer" is pertinent:

"The marketing and pricing problems in agriculture differ, sometimes dramatically, from those found in food processing and distribution. Contributing to the difference are the large number of farmers, the lack of product differentiation, the frequent oversupply resulting in part from rising farm productivity, unplanned variations in yields arising from weather and other natural hazards and the extreme perishability of many products. Farm markets lacking the firm influence of group action are volative, often depressed, and highly sensitive to downward pressures originating further along in marketing channels. Farmers as independent operators have not been able to coordinate quality improvement programs or to schedule more even flows of products to the extent demanded by today's food industry.

"We believe, therefore, that there is frequent need for group action by farmers to adjust sales more uniformly to market demands at reasonable prices, to improve product quality and uniformity, to negotiate with buyers, and the protect themselves against trade practices and abuses of market power to which they are otherwise vulnerable."

The Commission then suggested that cooperatives and bargaining associations "complemented by" marketing orders and agreements offer an ideal combination for effective group action. It said:

"Producers' marketing cooperatives and bargaining associations * * * already play a prominent part in food marketing. We believe that farmers do not yet fully appreciate the importance of cooperative action in marketing their products. We support all assistance government can reasonable give to producer cooperation * * *. Federal marketing agreements and orders should be authorized for any agricultural commodity produced in a local area or regional subdivision of the United States."

It is important to reemphasize, that, though such programs are set up primarily to enable farmers to work together for improved marketing, there are definite benefits to all segments of the industry. As farmers are able to improve the quality and type of their products, these have greater market value and permit more efficient operations for processors. Past experience has also shown that processor representation on the administrative committee is of value both to farmers and to the Secretary of Agriculture in program administration.

We appreciate the opportunity to appear before the subcommittee and present these views.

Mr. MATSUNAGA. I have also here a wire from the Washington-Oregon Canning Pear Association in support of the legislation, which telegram will be made a part of the record at this point.

(The telegram, dated July 27, 1966, follows:)

YAKIMA, WASH., *July 26, 1966.*

Hon. SPARK M. MATSUNAGA,
Chairman, Subcommittee Domestic Marketing and Consumer Relations, Committee on Agriculture, 1321 Longworth Building, Washington, D.C.:

The Washington-Oregon Canning Pear Association calls your attention to House bill H.R. 13931, permissive legislation include Bartlett pears in Marketing Act of 1937. Would appreciate your support in getting approval and movement of bill through your committee.

WASHINGTON-OREGON CANNING PEAR ASSOCIATION,
CLAY WHYBARK, *Secretary-Manager.*

(The following correspondence and statement were also submitted to the subcommittee:)

CALIFORNIA TREE FRUIT AGREEMENT,
Sacramento, Calif., July 26, 1966.

Congressman SPARK N. MATSUNAGA,
Chairman, Subcommittee on Domestic Marketing and Consumer Relations of the Committee on Agriculture, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN MATSUNAGA: This office manages several marketing order programs relating to four deciduous fruits produced in California. One of these programs is a Federal marketing order for plums.

Plums have been heavily planted here in recent years and a normal crop now exceeds 100,000 tons. Almost the entire crop is shipped fresh and in the most recent crop year approximately 7,500 carloads were thus marketed. Prices have been very low as a result of this overproduction and in each of the past three

years it has been necessary to request a surplus removal program from the U.S. Department of Agriculture.

Perhaps five to ten percent of the crop is processed. Since the plum crop is usually in a surplus condition, marketing order quality and size controls are invoked under the Federal program which are often severe, resulting in the development of large quantities of fruit which fail to meet the seasonal standards. This has served to create a large pool of cheap fruit which is available only to processors and it is often sold for less than $10.00 per ton. So long as there is a large captive supply of the raw product, processors do not have to pay fair prices for processing plums and the development of a profitable outlet is not possible.

The California plum industry would like to control the quality of fruit entering this channel and it is therefore greatly interested in H.R. 15604 which would make possible quality controls for California plums for canning or freezing under the Agricultural Marketing Agreement Act of 1937. Such controls would foster the sale of quality fruit to processors and this would benefit not only growers who would gain an additional outlet for good fruit but also consumers of the finished products.

Sincerely yours,

GALEN GELLER, *Manager.*

NATIONAL COUNCIL OF FARMER COOPERATIVES,
Washington, D.C., July 28, 1966.

Hon. S. M. MATSUNAGA,
Chairman, Subcommittee on Domestic Marketing and Consumer Relations, Committee on Agriculture, U.S. House of Representatives, Washington, D.C.

DEAR MR. MATSUNAGA: The National Council supports the provisions of H.R. 13007 and H.R. 13008, authorizing market promotion activities, including paid advertising, under marketing orders for fresh California table grapes, as established in accordance with the Agricultural Marketing Agreement Act of 1937.

Included in the Council's current policy statement on "Marketing Agreements and Orders" is the following:

"Experience in recent years confirms the conclusion that legislative authority of the type contained in the Agricultural Marketing Agreement Act of 1937 has made a substantial contribution to the bargaining power of producers of specific commodities and thereby to maintaining and raising their income. The National Council favors legislation for the continuation and liberalization of the marketing agreement and order type authority to * * * (2) Enlarge and clarify the authorization for agencies established under marketing orders to engage in or finance, within reasonable limits, research and/or market promotion activities from funds collected pursuant to the marketing order. * * * "

We believe that, for many commodity groups, this may prove to be the most practical, effective and equitable method of carrying out joint producer-processor-handler programs to promote the sale of their products. We do not subscribe to the view sometimes advanced that increased sale of one agricultural product is necessarily and totally at the expense of another. We believe that through spelling out health benefits and other little-appreciated merits of many food items, well-conceived promotional programs might often increase purchase of fruits or other such products as an addition rather than a replacement in the food budget. Furthermore, the increased promotional competition among foods can lead to improved quality control, brand identification and product innovations which could be beneficial to consumers, producers and the trade.

We would appreciate it if this statement can be included as part of the record of hearings on July 27 on H.R. 13007 and H.R. 13008.

Sincerely,

KENNETH D. NADEN, *Executive Vice President.*

NATIONAL MILK PRODUCERS FEDERATION,
Washington, D.C., July 29, 1966.

Hon. SPARK M. MATSUNAGA,
Chairman, Subcommittee on Domestic Marketing and Consumer Relations,
Committee on Agriculture,
House Office Building,
Washington, D.C.

DEAR MR. MATSUNAGA: Presently under consideration by your Subcommittee are several bills which propose various amendments to the Agricultural Marketing Agreement Act of 1937, including the authority for paid advertising of certain commodities.

In your consideration of these various amendments, the National Milk Producers Federation respectfully requests that you consider a further amendment which would provide permissive authority for dairy farmers under a Federal milk marketing order to support advertising, nutritional, and economic research of milk and dairy products to be financed by uniform deductions from the dairy farmers' own milk checks. There is enclosed suggested language which we feel would carry out this proposal.

Needless to say, your favorable consideration of this measure would be appreciated. We respectfully request that this communication and the suggested language be made part of the record of hearings on this subject.

Sincerely,

E. M. NORTON, *Secretary.*

Section 8c(6)(I) is further amended by adding at the end thereof the following additional sentences:

"Notwithstanding any other provisions of this Act, orders issued pursuant to this section in the case of milk and its products may contain terms and conditions similar to those authorized under this paragraph (I) for orders issued pursuant to this section in the case of other agricultural commodities and the products thereof and may provide for domestic marketing research and development projects, and advertising (excluding brand advertising), sales promotion, education, and other similar programs, designed to improve or promote the domestic marketing and consumption of milk and its products, to be financed by producer deductions at a rate per hundredweight fixed in the order on all producer milk under the order. Such funds shall be paid to an agency organized by milk producers and producers' cooperative associations in such form and with such methods of operation as are specified in the order. Such agency may designate and employ persons and organizations engaged in such projects and programs who meet the standards and qualifications to be specified in the order. All funds collected under this subparagraph shall be separately accounted for and shall be used only for the purposes for which they were collected. Projects and programs authorized by this subparagraph may be either local or national in scope, or both, as provided in the order, but shall not be international. Such order provisions with respect to milk and its products shall not become effective in any marketing order unless separately approved by producers in the same manner provided for the approval of marketing orders and may be terminated separately whenever the Secretary makes a determination with respect to such provisions as is provided for the termination of an order in subsection 8c(16)(B). Disapproval or termination of such order provisions with respect to milk and its products shall not be considered disapproval of the order or of other terms of the order."

PETERS & GARABEDIAN,
Fresno, Calif., July 29, 1966.

Congressman S. M. MATSUNAGA,
Chairman, Subcommittee on Domestic Marketing,
House of Representatives, Washington, D.C.

MY DEAR CONGRESSMAN MATSUNAGA: We are growers and shippers of plums here in California. As you know, for the past several years the markets have been depressed to the point where we have not been getting our production costs for our No. 1 marketable fruit. Yet the processors are buying below standard fruit, or culls, from the packing house at the ridiculous price of five to ten dollars per ton. I might add that the production cost to us is approximately $75 a ton.

These low-grade, cheap fruits are processed into jams and jellies for which a housewife pays from 49 cents to 69 cents for a small jar at the supermarket.

If we assume the jar contains one pound of plums, at the rate of ten dollars per ton the grower is receiving only one-half cent for the product and the consumer is paying as high as 69 cents. However, this is not the problem with which I am most greatly concerned.

We, as growers, feel certain that the processors of jelly and jam are most able to pay the cost of production, possibly a little profit for the grower, thereby securing a much better quality of fruit and assuring the consumer better merchandise.

Therefore I ask you to use your best efforts to have Bill H.R. 15604 passed.

Sincerely yours,

JOHN GARABEDIAN.

AMERICAN FARM BUREAU FEDERATION,
August 1, 1966.

Re: H.R. 13007, H.R. 13008, H.R. 13826, H.R. 13897, H.R. 13931, H.R. 14712, amendments to the Marketing Agreement Act.

Hon. SPARK M. MATSUNAGA,
Chairman, Domestic Marketing and Consumer Relations Subcommittee, House Committee on Agriculture, U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN MATSUNAGA: Your subcommittee held hearings on several bills that would add additional commodities to that section of the Agricultural Marketing Agreement Act of 1937 under which funds could be collected from agricultural producers to be used for a paid advertising and promotion program. Fresh table grapes in California and processing pears would be added to the list of commodities for which a paid advertising program could be established under a federal marketing order.

The elected voting delegates of the member State Farm Bureaus at our most recent annual meeting adopted the following Farm Bureau policy concerning Federal Marketing Orders that relate to the legislation before your Subcommittee:

"Orders should not be used to directly control production, to establish closed markets, to maintain artificially high prices, and to collect funds for advertising and promotion or for the purchase of agricultural products for diversion purposes."

In addition, the Farm Bureau policy on Promotion of Agricultural Commodities is also important in discussing this legislation. The pertinent paragraphs are as follows:

"We believe that any funds raised for the purpose of promoting the sale of farm commodities should be collected on a voluntary basis, administered by a non-governmental organization of producers—with handlers and processors included where it is mutually agreed that they should be included—through its board or committee, and used solely for the specific purposes for which collected and not for legislative or political activities.

"We define a voluntary check-off as one which leaves producers free to refuse to contribute or enables them to obtain the refund of any assessments collected by the voluntary action of market agencies. The procedure for obtaining refunds should not be so burdensome as to have the practical effect of depriving individual producers of the opportunity to obtain refunds."

The Farm Bureau has supported the Federal Marketing Order Program for many years. We have not felt that it was the proper function of a federal marketing order to be used as a device for collecting promotion funds from producers for a paid advertising program.

We hope that the legislative proposals dealing with the subject before your Subcommittee will not be approved.

We would appreciate your making this letter a part of the official hearing record.

Sincerely yours,

JOHN C. LYNN, *Legislative Director.*

STATEMENT OF NORTHWEST CANNERS & FREEZERS ASSOCIATION

The Northwest Canners & Freezers Association is a trade association of the canners and freezers of fruits and vegetables in the states of Idaho, Oregon and Washington. Its membership, consisting of 57 firms who pack approximately 85 percent of the annual production of such products in these states, is broadly representative of the types of business in the industry, with 13 members classified as grower cooperative associations, 32 members classified as local independent

packers and 12 classified as national brand packers. Headquarters of the Association are located at 3705 SE 26th Avenue, Portland, Oreg.

The association is opposed to H.R. 16701, which would include pears for canning or freezing under the marketing order provisions of the Agricultural Marketing Agreement Act of 1937, as amended, for the following reasons:

In the first place we are opposed in principle to any attempt to regulate by means of federal marketing orders the marketing of any fresh fruit or vegetable for processing, as provided in sections 8c(6) and 8c(7), with the possible exception of 8c(6)(I). In this latter instance we would have no legitimate objection to a mandatory program of marketing research, promotion or advertising with funds provided directly by growers. There are numerous reasons why marketing control programs formulated under the other provisions of this section would be unsound and unworkable. Only a few of the more important ones are here mentioned.

1. It would be impossible to administer such a program on a sound and equitable basis. To be effective, the program would have to encompass all of the commodity canned or frozen in the United States. No single person or group of persons is capable of making sound judgments relating to the intricate processes of marketing the entire pack of a processed fruit or vegetable. For example, with all producing areas included, no judgments could anticipate the effects on competitive relationships among the different producing areas under varying conditions of supply and raw product quality, or of the effects of the inter-relationship of demand among the various processed commodities or their products.

2. It would be impossible to fully protect the grower's and processor's investment in land, production and harvesting equipment, plant, facilities, stocks of finished goods, advertising and other promotion. Such a program would particularly discriminate against the newer, developing areas. The processing industry depends heavily on borrowed money. Increased risks would make both capital investment funds and operating funds more costly and difficult to obtain.

3. Since the administration of the program would be under the direct authority of the Secretary of Agriculture, the danger would be ever present that important economic decisions would be influenced by political bias. Such a situation would be intolerable.

4. An order program is undemocratic. It may be placed into effect without the consent of members of the group with the greatest financial investment—the processors. Each processor is brought under its provisions whether or not he chooses to do so. The program is punitive, with substantial fines and criminal liabilities imposed upon processors who do not comply, and without adequate recourse. The program may be administered by a committee or board dominated or composed entirely of persons who do not represent processors.

5. A probable effect of the interaction of the above and other factors and conditions incident to such a program would be to encourage in the industry a tendency to lean on a paternalistic government, and to discourage, or even stifle, initiative and free competition, to the detriment of producers and consumers generally.

6. The program would be costly, both to the government in setting it up, administering and policing it, and to the industry in effecting its provisions. The result would be unreasonable and substantial increases to consumers in the cost of food, or more probably, a reduction in the returns to growers from their products so regulated.

Secondly, and more specifically, we are opposed to the inclusion of pears for canning or freezing under the marketing order provisions of the Act for the following additional reasons:

1. Bartlett pears are the principal variety grown for processing in the United States. They are produced in largest volume in the states of California, Oregon and Washington, with substantial production in other states. In Oregon and Washington the crop is canned as pear halves for the retail and institutional markets throughout the United States, with an insignificant quantity packed in the form of pear nectar. In California, because of the availability of other fruits and specialized packing facilities, the canned pack is marketed as pear halves, nectar, baby food, and as an ingredient in fruit cocktail and fruits for salad. In addition, California has the advantage of the early fresh market and the drying outlets. A federal marketing order program uniformly applied under such circumstances would

certainly result in discrimination against producers and processors located in the Pacific Northwest in the marketing of their crops and products. A program of grading, as suggested by proponents in California, certainly could not be applied uniformly with equity because of variable geographic and weather effects upon the crop and regional differences in the end products.

2. Processors are now finding it difficult to move a consistently large volume of canned pears in the market place in the face of growing competition from other canned, frozen and fresh fruits. If costs are artificially forced up due to the effects of a marketing order program, only two alternatives are available to the industry—a drastic reduction in the volume packed or a substantial decrease in the average price to the grower—and either would be contrary to the legitimate objectives of the program.

3. Because of our views of the very limited usefulness of a marketing order program for pears for processing, we believe it would not be constructive leadership for the Congress to enact ill conceived and unsound legislation or for the Department of Agriculture to hold out false hopes of a panacea to the pear grower. The interaction of supply and demand in a relatively free economy is the best way to assure in the future, as in the past, a reasonable return to growers and processors for their enterprise at a fair price to the consumer. For these reasons we urge the deletion of "pears" from paragraph (1) (line 8) of H.R. 16701.

With respect to paragraph (2), as stated earlier we are not opposed to federally sponsored grower programs of marketing research, promotion or advertising. However, in the instance of pears we support the testimony of a proponent witness before your Committee (Mr. Robert E. Collins, president, California Canning Pear Association) that the promotion programs now in effect for the three states of California, Oregon and Washington "have been a great step forward in an orderly approach to marketing." With this favorable outlook we can see no adequate reason here to provide additionally for a promotion program for canned pears under the Federal Act.

Respectfully submitted.

NORTHWEST CANNERS AND FREEZERS ASSOCIATION,
By Legislative Coordinating Committee.

L. V. WISE, *Chairman,*
California Packing Corp.
N. W. MERRILL,
Blue Lake Packers, Inc.
F. M. MOSS,
Idaho Canning Co.

Attest:

C. R. TULLEY, *Executive Vice President.*

Mr. MATSUNAGA. The subcommittee will stand adjourned until 11 a.m., tomorrow, for further hearings on this matter, and then we will go into an executive session for consideration of all of the bills before the subcommittee.

(Whereupon, at 12:30 p.m., a recess was taken until 11 a.m., Thursday, July 28, 1966.)

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