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A BILL TO REPEAL THE STANDARD  
CONTAINER ACTS OF 1916 AND 1928

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HEARINGS  
BEFORE THE  
AD HOC SUBCOMMITTEE  
OF THE  
COMMITTEE ON  
SCIENCE AND ASTRONAUTICS  
U.S. HOUSE OF REPRESENTATIVES

EIGHTY-NINTH CONGRESS

SECOND SESSION

ON

S. 17

SEPTEMBER 27, 1966

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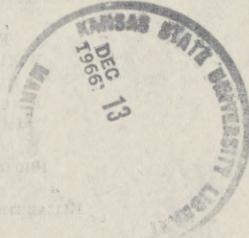
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A BILL TO REPEAL THE STANDARD  
CONTAINER ACTS OF 1916 AND 1928

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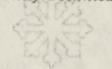
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S. 17, A BILL TO REPEAL CERTAIN ACTS RELATING TO  
CONTAINERS FOR FRUITS AND VEGETABLES, AND  
FOR OTHER PURPOSES

TUESDAY, SEPTEMBER 27, 1966

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON SCIENCE AND ASTRONAUTICS,  
AD HOC SUBCOMMITTEE ON S. 17,  
*Washington, D.C.*

The ad hoc subcommittee met, pursuant to call, in Room 2325, Rayburn House Office Building, at 10 o'clock a.m., the Hon. J. Edward Roush (chairman of the subcommittee), presiding.

Mr. ROUSH. The subcommittee will be in order.

Because the House goes into session this morning at 11 rather than the customary hour of noon, we are going to have to hurry right along with these hearings.

We meet this morning to take testimony on S. 17, a bill to repeal the Standard Container Acts of August 31, 1916, and May 21, 1928.

These acts establish standard volumes and sizes for wood veneer fruit and vegetable containers. The Senate has acted favorably on this bill, stating that the acts are now obsolete and do not meet the standards of new marketing practices.

I hope the testimony we receive this morning might explain to us the reason for the need to repeal these previous laws and you might add any other pertinent facts which will enlighten the committee.

As our first witness this morning we have Mr. Arthur E. Browne of the Department of Agriculture. Mr. Browne is Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

Mr. Browne, will you take a chair right here, sir? I believe you have a prepared statement; is that correct?

Mr. BROWNE. Yes, sir; I have.

Mr. ROUSH. You may proceed then with your testimony, Mr. Browne.

**STATEMENT OF ARTHUR E. BROWNE, DEPUTY DIRECTOR, FRUIT AND VEGETABLE DIVISION, CONSUMER AND MARKETING SERVICE, DEPARTMENT OF AGRICULTURE; ACCOMPANIED BY JOHN J. GARDNER, REGULATORY BRANCH, DEPARTMENT OF AGRICULTURE, AND JAMES E. HORTON, OFFICE OF THE GENERAL COUNSEL, DEPARTMENT OF AGRICULTURE**

Mr. BROWNE. Mr. Chairman, I have with me Mr. John J. Gardner of our Regulatory Branch; and Mr. James E. Horton of the Office of General Counsel, in the event there are questions the committee might wish to direct to these gentlemen, also.

S. 17 would repeal the U.S. Standard Container Acts of 1916 and 1928, effective January 1, 1967. These acts prescribe standard sizes and capacities for a limited number of types of baskets and hampers used in the shipment of fresh fruits and vegetables.

The Department recommends that S. 17 be passed.

Briefly, the act of August 31, 1916 (39 Stat. 673; 15 U.S.C. 251-256), commonly called the Standard Container Act of 1916, establishes standard sizes for climax baskets for grapes and other fruits and vegetables and fixes standards for baskets and other containers for small fruits, berries, and vegetables. The act provides for the examination of containers subject to regulation to determine their compliance with the law.

The act of May 21, 1928 (45 Stat. 685; 15 U.S.C. 257-257i), known as the Standard Container Act of 1928, establishes standard sizes for hampers, round-stave baskets, and splint baskets used for fresh fruits and vegetables. Specifications of containers covered by the act are submitted to and approved by the Department if such containers are of the prescribed capacity and not deceptive in appearance.

When the U.S. Standard Container Acts of 1916 and 1928 were enacted, the predominant types of containers used for the shipment of fresh fruits and vegetables were baskets, barrels, and hampers. At that time, because of the large number of sizes of containers being manufactured, a strong movement developed in the industry to bring about some degree of standardization in these containers.

In the years since the enactment of these acts, substantial changes have taken place in the types of containers used for shipping fresh fruits and vegetables. Baskets and hampers have largely been displaced by newer types of containers, such as boxes, lugs, crates, cartons, and bags.

In addition, the trend in trading in fruits and vegetables has been toward selling by weight or count, rather than by volumetric measure. As a result, it is estimated that less than 10 percent of the fresh fruits and vegetables shipped in interstate commerce are now packed in containers regulated under the Standard Container Acts of 1916 and 1928.

Further, the number of manufacturers of baskets and hampers subject to these acts has declined steadily in recent years. For example, during the past 10 years, the number of such factories has declined from 148 to 95 and the number of different containers manufactured by these plants has dropped from 611 to 408.

In view of the limited volume of fresh fruits and vegetables currently being shipped in containers under the Standard Container Acts of 1916 and 1928, the continuing trend toward wider uses of types of containers not subject to Federal regulation, and the fact that most fruits and vegetables are now sold by weight or count, the Department believes that the continued administration of these two acts is no longer justified.

Furthermore, a savings of approximately \$16,200 annually can be achieved through the repeal of these laws.

Mr. ROUSH. Mr. Browne, how is \$16,200 saved annually? What is this money spent on now?

Mr. BROWNE. This is spent on the testing of containers which are subject to these laws. The administration of these acts is carried on primarily by the examination of samples of containers subject to the acts, which are submitted to the Department.

We maintain a testing laboratory where these samples are tested to determine whether they meet the requirements of the acts and if not, the container manufacturers are advised to adjust their equipment to bring them into compliance, and new samples are then submitted to determine whether they meet the requirements. This laboratory would be discontinued and the manpower which is now devoted to this would be devoted to other work.

Mr. ROUSH. I understand the Department directed an inquiry to the various States asking for an opinion as to whether or not this should be repealed, these two acts should be repealed, and that 12 States have responded in opposition to the repeal of these two acts. Is this correct?

Mr. BROWNE. This survey was conducted by the Department of Commerce and I believe Mr. Jensen is prepared to comment on that.

Mr. ROUSH. Is it your opinion that these acts as they exist now do or do not satisfy a useful purpose for the various States?

Mr. BROWNE. It is the Department's position that in view of the relatively small volume of fresh fruits and vegetables which are now moving in these containers, the cost of administration of these acts is not justified by the benefits, the limited benefits, which are to be gained from the continued administration of these acts.

Mr. ROUSH. It seems rather ironical that last week this subcommittee was conducting hearings which hopefully will bring about a greater standardization, and this week we are repealing acts which deal with standardization.

That is just a comment.

Mr. Anderson.

Mr. ANDERSON. Mr. Browne, on page 2 you mention that the trend in selling of fruits and vegetables is by weight and count rather than volumetric measure, and you say—

As a result, it is estimated that less than ten percent of the fresh fruits and vegetables shipped in interstate commerce are now packed in containers regulated under the Standard Container Acts of 1916 and 1928.

Do I gather, then, roughly 90 percent of all transactions, no matter what the level is, is on the weight and count basis rather than volumetric at the present time?

Mr. BROWNE. That is probably true. The figure which I gave applies only to interstate shipments. These estimates were made several years ago, and based on the information that we have available, the percentage is undoubtedly lower today than it was at that time, the time the estimates were made.

What has been happening is that new types of containers have been coming into use for the shipment of many commodities—for example peaches: Only a few years ago it was the customary procedure to ship eastern peaches in baskets, subject to these acts. In recent years there has been a marked shift in the type of containers used for shipment of peaches. This is illustrated by the results of a study conducted by Clemson University on shipments from South Carolina, the leading Eastern State in the production of peaches. According to the results of this survey, during the 1959 season, 98 percent of all peaches shipped out of South Carolina were shipped in baskets subject to these acts.

By 1962, only 3 years later, it had dropped to 80 percent, and by 1965, last season, it was down to 29 percent being shipped in baskets. The balance are being shipped in containers not subject to regulation by Federal statute.

Mr. ANDERSON. What do you foresee as the impact of repealing these acts, other than the purely administrative matter of saving \$16,200?

Mr. BROWNE. We see relatively little impact from repeal of these acts. As you are perhaps aware, the industry has been very cooperative in adhering to these statutes. We have had no formal prosecutions under either of these acts since 1939, which indicates that excellent cooperation has been given whenever we have had to call to the attention of the manufacturer the fact that his basket is not meeting the requirement.

Mr. ANDERSON. Some people will, to a certain extent, continue to use the old style, I guess you would call it, the old system of measurement. Do you think there would be any possibility of deceptive practices creeping in?

Mr. BROWNE. Although the Department recommends the repeal of these acts, we are on record favoring the passage of legislation which will prohibit deceptive and unfair practices in packaging and labeling. Such legislation is now before the House.

Mr. ROUSH. Then in your opinion the proposed Fair Packaging and Labeling Act does cover the items covered by these two acts; is that correct?

Mr. BROWNE. Yes, sir; that is right.

Mr. ROUSH. Under the present situation, is there any unfair advantage to one industry, that is one industry providing packaging or providing baskets or providing fiber board containers, for example, over another?

Mr. BROWNE. Yes, and I think the manufacturers of containers subject to this act have been quite aware of this fact, because manufacturers of other types of containers not subject to Federal regulation have no restrictions whatsoever as to the shape, sizes, capacities of the containers which they may manufacture. As you perhaps recall, the act of 1928 was amended in 1964 to add five new sizes, and the reason given for this by the manufacturers who sponsored this amendment to the act was that they needed these in order to meet the competition from the unregulated types of containers. So that there is a definite economic advantage to the manufacturers of those types of containers not subject to regulation.

Mr. ROUSH. Are there present statutes on the books which deal with that same question which would be applicable if these two acts were repealed?

Mr. BROWNE. The labeling requirements of the Food and Drug Administration, I believe. Also, under the Perishable Agricultural Commodities Act, which is administered by the Department of Agriculture, there is a requirement that any information shown on the label must be accurate.

Mr. ROUSH. I would like to call your attention to a letter which was written to Mr. Jensen, Chief, Office of Weights and Measures, National Bureau of Standards, on May 5, 1966, by Mr. Rollin E. Meeks, director of the Division of Weights and Measures of the State

of Indiana. I pick this one out because it is my State. We have similar letters, and in glancing over these letters, I find they are all of the same tenor.

In this letter Mr. Meeks says:

I wish to advise that it is my opinion that these Acts serve a useful purpose and should not be repealed. A survey of our local fruit and vegetable markets discloses that standard containers are used to a considerable extent.

The Federal Standard Containers Act served to promote uniformity throughout the United States in the sale of fresh fruits and vegetables. Undoubtedly many states like Indiana have laws governing intrastate commerce that are compatible with these Federal Acts. Since the present standard baskets and other containers are still used to a considerable extent and they in no way prevent the sale of fresh fruits and vegetables by net weight, I know of no justification for the repeal of Federal Acts mentioned. The repeal without the enactment of Federal legislation requiring these commodities to be sold only on the basis of net weight would again, in my opinion, promote non-uniformity and defeat one of the principal objectives of the Weight and Measures Administration.

Do you care to comment on Mr. Meeks' letter?

Mr. BROWNE. It is true that in local sales of many fruits and vegetables, particularly in the Midwest, baskets and hampers are still used even though in interstate trading they are relatively minor in importance. In much of this local trading, the containers used are second-hand containers—they are not always new containers. This is because it is a cheap type of container to obtain and it is an advantage to the grower to market in this way.

In addition, there is nothing to prevent the various States from retaining on the books those State statutes which might govern, as he says, those that are compatible with the Federal statute.

Mr. ROUSH. I have no further questions.

Mr. ROUDEBUSH. Have you had a chance to read the testimony?

Mr. ROUDEBUSH. I am in the process of reading it now.

Mr. ROUSH. Will you be here for a few minutes, Mr. Browne?

Mr. BROWNE. Yes, sir.

Mr. ROUSH. I believe we will excuse you now, then, and call our next witness. It may be that we will have a question to propound to you as we go through the testimony.

We are happy to have as our next witness a colleague of ours, Mr. Hathaway.

Mr. Hathaway, will you take the stand for some severe interrogation here? We are happy to have you with us, and we would be happy to receive your testimony at this time.

Mr. HATHAWAY. Mr. Chairman and members of the committee, I am very grateful for this opportunity to testify.

I have a brief statement here. I believe it wouldn't take very long if I just simply read through it.

Mr. ROUSH. All right.

You may proceed, Mr. Hathaway.

#### STATEMENT OF HON. WILLIAM D. HATHAWAY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MAINE

Mr. HATHAWAY. Mr. Chairman and distinguished members of the committee, I am grateful for the opportunity to appear before you this morning to urge your approval of S. 17, a bill similar to my own bill, H.R. 5068, to repeal certain acts relating to containers for fruits and vegetables, and for other purposes.

As you know, S. 17 would repeal the Standard Container Act of 1916 which establishes standard sizes for climax baskets for grapes and other fruits and vegetables and fixes standards for baskets, and other containers for fruits, berries, and vegetables. S. 17 would also repeal the Standard Container Act of 1928, which establishes standard sizes for hampers, round-stave baskets, and splint baskets used for fresh fruits and vegetables.

At the time they were passed, the Standard Container Acts served a useful purpose, for baskets and hampers were the principal types of containers used for the shipment of fresh fruits and vegetables. By bringing a degree of standardization to these containers, the acts served to bring order to the container industry and to reduce cost, confusion, and in some cases deception in the shipping of fruits and vegetables to the marketplace.

Many years have passed since the Standard Container Acts were enacted into law and they have, because of changing modes of shipping, become irrelevant and obsolete. Baskets and hampers have been displaced in large part by newer types of containers such as fibreboard cartons, crates, wooden boxes and mesh, paper, and plastic bags, to name but a few.

It should be noted, also, that most fruits and vegetables are now being sold by weight or count so that slight variations in the volume capacity of their containers are no longer an important marketing factor.

The diminishing relevancy of the Standard Container Acts is well illustrated by the fact that during the past 10 years, the number of factories producing containers subject to their regulation has dropped from 183 to 129, a reduction of 31 percent.

During the same 10-year period, the number of different containers manufactured by these factories has dropped from 726 to 584, a reduction of 20 percent. This would appear to indicate that the packaging industry is, on its own, devising packages, containers, and standards more appropriate to today's modes of marketing.

It is estimated that less than 10 percent of the fresh fruits and vegetables currently being shipped in interstate commerce are packed in containers regulated under the Standard Container Acts.

In a letter to me dated August 31, 1966, the commissioner of Maine's Department of Agriculture said that his department has made a thorough study of the Container Acts. He said the acts are now outdated and serve no useful purpose. The Maine Department of Agriculture is in favor of repeal.

Mr. Chairman and members of the committee, for the reasons which I have outlined, I, too, am in favor of the repeal of the Standard Container Acts of 1916 and 1928 and urge you to give a favorable report on the bill being considered today, S. 17.

Mr. ROUSH. Thank you, Mr. Hathaway.

Mr. Anderson?

Mr. ANDERSON. I have no questions.

Mr. ROUSH. Mr. Roudebush.

Mr. ROUDEBUSH. Just this, Congressman. I want to congratulate you on a fine and concise statement and certainly one I think is thoroughly understandable by members of this committee. I am awfully happy you appeared today.

Mr. ROUSH. Mr. Hathaway, does Maine have acts which are dependent on these Federal acts?

In a letter from Mr. Meek of the State of Indiana he called attention to the fact that many States do have acts of their own controlling intrastate commerce which have depended on or have come about because of the existence of these acts. Do you know whether Maine has such an act?

Mr. HATHAWAY. I don't believe so, but Mr. Atwood could probably give me advice on that, if he would.

Mr. ATWOOD. Mr. Chairman, I am Edward W. Atwood, of Portland, Maine. I am going to speak later. I am representing Keyes Fibre Co.

Maine does have acts which here very much parallel these two acts, but do not contain what we consider the restrictive provisions, but they are entirely independent, Mr. Chairman, and are not dependent on these acts or any other Federal act.

Mr. ROUSH. In your statement you say that the acts we are now considering repealing did serve a useful purpose in that they brought about a degree of standardization to these containers. Why repeal these acts—why not amend these acts so as to include other types of containers that we are now using in order that we might not get away from this business of standardization?

Mr. HATHAWAY. I suppose if it were repealed you could make it broad enough so that it would cover the problem Keyes Fibre is going to testify to today, that it has not been able to put out a quart-and-a-half-size container because the act says it has to be in quarts or multiples of a quart, and that puts them in a disadvantage, and this is a size container for which there is quite a market. So in answer to your question, Mr. Chairman, if it were made broad enough, I don't think there would be any complaints, but the easy thing to do, of course, is to simply repeal it.

Mr. ROUSH. All right.

Thank you, Mr. Hathaway.

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

Mr. ROUSH. Our next witness is Mr. Malcolm Jensen, Chief of the Office of Weights and Measures, National Bureau of Standards, Department of Commerce.

Mr. Jensen, we are pleased to have you here this morning, and you may proceed with your testimony.

**STATEMENT OF MALCOLM W. JENSEN, CHIEF, OFFICE OF WEIGHTS AND MEASURES, U.S. DEPARTMENT OF COMMERCE; ACCOMPANIED BY ALLEN J. FARRAR, OFFICE OF GENERAL COUNSEL, DEPARTMENT OF COMMERCE**

Mr. JENSEN. Thank you, Mr. Chairman and members of the subcommittee.

I have with me Mr. Allen J. Farrar, representative of the Office of General Counsel, Department of Commerce, and legal adviser to the National Bureau of Standards, if you should desire to direct questions to him.

It is a pleasure to be here today in support of the proposed legislation, S. 17, which would repeal the Standard Container Acts of 1916 and 1928.

Although the administration of these acts is, as the members of this subcommittee are aware, the responsibility of the Department of Agriculture, the Department of Commerce has had a continuing interest in their administration because of our close working relationships with the weights and measure officials of the several States.

I should like to make clear that the Department supports standardization generally because of the obvious advantages to manufacturers, distributors, and consumers. Standardization, sensibly applied, leads to simplification and economy in production, reduction of duplication, ease of identification, and equitable negotiations. However, to be effective, standards must be uniformly applied throughout an industry and not just a portion of it.

Many new containers for fruits and vegetables have emerged since the enactment of these two Standard Container Acts. Fiberboard cartons, wirebound crates, and certain plastic packages, for example, are being widely used and are not subject to the laws. Changing marketing practices and the introduction of these new types of containers have made the existing Standard Container Acts obsolete.

Additional confusion is introduced because the containers not covered by the statutes are required by both Federal and State law to be labeled as to contents and origin, while the "standard" containers, because they are intended to be self-identifying, are not required to be so labeled.

During a number of the past sessions of Congress, amendments to the acts have been introduced to permit intermediate sizes. Although these have not in each case been successful, the introduction has been supported by statements of justification for additional sizes. Obviously, standardization is frustrated when self-identification is impaired.

Our position in favor of the repeal of these statutes is supported by a majority of State weights and measures officials who responded to a recent questionnaire.

At the request of Senator Magnuson, chairman of the Senate Committee on Commerce, the National Bureau of Standards addressed a communication to the weights and measures administrators in each of the 50 States. Each official was asked to express his view as to:

(1) the actual usefulness in commerce in his State of the Standard Container Acts; and

(2) his recommendation as to the continuation or repeal of the acts.

Letter responses were received from 29 States and the District of Columbia and Puerto Rico, and telephone responses from 2 States. Eighteen States and Puerto Rico favored the repeal of the Standard Container Acts, 11 States opposed the repeal, and 2 States and the District of Columbia had no recommendation to make.

For the record, a list of State responses is appended to my statement.

Because the statutes tend, in certain instances, to introduce confusion in the marketing of fruits and vegetables in containers, and because the standardization of containers originally contemplated in the enactment of the statutes no longer exists, the Department of Commerce supports the repeal of the Standard Container Acts through the enactment of S. 17.

(The appendix to the statement is as follows:)

## APPENDIX TO STATEMENT BY MALCOLM W. JENSEN

(State responses to inquiry of April 25, 1966, regarding proposed repeal of Standard Container Acts of 1916 and 1928)

FAVOR REPEAL	OPPOSED TO REPEAL
California	Alabama
Colorado	Arkansas
Georgia	Connecticut
Hawaii	Indiana
Iowa	Maryland
Michigan	New Jersey (by telephone)
Missouri	New York
Nevada	Ohio
New Hampshire	Texas
New Mexico	Virginia (by telephone)
North Carolina	Washington
North Dakota	
Oregon	NO RECOMMENDATION AT THIS TIME
Puerto Rico	District of Columbia
South Carolina	Kansas
South Dakota	Maine
Tennessee	
Wisconsin	
West Virginia	

Mr. ROUSH. Thank you, Mr. Jensen.  
Mr. Anderson?

Mr. ANDERSON. I have no questions.

Mr. ROUSH. Mr. Roudebush?

Mr. ROUDEBUSH. I have no questions.

Mr. ROUSH. Mr. Conable?

Mr. CONABLE. Would you tell me the reason that the States that opposed repeal advanced for opposing it?

Mr. JENSEN. Generally it was that the standard containers are still used in the States.

Mr. ROUSH. There is a proliferation of the State requirements, I take it?

Mr. JENSEN. Basically the requirements among the States are quite similar in that (1) they permit the use of standard containers without labeling and (2) any other container of any package must be properly labeled as to commodity identification, quantity of contents, and manufacturers, packers, or distributor.

Mr. CONABLE. Does this bill have any connection with the truth-in-packaging bill which has had a rather erratic course through Congress?

Mr. JENSEN. I see no direct connection, because, if S. 17 were to become law and the standards abolished, the containers still will have to be properly labeled under Federal law, and also under State laws.

Mr. ROUDEBUSH. Mr. Chairman.

Mr. ROUSH. Mr. Roudebush.

Mr. ROUDEBUSH. A question did occur to me that I would like to ask.

On studying S. 17, I know it repeals the act of 1928 as well as the act of 1916, I believe.

The act of 1928 provides dimensions and sizes in bushel hampers, for example, and other measurements. Where under law is the size of a bushel established, other than in the Standard Container Act?

Mr. JENSEN. The contents of a bushel in cubic inches is not established by law, but by administrative act by the National Bureau of Standards. A bushel is 2,150.42 cubic inches, but the dimensions are not fixed, any more than the dimensions of a gallon.

Mr. ROUDEBUSH. And there is no law, except you might say the statement or the order from the Bureau of Standards, on the size?

Mr. JENSEN. That is correct—although the Congress has authority to fix the standards of weight and measure by the Constitution.

Mr. ROUDEBUSH. If we do act favorably on S. 17 and agree with the Senate, then there would be no sizes established by law; is that correct?

Mr. JENSEN. That is correct. Not by the Federal Government.

Mr. ROUSH. Mr. Boone.

Mr. BOONE. Does this mean you have not published in the Federal Register the cubic content of a bushel?

Mr. JENSEN. Very definitely not.

Mr. BOONE. Then it is not a regulation in that sense?

But it would have almost the effect of a statute by having it published in the Federal Register?

Mr. JENSEN. There is however, no doubt that the sizes of physical measurements in the United States are firmly fixed, not only bushels, but gallons and pounds.

Mr. BOONE. In other words, there is a standard by which the Departments of Agriculture or HEW can determine what the cubic content of any measure should be?

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

Mr. ROUSH. Then the Department does have regulatory power over these standards?

Mr. JENSEN. I think probably I should not answer that. I am not an attorney.

Mr. ROUSH. Don't you have your counsel with you?

Mr. JENSEN. Mr. Farrar.

Mr. ROUSH. Would you identify yourself for the record?

Mr. FARRAR. My name is Allen Farrar. I am the legal adviser for the National Bureau of Standards.

Under section 2(a) of the act of March 3, 1901, as amended (15 U.S.C. 272(a)), the Secretary of Commerce is authorized to undertake "the custody, maintenance, and development of the national standards of measurement \* \* \* ." This authority has been delegated to the Director of the National Bureau of Standards. In carrying out this authority, the Director has caused to be published National Bureau of Standards Miscellaneous Publication 233, "Units of Weight and Measure—Definitions and Tables of Equivalents," dated December 20, 1960, in which are set forth the precise standards of measurement for such units as bushels, pounds, gallons, yards, and the like. As a historical reference, additional information on this subject can be found in National Bureau of Standards Circular 593, dated June 5, 1958, entitled "The Federal Basis for Weights and Measures."

Mr. ROUSH. Thank you.

Any other questions?

Mr. VIVIAN. On looking over the list of States to which you refer, I find, for example, that California and Oregon, both shippers of very large quantities of fruit, favor repeal, and Washington is opposed. That is the west coast.

I find that along the Great Lake shore, for example, my own State of Michigan favors repeal. Its neighboring State, Ohio, is opposed and the neighbor on the other side, Indiana, is opposed, whereas Wisconsin, which is in a similar location, favors repeal.

I am sure if I look through other portions of the States I would find similar situations in which there seems to be no relationship between neighboring States, and their views on this matter.

My conclusion is then that there is no clear functional role for the legislation or the absence of legislation.

Mr. JENSEN. I think this is an accurate evaluation. We probably could have helped the States in their answers had we been more specific as to the commercial application of the Federal statutes.

For example, I think if you would read the copies of the responses that were negative, you would find a fear that perhaps the use of these containers would be prohibited if the acts were repealed, and of course, this is not the case. The containers still could be used just as any other containers are used.

We simply asked the question because we did not want in any way to influence a State's response.

Mr. VIVIAN. Let me ask you another question.

If the act of 1916 established standard sizes for climax baskets for certain matters, and standards for baskets and other containers, and now I find that in the statement by Congressman Hathaway that less than 10 percent of the fresh fruits and vegetables currently are being shipped in such containers, and the question I think I have is, what was the requirement, or how could 90 percent be shipped in other containers consistent with the act of 1916?

Mr. JENSEN. A large portion of fruits and vegetables now are sold by weight, not by volume, and this is not in violation of the act as I understand it. Increasingly, commerce is by weight.

As a matter of fact, if a commodity is in a container properly labeled as to weight, the Standard Container Act is not applicable.

Mr. VIVIAN. Did the act of 1916 provide any container labeled by weight, that shipments may be continued in that fashion?

Mr. JENSEN. No, but I think it was not exclusive. I think it did not say all fruits and vegetables shall be sold this way and no other way, rather if they are sold in containers in these sizes, they shall be in these types of containers.

Mr. VIVIAN. The indication is the act of August 1916, according to remarks by Mr. Browne, that the act established standards for baskets and other containers. I presume all containers is meant by "other containers."

Mr. JENSEN. I think Mr. Browne should answer that question, Mr. Vivian. It is under their administration.

Mr. VIVIAN. I would appreciate hearing a response to that question.

Mr. BROWNE. Yes, at that time, as pointed out, practically all of the fresh fruits and vegetables were being shipped in types of containers which are covered by these two acts, and the act of 1916 restricts the use of containers for small fruits, berries, and vegetables, to certain sizes, without regard to type of material from which they are manufactured.

For example, berry baskets, whether they are made from wood veneer or plastic or whatever they may be, the sizes are standardized. That is the extent of this legislation.

Mr. VIVIAN. Let me ask the question, then: Turning to the remarks by the gentleman from Maine, he indicates that less than 10 percent of the fresh fruits and vegetables currently being shipped in interstate commerce are packed in containers governed by the legislation.

What containers are they packed in and why aren't they covered by the earlier laws?

Mr. BROWNE. Because the phrase "baskets and other containers" has been interpreted to mean a particular type of container similar to the berry basket which is referred to here.

Mr. VIVIAN. In other words, an administrative decision was made as to the interpretation of the law?

Mr. BROWNE. That is right.

Mr. VIVIAN. And this administrative decision led to excluding the preponderance of all packages used for containing fruits and vegetables.

Mr. BROWNE. That is right.

Mr. VIVIAN. It could have been interpreted by the Department in a different direction to have included all containers and then these laws would have some effect.

Mr. BROWNE. Mr. Gardner, would you like to comment on that, please?

Mr. GARDNER. My name is Gardner, John J. I am Assistant Chief, Regulatory Branch of the Fruit and Vegetable Division of the Department of Agriculture.

The sizes of container capacities are definitely stated in the act of 1916 and it definitely says when used for small fruits, berries, or vegetables, the capacities will be dry half pint, pint, quart, or multiples of dry quart, and this applies, regardless of what the container is made of.

Under the act of 1928, only those containers made of veneer are regulated, as for instance corrugated board is not.

Now, there has been no regulation of the containers such as boxes, bags, et cetera.

Mr. VIVIAN. But you indicated the act of 1916 did include specifications. Did the act of 1928 supersede those specifications?

Mr. GARDNER. No, it dealt with a different type of container—splint baskets, and handle baskets, hampers, bushel baskets, and it did specify the type, and it does have a provision in the act of 1928 that the provisions of that act will not conflict with the containers covered by the act of 1916.

Mr. VIVIAN. May I ask a different question, then?

If certain types of containers are now free to be made in any size or any shape desired by the shipper, which I have no objection to, personally, and other types are very restricted in shape and size or volume, presumably, why is there any desire to repeal the law? Is there any detriment to the shipper in using standard-sized baskets or containers?

Mr. GARDNER. There is no detriment to using standard-sized baskets or containers. It has just come to the point, with the reduction in the number of manufacturers, that the service to the industry as a whole has been reduced. There has been a consistent decline in a number of manufacturers and the concept of these two laws is different, I believe, than most of your proposed truth in packaging. All we are regulating here is the capacity of a container. We don't know whether it will be filled, half filled, and there is no declaration to be made regarding the contents.

Under the act of 1928, the recent amendment was that they must be marked with the capacity. Under the act of 1916 there is no requirement that they be marked.

Mr. BROWNE. Mr. Vivian, in further response to your original question, I think we could point out that the legislative history regarding the act of 1916 led to the Department issuing regulations which point out that the act applies only to berry boxes and till baskets, where it says "baskets and other containers."

It is contemplated that it is a particular type of container which is subject to regulation, not all other containers. I think this is the point that you were getting at.

Mr. VIVIAN. I fail as yet to see any reason why those—I read these comments about the numbers of producers going down, and I read the comments about the different sizes going down, and so on, but this is not necessarily significant, because, after all, there is a consolidation of almost all industries into a lower number of producers.

What I failed to understand is why is it to the advantage of the consumer, for whom we are principally legislating, to have the standard sizes dropped?

Mr. GARDNER. Basically these two laws cover wholesale containers except for the smaller sizes. The smaller sizes would be your ordinary market baskets. Normally the trade in these baskets has been toward weight—for instance, tomatoes are not sold necessarily as an 8-quart basket or 12-quart basket. They would be sold as an 8- or 10-pound basket, and they would be sold "weight determined."

Of course, berry boxes are an item that is commonly sold at retail. However, the consumer can see exactly what is in the container, whether it is filled, well filled, overfilled, or what the practice of the person may or may not be.

As far as till baskets are concerned, on a wholesale level, they have pretty much well gone out of existence. They are not too commercially important at the present time, and these are the reasons I would offer you for the repeal of the laws.

Mr. VIVIAN. Do any present laws require baskets of fruits and vegetables as affected by this law, that such baskets must be labeled by the total weight of the contents when sold?

Mr. GARDNER. There is a labeling requirement under the Food, Drug, and Cosmetic Act. I am not familiar enough with the statute to tell you just exactly what has to be put on it.

It is my recollection they must have the name and address and must mark the contents. I know there are two or three State laws that require markings on specific commodities, as, for instance, Ohio has a marking requirement which says they must mark it with the name of the packer and weight or count of contents in any closed container.

Mr. VIVIAN. Mr. Chairman, I think I will have further questions later, but at the moment I have no questions.

Mr. ROUDEBUSH. Apparently the situation is this: We have two basic acts, the act of 1916 and the act of 1928, and these two basic acts prescribe measurement of two different types of container.

However, we have a new container, a group of new containers on the market that aren't covered by either act. Now, assuming that the committee does act favorably on S. 17 or reports it favorably to the House and it does become law, would you favor an act to establish measurement, and is this necessary? Should we describe measure-

ments and standards for all types of containers, including the new containers now on the market?

Mr. ROUSH. To whom is the question directed?

Mr. ROUDEBUSH. I will direct it to the witness, and he can yield if he so desires.

Mr. JENSEN. I believe, sir, there would be little advantage in specifying dimensions for the many dry containers which have been used in the past, some of which are still used. I used the word "confusion" in my statement, and I would like, if I might, to expand it a little.

Let me use, for example, the bushel. It is possible to buy many different "bushels" in the market. First there is the "standard" bushel made according to fixed dimensions. This is a dry volume measurement, a certain number of cubic inches. Many States have laws that fix the weight per bushel of various commodities, some of which may be sold in "standard containers." This is the second bushel. The third bushel is just a cardboard container that is put out and labeled  $x$  number of pounds.

I do not think the average consumer—I know my wife, for example—has any feeling that there are differences among these—that apples, for example, can be marketed in different ways. My own belief is, and I think this is borne out by fact, the most precise way to sell anything is by weight, in properly designed packages, properly labeled and properly filled. I think this serves the manufacturer better, and I think it serves the distributors better, and the consumers better.

The State of Indiana, for example, prohibits by statute sale by dry volume, except in standard containers. What happens of course, as mentioned by Mr. Browne, is that standard containers are bought and are used. A producer or a farmer pulls his apples off the tree and puts them in a "standard" container. He may heap it full, or level full, or partially full, and call it a bushel.

Actually this is in violation of Indiana law presently, but with the few enforcement officials they have, it is impossible to police all of these things, so I think the one thing that would be served would be a clarity in the marketplace by doing away with these acts which, in my view, tend to confuse the situation.

I think very little would be served by defining specifically all of the containers used in the marketplace.

Mr. ROUDEBUSH. Then your argument would be if there were an amendment placed in this act to prescribe the standard of weight and measurements, it should be designated in pounds rather than in cubic inch volume?

Mr. JENSEN. There appears to be no question this is the future of marketing, except for things that are liquid. Yes, sir.

Mr. ROUDEBUSH. That is all I have.

Mr. ROUSH. Other questions?

Thank you, Mr. Jensen.

Our next witness is Mr. Wayne Cleveland, vice president of sales, Keyes Fibre Co., and he is accompanied by Mr. E. W. Atwood, secretary to the board.

Will you gentlemen please come forward?

Mr. CLEVELAND. Mr. Chairman, with your permission I would like Mr. Atwood to make the leadoff statement.

Mr. ROUSH. That is quite all right. You may handle your testimony as you see fit.

Mr. CLEVELAND. Thank you. I wish to submit our prepared statement for the record.

PREPARED STATEMENT OF KEYES FIBRE COMPANY

Respectfully represents Keyes Fibre Company that:

(1) It is a Maine corporation engaged primarily in the production and sale of a wide variety of molded pulp products including plates, dishes, food prepackaging trays, egg cartons, egg flats, egg trays, fruit packs and interior packaging materials for fragile articles. It has manufacturing plants in Waterville, Maine, Hammond, Indiana, Sacramento, California and Wenatchee, Washington. Keyes Norway A/S (100% owned) has a plant in Viul, Norway. Canadian Keyes Fibre Company Ltd. (50% owned) has a plant in Hantsport, N.S., Canada. An affiliate, Société des Emballages Keyes, has a plant in Ile d'Elle, France. An affiliate, Keyes Italiana S.p.A., has a plant in Catania, Sicily.

(2) It is anticipated that this Brief Statement will be supplemented orally at the hearing before your Subcommittee on September 27, 1966 by Wayne P. Cleveland, Vice President-Sales of Keyes Fibre Company, and Edward W. Atwood, a Director and Secretary of Keyes Fibre Company and a partner in the law firm which is its general counsel.

(3) S. 17 would repeal two Acts, one enacted in 1916 fixing standards for (a) Climax baskets for grapes and other fruits and vegetables and (b) *for baskets and other containers for small fruits, berries and vegetables*, and one enacted in 1928 fixing standards for hampers, round stave baskets, and splint baskets for fruits and vegetables. The products of Keyes Fibre Company and the requirements and needs of the users thereof and of the consumers of the products packaged therein are materially and adversely affected by the provisions of the 1916 Act relating to containers for small fruits, berries and vegetables.

(4) Under the provisions of the 1916 Act, as interpreted by the Department of Agriculture, containers for small fruits, berries and vegetables may only be of the following sizes: dry ½ pint, dry pint, dry quart and multiples of ½ dry quart. A container for produce which would contain the equivalent of 1½ quart is very popular with retailers for in-store packaging because it is versatile enough to be used for a number of different items and is popular with consumers as it packages a convenient quantity for the average retail purchaser. Also when the container is so used, the contents are, almost without exception, sold by weight or count rather than by volume measure. Yet if any of the items so packaged are "small fruits, berries or vegetables" the law has been violated. No sound reason exists today for such a limitation. It is incompatible with modern marketing methods and practices. This is recognized by the Department of Agriculture. We respectfully refer to the letter of Mr. Freeman, Secretary of Agriculture, to Senator Warren G. Magnuson, dated March 30, 1966, a copy of which is annexed hereto, recommending that these Acts be repealed. No more compelling argument for the repeal of such Acts could possibly be made than that set forth in such letter and we therefore heartily endorse it and incorporate it in this Brief by this reference. To the same effect, and equally forceful, was an earlier letter of Secretary Freeman, that of May 20, 1964, to the Honorable John W. McCormack, Speaker of the House, a copy of the pertinent parts of which is also hereto annexed.

These letters of Secretary Freeman highlight the following points, which we submit fully justify and call for repeal of these Acts, namely:

- (a) Since the enactment of these Acts in 1916 and 1928, great changes have taken place in the containers used for shipping fresh fruits and vegetables;
- (b) Most fruits and vegetables are now sold by weight or count and consequently slight variations in volume capacity of containers are no longer an important marketing factor; and
- (c) The cost of administering these Acts is no longer justified.

(5) Of interest is the view of the fruit growing industry in the State of Washington that such laws as the Acts sought to be repealed stifle improved methods of fruit packaging. See letter of Mr. Foster, Secretary-Manager of the Wenatchee Valley Traffic Association to Senator Magnuson dated March 22, 1966 (see p. 16).

(6) We include a copy of letter of Maynard C. Dolloff, Commissioner of Agriculture of the State of Maine to Senator Edmund S. Muskie dated August 31, 1966 favoring repeal of these Acts.

(7) In conclusion, we submit that for a number of sound reasons the Acts in question should be repealed by the enactment of S. 17, namely:

*Obsolescence.* This is the major reason and is fully discussed in the letters of Secretary Freeman above referred to.

*Ambiguity.* The 1916 Act fails to define "small fruits, berries and vegetables" and it is not clear whether the word "small" as used applies only to "fruits" or also to "berries" and "vegetables."

*Expense.* The expense of administering these Acts is not warranted.

We therefore urge that your Subcommittee act favorably on S. 17.

DEPARTMENT OF AGRICULTURE,  
Washington, D.C., March 30, 1966.

HON. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate.

DEAR MR. CHAIRMAN: This is in reply to your request of January 13, 1965, for a report on S. 17, a bill to repeal the Standard Container Acts of 1916 and 1928 which prescribe standard sizes and capacities for certain types of baskets and hampers used in the shipment of fresh fruits and vegetables.

This Department recommends that these Acts be repealed.

The Act of August 31, 1916 (15 U.S.C. §§ 251-256), known as the Standard Container Act of 1916, establishes standard sizes for Climax baskets for grapes and other fruits and vegetables and fixes standards for baskets and other containers for small fruits, berries, and vegetables. The Act provides for the examination of containers subject to regulation to determine their compliance with the law.

The Act of May 21, 1928 (15 U.S.C. § 257-257i), known as the Standard Container Act of 1928, establishes standard sizes for hampers, round stave baskets, and splint baskets used for fresh fruits and vegetables. Specifications of containers covered by the Act are submitted to and approved by the Department if such containers are of the prescribed capacity and not deceptive in appearance.

When these laws were enacted, baskets and hampers were the principal types of containers used for the shipment of fresh fruits and vegetables. At that time, because of the large number of sizes of containers being manufactured, a strong movement developed in the industry, particularly among container manufacturers, to bring about some degree of standardization in order to reduce the resultant unnecessary costs, confusion, and deception.

In the years since the enactment of the Standard Container Acts, great changes have taken place in the containers used for shipping fresh fruits and vegetables. Baskets and hampers, formerly the principal types used, have been displaced in large part by newer types. During the past 10 years, for example, the number of factories producing containers subject to the Standard Container Acts of 1916 and 1928 has declined from 183 to 129, or a reduction of 31 percent, while the number of different containers manufactured by these plants has dropped by 20 percent, from 726 to 584.

Of the large and increasing number of containers now widely used, such as fiberboard cartons, wirebound and nailed crates, wooden boxes and lugs, mesh, paper, and plastic bags, some were not in use at all for fruits and vegetables at the time these Acts were passed. None of these newer containers are regulated by Federal law as to shape, size, or capacity.

Moreover, most fruits and vegetables are now sold by weight or count. Consequently, slight variations in the volume capacity of containers are no longer an important marketing factor. Largely because of the growth in the use of containers not covered by the Standard Container Acts, it is estimated that less than 10 percent of the fresh fruits and vegetables shipped in interstate commerce now are packed in containers regulated under these Acts.

In view of the limited volume of fresh fruits and vegetables currently being shipped in containers subject to regulation under the Standard Container Acts of 1916 and 1928, the continuing trend toward wider use of types of containers not subject to Federal regulation, and the fact that most fruits and vegetables are now sold by weight or count, the Department is convinced that continued administration of these laws is no longer justified and that a saving can be achieved through repeal of these laws without detriment to the fruit and vegetable industry or the public.

Although practically all of the containers regulated under these Acts are used as shipping containers and not as consumer packages, there are some, such as

berry boxes, which are still used for marketing products to the consumer on a volume basis. While we recommend that these Acts be repealed, we believe that the interest of consumers should continue to be protected through the prohibition of unfair and deceptive packaging and labeling practices. Such prohibitions are contained in S. 985, the "Fair Packaging and Labeling Act", which, with certain amendments has been endorsed by the Administration. So that there will be no gaps in consumer protection, we recommend that S. 985 be amended to provide that the containers now regulated under the Standard Container Acts would not be forced from regulations by the repeal of these Acts but would, in that event, become subject to the provisions of S. 985. Such an amendment is needed since Sec. 8 (3) of S. 985 now excludes from the definition of "package" containers subject to the provisions of the Standard Container Acts.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program and the Bureau favors the amendment of S. 985 as indicated above.

Sincerely yours,

ORVILLE L. FREEMAN.

DEPARTMENT OF AGRICULTURE,  
Washington, D.C., May 20, 1964.

Hon. JOHN W. McCORMACK,  
Speaker of the House of Representatives,  
Washington, D.C.

DEAR MR. SPEAKER: There is enclosed a proposed bill to repeal the Standard Container Acts of 1916 and 1928, Tobacco Plant and Seed Exportation Act of 1940, U.S. Grain Standards Act of 1916, Naval Stores Act of 1923, and Wool Standards Act of 1928.

Over the years, economic conditions and marketing practices have changed so that the need for these Acts is no longer as great as when the legislation was passed. Therefore, to promote greater efficiency and economy in Government, in accordance with the President's request, we are recommending the repeal of these Acts. The portion of these activities that needs to be continued will be performed under the Agricultural Marketing Act of 1946. This would include financing the grain inspection service on a voluntary fee basis. Savings in appropriations realized by repeal of these Acts, involving limited or special interests, would be available for use in areas of more vital public importance.

The following paragraphs set forth in more detail the reasons for the Department's proposal:

*Standard Container Acts of 1916 and 1928* prescribe standard sizes and capacity for certain types of baskets and hampers used in shipping fresh fruits and vegetables. When these laws were enacted, baskets and hampers were used for a large part of the fresh fruits and vegetables shipped in containers and standardization of the volume capacity was needed to prevent deception. Since that time, there have been many changes in shipping containers for fresh produce. Containers not in existence at that time have been developed and have become important. The containers now most commonly used are crates, lugs, boxes and bags. Also, the construction material has changed significantly with fiber board, paper, and film now being commonly used. These containers have not been standardized by Federal law as to capacity or shape. Most fresh fruits and vegetables are now sold by weight or count rather than by volume measure so that deception due to slight variations in container volume is no longer an important marketing factor. Less than 10 percent of the fresh fruits and vegetables are now marketed in the regulated types of baskets and hampers. This Act, therefore, is of very limited usefulness and the cost of administering it is no longer justified.

\* \* \* \* \*

Sincerely yours,

ORVILLE L. FREEMAN,  
Secretary.

WENATCHEE VALLEY TRAFFIC ASSOCIATION,  
Wenatchee, Wash., March 22, 1966.

Senator WARREN G. MAGNUSON,  
Senate Office Building,  
Washington, D.C.

DEAR SENATOR MAGNUSON: It appears S. 17 would repeal antiquated U.S. standards for fruit and vegetable containers of which many, if not all, are no longer in use. We urge that you seek enactment of this legislation.

Our industry has consistently opposed state and federal standards for fruit containers. New containers are continually being developed to deliver fruit to consumers with fewer bruises and in better condition. The trend is toward consumer packages such as three and four pound bags and small trays of six or eight apples over-wrapped with film. Master containers for these small packages will continue in an experimental stage for a considerable period of time and in the meanwhile it is quite likely new packaging will develop.

Packaging standards enacted into law are too inflexible and tend to stifle improved methods. We hope you will resist legislation that would require definite container specifications for fruits.

Sincerely yours,

MARTIN A. FOSTER,  
Secretary-Manager.

AUGUST 31, 1966.

Hon. EDMUND S. MUSKIE,  
U.S. Senator,  
Washington, D.C.

DEAR ED: The Standard Container Acts of 1916 and 1928, which establish standard sizes and capacities for certain types of baskets and hampers used in the shipment of fresh fruits and vegetables, have been carefully reviewed by this department.

It is our belief that these Acts are outdated and no longer serve a useful purpose. There have been great changes in the type of shipping containers for fresh produce since these laws were enacted. Most fresh fruits and vegetables are now sold by weight or count rather than by volume measure, thus eliminating any deception due to variations in container volume. Recent statistics show that less than 10% of the fresh fruits and vegetables are now marketed in the regulated type of containers.

The Maine Department of Agriculture is in favor of repeal of these Acts.

Very truly yours,

MAYNARD C. DOLLOFF,  
Commissioner.

**STATEMENT OF WAYNE P. CLEVELAND, VICE PRESIDENT, SALES,  
KEYES FIBRE CO.; ACCOMPANIED BY E. W. ATWOOD, SECRETARY  
TO THE BOARD, KEYES FIBRE CO.**

Mr. Atwood. Thank you.

Mr. Chairman and members of the committee, my name is Edward W. Atwood, of Portland, Maine, representing the Keyes Fibre Co., along with Mr. Cleveland.

Mr. Cleveland is vice president in charge of sales of the Keyes Fibre Co., and he will be the one that will probably field any questions that relate to the products of the company, because he is more familiar with them.

My function with the company, I am director and secretary, and I am a member of the law firm which is their general counsel.

We have filed with the committee a brief outlining our views and that brief is repetitious of what you have already heard, because it really repeats most everything that has been said by the other witnesses, and what has been contained in their briefs, so I am not going to read the brief but I would, if it is consistent with your practice,

like to supplement that brief with some specific comments which occur to me by reason of some of the questions which have been asked here today, and with regard to specific instances that have brought our company within the purview of these acts, or, more specifically, one of these acts, and the ways in which the provisions of one of these acts the 1916 act, has curtailed our planning of products and our ability to meet the demands and needs of our customers.

The 1928 act has no impact upon us.

Our business, our primary business is the manufacture of molded pulp products and a large amount of these products are in the field of packaging. They are these molded pulp trays and tills and baskets, if you please, which you have all seen, I am sure, either manufactured by us or our competitors, in supermarkets, that they put produce in and weigh it and sell it to the housewife, and she takes it home, and almost 100 percent those products are sold by weight, and our containers are designed for that purpose.

We do make a berry basket which is designed to hold a quart, I think—

Mr. CLEVELAND. A pint.

Mr. ATWOOD (continuing). A pint, which is similar to the old-fashioned berry box we are all familiar with in size.

We make a molded pulp basket which is very similar to the climax basket in shape, but where we first encountered trouble under this act was that a size of till about that long and that wide and that high, which would hold—

Mr. ROUSH. I am not sure that can properly be reflected in the record. Would you like to put that in inches?

Mr. CLEVELAND. It was approximately a quart and a half.

Mr. ATWOOD. It would hold in dry measure approximately a quart and a half, but it was a size which was tremendously popular in the marketing end of it, because it carried a quantity which the housewife likes to carry home, and the store operator likes to accommodate her, and we like to accommodate him, because that itself is the way we make our living.

We found when we put this size on the market that we were in violation of this law, because this specified pint and quart and multiples of quarts, and we were in between. We had consultations about this with the people in the Department of Agriculture, some of whom are here today, and we received most courteous treatment. Every thing worked out extremely well. We agreed that we would not hold out to the public that this particular container was designed to sell these particular products, and under these circumstances and in the light of contemplated possible legislation, there has been no trouble about it at all, and we have refrained from the type of advertising that would indicate that these were designed for a particular product, small fruits and vegetables, for instance, because they are used for all sorts of things—they are used for large vegetables and they are used for many other food products also.

Then the question came up whether or not to suggest an amendment of law to add one more size which would clear us in that one item or to suggest repealing this act. I am talking about the 1916 act now, because we had no involvement under the 1928 act.

The Department of Agriculture indicated to us in the course of these conferences that they had finally concluded that the better move was

to repeal this act, and also the 1928 act, because of obsolescence and ambiguity, and for the many reasons so cited here today.

We would be much happier with repeal of the act because in our product development we are finding a variety of instances where now that we have come under the eye of the Department of Agriculture and have discussed this law with them, we feel if we go ahead with our plans we may be in violation.

One thing that bothers us particularly is this phrase which Mr. Vivian has commented on, "other containers."

Now, you take the 1928 act, and that doesn't get into that realm at all, and section 1 of the 1916 act which deals with climax baskets doesn't get into it, but when you get over into section 2 of the 1916 act, which prohibits the manufacture and sale of—I will read the exact words in the law:

The standard basket and other container for small fruits, berries and vegetables shall be in the following capacities:

And then it lists the capacities we have been talking about.

Then it says:

It shall be unlawful to manufacture for shipment or to sell for shipment or to ship from any state or territory of the United States, District of Columbia, or any other state or territory of the United States or the District of Columbia any climax baskets or other containers for small fruits, berries and vegetables, whether filled or unfilled, which do not conform to the provisions of this Act.

Now, I think it has been stated here that that has been cured by administrative regulation, but the regulation, if I read it correctly, carries forward that very same thing.

I now have before me the regulations under this act issued by the Department of Agriculture and that has a definition of containers, and it carries forward this very same language.

I am reading from the regulation:

Container means climax baskets for grapes and other fruits and vegetables or for mushrooms and baskets or other containers for small fruits, berries, and vegetables.

So it seems to me that same vice, if it is a vice, is carried right forward into the regulation as well as appearing in the statute.

Mr. ROUSH. The regulation could not contravene the statute, could it?

Mr. ATWOOD. Only in, as I understand it, an administrative interpretation of law which is acted under for a substantial period of time may by virtue of that have the force of law, but here what I am saying is that the regulation itself only confirms what the statute says, and that is one of the things that scares us, this "other containers," because if that is strictly construed by an administrative branch, which it isn't by this one, thank goodness, the impact of this law would then be that you could not sell any small fruits or any berries or any vegetables, and the Department says vegetables of any size, in anything but these particular sizes of these particular containers.

You outlaw every other container in the world that is now used to market produce, and that is one reason why in our conclusion we have said the principal reasons which we advance for repealing these laws are obsolescence and ambiguity, and I think this goes beyond ambiguity—I think this is a pretty flat legislative fiat, that you can't sell fruits and vegetables in anything but these specific containers.

That being true, you outlaw a vast, vast array of containers that are now in common use and accepted in common use.

Another thing is you get into the question of ambiguity. Right from the day this law was passed, everybody has treated this law as applying only to fresh fruits and vegetables.

Where is the word "fresh" in this act? What about frozen fruits and vegetables?

If you are going to put a strict interpretation on it in that regard, you outlaw all of the packages used in the supermarkets today in which frozen vegetables are sold.

Now, Mr. Cleveland and I took a look in the market here yesterday and we found frozen vegetables, asparagus, potatoes, peas, broccoli, beans, corn, onions, artichokes, squash, carrots, all sold in the supermarkets, all in packages which conform in this way with these acts. Every one of those packages was marked with a weight, ranging from 8 ounces to 12 ounces.

Now, I would think—maybe I am waving the riot flag here—but I would think there is a very real chance that a court would say that the legislative intent when this act was passed in 1916, when they never heard of freezing stuff, was that it applied only to fresh fruits and vegetables, but it doesn't say so.

It is still ambiguous in that regard and in the light of the recommendation of these Government departments that such a small percentage of the produce sold today is handled in these types of packages, it seems to me that vices, the faults greatly outweigh any advantage which there may be in retaining these two obsolete and ambiguous laws on the books.

I think that is our position, Mr. Chairman.

Mr. ROUSH. In the event these two acts are repealed, how will it affect your industry? What will you do differently?

Mr. ATWOOD. I will let Mr. Cleveland answer that. He is our vice president, sales.

Mr. CLEVELAND. We were talking about some of these containers. We manufacture a 2-quart container which at the present time under this code is legal. Peaches, when they are quite expensive, they don't want to put them in a 2-quart container in Michigan, as an example, because we sell them in Michigan, among other places—they prefer using a 1½-quart.

Now, they don't sell these or it isn't a quart and a half or 2 quarts—it is count or weight, but nevertheless, as the price goes up, they want a little less size container, and a 1½ is very popular.

We put it out originally as a 1½. When we were called on this—and that is when our interest started—we changed the nomenclature. We still call it a 1½, but it is a 1½ what—we don't say quart—but it is very popular in Michigan as a container for peaches when the price of peaches is too high to put in a 2-quart container.

There is one other thing that will affect us very definitely. We don't at the present time make a climax basket. I am quite sure you are familiar with it. It is the rounded end basket that they put tomatoes and grapes in, and it has a wire handle on it, and then there was a way you could put the top on it, slipping it under the handle, and we are working on a climax basket that will benefit the consumer and will be less expensive than the climax basket, but we can't make it if we stick to the regulations in this law because if you read part of it, it has to have a ¾-inch-thick bottom.

If you remember the old climax basket it did have a heavy bottom. We could mold a  $\frac{3}{8}$ -inch-thick bottom, but we would have to mold a  $\frac{3}{8}$ -inch-thick side all of the way around it, and it would defeat the purpose of giving a satisfactory carrier in what is now climax baskets.

That is the way it affects us. We want a climax basket, among other things, for mushrooms, and there is a need for this. We don't want to proliferate the sizes or containers because it is just as expensive for us to put a new item in the channels of distribution as it is to manufacture it. We don't want to proliferate the sizes but we would like to have a sized container that really meets the demand in the marketplace, and we think we have it, a 1½ which we can't make and call that, and we think we would have it in a climax basket, which we can't make in accordance with this law with a  $\frac{3}{8}$ -inch bottom.

I think perhaps the Department of Agriculture, they have been so cooperative so far, they might overlook the  $\frac{3}{8}$ -inch bottom. We haven't discussed it with them, but it would be in violation.

Mr. ROUSH. Mr. Anderson?

Mr. ANDERSON. No questions.

Mr. ROUSH. Mr. Roudebush?

Mr. ROUDEBUSH. No questions.

Mr. ROUSH. Mr. Vivian.

Mr. VIVIAN. I think a very pertinent comment on the bill is contained in the letter of Secretary Freeman. First, I would like to ask a question.

I see a list of States which are opposed to repeal, and the State of Washington is one, and I find in the printed remarks from your organization a statement that the fruitgrowing industry of the State of Washington feels that the act stifled improved methods of fruit packaging.

Is that a disparity between the views of the fruitgrowing industry in Washington and officials contacted?

Mr. CLEVELAND. Sir, we also attach to our statement a letter from Mr. Martin A. Foster, secretary-manager of the Wenatchee Valley Traffic Association.

This letter from Mr. Foster to Senator Magnuson, if that is a conflict, that is what we based our statement on in the other, and that is the heart of the fruitgrowing area.

Mr. VIVIAN. In other words, you are saying there is a disparity between the opinions of the fruit association and the officials of the State who made the recommendation?

Mr. CLEVELAND. Yes, sir.

Mr. VIVIAN. Let me return to a part of the letter from Secretary Freeman to the Honorable Warren Magnuson, dated March 30, 1966, and the paragraph next to the end states that:

Although practically all of the containers regulated under these Acts are used as shipping containers and not as consumer packages, there are some, such as berry boxes, which are still used for marketing products to the consumer on a volume basis. While we recommend that these Acts be repealed, we believe that the interest of consumers should continue to be protected through the prohibition of unfair and deceptive packaging and labeling practices. Such prohibitions are contained in S. 985, the "Fair Packaging and Labeling Act," which, with certain amendments has been endorsed by the Administration. So that there will be no gaps in consumer protection, we recommend that S. 985 be amended to provide that the containers now regulated under the Standard Container Acts would not be freed from regulations by the repeal of these Acts but would, in that event become subject to the provisions of S. 985. Such an amendment is

needed since Sec. 8(3) of S. 985 now excludes from the definition of "package" containers subject to the provisions of the Standard Container Acts.

I would like to state what this suggests is that the two bills should be tied together. However, neither as yet has been passed, and therefore it would be impossible to resolve the question related to this act in accordance with the suggestions made by the Secretary until the other act has passed.

Conversely, if the other act passed, we would then be in the position of having a law which has been passed which excludes the definition.

Those of you here at the present time testifying, have you any recommendation as to what should be done pursuant to the paragraph just read?

Mr. ARWOOD. Mr. Vivian, that was under discussion with counsel for the Senate committee and I think—did the Agriculture Department come into that discussion—and it was concluded that if these two acts were repealed, even though a Truth in Packaging Act were passed with that exception in it, there would still be, in fact, no problem, because there would be no items to exclude under that section because if these acts were repealed there would be no items still subject to acts of this kind.

I don't know as I made myself clear, except if you have no Container Acts of 1916 and 1928, and they are no longer on the books, the exclusion of any items that come under those acts is meaningless, so there would be no resulting problem if the Truth in Packaging Act should pass with that language in it.

That was the conclusion on that.

Am I correct; did the Agriculture representatives get into that discussion?

Mr. GARDNER. No; we weren't in that discussion.

Mr. ROUSH. Did you have further questions?

Mr. VIVIAN. I would like to point out that the Secretary clearly indicated in the sentence just read "We believe that the interest of consumers should continue to be protected through the prohibition of unfair and deceptive packaging and labeling practices."

Now if this bill, S. 17, were to be repealed before S. 985 were enacted, there would be a period of time in which there would be no standard size protection for the consumer. Is that a correct statement?

Mr. CLEVELAND. Mr. Vivian, I think the statement has been made that if this were repealed, each individual State has laws that would regulate this within the State, and there is less than perhaps 10 percent of the merchandise packaged in this type container which would be in interstate, but State laws do protect them, and there is a possibility that it is protected, and I don't know that it was clearly defined, but there was a possibility that it would be protected under this Food and Drug Labeling Act, or however it was referred to.

But with this statement, even with that statement in there, I think it is clear by that letter that Secretary Freeman clearly recommends the adoption of S. 17. Actually, we are biased in this. We want to make some containers that would serve a purpose, but rather than put some of our biased opinions in our statements, we thought that we would quote Secretary Freeman, who was strictly unbiased in it.

That is the reason we didn't have some of these other things in our statement.

Mr. VIVIAN. Let me ask one brief further question:

A great many fruits are now sold on shallow trays, fiberboard trays, perhaps made by your own firm.

Mr. CLEVELAND. Yes, sir.

Mr. VIVIAN. And the volume of the trays is irrelevant since most of the material extends above the top of the tray and the quantity depends on the size enclosed by the covering plastic membrane.

How are those labeled; by volume?

Mr. CLEVELAND. They are labeled by the weight, but after reading this law strictly we wonder if they are in violation, now that we have been over it, because they are sold by weight or by count, and definitely not as a dry measure.

Mr. ATWOOD. I think when you say "labeled by weight," you mean they are marked by weight by the merchant. When he puts the quantity in, he weighs and marks it. It isn't stamped on the container.

Mr. VIVIAN. I have no further questions.

Mr. CLEVELAND. After reading this, we wonder whether or not we are in violation.

Mr. ROUSH. The witnesses are excused.

Mr. Browne, we would like a written comment from the Department of Agriculture concerning the possible effect of the proposed H.R. 15440 and S. 985 on the question which is now before us. If you will consult with counsel here, he can be a little more specific.

(The information requested is as follows:)

U.S. DEPARTMENT OF AGRICULTURE,  
OFFICE OF THE GENERAL COUNSEL,  
Washington, D.C., September 30, 1966.

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

DEAR MR. CHAIRMAN: At the conclusion of the question period following testimony on S. 17, a bill to repeal the Standard Container Acts of 1916 and 1928, before an ad hoc Subcommittee, the Chairman, J. Edward Roush of Indiana, requested that the Department of Agriculture submit a statement of its interpretation of the impact of repeal of the Standard Container Acts of 1916 and 1928 upon H.R. 15440 and S. 985, the Fair Packaging and Labeling bills.

H.R. 15440 (and S. 985) provides in Sec. 10(b)(3) that the term "package" does not include containers subject to the Standard Container Acts of 1916 and 1928. It is the interpretation of this Department that, should S. 17 be enacted prior to the enactment of H.R. 15440 (or S. 985), it would be desirable, in order to avoid possible ambiguity, to eliminate reference to the Standard Container Acts in the latter bills. It is recognized that the exemption in Sec. 10(b)(3) of H.R. 15440 (and S. 985) is intended to avoid duplication of regulation. Nevertheless, with the prior repeal of the Standard Container Acts, the enactment of H.R. 15440 (or S. 985), without elimination of the reference to these Acts, could result in an interpretation that the Congress intended to exempt the kinds of containers described in the repealed Acts, on the ground that the language otherwise would be meaningless in these circumstances.

If, on the other hand, H.R. 15440 (or S. 985) should be enacted first, there will be an exemption from its provisions of containers covered by the Standard Container Acts until such time as S. 17 is enacted, but upon the enactment of S. 17 there no longer will be any such exemption.

Sincerely yours,

JOHN C. BAGWELL, *General Counsel.*

We have a quorum call going; we have some astronauts over here in the next room who the members would like to greet.

I want to thank all of you gentlemen for appearing here this morning, and we will take this under very serious consideration in the very near future.

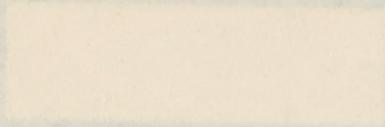
The committee stands adjourned.

(Whereupon, at 11:15 a.m., the subcommittee was adjourned.)



We have a number of amendments which we have sent to the committee in the past month and the committee would like to have a report on them. I want to thank you for your interest in the bill and we will take the amendments into consideration in the next session. The committee will be glad to hear from you. (Whereupon at 11:15 am, the amendments were referred.)







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